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# Questioning the recognition of equitable treatment of minority shareholders under OHADA Law: An application or violation under Cameroon corporate law

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**Abstract**
Protecting shareholders and in particular minority shareholders is an important phenomenon in recognizing shareholders rights under OHADA law. It therefore becomes the responsibility of the OHADA legislator to ensure that all shareholders be it a minority or majority shareholder, that your rights in the company should be respected. We discovered that even with the incorporation of the principle of equitable treatment of shareholders in the Uniform Act on Commercial Companies and Economic Interest Groups, minority shareholders rights are still being violated especially when it comes to decision making and sharing of dividends etc. These shareholders are not treated fairly when it comes to running the affairs of the company, there is generally what we call majority oppression. From this therefore, we are worried if it is that the incorporation of the principle under the Uniform Act itself is insufficient or the legislator has actually sufficiently incorporated the principle but we now have a problem of implementation thus resulting to the poor treatment given to minority shareholders. This paper has as objective to examine the challenges faced by the principle of equitable treatment of shareholders under OHADA law specifically with the minority shareholder. The method used in realizing this includes the doctrinal and analytical, whereby a great use of primary and secondary sources of data was done. Finally we recommended in this paper that, OHADA member states should copy the English principle of stare decisis and entertain matters pertaining to director's duties. OHADA legislator should also incorporate the United Kingdom business judgment rule. This would reinforce and prove the high level of trust given to directors under OHADA Law and thus would give more freedom of action to directors, also to ensure that they are protected, shareholders must not engage in an unlawful activity. A shareholder, for instance who invests in an unlawful or an illegal activity, does not have a right to bring an action if his rights are breached.

**Keywords:** Equitable treatment, shareholders, OHADA law, violation, minority, recognition, corporate law

## Introduction
Companies are gradually becoming one of the greatest pillars of development in most developed and developing countries [1]. Through their numerous activities [2], they help in transforming nations. It is worthy of note here that companies in Cameroon just like any other company is owned by individuals or government. Our focus here is on non-state corporations. Such as public limited companies [3], private limited companies [4], partnership [5], limited partnership [6] and simplified Joint Stock Company [7].

[1]Tabe Tabe, S., (2018), "Understanding OHADA Company Law in Cameroon", ULTRANET, Bafoussam, Sylimit Outreach Printing Press.
[2] Creating employment, infrastructural development, opening up of roads etc.
[3] This is referred to under the UACC as "Societe Anonyme". These are large companies which can sell their shares to ordinary members of the public as investors.
[4] Private limited companies are referred to under the UACC as" Societe a Responsabilitee". The private company is defined in article 309 of the UACC as a company in which the members are liable for the company's debts up to the limit of their contributions and their rights are represented by company shares.
[5] This is referred under the UACC as "Societe en Nom Collectif" (SNC). It is defined in article 270 of the UACC as a kind of private partnership in which all the partners are traders and have unlimited liability for the company's debts.
[6] This is referred under the UACC as "Societe en Commandite Simple" (SCS). The limited partnership is a form of partnership with two types of partners. Members of a limited partnership are either full partners (commandites) or limited partners (commanditaires). While the former will manage the company and be fully liable for the company's debts, the latter (usually investors) will be "sleeping" partners with a limited personal liability. If the sleeping partners are not granted shares in the company, it is called a limited partnership; if shares are granted, it is known as a partnership limited by shares and may thereby subsequently be transformed into a large corporation.
[7]Accordin to the UACC, this is referred to as "Societe par Actions Simplifiee" (SAS). The SAS is a registered company under OHADA law which allows the shareholders the liberty to organize the governance of the company in the manner stipulated in their Articles of Assoction.

Before the advent of the OHADA [8] laws in Cameroon, the applicable company law in the country was derived almost entirely from the introduced English and French Laws which had been in application since 20th July, 1922 when the British and French Mandates for the administration of their areas of the country were confirmed by the Council of the League of Nations [9].

Relying on Article 9 of the Mandates Agreement and on the Foreign Jurisdiction Act of 1890, Britain enacted the British Cameroons Order-in Council N° 1621 of June 26, 1923, according to which laws enacted in Nigeria were to be applicable in British Cameroon [10]. This is the reason why the Nigerian Companies Ordinance [11], Cap 37 of the Laws of Nigeria, 1958 [12], was applicable in former West Cameroon before the coming into force of the OHADA Uniform Act Relating to Commercial Companies and Economic Interest Groups. The Nigerian Companies Ordinance was first enacted in 1912, and it drew its inspiration from the English Companies Act of 1908. It was supplemented by the Common Law, the doctrines of equity and the statutes of general application which were in force in England before 1900 [13]. Meanwhile, in former East Cameroon, the mass of legislation governing company law was of French origin and comprised the following: the law of 24th July 1867 on the societé par actions; the law of 18th March 1919 on the registre du commerce; the law of 17th March 1925 on the societies à responsabilité limitée; law of 16th November 1940 and 4th March 1943 on the societies anonymes [14].

Present day Cameroon applies the OHADA Laws as far as company related issues are concerned. The OHADA Uniform Act on General Commercial Companies and Economic Interest [15] Groups is the law which regulates and governs company activities in present day Cameroon. The objective of OHADA Treaty was to harmonize business laws of Member States such that they have a single, modern legal framework for their economic activities [16]. The rationale for this was to improve legal security which, in turn would help to promote trade and investment. Article 1 of the Treaty in stating the objectives, provides as follows:

The objective of the present Treaty is the harmonization of business laws in the contracting states by the elaboration and adoption of simple modern common rules adapted to their economies, by setting up appropriate judicial procedures, and by encouraging arbitration for the settlement of contractual disputes.

It is worthy of note that for a company to function well, the company relies or depends on the shares bought by the shareholders. The shareholders here are usually the majority or the minority shareholders [17]. There is no doubt that the minority shareholders as compared to the majority shareholders do not benefit from equal treatment as far as sharing of profits or decision making in the company is concern [18]. The corporate governance principle of equitable treatment of shareholders advocates that all shareholders be them minority or majority should be given some degree of preferential treatment with the minority shareholders being the center or point of focus. But it should be noted that this doctrine of corporate governance is a soft law and technically speaking has no binding force as a text but only has a binding force and serves as an obligation when incorporated in the laws such as incorporation into the OHADA law.

**Establishing the need of recognizing equitable treatment of shareholders under corporate governance**

Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders [19]. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. As seen earlier, corporate governance may be defined as a set of systems, processes and principles which ensure that a company is governed in the best interest for all stakeholders. It is the system by which companies are directed and controlled. It is about promoting corporate fairness, transparency and accountability [20].

The aim of good corporate governance is to ensure commitment of the board in managing the company in a transparent manner for maximizing long-term value of the company for its shareholders and all other partners. It integrates all the participants involved in a process, which is economic, and at the same time social [21].

Again, the purpose of corporate governance is to facilitate effective, entrepreneurial and prudent management that can deliver the long-term success of the company [22]. Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies.

[8] OHADA is the acronym of the Organzation for the Harmonization of Business Law in Africa. In French it is: Organization pour L'Harmonisation en Afrique du Droit des Affaires.

[9] Tabe Tabe, (2018) "Understanding Ohada Company Law in Cameroon", ULTRANET, Baffoussam.

[10] Ordinance N° 5 of 1924. By virtue of this Ordinance all Ordinances enacted in Nigeria after February 1924 were applicable to the Cameroons under the British Mandate.

[11] The Ordinance was known as an Ordinance for the incorporation, regulation and winding up of trading companies and other associations.

[12] The Laws of the Federation of Nigeria and Lagos 1958, Chapter 37. The Nigerian Companies Ordinance of 1958, was modelled on the English Companies Act 1948. Since 1948, the Companies Act has been reviewed on several occasions, resulting in several company law reforms. In England today, the Companies Act 1985, as modified by the Companies Act 1989 is the current legislation on company law matters. In Nigeria today, the legislation governing company law matters is the Companies and Allied Matters Act 1990. It is of interest to note that the Nigerian Companies Ordinance was the applicable law on company matters in Anglophone Cameroon up till the 1st of January 1998 when the OHADA Uniform Act Relating to Commercial Companies and Economic Interest Groups came into force.

[13] Tabe Tabe, S., (2018), Understanding OHADA Company Law in Cameroon, ULTRANET, Bafoussam, Sylimit Outreach Printing Press

[14] Anoukaha, F., Nah T., and Tabe Tabe, S., the Law governing commercial Companies in the OHADA Zone (A comparative Study with Ghanaian and Nigerian Laws), Juriscope, France, 2010.

[15] UAGCCEIG.

[16] Tumnde, S. M., (2002), «The Applicability of the OHADA Treaty in Cameroon: Problems and Prospects, » Annals of the Faculty of Law and Political Science, University of Dschang, Vol. 6, P. 24.

[17] The Majority shareholders are usually those who have contributed the greater share in the company while the Minority shareholders are usually those who have contributed the smaller share in the company.

[18] Christian, C., & Dennis C., (2011),)" International Liability of Corporate Directors" 2nd Ed., Juris Publishing.

[19] Baltic Institute of Corporate Governance.

[20] Organization for Economic Co-operation and Development. Opcit.

[21] Baltic Institute of Corporate Governance expatiates more on the principles of corporate governance, it holds that should these principles (transparency, accountability, disclosure etc.) are all respected, it is going to increase the performance level of companies.

[22]Irene-Marie, E., (2005), "The Enlightened Shareholder Value Approach versus Plurism in the Management of Companies", Obiter Journal, Vol. 26, issue 3, PP.719-725.

Corporate governance is of paramount importance to a company and is almost as important as its primary business plan. When executed effectively, it can prevent corporate scandals, fraud and the civil and criminal liability of the company. Corporate governance keeps a company honest and out of trouble. It should be noted that corporate governance is a doctrine which is not legally binding but merely serve as a guide or aspirations of member states on how companies should be managed. This doctrine of corporate governance has provided some principles such as the principle of transparency, accountability, equitable treatment of shareholder, disclosure etc. our focus here is on the principle of equitable treatment of shareholders as seen under this doctrine.

**Understanding the principle of equitable treatment of shareholders**

Generally, the corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

This principle holds that all shareholders be it minority or majority shareholders, national or international be treated equally in the company. The justification for this is that they all are shareholders of the company, regardless of the number of shares owned by each of them. So as such, they need to be treated equally in the company by given equal rights and remedies in areas of breach of such rights. Good corporate governance, especially protection of shareholders' rights, is crucial for attracting capital [23]. Effective corporate governance and protection of shareholders' rights help to assure the availability of funds. Suppliers of capital are more willing to make loans or provide investment when their rights are clearly stated and effective remedies are available in the event of violations.

When, by contrast, applicable legislation and/or company by-laws allow management or controlling shareholders to derive material benefits from company activities at the expense of creditors and investors, neither loans nor investments are likely to be forthcoming. Therefore, the economic growth of the developing African countries depends upon providing for and guaranteeing the rights of creditors and investors. Fair and equal treatment of all holders of common shares is one of the key principles of effective corporate governance. (In developing countries, it may be expedient to prohibit issuing different types of common shares with different sets of rights, although this is allowed in many developed countries).

Equity investors have certain property rights. For example, an equity share in a publicly traded company can be bought, sold, or transferred. An equity share also entitles the investor to participate in the profits of the company, with liability limited to the amount of the investment. In addition, ownership of an equity share provides a right to information about the corporation and a right to influence the corporation, primarily by participation in general shareholder meetings and by voting.

As a practical matter, however, the company cannot be managed by shareholder referendum [24]. The shareholding body is made up of individuals and institutions whose interests, goals, investment horizons and capabilities vary. Moreover, the corporation's management must be able to take business decisions rapidly. In light of these realities and the complexity of managing the corporation's affairs in fast moving and ever-changing markets, shareholders are not expected to assume responsibility for managing corporate activities. The responsibility for corporate strategy and operations is typically placed in the hands of the board and a management team that is selected, motivated and, when necessary, replaced by the board.

Shareholders' rights to influence the corporation center on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board, amendments to the company's organic documents, approval of extraordinary transactions, and other basic issues as specified in company law and internal company statutes. This section can be seen as a statement of the most basic rights of shareholders, which are recognized by law in most countries and Cameroon inclusive [25].

Investors' need the confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders. This is an important factor in the development and proper functioning of capital markets. Corporate boards, managers and controlling shareholders may have the opportunity to engage in activities that advance their own interests at the expense of non-controlling shareholders. In providing protection to investors, a distinction can usefully be made between *ex-ante* and *ex-post* shareholder rights [26]. In jurisdictions where the enforcement of the legal and regulatory framework is weak, it can be desirable to strengthen the *ex-ante* rights of shareholders such as by low share ownership thresholds for placing items on the agenda of the shareholders meeting or by requiring a supermajority of shareholders for certain important decisions. The Principles support equal treatment for foreign and domestic shareholders in corporate governance.

One of the ways in which shareholders can enforce their rights is to be able to initiate legal and administrative proceedings against management and board members. Experience has shown that an important determinant of the degree to which shareholder rights are protected is whether effective methods exist to obtain redress for grievances at a reasonable cost and without excessive delay. The confidence of minority investors is enhanced when the legal system provides mechanisms for minority shareholders to bring lawsuits when they have reasonable grounds to believe that their rights have been violated. The provision of such enforcement mechanisms is a key responsibility of legislators and regulators.

[23] Cameroonian commercial companies are in extreme need of additional cash resources for modernizing production and expanding into new markets. The two potential sources of desperately needed cash are loans from creditors and capital investments.

[24] A proposal submitted by shareholders for a vote at the company's annual meeting. In this sense, the voting on these resolutions more closely resembles a poll than it does a (binding) referendum or plebiscite.

[25] Additional rights such as the approval or election of auditors, direct nomination of board members, the ability to pledge shares, the approval of distributions of profits, shareholder ability to vote on board member and/or key executive compensation, approval of material related party transactions and others have also been established in various jurisdictions

[26] Ex ante rights are, for example, pre-emptive rights and qualified majorities for certain decisions. Ex post rights allow the seeking of redress once rights have been violated.

Among the specific rights that should be guaranteed equally to all shareholders are: the right to receive dividends; preemptive rights to purchase additionally placed shares; the right to obtain adequate information on a company's activity that is; the right to participate in the general shareholders meeting, including adequate disclosure in advance of all materials necessary to make informed decisions and the right to receive a proportionate share of a company's property, after payment of creditors, in the event of its liquidation.

An extremely important prerequisite for attracting investment is ensuring that all shareholders, domestic (internal) and foreign, government and private, are treated equally, irrespective of the state policy on foreign investment.

**Manifestation of the principle of equitable treatment of shareholders in the protection of minority shareholders rights**

The objective here is to see the extent to which the corporate governance principle of equitable treatment of shareholders has been able to protect the rights of shareholders in general and minority shareholders in particular through its provisions.

**Participation in decision making**

**A necessary component of recognizing corporate governance**

Once a shareholder of company weather a minority or majority shareholder, according to the principle of equitable treatment of shareholders, you need to be adequately informed on happenings in the company [27]. The ability of companies to form partnerships and related companies and to transfer operational assets, cash flow rights and other rights and obligations to them is important for business flexibility and for delegating accountability in complex organizations. It also allows a company to divest itself of operational assets and to become only a holding company. However, without appropriate checks and balances such possibilities may also be abused.

**Participation in general shareholders meetings and a right to being informed of voting rules in meetings: A necessary component of recognizing corporate governance**

- Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.
- Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders.
- Company procedures should not make it unduly difficult or expensive to cast votes.

The right to participate in general shareholder meetings is a fundamental shareholder right. Management and controlling investors have at times sought to discourage non-controlling or foreign investors from trying to influence the direction of the company. Some companies have charged fees for voting. Other potential impediments include prohibitions on proxy voting, the requirement of personal attendance at general shareholder meetings to vote, holding the meeting in a remote location, and allowing voting by show of hands only. Still other procedures may make it practically impossible to exercise ownership rights. Voting materials may be sent too close to the time of general shareholder meetings to allow investors adequate time for reflection and consultation. Many companies are seeking to develop better channels of communication and decision-making with shareholders. Efforts by companies to remove artificial barriers to participation in general meetings are encouraged and the corporate governance framework should facilitate the use of electronic voting in absentia, including the electronic distribution of proxy materials and reliable vote confirmation systems. In jurisdictions where private enforcement is weak, regulators should be in a position to curb unfair voting practices.

**Effective shareholder participation in key corporate governance decisions [28]**

To elect the members of the board is a basic shareholder right. For the election process to be effective, shareholders should be able to participate in the nomination of board members and vote on individual nominees or on different lists of them. To this end, shareholders have access in a number of countries to the company's voting materials which are made available to shareholders, subject to conditions to prevent abuse. With respect to nomination of candidates, boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and co-ordinate the search for a balanced and qualified board. It is regarded as good practice for independent board members to have a key role on this committee. To further improve the selection process, the *Principles* also call for full and timely disclosure of the experience and background of candidates for the board and the nomination process, which will allow an informed assessment of the abilities and suitability of each candidate. It is considered good practice to also disclose information about any other board positions that nominees hold, and in some jurisdictions also positions that they are nominated for.

The *Principles* call for the disclosure of remuneration of board members and key executives. In particular, it is important for shareholders to know the remuneration policy as well as the total value of compensation arrangements made pursuant to this policy. Shareholders also have an interest in how remuneration and company performance are linked when they assess the capability of the board and the qualities they should seek in nominees for the board. The different forms of say-on-pay (binding or advisory vote, ex-ante and/or *ex post*, board members and/or key executives covered, individual and/or aggregate compensation, compensation policy and/or actual remuneration) play an important role in conveying the strength and tone of

[27] 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorization of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.

[28] Such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known, including through votes at shareholder meetings, on the remuneration of board members and/or key executives, as applicable. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.

shareholder sentiment to the board. In the case of equity-based schemes, their potential to dilute shareholders' capital and to powerfully determine managerial incentives means that they should be approved by shareholders, either for individuals or for the policy of the scheme as a whole. Shareholder approval should also be required for any material changes to existing schemes.

**Basic shareholder rights as defined in the principles should be granted to all shareholders**

It has long been recognized that in companies with dispersed ownership, individual shareholders might have too small a stake in the company to warrant the cost of taking action or for making an investment in monitoring performance[29]. Moreover, if small shareholders did invest resources in such activities, others would also gain without having contributed (i.e. they are "free riders"). This effect, which serves to lower incentives for monitoring, is probably less of a problem for institutions, particularly financial institutions acting in a fiduciary capacity, in deciding whether to increase their ownership to a significant stake in individual companies, or to rather simply diversify. However, other costs with regard to holding a significant stake might still be high. In many instances institutional investors are prevented from doing this because it is beyond their capacity or would require investing more of their assets in one company than may be prudent. To overcome this asymmetry which favor's diversification, they should be allowed, and even encouraged, to co-operate and co-ordinate their actions in nominating and electing board members, placing proposals on the agenda and holding discussions directly with a company in order to improve its corporate governance. More generally, shareholders should be allowed to communicate with each other without having to comply with the formalities of proxy solicitation.

It must be recognized; however, that co-operation among investors could also be used to manipulate markets and to obtain control over a company without being subject to any takeover or disclosure regulations. Moreover, cooperation might also be for the purposes of circumventing competition law. However, if co-operation does not involve issues of corporate control, or conflict with concerns about market efficiency and fairness, the benefits of more effective ownership may still be obtained.

**Board members and executives should disclose to board whether they have interest in any transaction affecting the company**

Board members and executives should disclose to board whether they directly, indirectly or on behalf of third parties have interest in any transaction affecting the company [30]. Members of the board, key executives and, in some jurisdictions, controlling shareholders have an obligation to inform the board where they have a business, family or other special relationship outside of the company that could affect their judgment with respect to a particular transaction or matter affecting the company. Such special relationships include situations where executives and board members have a relationship with the company via their association with a shareholder who is in a position to exercise control [31]. Where a material interest has been declared, it is good practice for that person not to be involved in any decision involving the transaction or matter and for the decision of the board to be specifically motivated against the presence of such interests and/or to justify the interest of the transaction for the company, notably by mentioning the terms of the transaction.

Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia

**OHADA Uniform Act on Commercial Companies and Economic Interest Groups and its recognition of the principle of equitable treatment of shareholders**

The doctrine of corporate governance though a soft law is gradually gaining a legal force since pieces of legislations is gradually recognizing and incorporating it in their text. OHADA has not gone unnoticed as far as this is concern, OHADA has incepted the principle of equitable treatment of shareholders in its provisions thus recognizing and giving it a binding force on all member states. For instance, OHADA has also recognized the voting rights, right to participate and also a right to the company's profit.

**A right to a share of the company's profits whenever they are distributed**

Profit in its simplest form means a financial gain, especially the difference between the amount earned and the amount spent in buying, operating, or producing something[32]. According to the UACCEIG, all shareholders have a right to the company's profit whenever there are distributed [33]. That is to say shares confer on the shareholders' rights and obligations which must be respected in the company. It is worthy of note that, such profits are distributed to the various shareholders base on their respective contributions or shares owned in the company. The OHADA Law has actually incorporated the right to share of profit in its provision thus working hand in glove with the principles of corporate governance. It should be noted however that profits of a private company are placed in the corporation's retained earnings account, but the corporation is not required to distribute those profits to shareholders. The decision to distribute profits is made by the corporation's board of directors, this therefore serves as a violation to the rights of profit because the board of directors will intend distribute only part of the profit and the balance left in the company's account. While in the course of distributing the profit still, profits are distributed according to the shares owned by each and every shareholder [34].

**A right to the company's assets when shared following the dissolution of the company or where the company's share capital is reduced**

Business assets are items of value that your business owns, creates or benefits from. Examples of assets that are likely

[29] Andrew, H., & Goo S. H., (1997), Company Law, 2nd Ed., Black stond Press Limited.

[30] Enonchong, N., (2007), "The Harmonization of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?", Journal of African Law, Vol. 51, issue 1, PP. 95-116.

[31] Berman, S.L et al., (1999), "Does Stakeholder Orientation Matter? The Relationship between Stakeholder Management Models and Firm Financial Performance", Academy of Management Journal, Vol.42 issue 5, PP. 488-506.

[32] https://languages.oup.com/google-dictionary-en/. Accessed on April 26, 2021.

[33] Article 53 of the UACCEIG.

[34] https://smallbusiness.chron.com/profits-paid-corporation-55594.htm. Accessed on April 7, 2022.

to be listed on a company's balance sheet include: cash, temporary investments, accounts receivable, inventory, prepaid expenses, long-term investments, land, buildings, machines, equipment, furniture, fixtures, vehicles, goodwill, and more[35]. According to the UACCEIG [36], every shareholder has a right to the company's assets when distributed during dissolution of the company [37] or where the company's share capital is reduced. This is as of right, as such the shareholder be it a majority or minority shareholder need to benefit from this failure which he or she can bring an action The general tendency is that the majority shareholders usually have the habit of wanting to benefit more because of their alarming shares in the company. The Uniform Act however tries to strike a balance in this area.

**The right to participate in and vote on the collective decisions of the members**

Shares in commercial companies also confer on the shareholders a right to vote and partake in decision making. This right is irrespective of whether the shareholder in question is a minority or a majority shareholder. The vote and participation here however is usually done according to the number of shares owned by the various shareholders. For instance, the majority shareholders have more voting rights than the minority shareholders. This is because they both have unequal shares. According to Article 53 of the UACCEIG, "shareholders shall have a right to participate in and vote on the collective decisions of the members, except as otherwise provided by the Uniform Act for certain classes of shares".

It is worthy of note that unless otherwise provided in the Articles of Association, the rights and obligations of each member as stipulated in Article 53 of the Uniform Act shall be proportional to the amount of his contributions, whether such contributions were made during the formation of the company or during its lifetime [38].

However, provisions attributing all of the company's profits to a member, or exonerating a member from all liability for losses, as well as those excluding a member from sharing in the profits or charging all losses to one member shall be void.

It should be noted that the rights referred to in Article 53 of the Uniform Act shall be exercised under the conditions laid down for each form of company. Such rights may only be suspended or cancelled by express provisions of the Uniform Act [39].

**The right to transfer of shares to third parties**

According to article 318 [40], the Articles of Association [41] shall freely define the conditions for the transfer of company shares between members. Failing this, share transfers between members shall be free [42]. The Articles of Association may also define the conditions for the transfer of company shares between spouses, ascendants and descendants. Failing this, shares shall be freely transferable between the persons concerned. All shareholders have a write to benefit from this right of transfer of shares. The transfer of shares is not a right to be benefitted by only the majority shareholders. The minority shareholders also have a right to transfer shares to third parties, the transfer here must follow the conditions laid down in the articles of association, if there are no rules then the transfer will automatically be free.

**The right to pledges of shares**

It is worthy of note that apart from transfer of shares, shares can also be pledged. This is seen in Article 322 [43] which provides that where the company consents to a plan to pledge company shares under the conditions governing the transfer of shares to third parties, such consent shall imply the acceptance of the transferee in case of the compulsory liquidation of regularly pledged company shares, unless the company prefers, after the transfer, to immediately redeem the said shares in order to reduce its capital. In order to implement the provisions of the above paragraph and for the pledge to be binding on third parties, the pledging of shares may be established by notarial deed or by private deed notified to the company and published in the TPPRR [44].

**Complexities in enforcing and recognizing the practicalities of equitable treatment of shareholders rights in Cameroon**

The doctrine of corporate governance as seen earlier is a soft law which contains mere aspirations and strictly speaking has only moral rules for the running of a company. It is true that in company, we have both the majority and minority shareholders who have given their respected contributions and bought distinct shares in the company [45]. The general rule is that the majority shareholders benefit more in the company than the minority shareholders, it is for this reason that the principle of equitable treatment of shareholders which is a principle of corporate governance seeks to at least strike a balance between the majority and minority shareholders. Nevertheless, this is observed with some impediments affecting the applicability of the principle.

**The notion of profit sharing**

According to the UACCEIG, all shareholders have a right to the company's profit whenever there are distributed. That is to say shares confer on the shareholders' rights and obligations which must be respected in the company. It is worthy of note that, such profits are distributed to the various shareholders base on their respective contributions or shares owned in the company. To this therefore, the majority shareholders are always entitled to greater part of the profit when shared than the minority shareholders [46].

[35] https://www.nibusinessinfo.co.uk. Accessed on April 26, 2021.
[36] Article 53 Ibid.
[37] Dissolving a company, also known as 'striking-off' has the effect of removing the business from the registrar of companies (Companies House), so annual returns and accounts no longer need to be filed.
[38] Article 54 of the UACCEIG.
[39] Article 55 of the UACCEIG.
[40] OHADA Uniform Act on Commercial Companies and Economic Interest Groups.
[41] In corporate governance, a company's articles of association (AoA, called articles of incorporation in some jurisdictions) is a document which, along with the memorandum of association (in cases where the memorandum exists) form the company's constitution, and defines the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the board of directors.
[42] Carsten, G. B., et al., (2013), The Study on Directors' Duties and Liability, London, LSE Enterprise Ltd.
[43] UACCEG.
[44] Trade and Personal Property Rights Register.
[45] Alhousseini, M., (2009), Understanding the Organization for the Harmonization of Business Law in Africa, 2nd Ed., Port Louis.
[46] This practice is very common in private limited companies where profits of a private company are placed in the corporation's retained earnings account, but the corporation is not required to distribute those profits to

Whatever the case, we do not expect to have the profits of a company being shared equally between a minority and majority shareholder, profits are being shared generally according to the number of shares owned by each and every shareholder [47]. It is for this reason however that the doctrine of corporate governance through its principle of equitable treatment of shareholders tries to bring in some degree of fairness and equity in the treatment of shareholders in companies.

**The reality under asset sharing**

Business assets are items of value that your business owns, creates or benefits from. Examples of assets that are likely to be listed on a company's balance sheet include: cash, temporary investments, accounts receivable, inventory, prepaid expenses, long-term investments, land, buildings, machines, equipment, furniture, fixtures, vehicles, goodwill, and more [48]. According to the UACCEIG [49], every shareholder has a right to the company's assets when distributed during dissolution of the company [50] or where the company's share capital is reduced. This is as of right, as such the shareholder be it a majority or minority shareholder need to benefit from this failure which he or she can bring an action.

The general rule as stipulated by the law is that all the shareholders have a right to benefit from the company's assets whenever there are shared, be it a majority or minority shareholder. The law however does not explain further on how this assets will be shared. However, taking into consideration the fact that majority shareholders usually receive more of the profits than the minority shareholders, the same thing applies will the sharing of assets especially in private limited companies. It is not a disputable fact that majority shareholders should benefit more in a company than the minority shareholders, however the case, it is for this reason that the principle of equitable treatment of shareholders comes in to also strike a balance between the majority and minority shareholders. This will result to some fairness and equity as far as the treatment accorded to minority shareholders is concern.

**Practicability in key decision making**

Shares in commercial companies also confer on the shareholders a right to vote and partake in the decision making [51]. This right is irrespective of whether the shareholder in question is a minority or a majority shareholder. The vote and participation here however is usually done according to the number of shares owned by the various shareholders [52]. For instance, the majority shareholders have more voting rights than the minority shareholders. This is because they both have unequal shares. According to Article 53 of the UACCEIG, "shareholders shall have a right to participate in and vote on the collective decisions of the members, except as otherwise provided by the Uniform Act for certain classes of shares".

It is worthy of note that unless otherwise provided in the Articles of Association, the rights and obligations of each member as stipulated in Article 53 of the Uniform Act shall be proportional to the amount of his contributions, whether such contributions were made during the formation of the company or during its lifetime [53].

However, provisions attributing all of the company's profits to a member, or exonerating a member from all liability for losses, as well as those excluding a member from sharing in the profits or charging all losses to one member shall be void.

It should be noted that the rights referred to in Article 53 of the Uniform Act shall be exercised under the conditions laid down for each form of company. Such rights may only be suspended or cancelled by express provisions of the Uniform Act [54]. As seen earlier, this right is accorded to shareholders base on the number of shares owned by each shareholder. This is technically seen as a hurdle to the smooth implementation of the principle of equitable treatment of shareholders. This is because in reality, the company will always be run and manage according to the desires of the majority shareholders since they have the greater voting rights to always vote and make decisions in the company. It is therefore for this reason that the principle of equitable treatment of shareholders tries to came in and preach fairness and equity, so that the company can also at one point and time be managed taking into consideration the desires or aspirations of the minority shareholders [55].

**Future perspective and a way forward of equitable treatment of shareholders in Cameroon**

There is no doubt that there is unequal treatment of shareholders in company activities especially in the case of private limited companies. This unequal treatment is seen at the level of profit sharing, decision making, sharing of assets and also at the level of participation in the company. The majority shareholders generally benefit more in all of these. Despite the fact that the doctrine of corporate governance through its principle of equitable treatment of shareholders has advocated for a fair and equitable treatment of shareholders, till date, this is still a myth than a reality in the light of companies. It should be noted that if shareholders specifically the minority shareholders are well protected, it paves way for a favorable market system[56]. The implication of the non-respect of these principles is that many prospective investors will definitely change their minds to invest in the company for fear that, should they be minority shareholders, their rights will not be respected and also the available minority shareholders might also decide to terminate their contract with the company. As a result, the company's economic strength will die down. For this reason, we believe that the following can be done to remedy

shareholders. The decision to distribute profits is made by the corporation's board of directors and profits are distributed to shareholders based on their share percentages.

[47] Francesco, P., & Clodia, V., (2013), "Stakeholder Orientation and Corporate Reputation: A Quantitative Study on US Companies", Emerging Issues in Management, symphonya.unimib.it, P. 53-65.

[48] https://www.nibusinessinfo.co.uk. Accessed on April 26, 2021.

[49] Article 53 Ibid.

[50] Dissolving a company, also known as 'striking-off' has the effect of removing the business from the registrar of companies (Companies House), so annual returns and accounts no longer need to be filed.

[51] Alkhafaji, A. F., (1989), A stakeholder Approach to Corporate Governance: Managing in a Dynamic Environment, Westport, CT: Quorum Books.

[52] Handy, C. (1993), "What is a Company for?" Corporate Governance: An International Review, Vol. 1, issue 1, PP. 14-16.

[53] Article 54 of the UACCEIG.

[54] Article 55 of the UACCEIG.

[55] (Thus the principle of equitable treatment of shareholders).

[56] When you have strong protections for the interest of minority shareholders, then more people are willing to invest money in the stock market. As a result, what you get is a larger stock market with more turnover and higher capitalization or more dynamism.

the situation thereby striking partially a balance between the majority and minority shareholders as far as running and managing companies is concern.

**To the legislator**

Firstly, criminal liabilities are aimed at deterring directors from committing criminal offences. In the past, an encounter between criminal and business law was difficult to come by, but today because of an increase in business dishonesty, penal sanctions in business relations are so valuable such that it cannot be ignored. The various forms of punishment be it fine or imprisonment terms, are put in place to punished directors for their acts and omissions. Unfortunately, this objective is often not met in the OHADA and English jurisdictions either because of lack of harmonization of the criminal law, lack of implementation or corruption within the system. Against this backdrop, we recommend that, restrictive measures of implementation of criminal sanction should be put in place both under OHADA and English Law. This will go a long way to restrict directors from engaging in certain activities such as taking loans from the company and having their engagement guaranteed by the company. We also recommend that OHADA Legislator should harmonize criminal sanctions of corporate directors in its Uniform Company Act.

Furthermore, under both OHADA and English Law, disputes involving directors are resolved using different pattern. While English Law depends on the principle of *stare decisis* which utilizes the binding force of judicial precedents where the presence of pre-determined legal rules is limited to include only those that are strictly necessary and which of date has series of decided cases with respect to director's duties, OHADA, courts essentially refer to the principles of law set forth in the Codes and they exist little or no body of case law in respect of director's duties to support its fact. Under OHADA Law jurisdictions, there exists no jurisprudence related to fiduciary duties of directors. Thus courts under OHADA has not yet been called on to decide on matters relating to the duty of care required, and there is no evidence of application of the business judgment rule as of yet. In this line, we recommend that, OHADA member states should copy the English principle of *stare decisis* and entertain matter pertaining to director's duties. OHADA legislator should also incorporate the UK business judgment rule. This would reinforce and prove the high level of trust given to directors under OHADA Law and thus would give more freedom of action to directors.

Finally, there is a problem of recognition and enforcement of judgment both under OHADA unlike English Law. Under OHADA for instance, the judgment given by the CCJA are not always respected by the member's states. Against this backdrop, we recommend that the OHADA and the English legislators should put in place strict rule to ensure that judgments are recognized and enforced within these states. Also any OHADA member state who fails to enforce judgments of the CCJA should be severely punished.

**To the shareholders**

Firstly, shareholders should ensure that a clause issuing them special protection is put in place at the level of the formation of a company. This clause should outline their role and the benefit they are going to have as members of the company, and should be done in conformity with their shares. This will reduce the level of breach of their rights as compare to shareholders who invest without any special clause. The shareholders can also bring an action in case any provision of the said clause is breached.

Secondly, shareholders are also advised to know the forms and types of company before investing their capital in it. Shareholders who invest in an un-registered company have no right to bring an action since the company is not recognized by the law. In this direction, we advise shareholders to invest in registered companies this will guarantee the protection of their rights. Shareholders should also invest in limited liability companies since the liability of each shareholder for the debt of the company is limited to his/her contribution. This will go a long way to protect their private properties in times of insolvency.

Finally, to ensure that they are protected, shareholders must not engage in an unlawful activity. A shareholder, for instance who invests in an unlawful or an illegal activity, does not have a right to bring an action if his rights are breached. When stakeholders carry out legal activities, and within the scope of their authority, they have the ground to bring and action whenever their rights are breached.

It is hoped that the recommendations suggested if adopted will go a long way to improve on the content of the Uniform Act on Commercial Companies and Economic Interest Groups, also it will help improve on the kind of treatment accorded to shareholders (particularly minority shareholders) in a company.

**Conclusion**

This paper concludes that, the corporate governance principle of equitable treatment of shareholders must be incorporated entirely in the Uniform Act on Commercial Company and Economic Interest Groups and enforced within the OHADA zone and beyond. There is no doubt that in a company we have both majority and minority shareholders, it is just but normal that the majority shareholders receive more of every benefit coming from the company while the minority shareholders receive less. Even the Uniform Act recognizes this affirmation, for it will be unjustly to have two people of unequal shares receiving the same amounts of profit or benefits from the company. Whatever the case, this paper concludes that minority shareholders in particular should be fairly treated and equity should be observed at every level in the running of the company, without which the minority shareholders especially when it comes to decision making may hardly ever have anything to say since their voting rights is limited to their shares so technically the majority shareholders may always win taking into consideration the lion share they own in the company.

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