



## Mechanisms of Effective Corporate Governance for Credit Establishments in the CEMAC Region

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**Abstract:** A great amount of attention is being given as of now to issues of good corporate governance around the world and in the CEMAC region as well as financial institutions which is as a result of the high profile accounting scandals that occurred in the 1980s and 1990s. These scandals saw the fall of major financial institutions around the world and it was largely attributed to corporate governance failures. These events have ignited the importance of implementing good corporation governance mechanisms for financial institutions including credit establishments in the CEMAC Region. This study examined the various mechanism of good corporate governance for credit establishments provided by the law within the CEMAC region. To achieve this objective, the study comprehensively reviewed literature on the key issues under consideration. It adopted a qualitative approach to obtain primary and secondary data for the study. The study majorly found out that good corporate governance mechanisms include internal governance mechanisms based on specific mechanisms and actions taken by individual firms to enforce control and accountability. They also include external governance mechanisms- which include regulatory and supervisory bodies to enhance the efficiency of credit establishments. Consequently, good corporate governance is essential for achieving success in credit establishment and in turn for the economic growth as a whole. The researcher recommends the effective implementation of the good governance mechanisms provided for by the COBAC regulations and the OHADA UNIFORM ACT as well as other related instruments within the CEMAC Region by credit establishments to ensure the achievement of greater performance and governance effectiveness.

**Key words:** Corporate Governance Mechanisms, Credit Establishments, CEMAC.

### Introduction

Credit establishments as defined in article 4 of the Cobac Convention on the harmonization of banking regulations in the states of central Africa, 1992 as organizations that carry out banking transactions on the regular basis, are created in the form of public limited companies under the OHADA Uniform acts on commercial companies and the economic interest group 2014. Article 5 of the Cobac regulation amending and completing certain conditions relating to the practice of the banking profession in the Cemac, 2015<sup>1</sup> provides the credit establishments must be constituted in the legal form of public limited companies with a board of directors within the meaning of the Uniform Act on ohada on commercial companies and economic interest group. The shares must be in registered form. Furthermore, Article 4 of the Cobac regulation on<sup>2</sup> corporate governance in Cemac 2008 provides that credit establishment must be established in a form which allows the existence of

<sup>1</sup> Regulation No 02/15/CEMAC/UMAC/COBAC Amending and completing certain conditions relating to the practice of the banking profession in the CEMAC

<sup>2</sup> Regulation No. 4/8 CEMAC/ UMAC/COBAC Regulating to corporate governance in the credit establishments of Cemac

boards of directors or body in lieu thereof. The directors appointed by the General Assembly in accordance with the rules of common law (OHADA are collectively responsible to the General Assembly. They must have sufficient banking knowledge and have experience in business administration. The OHADA uniform act on commercial companies and economic interest group 2014 accordingly provides in its article 414 on the administration and management of public limited company thus” the management structure of each public limited company shall be determined unequivocally in the articles of association which shall choose between the public limited company with board of directors or the public limited company with a general director...”from the foregoing it is clear that the structure of the single board system as opposed to the dual board system is adopted by the OHADA uniform act. Under the single board system, the board of directors generally nominated on an individual basis through an internal committee and /or executive management recommendations and elected by shareholders acts as an independent monitor of company management. This is common in countries such as United States, UK, and Canada. On the other hand the dual board system which is found in Germany and other continental European countries mandates a division between two bodies: the supervisory board and the management board <sup>3</sup>

Also in accordance to article 6, 10, 25 and 26 of the COBAC regulation 2008 relating to corporate governance in the credit establishments of CEMAC powers to manage the company are rested on directors. Thus shareholders cannot interfere in the management of companies. From the foregoing it is clear that the COBAC legislators adopted the capitalist shareholder model of governance over the stakeholder model. This is in accordance with the 1999 OECD principles on corporate governance as well as the UK/ US corporate governance codes based on shareholders theory and the price mechanism which states that the shareholders are owners of the companies who benefit from the company’s profits and bear all the risk in times of losses by the company. However, the shareholders model of corporate governance is not the only model of corporate governance. We also have others like the stakeholder model practiced in continental Europe which imposes explicit obligations on the board to consult other groups such as in Germany where companies have to appoint a supervisory board that encompasses employees ‘representatives and banks to the board of the organization <sup>4</sup>. This shareholder model commonly gives rise to governance issues, sparse shareholders and agency problems. The agency problem in corporation was first identified by Adam Smith who noted in 1937<sup>5</sup>, that the directors who manage other people’s money cannot be expected to watch over it with the same exiguous vigilance as they watch over their own management’s negligence and professions always prevail in such a joint stock company. These problems became compounded by the phenomenon of separation of ownership and controls which was observed by Berle and Means in 1932 which increased the power of the professional managers. It left them free to pursue their own aims and serve their own interests instead of the interests of the shareholders who are the owners of the firm. In the wake of fragmented and dispersed shareholders who attempted to exert their rights over the managers who have gained control in the modern corporation with a host of negative consequences on the corporations, the legislators had to step in by enacting governance legislations such as the Basel accords, the Cobac regulations, and OHADA legislations.

From the above analysis, it remains clear that shareholders are in a difficult position. Diffusion and agency barriers lead to lack of control. The shareholders often cannot influence or monitor management and lack access to information, and the cost of overcoming these hurdles is considerable. They want rights to be upheld such as profit maximization and fair treatment but it cannot be certain that they will be achieved. Thus in the face of these challenges the shareholder can become positive and even apathetic. The concept of “equitable control” where managers obtain power from diffuse shareholders and act in the best interests of the firm is not guaranteed to work without proper structure, incentives and checks and balances. Perhaps the interest of shareholders

<sup>3</sup> ERIK Banks, corporate governance; Financial responsibility, controls and Ethics, Newyork, palgrave macmillan 2004, page 36

<sup>4</sup> Tony Ike Nwanji, Kerry E. Howell, *A Review of the two main competing models of corporate governance: The shareholdership model versus the stakeholdership model*, corporate ownership and control/ volume 5, issue 1 2007, page 12

<sup>5</sup> I bid at page 13

and management are not aligned: perhaps, as Berle and Means presciently noted, management can “serve their own pockets better by profiting at the expense of the company than by making profits for it”<sup>6</sup> as was seen around the world in Enron, world com, Tyco, Kmart, Daewoo, Health South etc as well as in the CEMAC regions collapsed financial institutions. Even if the management does not behave fraudulently, it might still primarily be interested in building empires or focusing on activities that provide lucrative short term financial reward. If dissatisfied, it may be easier for the shareholders to sell the stock and redeploy capital in another opportunity rather than trying to fight the system. Since shareholders are diffused, they lack effective control and have rights that require protection; strong governance is of paramount importance. If investors cannot exercise proper control, then mechanism must be put in place to ensure some type of accountability. They need a frame work whereby they can oversee and discipline management. The same can also be extended to other stakeholders, who have interest that need to be represented properly. Governance assumes various forms in modern corporate systems. They include both external and internal mechanisms as will be discussed below.

### **Statement of Problem;**

It is true that the creation of the banking commission and the harmonization of the banking rules has led to a great improvement in corporate governance of credit establishments in the CEMAC Region but regrettable the region remains fraud with a lot corporate governance challenges due to inadequate implementation of the rules of corporate governance mechanisms put in place by COBAC regulations and other related corporate governance regulations in the sub-region. As a result of these implementations inadequacies, the credit establishments have continued to suffer from various governance challenges such as high vulnerability to credit risk, high levels of bad debts, poor internal and external governance practices and many others<sup>7</sup>.

### **Research Questions;**

This work possess a main research question and specific research question

- What are the mechanisms of good corporate governance provided by the law in the CEMAC Region for credit establishments?
- How effective is the implementation of these corporate governance mechanisms for credit establishments in the CEMAC Region?

### **Research Objectives**

- This paper is out to establish a comprehensive appraisal of good corporate governance mechanisms for credit establishments provided by the law in the CEMAC Region.
- To assess the effectiveness in the implementation of these corporate governance mechanisms for credit establishments in the CEMAC REGION

### **Research Methodology**

The research methodology used in this work is qualitative which includes the doctrinal research method that deals with content analysis of primary and secondary data, unstructured interviews, focus groups discussions and observations.

- Primary data obtained from COBAC regulations, OHADA UNIFORM ACT, International and National Legislations.
- Secondary data is obtained from books, journals articles, reports, thesis and websites.
- Also, the technique of legal research employed in this research is that of inductive reasoning.

### **Corporate governance mechanisms for credit establishments provided by the law in the CEMAC Region**

The COBAC regulations and the OHADA UNIFORM ACTS as well as other related international and local regulations has made provisions for internal and external corporate governance mechanisms for credit establishments in the CEMAC REGION. We shall proceed to examine a few or some of them below.

<sup>6</sup> Erik Banks opcit foot notes 23, page 23-24

<sup>7</sup> Bulletin of the central African banking commission of 30<sup>th</sup> June 2014/2015 on commitments on related parties in CEMAC credit establishments

### **Internal governance mechanisms**

Internal governance is based on specific mechanisms and actions taken by individual firms to enforce control and accountability. These may vary between companies and countries but broadly speaking they include: the ownership and control structure, executive management, internal control groups, practice guidelines and code of conduct. Because of the extremely complex nature of banking transactions which are very difficult to trace and evaluate, supervisors depend to a substantial degree on internal management control systems. The task of bank supervision includes monitoring, evaluating and when necessary, strengthening the risk management process that is undertaken by banks through internal governance mechanisms provided by the law.

### **The structure of Power (shareholders and board of directors accountability)**

Shareholders as owners of companies place a key note in corporate governance. From the formation of the companies to approving the board of directors, the audit committees and external auditors, shareholders are in the position to determine the direction of credit establishments. The banking laws legislators as well as regulators recognize the importance of shareholders and directors. In the modern market – oriented approach to bank regulation, the emphasis on the fiduciary responsibility of shareholders has increased significantly. This is reflected in several ways including more stringent bank licensing requirement and standard that bank's founder and larger shareholders must meet to be considered fit and proper<sup>8</sup>. Actions that may be taken against shareholders who fail to properly discharge their responsibilities to ensure the appointment of fit and proper persons for the corporate governance process have also become broader such as provided in article 13 of the Cobac convention of 1990<sup>9</sup> which entails warning, discipline or even withdrawal of their approval for violating banking legislations. Also bank licensing procedures of major shareholders and mandate a minimum number of shareholders which varies amongst jurisdictions. Article 14 of the Cobac 1992 convention on harmonization of banking regulation in CEMAC is structured. Explicit approval of the supervisory authority for a person to become a bank future manager, which normally implies owning a certain percentage of the bank's share. Article 3.8.7 of the OHADA uniform act on commercial companies<sup>10</sup> provides that the minimum stated capital for public limited companies is set at 10.000.000 frs cfa to be divided into shares in article of association and 100.000.000 frs cfa if it intends to sell its shares at stock exchange market. Such approval is based on the ability of shareholders to meet a certain set of predefined criteria. The central bank normally approves all changes in the shareholding structure of a bank. The central banks in most jurisdictions also review and approve a bank charter and key by laws that determine the specific relationships of banks with its shareholder<sup>11</sup>. From the foregoing it remains undisputed that shareholders should play a key role in overseeing a bank's affairs. They are normally expected to select a competent board of directors whose members are experienced and qualified to set sound policies and objectives. Article 4 of the Cobac regulations on corporate governance 2008 provides credit establishments must be established in a form which allows the existence of board of directors or body in lieu thereof. The director appointed by the General Assembly in accordance with the rules of common law is collectively responsible to the General Assembly. They must have sufficient banking knowledge and have experience in business administration<sup>12</sup>. The board of directors also has been given the responsibility to manage the affairs of the bank by legislators. It must be able to adopt a suitable business strategy for the bank, supervise the bank's affairs and its financial position maintains reasonable capitalization and prevents self-serving practices among themselves and throughout the banks as a whole. Article 6 of the COBAC regulation on corporate governance 2008 empowers the board of

<sup>8</sup>Hennie van Greuning and Sonja Brajovic Bratanovic Analysing Banking Risk, 3<sup>rd</sup> edition, Washington D.C. The world Bank 2009, page 51

<sup>9</sup> Convention for the establishment of a central African banking commission 1990

<sup>10</sup> ohada uniform Act on commercial companies and economic interest group 2014

<sup>11</sup>Hennie Van Greuning and Sonja Brejovic Bratanovic, Analyzing Banking Risk, 3<sup>rd</sup> Edition. Washington D.C. world bank, page 5.1

<sup>12</sup> CEMAC Regulation No 04/08/CEMAC/UMAC/COBAC of October 6, 2008 relating to Corporate governance in cemac credit institutions

directors to appoint other responsible officers, monitor and evaluate the performance of the general management as well it's adherence to the defined strategic orientations<sup>13</sup>.

Article 121 and 122 of the OHADA uniform acts on commercial company and economic interest groups<sup>14</sup> provides that acts of management body shall bind the company. From the foregoing it remains obvious that there is separation of ownership from management. This separation of ownership from management can lead to managers of firms taking action that may not maximize shareholder wealth, due to their firm specific knowledge and expertise, which would benefit them and not the owners, hence a monitory mechanism is designed to protect the shareholder interest (Jensen and Meckling 1976)<sup>15</sup>. This is known as the agency problem in corporations which was first identified by Adam Smith ((RBS review, 1937)<sup>16</sup> that directors who manage other peoples' money cannot be expected to watch over it with the same anxious vigilance as they watch over their own. Management's negligence and profusion always prevail. This agency problem is common with the shareholder model of corporate governance practiced of the Anglo Americans such as U.K and U.S.A where in a vast majority of cases owners are not involved in management of companies. The management entrusted in the hands of directors who can be working for their interest thus the need for a system for directors as agents to account for their stewardship to the owners of the business. When managements and directors are detached from ownership and especially when ownership is diffuse as opposed to concentrated share ownership in the continental model of corporate governance, it is possible for managers to run a corporation to serve their own ends. Mechanisms are therefore needed for ensuring that corporate actions, agents and assets are devoted to achieving the corporate purpose established by the shareholders. The key concept here is accountability. Accountability here means that individuals and institutions are answerable for what they do. They must account to others for their conduct and for their use of resources. Two sorts of accountability are critical for corporate governance: the accountability of directors to shareholders and the accountability of corporate employees and other corporate agent to the corporation<sup>17</sup>. A successful model of corporate governance must provide mechanism for these sorts of accountability. The mechanism employed to address agency and coordinated problems fall in to two broad categories. These are the regulation based strategies. Regulatory strategies directly contain the actions of corporate actors such as imposing duties on directors controlling certain transactions directors can make disgorgement of profits made by directors etc. Some of these regulators provided by the law includes the following:

The first constrains on the director is on the management of conflict of interests. Article 42 to 48 of the COBAC regulation of corporate governance in credit establishments in CEMAC<sup>18</sup> stipulates the board of directors must pay particular attention to prevent possible conflicts of interest, to the transparency of information provided and to take equitable account of all the interest involved. The corporate governance committee is responsible for this. It also provides a special procedure must allow administrators and General managers to avoid conflicts of interest by informing the chairman of the board of directors of any situation of potential conflicts with the credit institution. A formal prohibition must be made to the administrators and to the General managers to make transactions on the securities of the credit institution during determined sensitive period and in particular those proceeding the announcement of the financial results. Articles 42-45 manages related parties' transaction which includes insiders' dealings as well as regulated and prohibited agreements conflicting with co-entrusts.

<sup>13</sup> I bid, Article 6 page 4

<sup>14</sup> Uniform act on commercial companies and the economic interest group 2014

<sup>15</sup> Wan Fau Ziah wan yusoff and idris Adamu Alhaji *Journal of Business and management* vol.1 issues 1 (2012) North America, Science and education center page 54

<sup>16</sup> Tony Ike Nyoanji, Kerry E. Howell "A Review of the two main competing models of corporate governance: The shareholders model versus the stakeholdership model", vol.5 issue 1 2007, page 13

<sup>17</sup> I bid at page 15 para 3

<sup>18</sup> Regulation No 04/08 Cemac/Umac/Coba relating to corporate governance in the credit establishment of CEMAC

Insider dealing or insider trading is the practice whereby a person who has knowledge of confidential price-sensitive information (inside information) of a company obtained as result of association with the company uses of that information to either buy securities of the company or sell securities which he holds in order to make a profit whereas those who do not have knowledge of that information cannot deal in those securities. To put it in another way the person deals in the information in order to obtain an unfair advantage in the securities market. In this type of scenario, generally a person that is having some very important information (concerning a company) that is usually not available to investors uses this information for their own personal gain. This is one of the major irrational behaviors that come under abusive marketing where this wrong person would try to deal with the personal information of the firm which was not initially meant to be shared with anyone else except for a few people. Thus this is a classic example of misusing the information. This also includes persons to whom insiders have passed on inside information known as “secondary insider” or tippees and persons who have wrongfully gained possession of such information. It is the use of the information and not some connections between the person who uses it and the company that constitutes the offence.<sup>19</sup> It is now considered as trading on inside information. This is expressly prohibited in credit establishment in CEMAC by article 45 of the COBAC regulation on corporate governance 2008.

### **Executive management under the structure of powers**

Executive management, senior management or upper management means the highest organizational leadership level of a company.<sup>20</sup> Article 414 of the OHADA uniform act on commercial companies and economic interest groups<sup>21</sup> states that the management structure of each public limited company shall be determined unequivocally in the articles of association which shall choose between: the public limited company with board of directors; or the public limited company with a general director. Article 415 of the uniform act further provides that the public limited company with a board of directors shall be managed by either a chief executive officer or by a chairperson of the board of directors and a general manager. This separation of the functions of chairman of the board of directors and chief executive officer is further emphasized in Article 21 of the COBAC regulation on corporate governance for credit establishments in CEMAC<sup>22</sup>. It provides that the internal rules in force in each credit institution must clearly and unequivocally define the modalities for the division of responsibilities at the heart of the institution which guarantees the balance of powers and authority so as to avoid the concentration of decision-making powers in the hands of one and the same person. In its article 22 it further states that the function of Chairpersons of the Board of Directors and general manager to a credit institution must not be exercised by the same person. Article 24 and 25 of the regulations make a distinction of their functions. According to article 24 the chairman of the board of directors is responsible for the functioning of the board by ensuring its effectiveness in all aspects of its missions while article 25 provides that the director general is responsible for the day to day management of the credit institution and for the adequate information of the board of directors. Thus the director general is in charge of day to day management of the credit establishment and reports to the board of directors. This governance mechanism ensures as mentioned in article 21 balance of powers, and prevents concentration on decision making in the hands of one person which might lead to possible power abuse and conflict of interest with owners or shareholders. Under the direction and oversight of the board, senior management should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, incentive compensation and other policies approved by the board.

The organization procedures and decision-making of senior management should be clear and transparent and designed to promote effective management of the bank. This includes clarity on the rules and authority of the various positions within senior management including the CEO.

<sup>19</sup>Company Law 1 notes. University of Buea. 2019-2020, page 3

<sup>20</sup>Deltacon Executive search and recruiting, [www.Deltacon-exs.com](http://www.Deltacon-exs.com) Accessed on 14 August 2021

<sup>21</sup>uniform Act on commercial companies and the economic interest group 2014, page 122

<sup>22</sup>Regulation No. 04/08 Cemac/ Umac/ Cobac Relating to corporate governance in credit institutions of CEMAC.

Senior management is responsible for delegating duties to staff and should establish a management structure that promotes accountability and transparency throughout the bank.

Senior management should implement consistent with the direction given by the board, risk management systems, processes and controls for managing the risk both financial and non-financial to which the bank is exposed and for employing with laws, regulations and internal policies. This include comprehensive and independent risk management, compliance and audit functions, as well as an effective overall system of internal controls; senior management should recognize and respect the independent duties of the risk management, compliance and internal audit functions and should not interfere in their exercise of such duties.

Senior management should provide the board with information it needs to carry out its responsibilities supervise senior management and assess the quality of senior management's performance. In this regard senior management should keep the board regularly and adequately informed of material matters including:-

- Changes in business strategy, risk strategy, risk appetite,
- Banks performance and conditions
- Breaches of risk limits or compliance rules
- Internal control failures and
- Legal or regulating concerns<sup>23</sup>.

### **External Governance Mechanisms**

On external governance mechanism we shall consider various financial and structural governance mechanisms including regulatory and supervisory oversights, block holding or consolidated and cross border monitoring, Active institutional investors' participation and monitoring, external audit and credit rating agencies review.

### **Regulatory and supervisory mechanisms**

Regulators and supervisor form an external vital part of the external governance process. Although companies feature their own internal mechanisms, regulators and supervisors are still necessary because individual firms might not design proper checks and balances. Also in a situation where shareholders are diffuse like in the shareholders model of governance, they might not be able to challenge certain behaviors of management. Supervision and regulatory bodies attempt to create frame works that protect all stakeholders' not just investors but also suppliers and creditors, customers and others. Regulations might be developed by regulators then promulgated and enforced by supervisors. Although specific regulatory directives vary by country and industry, most focus on the following areas:

Financial soundness and stability by (for examples adequate capital and liquidity, sound asset quality), Operating and financial risk control processes, accounting and disclosure standards legal compliance standards and code of conduct /ethics<sup>24</sup>.

### **COBAC**

In the CEMAC, the implementation of banking regulation is entrusted to a community authority whose scope of intervention, its independence and power are the main indicators of identification. Considering these criteria, it appears from the CEMAC banking regulations that the regulatory authority of the banking sector is the COBAC<sup>25</sup>.

As regards the scope of intervention ,the regulatory authority is generally responsible for establishing or maintaining the major balances of sectors that cannot by their own powers create or maintain

<sup>23</sup> Company Law 1 notes.University of Buea. 2019-2020, page 3

<sup>23</sup>Deltacon Executive search and recruiting, [www.Deltacon-exs.com](http://www.Deltacon-exs.com) Accessed on 14 August 2021 page 18

<sup>24</sup> Erik Banks, Corporate governance: financial responsibility, control an ethics; New York, palgrave macmillan 2004, page 55.

<sup>25</sup> Achille Sunkam Kamdem: *Réflexion Sur le system de regulation Institutionnelle de l' activité bancaire dans la Cemac*, Revue libre de Droit , 2014 p. 134 - 148

them.<sup>26</sup> In doing so they must “supervise the development of the sector for which they are responsible for certain the rules of the game and arbitrating between the interest involved”<sup>27</sup>. More specifically the purpose of banking regulation is to ensure the soundness of the banking system. In the CEMAC banking system, COBAC is the authority that corresponds to this description of the role of the regulator. Indeed Article 1 paragraph 2 of the Annex to the convention of 16 October 1990 establishing COBAC provides that COBAC shall ensure the quality of the financial situation of credit institutions and the integrity of the banking and financial system. Article 9 of the same text adds that COBAC set the rules to ensure and monitoring the liquidity and solvency of credit institutions vis- a- vis third parties and more generally the balance of the financial structure.

As far as the independence of the regulator is concerned, it is one of the most central criteria for characterizing a regulator. It reflects a new conception of the state, postulating a new style of public action.<sup>28</sup> In contemporary societies we can see the retreat of a conception that set up a state as an agent of modernity responsible for managing key sectors of the economy. The state is becoming a referee of the social game, renouncing the imposition of its views and constantly negotiating with social partners to build the necessary compromises. This is accompanied by the proliferation, on the fingers of traditional administrative structures, of bodies with the capacity for autonomous action. The independence of the regulatory authorities this appears to be necessary criterion for the effective of their rule, which consist in organizing the conditions for a fair balance between social interest of all kinds, This independence I both legal and financial<sup>29</sup> because their operating rules exclude them the principle of subordination and grant them financial management autonomy with respect to the state.<sup>30</sup> In this regard COBAC is truly independent of the CEMAC states since it is community body instituted by the UMAC and whose competences and powers are above purely states considerations or constraints.

With regard to powers the regulatory authorities are endowed with decision- making powers, control of the norms they enact and sanctioning powers,<sup>31</sup> all prerogatives whose absence would doom their task to failure. Thus when Article 1 of the annex to the convention of 16 October 1990 creating the banking commission states that “ a central African Banking commission is hereby established herein after “ the banking commission “ and I short “ COBAC” responsible for ensuring that credit institutions comply with the legislative and regulatory provisions enacted by the national authorities, by the Bank of Central African States(BEAC) or by itself and which are applicable to them, and to sanction the shortcomings noted. In particular, the banking commission monitors the operating conditions of credit institutions, ensures that quality of their financial situation and ensures compliance with the ethical rule of the profession”. This is undoubtedly the full powers involved to a regulator which are thus entrusted. These powers are further strengthened by Article 7 of the 1990 convention which provides in its first paragraph that within the framework of the mission assigned to it, the banking commission has authority over the territory of the member states of the BEAC for the exercise of the powers listed below. Its decisions are automatically enforceable upon notification to the National Monetary Authorities and the institutions concerned. In the event of a failure by a credit institution to comply with rules of good conduct of the profession, the banking commission may after having given its managers formal notice to explain themselves, issue a warning to them and other subsequent sanctions provided by COBAC regulations. Article 13 of the annex of the convention for the establishment of the Central African Banking commission 1990 provides for these sanctions which include warning, blame, prohibition, dismissal, automatic suspension and withdrawal of approval. Article 45 of the convention of the harmonization of banking regulations in CEMAC 1992, also provides further sanctions. An example of such sanctions metted by COBAC on credit establishments is that of 6 Cameroon banks placed on COBAC sanctions for the violation by

<sup>26</sup> I bid

<sup>27</sup> I bid, page 139 para 4

<sup>28</sup> I bid, page 140 para 2

<sup>29</sup> I bid , page 140 para 2

<sup>30</sup> Articles 9 and 31 of the agreement governing the UMAC

<sup>31</sup> Achille Sunkam Kamdem *Re lection on the system of institutional regulation of banking Activity in the CEMAC*, Revue libre de Druit, 2014 , PAGE 140.

these institutions of regulations on change. These banks includes Bgfi Bank, BICEC , Afriland first Bank, Société Générale Cameroon, Standard Chartered Bank and United Bank for Africa (UBA). COBAC, during her session on the 22 September 2018 issued sanctions against managers of Cameroonian banks and to the above banks for non-respect for regulation of change<sup>32</sup>.

It is clear and undeniable from this analysis that the legislative and regulatory authorities of the CEMAC have entrusted the regulations of banking activity to the COBAC.

### **An Appraisal of the Effectiveness in the Implementation of the Corporate Governance Mechanisms for Credit Establishments in the CEMAC Region**

The sound internal and external corporate governance mechanisms put in place by the laws in the CEMAC region to enforce good corporate governance practices for credit establishments which has witnessed substantial improvements in the performance of credit establishments can be aid to be successful to a reasonable extent.

However, failures and short comings are still being witnessed in the governance processes which has to a large extend been attributed to ineffectiveness in the implementation of the corporate governance mechanisms provide by the laws. We shall proceed to examine some of these failures such as board and executive management governance failures.

Despite the sound internal and external corporate governance mechanisms put in place to ensure good governance processes, failures and short comings are still witnessed occasionally such as failure within the board of directors or the executive suit, ineffectiveness in internal controls or corporate policies, external control failures and inadequate regulations implementation. Any of these might lead to corporate problems. In some cases several shortcomings might appear at same time, increasing the possibility of a more extreme outcome, such as excessively large and unexpected loss, a liquidity crisis, financial distress, or even bankruptcy.<sup>33</sup>. Thus detecting and ultimately solving problems must therefore be part of the corporate culture. This chapter answers the research question on the shortcomings in the governance process of credit establishments in CEMAC region

#### **Board and executive management governance short comings**

Governance failure at the level of directors and executive management can take many forms each potentially serious. Generally this can include micro governance failures such as: Ineffective boards, Conflicted CEO's, Breach of duties of care and loyalty, entrenched management, failed corporate policies.<sup>34</sup> We shall proceed to consider each of these points below:-

##### **Ineffective boards:-**

As we know in most governance models, the board of directors is the starting point in creating an effective governance process, and the selection of directors is the starting point in creating and effective board. For instance Article 4 of Cobac regulation relating to corporate governance in the credit institutions in the CEMAC<sup>35</sup> provides that “credit institutions must be establish in a form which allows the existence of board of Directors or body in lieu thereof. The directors appointed by the General Assembly in accordance with the rules of the common law are collectively responsible to the General Assembly. They must have sufficient banking knowledge and have experience in business administration”.

Accordingly failure to select directors who are skilled, strong, independent and value-added has the potential of setting in motion much larger problems. An ineffective board can fail to provide proper governance protections for a variety of reasons,

<sup>32</sup> CAMEROUN: 6 Banques Sous sanction De la COBAC, Agence Afrique , 31/05/2019, [www. Agenceafrique . cc](http://www.Agenceafrique . cc), Accessed on 25<sup>th</sup>

<sup>33</sup> Erik Banks, *Corporate Governance: financial Responsibility, controls and Ethics*, Newyork, palgravemacmillan, 2004 page 103

<sup>34</sup> I bid at page 107

<sup>35</sup> COBAC regulation No' 04/08 cemar/ umac/cobac relating to corporate governance in the credit institutions of cemar, 06<sup>th</sup> October 2008

Including, Lack of independence /conflicts of interest , Lack of strength , Unwillingness to challenges, Knowledge gaps, Excessive commitments, Insufficient focus on substantive issues, Lack of alignment, Excessive board size<sup>36</sup>

Lack of independence can lead to ineffective monitoring, lack of strength by the board, unwillingness to challenge for fear of losing advantages and poor judgments. In any of this situation the basic flaw lies in the possibility that non- independent directors will be unwilling to properly monitor and discipline executive management for fear of losing what might be a lucrative financial relationship or valued personal relationship. When this occurs, the shareholder suffers; the agent charged with supervising management becomes more interested in benefiting from its relationship with management.<sup>37</sup>

There are no uniform standards on directors' independence. Although many best practice codes and legislation recommend independence, few countries have mandated it specifically. In addition it can be difficult to determine whether or not a director is independent.<sup>38</sup>

Article 14 of the Cobac regulation relating to corporate governance in the credit establishments in the Cemac,<sup>39</sup> provides that “the board of directors and it’s president must preserve their independence vis- a- vis the general management”. It is most likely as a result of these uncertainties that this regulation made provision of independent board members in its Article 9 which provides that” in its quest for independence, professionalism and effectiveness, the Board of Directors must include independent directors”.

A weak board which lacks independence, energy, technical skills, excessive commitments, lack alignment, also burdened by the conflicts of interest issues mentioned above, can be influenced by the CEO or executive team. When this occurs, executives might crush potential dissent before it becomes a significant threat, prohibit criticism of tactical and strategic motivations or deny full access to information. Some examples of ineffective board members sanctions lays emphasis on this e.g The Cobac inflicted sanctions on some presidents and directors of banks and micro finance institutions for unjustified foreign currency holdings, violations of regulations against money laundering and non-respect of banking regulations. These banks include; BGFI Cameroon, Gabon and Equatorial Guinea; Afriland first group in Cameroon and Equatorial Guinea; Eco bank in Cameroon and in Central Africa; U.B.A Cameroon and Citi Bank Gabon.

Also included were the President of the Administrative council and the assistant Director General of Credit Commuautaire d’ Afrique (CCA), the new Director General of CCA Bank<sup>40</sup>

### Recommendations

The significant failures of most credit establishments throughout the Cemac Region largely attributed to failures in governance practices only goes a long way to emphasis the point that move stringent measures are needed to ensure the effective implementation of the corporate governance mechanisms for credit establishment put in place by the applicable laws. The researcher hereby puts forward the following recommendations which if implemented will go a long way to assist effective implementation of corporate governance mechanisms for credit establishments:-

- Continuous education and training of personnel on the numerous COBAC and OHADA legislations on corporate governance mechanisms for credit establishments in the Cemac Region.

The researcher recommends COBAC to embark on a continuous periodic and intensive education and training of credit establishment personnel on good governance mechanisms provided by the law

<sup>36</sup> Erik Banks, *Corporate governance: Financial Responsibility, controls and Ethics*;Newyuork, palgravemacmillan 2004, page 108

<sup>37</sup> I bid page 108 para 3

<sup>38</sup> I bid at page 109 para 2

<sup>39</sup> Regulation No’ 04/08 Cemac/ umac/ cobac relating to corporate governance in credit establishments in Cemac of October 6, 2008

<sup>40</sup> Omer Mbadi, “ *les dirigeants de dix établissements bancaires sanctionnes par l’autorité regionale, 11 January 2019. www. jeune afrique. Corr. Accessed on 30 June 2022 see also Achille mbog pibasso “ cobac inflige des sanction à 12 banques et suspend une dizaine de dirigeants”*, 7 October 2021 www. financial afrik. Con. Accessed 30 June 2022

to get them properly abreast with these regulatory requirements. This will go a long way to increase their effectiveness in the implementation of these governance mechanisms as well as their performance.

➤ Translation of the official texts of COBAC regulations into English and other official languages. Cobac from its inception has issued out so many regulations governing different aspects of credit establishments only in the French language which has to a large extent limited its effective implementation in the areas where French hasn't been their first language. It is the proposal of the researcher that these texts be translated into English as well as other Cobac working languages so as to improve on the comprehension and effectiveness in its implementation by other Cobac users of the texts.

➤ Effective on-the-site supervision and control by Cobac:

The researcher equally recommends Cobac officials to carry out meaningful on-the-site supervision and control of credit establishments in the Cemac Region which is a mandatory duty imposed on them by the law.

### Conclusion

In conclusion, we can comfortably say that the implementation of the governance mechanisms for credit establishments in the CEMAC Regions is highly effective to a reasonable extent looking at the so much improvement in governance processes and economic performances of these establishments. However, to another extent, much still needs to be done to achieve a greater implementation level of good corporate governance mechanisms processes.

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