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Legal Mechanisms for the Protection of Commercial Companies under OHADA Law: Challenges and Prospects for Emerging African Markets

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ABSTRACT

The intent of shareholders of a commercial company is to make profits and never to lose; that is why the OHADA (Organisation for the Harmonisation of Business Law in Africa) law has created, partly for the protection of shareholders and their investments in the commercial company. Before the advent of the OHADA law in 1993, commercial companies were subject to a mixture of different laws from different eras, which could benefit neither the company nor the shareholders. With the advent of this new and harmonised law, the climate for business is favourable for the partners and the legal entity that carries the business (the commercial company). Through its different Uniform Acts, the OHADA law provides provisions with the aim of protecting the commercial company and its partners. The objective of this article is to analyze the different Uniform Acts to assess how far the OHADA law has advanced in guaranteeing shareholder and company protection. From analytical findings, the attractiveness of the OHADA law is revealed through the different measures of protection of commercial companies from internal and external pressures. These efforts cover every stage of corporate existence, from incorporation to liquidation. Though the effort of protection encounters some difficulties, such as language problems and the phenomenon of the concentration of companies, the OHADA Law has established enough measures for the development and sustainability of commercial companies under the OHADA legislation. We intend to use the doctrinal and legal analytical method to attain this objective.

Keywords: OHADA (Organisation for the Harmonisation of Business Law in Africa) Law; Corporate Entity; Corporate Protection; Attractiveness; Company Sustainability; Judicial Security; Business Law Harmonisation

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1. Introduction

The creation of a company is never undertaken with the purpose of subjecting it to uncertainty or eventual ruin. Every commercial company is established with the goal of operating effectively, achieving growth, and potentially expanding into a consortium, all while generating profits for its shareholders; the OHADA law was established partly for this reason. The primary objective of OHADA is to harmonise and modernise business regulations within African countries to promote legal security and economic integration[1]. The Economic Community of West African States (ECOWAS), which was established in 1975 by the Treaty of Lagos, failed to do this as it was focused rather on promoting economic integration and cooperation amongst West African States without creating a directly applicable uniform law[2]. Nevertheless, ECOWAS deals with the promotion of inter-regional trade by reducing trade and regulatory barriers, offering a regional Common Investment Code that sets non-discrimination and investor-treatment standards, proposing a regional competition policy to curb anti-competitive practices, and encouraging harmonised national investment policies. These protections expand market access and seek to protect investors from arbitrary treatment[3]. We believe that OHADA has covered the gaps left open by ECOWAS.

OHADA was created in a period of a serious economic crisis, where investment in Africa had greatly reduced. Legal and judicial insecurity, which were rampant in Africa by then, were identified as major reasons why investors were not much interested in investing in the continent. The disparity, inaccessibility, and outdated nature of rules governing economic operations could only lead to legal insecurities. These obstacles made it difficult to determine the rules applicable in a given operation. The case was furthermore worsened by the dilapidated state of courts, insufficient and incompetent judicial personnel, and lack of persons trained in business law, delay in court proceedings, and the inaptitude of judicial personnel to respect professional ethics. It was therefore essential to take corrective actions to safeguard legal and economic stability. So, OHADA law intervened to strengthen the regulatory framework for companies and to guarantee the legal and judicial security of economic operations within its member states, thus stimulating investment and enhancing regional economic integration in Africa. With the objective of the OHADA law, combined with the different Uniform Acts governing different phases of business, one could conclude that all aspects of business security are satisfactory, but actually, that is not the case. Although OHADA has achieved significant progress in legal security, some challenges still persist.

The OHADA law is designed not only to safeguard business transactions between investors but also to ensure the protection and proper functioning of business entities themselves, particularly commercial companies. It should be recognised that the OHADA harmonisation process stands as the key factor that elevates OHADA law to a benchmark for legal development across Africa. To this effect; the OHADA law serves as a model for regional legal harmonisation in other emerging markets and this in many ways: the establishment of a successful uniform business laws; the establishment of a very firm institutional structure such as the Common Court of Justice and Arbitration (CCJA), the OHADA permanent secretariat, effective mechanisms for dispute resolutions; OHADA also promotes legal integration through legal harmonisation that transcends linguistics, colonial and cultural divides. Moreover, OHADA integrates civil and common law traditions and also creates investor confidence and economic growth through standardized commercial laws. Other regional laws, such as ECOWAS, COMESA (Common Market for Eastern and Southern Africa), and even non-African emerging economies like the European Union (EU), have inspired interest in the success of OHADA. The last but not least asset of the OHADA is the capacity building of OHADA and its legal modernisation. OHADA reforms benefit from frequent updating of its Uniform Acts. This shows a dynamic model of modernisation and adaptability, emphasizing continuous improvement and capacity building amongst its member states.

By all these, we can confidently say OHADA is a fertile ground for business as it has created a favourable legal climate for stakeholders and investors in the sub-region. Prior to the advent of the OHADA law in 1993, there was a patchwork of mixed modern and antiquated laws dating back as far as the 19th Century. Consequently, those who wanted to invest in Africa had trouble distinguishing and understanding the intricacies of multiple legal frameworks that were mostly not documented. It is good to announce that the OHADA law has overcome this challenge by introducing contemporary commercial laws, which now regulate commercial activities.

The updated OHADA legal framework of 2014 on Com-

mercial Companies and Economic Interest Groups was inspired by the French Modern Company law, which better aligns with today's commercial enterprises. With the unification of laws, companies with a registered office in member states are subject to Uniform laws, irrespective of foreign or local ownership. The Uniform Act on Commercial Companies and economic interest groups, in its Article 4, defines a commercial company as a contract in which two or more persons agree to contribute to a common activity with the aim of sharing its outcome, whether benefits or losses. Some commercial companies can be a "one partner type", where they have only one shareholder. This is possible only in the Public Limited Company (PLC).

As per Article 4 of the Uniform Act on Commercial Company and Economic Interest Groups cited above, the definition of a commercial company does not completely convey the legal specificity and identity of a commercial entity: A commercial company is a person, though artificial, that is a juridical person and not a physical one, it is a juridical person with rights and obligations under the law. We also need to acknowledge that a commercial company is an incorporated association whose legal existence begins only after filing with the Trade and Personal Property Credit Register; it is also a separate legal entity with a perpetual existence. This simply means that the existence of the commercial company is not linked to that of the members/shareholders. That is, the commercial company and the shareholder are two different legal entities; the legal personality of the commercial company is distinct and independent of its members; the end of the shareholders will not mean the dissolution of the commercial company.

So, given the independence, the legal personality, and the economic importance of the commercial company, it must have a clean, clear, and secure environment for its establishment and exercise, which the OHADA law has endeavored to create[4]. This study focuses on the mechanisms of protection afforded to commercial companies under OHADA law, as clearly presented in the table in **Appendix A**, **Table A1**. We shall address the question of the various steps undertaken by the OHADA legislator to create and maintain a secure and attractive business environment for investors in Africa. We shall also address the question of the efficiency of these mechanisms; that is, has the OHADA law succeeded in its mission of presenting the OHADA zone as a clean, clear, and secure environment for the establishment and the growth of businesses? Are the different mechanisms effective?

To answer these questions, we shall use the doctrinal and legal analytical method to reach our goal. This paper is based on primary and secondary sources of law. The primary sources include the Uniform Acts of OHADA, especially the Uniform Act on Commercial Companies and Economic Interest Groups (AUSCGIE), the Uniform Act on Collective Insolvency Proceedings (AUPC) and the Uniform Act on Arbitration Law, where various provisions such as Articles 715–725 AUSCGIE; Articles 2–20 AUPC; and Article 100 of the Arbitration rules, just to name a few, are consecrated to the protection of shareholders and the commercial company as a corporate entity.

In this paper, we will also be analyzing and interpreting secondary sources such as case laws and doctrinal works of eminent authors like Gatsi J. (2006)[5], *Droit des Affaires: Droit Commercial des Sociétés* ('*Business Law: Corporate Law'*); Akam Akam A. and Bakreo V. (2017)[6], *Droit des Sociétés Commerciales OHADA* ('*OHADA Company Law'*); Pohé D. (2020)[7], *Droit des Sociétés Commerciales et Coopératives Dans l'Espace OHADA ('Law of Commercial Companies and Coorperatives under OHADA'*); Lim E. and Morgan P. (2004)[8], *The Cambridge Handbook of Private Law and Artificial Intelligence*; Tambe C. (2021)[9], *Evaluating the forms and stages of financial disclosure of company life under OHADA*; Djeuifack R. (2024)[10], *The potency of the OHADA law in the African digital economy*, and Nyitioseh N.A. (2024)[11], *A comparative analysis of remedies and challenges in the protection of stakeholders' rights*. The Common Court of Justice and Arbitration (CCJA) has also held enough court sessions where the objective was to enhance the sustainability and development of commercial companies within the OHADA zone[12]. These secondary sources offer a comprehensive examination of the mechanisms that strengthen the viability, durability, and development of business entities[13]. This article analyses the attractiveness of the OHADA law through the different measures of protection of the commercial company from its formation to its liquidation.

This study will begin by examining the legal mechanisms through which OHADA law ensures the protection of commercial companies, before assessing the challenges encountered and prospects for improvement, and will end

with a general conclusion.

2. Mechanisms for the Protection of Commercial Companies under OHADA Law

The sustainability, growth, and development of a commercial company depend partly on the level of protection it receives [14]. The commercial company is created for the benefit of its shareholders, who agree to pool their resources to engage in an economic activity through which they will either gain and share the benefits or lose and share the losses [15]. The gains or the losses will depend on how the commercial company is managed, protected, and preserved [16]. No one creates an economic activity to abandon in the hands of misfortune. The OHADA law, through the harmonisation process, has provided various ways through which the commercial company can be protected from external or internal pressure [17] that can affect the company's well-being (A). The stakeholders also have a very broad prerogative within the commercial company [18], which is aimed at protecting their interests within the company (B).

2.1. The Harmonisation Process

OHADA's goal is to standardize business laws while ensuring investor confidence [19]. It is undeniable that inconsistent laws and judicial uncertainty hindered economic growth in the African continent. To boost investor confidence, it is essential to standardize business regulations and improve judicial efficiency, develop a vibrant private sector, and facilitate trade between countries. This is made possible through (1) OHADA's harmonisation of economic laws and (2) the enactment of Uniform Acts.

2.1.1. The Harmonisation of Economic Laws

To foster a conducive business climate for economic transactions and establish a sustainable commercial company in Africa, there was a need for economic globalization [20]. Economic globalization, in turn, needs a harmonised law and legal practices, and this must be a priority if they intend to establish a reliable legal climate for business. Investment itself is certainly a risk, and the risk will be multiplied if the investors have to deal with an unstable and unpredictable legal framework. Therefore, through OHADA, Africa has succeeded in creating a uniform commercial legal regime, which is a significant instrument for legal progress and an important tool for the development of business. It is an integrated legal space that promotes business development. OHADA is indeed considered a role model in Africa and beyond for its efforts in harmonising business law. By creating a unified legal framework, OHADA has fostered a favorable environment for economic growth, investment, and trade among its member states, unlike ECOWAS, whose achievements are limited only to economic integration and trade liberalization [21].

The harmonisation of business law by the OHADA has yielded many fruits in the domain of the protection of commercial companies and the creation of a conducive and secure environment for the creation and exercise of economic activities [22]. In this light, the harmonisation process has given rise to the production of common rules that govern various areas of business, such as the Uniform Acts on General Commercial law, Securities and Guarantee, Contract of Carriage of Goods by Road, Business Accounting, Cooperative Society, Arbitration, Insolvency, Commercial Companies and Economic Interest Groups, Simplified Recovery Proceedings, and Measures of Execution. All the OHADA member states are subject to these Uniform Acts [23].

For the purpose of the welfare of investors and investments, the harmonisation of economic laws has also succeeded in obtaining transparency and accessibility to the applicable law in all the above-cited areas in various languages, notably English, French, Spanish, and Portuguese [24].

Above all, the OHADA balances unity and membership sovereignty by establishing coordinated justice at the regional level through the creation of the Common Court of Justice and Arbitration (CCJA), whose jurisdiction is to review decisions rendered by national courts in commercial matters [25], ensure uniform interpretation of the law [26], promote legal security and business confidence, ensure compliance with OHADA treaty, protect fundamental rights in business and commercial matters and contribute to the development of OHADA jurisprudence [27].

Moreover, the OHADA law is enriched with arbitral procedures that are available to business partners. These arbitral procedures work with the assistance of the Common Court of Justice and Arbitration to administer proceedings without acting as arbitrators, but check the quality of awards

and give them the executive force.

2.1.2. The Enactment of Uniform Acts

The OHADA legal framework extends to the preservation of stakeholders' capital as a fundamental element of corporate governance; that is why the OHADA law is organized in Uniform Acts with the aim of protecting the commercial company and the interests of stakeholders. There are ten Uniform Acts currently in force under OHADA, and each of them organizes a particular aspect of business under OHADA.

We have the Uniform Act on commercial companies and economic interest groups that establishes a unified legal framework governing the creation, operation, transformation, and dissolution of commercial companies. It also ensures legal security and predictability, that is, legal certainty for investors, creditors, and business operators, by providing clear, coherent, and predictable company law rules. The Uniform Act on commercial company law also ensures the protection of good corporate governance, facilitates business creation and operation, and also ensures the protection of stakeholders.

There is also the Uniform Act on General Commercial Law, whose objective is to unify the commercial law regime across OHADA member states, reducing legal fragmentation, regulating the commercial register, securing accounting transparency, modernizing contractual relations, clarifying liability and remedies, facilitating access to information, and promoting legal certainty and economic development.

The Uniform Act on Arbitration Law (UAA). OHADA is also interested in the legal security of the different business transactions within the zone. The UAA intervenes to foster this legal certainty by providing a uniform, predictable legal structure through arbitration, including rules on how arbitral awards are recognized and enforced. UAA promotes arbitration as a dispute resolution mechanism within the zone. It also lays down principles that govern arbitration, harmonise arbitration law, unify the arbitration code, regulate the various stages of the proceedings, establish requirements for arbitral award recognition and enforcement, specify means of recourse against arbitral decisions, amongst others.

Another Uniform Act is organizing Collective Proceeding for Clearing Debts (AUPC), also known as the Harmonised Bankruptcy Regulations. This Uniform Act, initially announced in the OHADA official gazette in the July edition in 1998, was revised and adopted in September 2015 in Grand-Bassam in the Ivory Coast, and it entered into force in December 2015. We believe the intent of this revision is to better enhance the protection of corporate entities operating within the OHADA zone. This Uniform Act focuses on organizing preventive measures, such as conciliation and rehabilitation, to address the financial difficulties of commercial companies before insolvency. This is done for many reasons: to maintain economic viability and employment in debt-ridden companies[28], to swiftly rehabilitate viable companies, and wind up unviable ones so that the debtor's property will not be optimized solely for the creditor's recoveries, and define a payment scheme for secured and unsecured claims. We see that the OHADA law has watchful eyes even on companies in distress: it does not abandon them at first sight, but endeavors through various proceedings to save the company; it is only when the redress is impossible that winding-up can be envisaged. Even at the stage of winding-up, the OHADA law still makes sure all those with claims over the indebted company are satisfied accordingly.

The revision of this Uniform Act in 2015 demonstrates the OHADA's desire to perfect it by broadening its scope of application. It has been extended to natural persons undertaking autonomous civil, agricultural, or commercial activities, to all legal entities, whether public or private, that engage in the regulated activities or operate with private sector characteristics such as commercial companies, micro-finance, insurance companies, and credit institutions. The OHADA legislator has, in addition, established a simplified procedure for small businesses. A new preventive procedure has also been introduced by the revised Uniform Act, known as the conciliation procedure. This is a consensual and confidential procedure whose goal is to negotiate a mutually beneficial agreement with the primary creditor before the company faces cash flow problems. These agreements can be for the extension of the deadline for payment or any other measure that will prevent cash-flow insolvency. The OHADA law has also established a "*new money*" privilege that benefits the distressed debtor: this is to prevent the company from going bankrupt. Here, able creditors offer financial assistance to debtors as part of a negotiated agreement, preventive restructuring, or court-supervised recovery to ensure the continuity of their activities. Such creditors will be preferred to all other creditors in the event of later liquidation proceedings against

such debtors. Another measure taken by the OHADA law with a view to canalizing insolvency procedures is the development of a regulatory framework for receivers and a new approach to international insolvency proceedings, which has gone a long way to ameliorate the insolvency proceedings.

The Uniform Act on Insolvency has four proceedings meant to reorganize the company and prevent it from bankruptcy. These proceedings[29] include conciliation measures, preventive settlements, judicial recovery, and winding-up.

While a conciliation measure is a preventive measure meant to prevent the commercial company from financial difficulty, by providing financial support to the debtor for the continuity of his commercial activities, preventive settlement applies to debtors already facing significant financial challenges, as long as they are not cash-flow insolvent. Through this measure, the debtor will present to the competent court his financial challenges and potential path of recovery, including the plans to settle his debts. He also has to propose to the court a preventive plan outlining steps to ensure business continuity, secure financing, and the preservation of jobs.

As for the judicial recovery, it is a curative measure meant to achieve a restructuring plan that preserves the debtor's business and also helps in the repayment of his debts. This measure takes effect as soon as the competent court grants a judicial recovery order. During this period, all creditor actions against the debtor are stayed and barred to protect the insolvent debtor and individual guarantors. Also, any existing agreement triggered by payment default, security enforcement action, and shareholder payouts will be terminated. Furthermore, the security interest will be suspended, even interest on loans whose deadline for payment is less than a year ceases to grow, and any debtor's decision concerning the administration and the disposal of assets will be under the supervision of the syndic in order to be enforceable against creditors. Creditors with valid security on the debtor's assets would not lose their security interests, but would be prevented from acting on them until the end of the judicial recovery period or the rescission of the recovery agreement.

The competent court can only approve of the judicial recovery arrangement if the majority of the unsecured creditors representing at least fifty percent (50%) of the total amount of liabilities accept. If this condition is not met, the demand for a judicial recovery arrangement will be transformed into a liquidation proceeding.

The liquidation proceeding, which is another curative measure, is a proceeding that is applied when the debtor is in a situation where his assets are far less than his debts, such that his situation is irreversibly compromised. The creditors can ask the debtor to apply for this proceeding or the court itself if, after verifications, it is discovered that the judicial recovery cannot save the company. Through liquidation or winding-up, the debtor's available assets will be sold by the syndic for his liabilities to be discharged, and the proceeds, if any, will be given to creditors in order of priority. This is admitted only in extreme cases where the financial distress is irreversible. At this level, the law intends to safeguard only in the interest of creditors in the company. Another mechanism for the protection of the commercial company is seen through the board's prerogatives over shareholders.

2.2. The Broad Prerogatives of Stakeholders (Members of the Company)

According to Article 1103 of the civil code, a contract is the expression of the parties' sovereign will. And the commercial company is a contract as per Article 4 of the Uniform Act on Commercial Companies and Economic Interest Groups (UACC). Through the contract of a commercial company, they agree on the modalities of formation, the cost per share, the form of the company, and every other element that constitutes the company. Also, through their Memorandum of Association, the shareholders can agree on the rules that will canalize the company, the purpose of the company, its administrative structure, powers and duties of the company director, and the awarding of dividends. The Memorandum of Association also regulates how a company is managed and is legally binding. The reason for the shareholders' broad power is for the protection of both their interests and of the company. Among the shareholders are the active and the passive members of the company.

2.2.1. The Prerogatives of Active Members

The active members can be considered to be the shareholders and the managers of the company. A contract being the expression of the parties' sovereign will, it is obvious that the law gives them a broad prerogative to protect it from internal and external pressure capable of threatening the existence or the survival of their company. The law has

given the shareholders power that permits them to control the company's management team with the aim of protecting the company. Nonetheless, their power is limited by the provisions of the Uniform Act[30].

Article 2(1) AUCC provides that, subject to the provisions of the Uniform Acts and the articles of association, which prevail over every contrary stipulation, members may conclude supplementary agreements to govern their relations on terms of their own choosing. From this, we understand that the OHADA law has given the shareholders the power to enter into other agreements, which will be a standard contract subject to common contract law and the principles of the Uniform Act, but the substance and structure must not necessarily abide by the Uniform Act[31]. Such agreements have unlimited scope but should not override the Uniform Act or the articles of association[32]. Such agreements will open doors for the shareholders to maximize rules that will certainly serve for the sustenance, the development, and the protection of the commercial company. This tool is extremely important as it can be used by shareholders to effectively run the company while protecting their respective interests and the company as a whole[33]. Its flexibility is an addition to its ability to resolve disputes and perfect the functioning and development of the company.

The shareholders possess a statutory right to be informed about the management of the company. They can ask questions, give ideas, and make proposals during the general assembly for the betterment of the company. They also have the power to control the activities of the management of the company[34]. The multiplication of meetings in the commercial company (constituent general meeting, ordinary general meeting, extraordinary general meeting, and special meeting) is also a means for the shareholders to take part in the functioning of the company. Thus, participating in the protection of the commercial company.

According to Article 347 UACC, the shareholders have the power to appoint and replace the manager of the company if they observe that his conduct runs counter to the company's corporate interest. The shareholders also have the power to apply for the post of a management expert if they are convinced that the managers are engaging in conduct that contravenes the company's corporate interest.

It is important to emphasize that the doctrine of privity of contract and the principle of the relativity of contract provide that agreements produce rights and obligations only for the parties concerned and never for third parties. So, it is only natural for the partners to play an active role in the growth and continued viability of the company.

The managers are also considered to be the active members of the company and are expected to contribute to the company's security and growth. It is legally provided that the managers of the company should not undertake actions that are not in line with the social object of the company. It is important to emphasise that the social object of the company is at the service of the social interest. So, every management act the manager undertakes should fall under the social object of the company. If the managers of the company take actions that do not align with the company's social objectives, such actions will be considered an abnormal management act, and the manager will be liable for the prejudice that may occur[35].

The status of a company manager under OHADA is such that the company manager must be rigid in the exercise of his managerial duties but flexible in the organisation of corporate management. The rigidity is based on two essential elements: the legal power of the managers on one hand, and the judicial sanctions on the other hand. With the omnipotence of the corporate managers, the corporate sanctions appear as a true force of opposition to deter and penalise the managers' misconduct. The flexibility in the organisation of corporate management is real when it is necessary to reinforce or stabilise the management, but this flexibility is limited when it concerns the structures. Also, effective management control can be achieved by incorporating external governance into the organisation[36].

2.2.2. The Prerogatives of Passive Members

Passive members are wage earners and the creditors of the commercial company. Wage earners are the key holders of the development and growth of commercial companies. They are the indispensable members of the company, for they play an active role in the development and the sustainability of the company[37]. The company's stability is vital for them since their income depends on it. The UA has given a certain measure of power that enables them to protect the company from any act that can jeopardize the good functioning of the company: they have the power to launch the alert procedure whenever the managers carry out unlawful activities that may jeopardize the survival of the company. A French law nº 2016-1691 of 9th December 2016 has generalized

the question of alert as it states that any person who works (employee, civil servant, public agent, internal or external collaborator, etc.) can be an alert launcher. Article 6 of the above law defines an alert launcher as an individual who, without bias and acting in good faith, reports or discloses a crime, an offence, or a clear and serious breach of the law or a contract. Therefore, the alert launcher regime concerns any natural person who can be any member or actor of the company[38].

As creditors, they also play an important role in the protection of the commercial company. As analyzed above, the main creditors may agree with the company debtor before it becomes cash flow insolvent. These agreements may be the extension of the deadline for payment or the reduction of the interest rate of the credit. Creditors may also provide financial support to the company debtor to ensure the continuity of the company's operations, and in this case, this creditor's rights will prevail over the rights of other creditors in case the company debtor undergoes subsequent winding-up.

OHADA has provided various rules at various levels for the protection of commercial companies, but the question is, are these rules effective? What are the different challenges faced by OHADA?

3. Challenges and Prospects for the Protection of Commercial Companies under OHADA Law

OHADA has instituted groups of legal rules (Uniform Acts) that govern business activities on the African continent. These rules play a great role in the protection of business units, commercial companies, and commercial transactions. However, these rules face some challenges that limit their efficiency. We can recount the lack of clarity and precision in certain legal provisions of the Uniform Acts that can easily lead to arbitrary decisions. We also noticed some linguistic problems faced by OHADA and some structural impediments that thwart the application of the fundamental principles that govern company law.

3.1. Normative Inconsistencies

The efficiency of the protective rules of commercial companies is breached by certain legal provisions that are neither clear nor precise, and can lead to arbitrary decisions; added to this are the linguistic problems faced by the member states of OHADA.

3.1.1. The Use of Vague Terms by the OHADA Legislator

The law is not intended for a limited group of people, but for all citizens. To be accessible to them, it must be precise, without escaping the technical requirements of legal concepts. Like any other discipline, law has its own language, which is an intellectual vehicle for communication designed to set out the principles and rules applicable to its field. In legal statements, the legislator usually adopts an imperative tone because of the objective he wants to obtain, which is the protection of the collective and particular interests. Consequently, the legislator must use practical and specialized linguistics, which requires a special effort in the choice of terms to ensure clarity and precision[39]. What is important for the rule of law is its ability to be expressed and be understood by its addressees, as affirmed by BECANE, COUDERC, and HERIN[40]. This is not limited to purely linguistic requirements, but also presupposes the quality of expression of thoughts and communication. In fact, in all fields and legal orders, certainty and precision are the sources of guarantees of judicial security. The words and phrases used by the legislator are decisive in the interpretation that the judges will give to them in their application. That is why Article 1 of the OHADA Treaty provides that harmonised business law must provide a clear, secure legal framework for economic transactions. The legal security is presented as an essential value to encourage the development of economic activities[41] and promote investments[42].

Meanwhile, in the different Uniform Acts, we find various notions, terms, and expressions that do not respect the necessity of legal certainty, where some legal terms and notions lack the legal precision and clarity of legal provisions. For instance, we have the concept of social interest, which has no legal definition; meanwhile, it is of utmost importance to the sustainability and management of the commercial company. There is also the use of imprecise and vague terms in the definition of certain notions[43]. We have the notion of a consortium as an example. It is necessary to note that the definition of a concept determines its understanding and its applicability, which is why Jean-Louis Bergel stated that, when the rule of law contains equivocal or insufficient terms,

the concept becomes uncertain. And it will be challenging, if not impossible, to anticipate how a potential dispute will be resolved, since the interpretation of the concept in question and the scope of the relevant rule will ultimately hinge on the judge's personal assessment[44–46]. Normally, legal concepts must be defined in clear and precise terms. The same author says further that the terminology employed in a definition must be exact. The chosen word should carry a sufficiently clear and nuanced meaning to be easily understood and to accurately indicate the consent they refer to. When a concept is poorly defined, it is difficult to understand. OHADA acknowledges that sustainable economic growth requires knowledge of precise, correctly applied, certain, and stable governing laws and regulations, as stated in the very first article of the OHADA treaty.

So, the OHADA law will gain in quality if the legislators amend the Uniform Acts while making sure every ambiguity is removed to better enhance legal security[47].

3.1.2. The Legal Foundation of OHADA and Its Linguistic Regime as a Challenge to Its Effectiveness

OHADA's harmonisation process is a tool for economic integration in Africa. Therefore, the legislators had to take into consideration various African cultural aspects and languages to avoid misinterpretation and abuse of sovereignty, but they failed. The main source of OHADA law is the civil law of the legal system of continental Europe and its former colonies. As a result, the OHADA harmonisation process is dominated by the perspectives and cultural norms of its francophone member states, and the provisions of Articles 42 and 63 of the OHADA treaty are evidence of this deficiency. This situation has caused the English-speaking countries to be unenthusiastic about the organisation due to the undermining of the common law culture by the OHADA legislator. With regards to the ongoing Anglophone crises in Cameroon in the north-west and south-west regions of Cameroon, for instance, Justice Aya Paul in the case of *Akiangan Fombin Sebastian v. Fotso Joseph and others* (unreported) dismissed the application of the OHADA treaty in Cameroon on the basis that the essential drafting of the OHADA treaty is in French, so, has inadvertently excluded the English-speaking regions from full participation[48]. He further argued that "no piece of legislation can bring in Napoleonic or civil law principles through the back door and even parliament cannot make laws which will abrogate the duality of laws in Cameroon since it was a matter at the heart of negotiations leading to the reunification of the federated states." For Ayah Paul, Cameroon did not have to ratify the OHADA treaty because it is constitutionally invalid.

Moreover, given the disparities in legal training and education between the anglophone and francophone African countries, the judges have varying methodologies for interpreting status, which, according to Tabe-Tabe, undermines consistency in interpreting and applying Uniform Acts across English-speaking African countries. In francophone countries, just as in France, judges rely on the grammatical, logical, historical, and teleological approaches to interpret statutes. Meanwhile, in English-speaking African countries, the judges draw on established canons of construction, including the literal rule, the golden rule, the mischief rule, and the *ejusdem generis* rule, to interpret statutes.

A further challenge is limited awareness, stemming from a language barrier or inadequate dissemination of OHADA laws. Consequently, anglophone judges and magistrates face difficulty in construing the Uniform Acts and the treaty. That is why Anglophone lawyers and judges have been unwilling to refer their cases to the Common Court of Justice and Arbitration (CCJA), frightened by the challenge of inconsistencies between the English and the French rule of law. To a large extent, the language and procedural requirements have significantly hindered Anglophone lawyers' ability to effectively plead cases before the CCJA. Countries may not want to be left out of any legal reform process, but they would not be subjected to laws they do not comprehend. Addressing this issue is crucial to alleviating sceptics' concerns.

It is a notable advancement as the Uniform Acts have been translated from French into English, Portuguese, and Spanish; though not perfect, it's a good step worthy of appreciation. Nonetheless, the linguistic problem in OHADA must be tackled effectively by the OHADA legislators. It will be appropriate to begin at the stage of legal drafting, where other sources of law will be considered. It will also be appropriate for the Uniform law translators to be associated with experts in comparative law so that suitable legal language will be used in translation from French to English or any other language. Only such efforts will encourage the common law African countries to ratify the OHADA treaty

and render investment in Africa more attractive.

3.2. Contractual Liberty as a Structural Impediment to the Effective Application of OHADA Legal Standards

The protection of commercial companies by the OHADA law has not succeeded at every level. It is not always obvious to play a perfect role, as some exceptions must occur. These exceptions serve the purpose of the flexibility of the OHADA law. This is seen through the concept of consortia, whose principles violate some of the fundamental principles of commercial companies. Therefore, this situation fragilizes the legal personality of legal entities, destabilizes their autonomy, and even puts the company's sustainability at stake. The concept of a group of companies, which is the proof of the development and growth of the commercial company (1) has left a heavy consequence on the protection and (2) the sustainability of legal entities.

3.2.1. The Dynamics of Groups of Companies within the OHADA Framework

The new phase of industrial innovations, marked by significant growth and restructuring, notably with the rapid growth of corporate mergers coupled with the economic development of commercial companies, has led to the creation and multiplication of groups of companies. On a strict economic plan, business concentration is of great advantage as it boils down to the creation of important units of production, which are profitable to the business world. It also helps as it leads to the concentration of economic power, as the parent company can consolidate resources, finances, and management expertise across subsidiaries.

Section 173 UACC considers a group of companies as a network of autonomous commercial companies connected through various links, such as financial, contractual, or personal links, enabling one of them, called the parent company, to exercise control over the others, known as subsidiaries[49]. The concept of control here has to do with the effective power of policy-making over the subsidiaries as per Article 174 UACC. When visualised through the concept of control, a group of companies seems to be one consolidated entity. Meanwhile, the subsidiaries that form the group remain independent, autonomous commercial companies in the eyes of the law with their own rights, obligations, and liabilities. Despite this legal separation, the parent company often exerts significant influence or control, especially over strategic decisions. In other words, the subsidiaries, though independent and autonomous, are subject to the directives and dictates of the parent company. Hence, their interests become second to those of the whole group, fragilizing their existence and growth.

3.2.2. The Ramifications of a Group of Companies under OHADA

The phenomenon of a group of companies violates many principles of company law established by OHADA. As such, it reduces the protective power of the OHADA law over commercial companies. The influence of the mother company over subsidiaries has a harmful effect on the subsidiaries. By principle, companies belonging to a group are legally independent and ought to participate in the life of the group like any other subject of law, yet this apparent autonomy is undermined by the actual influence the parent company holds over its subsidiaries. Indeed, the monopoly of power in the group of companies is likely to generate concerns and risks for partners and even subordinate companies.

By virtue of the power of control, subsidiaries operate under the mother company's guidance and direction; so, subsidiaries practically lose their autonomy as they are bound to follow the strategic guidelines set by the parent company in their day-to-day operations. There is a concern that the exercise of control may primarily serve the interests of the controlling entity. This is likely, given that the parent company generally approves only those decisions that align with its own interests or, at best, the broader interests of the group, even where the decision undermines the interests of a subsidiary[50]. Moreover, it is possible for the mother company to support the group with funds from a subsidiary to the extent of allowing the subsidiary to go through financial difficulties in favour of the group.

In reality, within a group of companies, the subsidiary's separate patrimony is not truly upheld, its legal independence is undermined, and its financial self-sufficiency is overlooked. Yet, under the principle of the legal personality of each entity, the parent company cannot be held liable for obligations incurred through the subsidiary. Such situations can only jeopardize the existence and growth of subsidiaries.

These are clear evidence that the phenomenon of groups

of companies might be of great importance to the business world, but a threat to the viability of the companies that belong to it.

To tackle this problem, the OHADA legislator can elaborate legal rules that will canalise the creation, the functioning, and the liability regime of a group of companies in a way that will uphold subsidiaries and secure their interest. Or recognise the group of companies itself as a single legal entity, causing the subsidiaries to relinquish their individual legal personality and autonomy, which would then be absorbed into and exercised solely by the group as a unified legal subject.

4. Conclusions

Conclusively, the OHADA law has not failed in its mission, which is to offer a stable and predictable legal framework for investors and companies. It has provided clear and enforceable measures of protection from the creation of the commercial company through its functioning till the level of liquidation or winding-up, from failure or from failing to fulfill the goal for which it was created. As analysed above, the OHADA has provided sufficient laws and reforms for the protection of commercial companies. The most important measures are the harmonisation process and the enactment of Uniform Acts, where some of them have the aim of protecting the commercial company bankruptcy, such as the UAPC.

OHADA also gives the possibility to stakeholders to take personal action for the protection of their investment in the company. The right to information, which is a key right of all shareholders and a key obligation of all managers, entails informing shareholders of the financial situation of the company. The shareholders may also take actions against the managers if their actions are not favourable to the company and to the shareholders.

And on a positive note, the OHADA Law is being ameliorated year after year; for instance, the Uniform Acts of 2015 are not the same as they were in 1997. Year after year, new Uniform Acts are enacted and old ones are modified to adapt to the economic revolution of 2014.

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Data Availability Statement

1. Primary legal sources (statutes and regulations)

- Uniform act on commercial companies and economic interest groups of 2014
- Uniform Act on General Commercial Law
- Uniform Act on Arbitration
- Uniform Act on Insolvency Proceedings

2. Case Law (CCJA) jurisprudence

- CCJA Decision nº 162/2023 (CCJA), 6 July 2023, Joel Ovatai vs. Societe Pari Mutuel Urbain Gabonais SA [25].
- CCJA Decision nº198/2023(CCJA) 30 November 2023, Société Port Autonome de Douala SA vs. APM Terminals B.V [26].
- CCJA Decision nº 206/2022 (29 December 2022), société d'Exploitation de KIPOI et ses délégués vs. Société Group Five DRC SARL [12].
- CCJA, decision nº 046/2020 on mismanagement in liquidation.
- CCJA, decision nº 112/2022 on the hierarchy of creditor claims.

3. Secondary sources (doctrinal works and articles)

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Conflicts of Interest

The author declares no conflict of interest.

Appendix A

Table A1. Mechanisms for the protection of commercial companies under OHADA.

Nº	Stage	Protective Mechanisms	Interest Protected	Legal Bases	Illustrative CCJA Decisions
01	At the stage of formation	Limited capital and contribution verification	Shareholders and Creditors	Articles 307–312 of the AUSCGIE	CCJA decision nº 048/2018, Société Végahold vs. État du Cameroun.
		Statutory audit of capital in kind	Shareholders and creditors	Article 312 of the AUSCGIE	–
02	Corporate governance	Minority shareholder rights	Minority shareholders	Articles 525–526, 549, 554 of the AUSCGIE	CCJA, decision nº 220/2024. Arbitration in shareholders disputes
		Statutory auditor	Company, shareholder and public	Articles 715–725 of the AUSCGIE	–
		Conflict of interest regulation	Company and minority shareholders	Articles 470–473 of the AUSCGIE	–
03	Crises period	Arbitration and ADR clauses	Shareholders and company	Article 100 of the arbitration rules	CCJA, decision nº 220/2024
		CCJA cassation and supranational review	All corporate actors	OHADA Treaty Articles 14–20	CCJA, decision nº 013/2023 admitting the authority of CCJA decisions
04	Insolvency and reorganisation	Preventive settlement	Company	Articles 2–20 of the AUPC	CCJA, decision nº 007/2021 admitting preventive settlements
		Judicial reorganisation	Company	Articles 21–100 of the AUPC	CCJA, decision nº 112/2022 on the hierarchy of creditor claims
		Liquidation safeguards (liquidation control and report)	shareholders	Articles 187–200 of the AUPC	CCJA, decision nº 046/2020 on mismanagement in liquidation

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