

The Contents of the Articles of Association as a Document used in the Creation of Companies in Cameroon under the OHADA Law

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Abstract: *This study unveils that the creation of companies in Cameroon is been regulated by the OHADA[1], law under the Uniform Act on Commercial Companies and Economic Interest Groups (UACCEIG) which says, every company must have its own Articles of Association [2]. The Articles of Association is a document that contains the internal regulation for the management of the company's affairs. [3] The articles of association are the contracts between the shareholders and the company and among the shareholders themselves. [4] The questions raised are what are the requirements common in the Articles of Association of all companies under OHADA Law? What effect do the AOA has? The study adopted an analytical approach which has led to the finding that the AOA under OHADA, is similar to the MOA [5] in most English speaking countries, but a major difference in that UACCEIG has limited the life span of the company to 99years while under English company law, a company goes on for an indefinite period. [6] The life span of the company should not be limited due to the principle of perpetual succession. The UACC seem to have concurred with some aspects of the Common Law, making the UACC an applaudable law reform.*

Keywords: Articles of association, commercial companies, OHADA Law, notarised deed, Cameroon

1. Introduction

Companies [7] have freedom in drafting their Articles of Association [8] although they are subject to relevant provisions of the Uniform Act on Commercial Companies and Economic Interest Group (UACCEIG). Under the OHADA Law, every company must have its own Articles of Association [8] which are consistent with the statutory provision. [9] Before a company is formed, it must pass through promotion which is been done by promoter/founders [10]. They have to do a lot of reflection before drafting it. Their reflection can take them to aspects like the type of company, name of the company, the registered office and registered capital of the company [11]. The UACCEIG has made the Articles of Association in such a way that it can be established in writing by a notarised deed or by private contract in the state of the registered office [12]. As such, the certificate of writing and signature of all the parties is deposited at the notary's office as the originals [13]. In the past, this procedure retarded the establishment of the company's constitution not only was it delaying, it was also costly as payments were made for the notarised deed [14]. But this procedure has been simplified today [15]. If the Articles of Association is drawn up in a private document, many original copies are needed to be established and one is deposited in the company's registered office and the others are used to meet up other required procedures [16]. If it a private company, an original copy will be given to each partner and sleeping partnerships. When it is other companies, a copy of the Articles of Association could be given to each partner. The Articles of Association must have precise information and must be signed by the partners.

2. Literature Survey

The review focuses on the relevant academic publications that have influence the examination of the AOA. This paper does not portray the entire literature on the subject but highlights the key features in the definition and components found in the Articles of Association. The main contribution of this paper is structured on the examination of the articles of association under the OHADA law. The article contributes to the literature by exploring how the requirements or components of the AOA under OHADA are similar to those in the English law making OHADA Law a good law reform for company law in Cameroon.

According to James Chen and Julius Monsa [17], AOA can be thought as a user manual for a company, defining its purpose and outlining the methodology for accomplishing necessary day-to-day task and the content and term of the AOA vary by jurisdiction, but typically must include provisions and the company name, its purpose, shares, the company's organization and provisions concerning share holding. In the US and Canada, it is referred to as Articles for short.

Le Talbot [18] on his part gave the effect of the Articles of Association as being a Contract. The company constitution and the rights of members under the constitution, in particular, have been frequently articulated within the paradigm of the contract. The call of this paradigm has been particularly influenced by certain aspects, or quirks, of company law. These include such things as the right of the company's incorporators to register their own articles of association, and s 33 of the 2006 Companies Act, which, specifies a contractual relationship between shareholder and company. It is also expected to include other important information relating to the company held in the incorporation.

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Easterbrook and Fischel [19], opined that the registration of a company creates a kind of shield called corporate veil that protects the members of the company and their assets from personal liability. They added that the liability of the shareholders of the company is limited to the share contributed.

It should be noted that these are not the only works that have been used in this study, the views of other authors have been expressed in the work.

Problem statement

The AOA is considered as the constitution of the company under the Uniform Act. The company under this act can only operate for a period of 99 years while others in most English speaking countries operate for an indefinite period making it flexible. The contents of the AOA needs to be examined especially the aspect of the duration of the company. The effect of the AOA should be felt by all involved.

3. Methodology

The study adopted an analytical and comparative approach. Both data from the primary and secondary sources were collected and analyzed.

Discussion: The contents of the Articles of Association Common to All Companies under OHADA

It is important to pay extra attention to the contents of the Articles of Association at the initial stage since they are important for the ability of the company to make and keep their shareholders satisfied [20]. It is also important to make sure that they are as per the company's interest because amending it later will require a two- third majority of votes at the general meeting of shareholders. The contents and terms of the AOA may vary according to jurisdiction. Under the UACC [21], there are about twelve requirements [22] which are very common in the Articles of Association of all companies [20]. The provisions on the company are examined below.

1) Company name

As a legal entity, the company must have a name that must be found in the Articles of Association [23]. Choosing a name for a company is not as straightforward as one might assume [24]. There are restrictions on the name a company can be given [25]. A company may be given any name provided such a name is not identical or resembles that by which a company in existence is already registered [26]. The name of the company is chosen by the founders [27]. It is not possible to register a company with a name which would constitute a criminal offence or be offensive [28], for example names which is blasphemous, treasonous, or likely to incite racial hatred, or which contains proscribed organization would not be accepted. The company name shall appear on all deeds and documents from the company to the third parties especially letters, bills, notices, and various publications [29]. It shall be followed immediately by an indication of the form of the company, the amount of its registered capital, the address of the registered office and its registration number in the Trade and Personal Property Credit Register.

It should be noted that, under common law, the name issue of a company is not different from that of the Uniform Act. Succeeding in registering a company name will not however, guarantee that the name of your company is not in use by another business. If two businesses have the same name the issue is decided by the common law action of passing off. A business cannot use the same name so similar to the name used by an existing business as to be likely to mislead the general public into confusing the two concerns. It involves, in essence, an allegation that company B is trying to pass itself off as company A by using the same or similar name and in effect trade on the reputation of the company as was in *Exxon Corp V. Exxon Insurance Consultants International Ltd* [30] where the defendant company carried on business as motor insurance brokers and where in no way connected with the plaintiff company who were an international oil company with a global presence identified with the name 'Exxon'. The plaintiff company sought an injunction preventing the use of the word 'Exxon' in the defendant company's name. It was held that the protection of the common law tort of passing off, extended to cover this case and prevent the defendant from using the name 'Exxon' even though the defendant was not in the same line of business as the plaintiff, since the public might still be likely to do business with the defendant company as the name 'Exxon' is so widely known that it may lead to an erroneous impression that a connection exists where there is in fact none.

During the life time of the company the name of the company may be changed under special resolution [31] or conditions stipulated for amending the AOA for each form of company [32]. Under the OHADA Law, a company's name may be changed under the conditions stipulated in the Articles of Association for each form of company [33].

2) Registered office

It is very certain that every company shall have a registered office which must be indicated in the Articles of Association [34] in which the partners shall decide on the location of the registered office either at the company's principal place of business or at the place of its administrative and financial services are located [35]. It may not consist solely of a postal address. It may be temporarily located in a lawyer's office or notary's office for the incorporation period [36]. But it shall be localized by an address and a specific and adequate geographic indication. In keeping with the public nature of the application documents, this is the address to which all correspondence can be addressed or notices served [37]. It should be understood that the registered office helps in determining the domicile of the company. This brings to mind the case of *Societe de Transformation Metalique (SCTM) Activa Assurance V Nchanji Chifu Maurice* [38] where the issue of residence of the company was contemplated and it was indicated that residence of a company must be where the registered office of the company is or registered agents are located and in that case, it was considered that the 2nd appellant (Activa) admitted carrying out business in Kumba as contained in paragraph 3 of the statement of claim, the 1st appellant (SCTM) equally admitted carrying out business through agents all over the Republic of Cameroon, including the City of Kumba and Meme Division since the defendants argued that the

company does not have a registered office in Meme Division. The appeal failed. The appeal was dismissed at the Supreme Court ordinary session of 10th February 2011.

Note should be taken that the change of the registered office is possible under the same conditions as the change of name. However, it may be transferred to different location in the same town by a simple decision of the company's management or the administration [39]. It can also be transferred out of the country but it would require the unanimous decision of its members [40]. Third parties may also rely on the statutory registered office whenever there is a problem, but the company cannot rely against them where the real registered office is located elsewhere. The registered office may be transferred out of the country. The board of directors may decide to transfer the registered office of the company to a different place within the territory of another contracting state [41].

3) The duration of the company

Companies are like human beings, they live and die. Every company shall be set up for a duration which shall be indicated in the Articles of Association. The duration of the company shall not exceed 99 years [42] but it is renewable. Whereas under the common Law and Companies Ordinance, companies are established for an indefinite duration. Its existence shall begin on the date on which it entered on the Trade and Personal Property Credit Register. Unless otherwise provided by the act [43]. The expiry of the term shall entail the automatic dissolution of the company, unless an extension has been decided upon [44], the existence of the company may be extended one or more times [45]. The partners shall be consulted at least one year before the date of expiry of the company to decide whether or not to extend the duration of the company [46]. Failing this any partner may request the president of the competent court within whose jurisdiction the registered office is located to designate by summary proceedings a legal representative to initiate the consultation mentioned above. The extension of duration of the company shall be done under the condition laid down for the amendment of the Articles of Association for each form of company [47].

4) The object of the company

Before setting up a company, you must have an object. Therefore, every company shall have an object which shall constitute the company's activity and which shall be identified and described in the Articles of Association [48]. The OHADA Law just like Companies Ordinance the object clause may be worded in general terms so as to allow all manner of activities conducted [49]. After looking at the market in which the company shall compete with others, the clause might end with words such as "the company also has power to engage in all connected or similar activities [50]" in the object clause, all the things and activities that the company can do or carry out are listed therein with the shareholder determining the types of activities that can be included in the object clause [51].

In addition, under Common Law, if the company enters into a transaction which is not included in the clause, that transaction would be ultra vires and void. In the case of *Asbury Railway Carriage and Iron Company V Riche* [52],

the company bought a concession for the construction of a railway system in Belgium and entered into an agreement to finance Mrs. Riche commences the railway line, Mrs. Riche commences the work and the company paid over certain sum of money in connection with the contract. The company later ran into difficulties and the shareholders wish the director to take over the contract in a personal capacity and indemnify the shareholders. The directors there upon repudiated the contract on behalf of the company and Mrs. Riche sued for breach of contract. The case turned on whether the company was engaged in ultra vires activity in financing the building of a complete railway system because if so the contract it had made with Mrs. Riche would be ultra vires and void, and the claim against the company would fail. The object clause of the company's memorandum stated that it was established "to make or sell, lend, or hire railway carriages, wagons, and all kinds of railway plant, fitting, machinery and rolling stock; to carry on the business of machinery engineers and general contractors, to purchase and sell as merchants, timbers, coal, metal, and other materials and to buy and sell such materials on commission or as agent". It was held by the House of Lords that the financing of concession to build a complete railway system from Antwerp to Tournai was ultra vires and void because it was not within the objects of the company. The contract with Mrs. Riche was therefore void and the directors were entitled to repudiate it. In other words, it established that the powers of such a company are limited to the objects stated in the company's memorandum of association. Any contract made outside these powers is not necessarily illegal, but it is void and not binding on the company. It cannot be ratified by the united desire of all the shareholders.

The ultra vires rules of the common law were brought in by articles to protect the shareholders. It was thought that if a shareholder bought shares in a company which had as its main object publishing an allied activity, he/she will not want the directors of that company to start up a different type of business because he/she to put money in publishing. Nowadays shareholders are very fussy about the businesses the directors take the company into so long as it makes profit from which to pay dividends and price of the company's shares rises on the stock exchange as a result of its success. With this ultra vires rule, the creditors are the ones most affected if they had supplied goods and services to a company for the purpose that is not contained in its object clause.

If the company was solvent, no doubts such creditors would be paid, but if it went into insolvent liquidation they would not be able to put in the claim. The liquidator would reject it has been based on a void transaction. Other creditors might be paid some part of their debt if the company had some funds, but the ultra vires creditors would give nothing. Because of this, it has become and has remained usual to put in the object clause a large number of objects and powers so that the company can do a wide variety of things apart from its main business if at any time it wishes to do so.

It is also common to insert a paragraph in the object clause which states that each clause contains a separate and independent main object which can be carried on separately from the others [53].

It is to the effect that a subjective object clause can be drafted in such a way as to allow the company to carry on any additional business not provided for in the object clause which the directors think can be conveniently pursued by the company. If this thought to be put too much power in the hand of the directors, the object clause may make the decision depend upon an ordinary resolution of the members. As such the limitations which are placed by the common law on the company's business activities by the ultra vires rules would have been much reduced.

a) The substratus rule

This rule states that although a company may include in the object clause a large number of objects, these objects cannot be pursued unless the main object or substratus usually the first clause is been carried on. Therefore if the main object or substratus fails, the company cannot continue to operate the business under another object. The shareholders can petition for winding up of the company where the whole substratus has gone and the court can order liquidation under its power to do so whenever it is put and equitable [54].

In the leading case of *Re German Date Coffee Company* [55], the company was formed to work a German patent for manufacturing coffee from dates, and the memorandum contained powers to acquire other inventions for similar purposes and to import and export all descriptions of produce for the purpose of food. The intended German patent was never granted, but the company purchased a Swedish patent and established works in Hamburg where it made and sold coffee made from dates without a patent. A petition was presented by two shareholders for the winding-up of the company had failed, and it was impossible to carry out the objects for which it was formed, and therefore it was just and equitable that the company should wound up.

Under OHADA just like Common Law, the object of the company must be lawful and not offended against public policy [56]. The activity the company intends to carry out must not be one that is forbidden by law and the company must not be formed for an immoral purpose. The object must really not be against public policy such as formed to injure the public service or to carry on trade with an enemy or formed between competing business men whereby they agree on some common price or sale or production policy or a company formed to injure the safety of the country as where shareholders create the company to break the laws of the country or to fraud on taxation laws as in *R v. Registrar of Companies exp Attorney General*[57], in which the Ms Lindi St Clair set up a company through which to carry out her trade as a prostitute. She had applied for registration of this company under the names 'prostitutes Ltd' 'Hookers Ltd' and Lindi St Clair (French Lesson) Ltd all of which was rejected by the registrar of companies. Eventually the company was registered with the name 'Lindi St Clair (Personal Services) Ltd. The Attorney General brought an action to challenge the registration of the company on grounds that his purposes were unlawful. It was held that the company was struck off the register as its principal objects were illegal, contracts being made for sexually immoral purposes being contrary to public policy and illegal.

When the object of the company is lawful and not against public policy, the registrar will not hesitate to register the company as seen in *Bowman v. Secular Society Ltd* [58]. The company's object may be changed under the conditions stipulated for amendment of the articles of association [59]. Both the Uniform Act and Common law observe the ultra vires rule [60].

5) Contributions (towards the capital of the company)

A company is defined by the Act as an association of two or more persons who agree by contract to assign assets in cash or in kind to an activity for the purpose of sharing profits or benefiting from savings that may derived there from. Therefore, each partner has the obligation to contribute to the capital of the company [61]. Each partner shall owe the company what he has pledge to contribute in cash or in kind in return for their contributions the partners shall receive shares issued by the company [62].

Some different types of contribution are been made. Money as contribution made in cash, service in the form of supply of labour, personal rights in movable or immovable, tangible or intangible property as a contribution in kind [63]. Any other form of contribution is forbidden.

a) Contribution in cash

This act is done by partners paying the totality of the sum promised during the formation of the company or installments in conformity with the provisions of the UA. In public limited companies [64], at least ¼ of the value of shares representing contribution in cash shall be paid up during capital subscription, the rest shall be paid within a period not more than three years from the date of registration of the company in the Trade and Personal Property Credit Register in accordance with the terms and conditions laid down by the articles of association or by the decisions of the board of directors or the managing directors.

In the case of delay in payments the balance due to the company shall automatically bear interest at the official rate from the date on which the payment was due with prejudice to the payment of damages if any[65]. Contribution in cash made during an increase in capital of a company may unless the AA forbids it to be realized from set off with an unquestionable liquid and due claim on the company.

b) Contribution in kind

Talking about contribution in kind, it shall be made by a transfer of real or personal rights in the property contributed and the effective conveyance to the company of the property to which those rights are attached, this operation is similar to a sale of goods operation. Once the contribution is made, the risk in the property is transferred to the company and the contributor shall stand security for the company as a vendor for the buyer [66]. If the contribution is made in the form of a lease hold, the contributor shall stand the security for the company like a lessor or the lease and date.

It should be noted that the problem with contribution in kind is at the level of evaluation because a wrong evaluation may be given to a contribution. The question on evaluation is very important because each partner receives as consideration for his contribution stocks or shares proportionate to his contribution, the same proportionality

apply to the sharing of benefits or surplus after liquidation, the registration capital of the company which is the sum total of all contributions may be over evaluated. This is deceptive as creditors generally see the capital of the company as a security and also even under evaluation could scare investors. Payment of stamps duty on the company accounts depends on the registration capital of the company.

Since evaluation is very necessary, over evaluation in favour of a contributor in kind cheats contributors in cash who receives exactly the amount of shares which their contribution can provide. The repercussion is seen at voting in the general assembly and sharing of dividends. It is deceitful. So therefore because of all these, contribution in kind shall be fully paid up at the time of the formation of the company [67]. It shall be evaluated by the partners and such evaluation shall be checked by a contributor in kind [68].

c) Contribution in the form of services

Partners may contribute services to the capital of a company. It does not catalogue the forms of services that could possibly be considered as contributions. This would generally consist of work or activity which the contributors does or promise to do by virtue of his commercial or technical competence or service which some one renders to the company by letting it benefit from a credit facility, know-how or his experience amongst all these forms of services [69].

These contributors of services do not receive a salary from the company but they share in the benefit of the company like other partners. Like salary workers however they must be loyal to co-partners and must limit their services to the company alone. They must not supply same labour to a competitive company. Contribution of services is not without problems. This problem is that in the case of dissolution and consequent liquidation, the creditor finds it impossible to retrieve their loans from the company by seizures effected on those who contributed only services. Generally contribution poses a difficulty of evaluation.

6) Registered capital

It has been made known that every company shall have a registered capital which shall be indicated in its articles of association. The registered capital at the moment of formation is the sum total of the contribution in cash and in kind [70]. The capital of the company can be increased beyond that contributed by the partners. Such is the case where an operating company capitalizes its reserves or profits or issue premiums, that is, company may issue shares at a premium that is at the price in excess of their nominal value so that the issue of a ten thousand francs share for one thousand two hundred francs is in order. In consideration of contributions made, contributors receive shares commensurate to their contributions.

As is it a very vital issue in the formation of a company, the amount of registered capital is always determined by the partners of the company. The statement of capital and initial share holding is very vital [71]. However Uniform Act may fix a minimum registered capital according to the form or object of the company [72]. Like we can see that the minimum capital of a private limited company is fixed at one million (1.000000frs) divided into equal shares whose

nominal value may not be less than five thousand francs (5000frs) [73]. While that of a public limited company at ten million (10.000000frs) divided into shares of the face value of not less than ten thousand francs (10000frs).

In the same vein, if the capital of any of these does not attain this sum, they cannot be formed [74], and if after formation the capital of this company reduces below the statutory minimum, the company has to be dissolved [75] unless the company does something to increase the capital. No minimum capital is fixed for partnerships and limited partnership but the capital chosen by the members of these companies must be broken down into shares of an equal value.

The capital of the company is cloth with two aspects. These are the accounting aspect and the legal aspect. From the accounting aspect or point of view, capital represents an element on the liability column of the company. This is so because it represents debts that the company owes to its creditors. At dissolution, each contributor receives an amount equal to its contribution from the assets of the company. From the legal point of view capital is characterized by the fact that it is fixed and untouchable, it signifies that capital is an element on the assets column of a company's balance sheet and indicates the amount below which the company cannot deduct for payment of profits. If the company suffers loss it cannot pay profits because capital cannot be used to pay profits [76].

The capital of a company is an element which is fixed by contract or by the Uniform Act. It cannot be modified without the accord of the parties to the contract. Modification may entail an increase or a decrease of the capital. Modification will depend on the form of the company [77]. The registered capital of company may be increased when new contributions are made to the company or reserves, profits and issued premiums are capitalized [78]. Also the registered capital reduced by refunding part of the partner's contributions by imputing losses to the company [79]. This means that the company can be dissolved if the members do not do something to increase the company's registered capital.

7) The signing of the Articles of Association by the members

The moment the Articles of Association is signed, the company is said to be formed and all those who took active part in the commitments that led to the formation of the company are considered as founder of the company. Here, their role starts with the first transaction for the purpose of forming the company. The moment referred to above is the date on which the Articles of Association is signed therefore, founders role only come to an end on the date that the AOA is signed by all the partners or sole proprietor [80]. A partner has the right to sign the AOA if he is interested and willing to carry on trading under penalty of annulment of the company, in person, or through his authorized agent with special powers [81].

Those who were the initiator, or promoters of the company up to the point of its registration in the Trade and Personal Property Credit Register shall take shares by signing the

AOA and each subscriber shall sign also indicating the number of shares he has taken and the portion of his share capital in front of one witness who will have to attest the signature. The subscriber can do so in person or may use an agent who has to produce a power of attorney to permit him sign on his behalf. A certificate of shares shall be given to all those whose names has been entered in the AOA and signed it as a shareholder under the common seal of the company indicating each person's shares and the amount he/she has paid. Just one certificate of shares shall be given to shares held jointly by several persons as delivery of this certificate to one of the several joint holder means delivery to all. It should be understood that, signing the Articles of Association gives birth to the company and the executives take over from the founding shareholders.

a) The effect of signing the Articles of Association

The purpose of the Articles of Association is to outline the way in which the proper functioning of the company is to take place [82], as was held in *Welton v Saffrey* [83]. There are several effects of signing the AOA. These effects is been felt by both the company and shareholders. It is seen as a contract between the company and its members, as a contract enforceable by the member against the company, also as a contract enforceable by the company against its members. It does not bind the company to the outsider, and it evidences the contract.

b) As a contract: the company and its members

The Articles of Association is not without any great effect in the formation of a company. Firstly, the articles of association when registered, binds the company and its members as if they had been signed and sealed by each member and contain agreement on the part of each member to observe all their provisions. The result is that the AOA form a contract between the company and each member in his capacity as members bound to the company by the provision found in the AOA. A member is bound by contract to pay the amount outstanding on the shares. In *Pender v Lushington* [84], the chairman of a meeting of members refused to accept Pender's votes. The Articles of Association gave one vote for every 10 shares to the shareholders. This cause a resolution proposed by Pender to be held. He asked the court to grant an injunction to stop the directors acting contrary to the resolution. Pender succeeded as it was held that the Articles of Association were a contract binding the company to the members.

In addition, in *Amity Bank Cameroon Plc V. Lawrence Lower Tsaha* [85], where the defendant, Lawrence, general manager and chairman of plaintiff, Amity Bank Cameroon Plc, was dismissed by the board of directors of the bank according to article 22 of the Articles of Association of the bank the board of directors shall appoint or dismiss the managing director and deputy managing director by a simple majority vote. This also fell in line with Article 469 and 492 of the UACCEIG which deals with dismissal of chairman, managing director and general manager of a public limited company. Article 469 states that the chairman and managing director may be dismissed at any time by the board of directors. This also relates with Article 492 which states that the general manager may be dismissed at any time by the board of directors. As such, MR, Lawrence Lower was

dismissed by three-quarters majority vote of the board of directors which was made up of six out of nine members voted in favour of his dismissal. His dismissal was valid as it was in line with the AA and the UACCIEG.

8) As a contract: enforceable by the members against the company

It is worth looking at one of the effect of the articles of association as being a contract enforceable by the members against the company as was taken in the case of *Rayfield V. Hands* [86]. In the same line of discussion, in *Wood v Odessa Water works Co* [87], the AOA empowered the directors with the approval of the general meeting to declare dividends to be paid to the members. The directors recommended that instead paying a dividend, members should be given debenture-bonds bearing interest repayable at par, by annual drawings extending over 30 years. The recommendation was approved by the company in general meeting by ordinary resolution. The plaintiff successfully sought an injunction restraining the company from acting on the resolution on the ground that it breached the Articles of Association.

9) As a contract: enforceable by the company against its members

The Articles of Association represents also a contract enforceable by the company against its members. In *Hickman v Kent or Romney Marsh Sheep breeder's Association* [88], the defendant company was incorporated under the Companies Act 1895. The objects of the company were to encourage and retain as pure the sheep known as Kent or Romney Marsh, and the establishment of a flock book, listing recognized sires and ewes to be bred from. The AA provided for disputes between the company and the members to be referred to arbitration. This action was brought in the chancery Division by the claimant because the Association had refused to register certain of his sheep in the flock book, and asked for damages. It also appeared that the Association was trying to expel him, and he asked for an injunction to prevent this. It was held by Astbury J that the Association was entitled to have the action stayed. The AOA amounted to the contract between the Association and the claimant to refer disputes to arbitration.

10) As contract between themselves

The Articles of Association also has effect as a contract between the members themselves. Thus a member can sue another if that other member fails to observe a provision in the Articles of Association. The method through which this was undertaken was seen in the case of *MacDougall v Gardiner* [89]. Rights may only be enforced via the company as opposed to directly between members and is based on internal management principle. No rights given by the AOA to a member in a capacity other than that of member (for example solicitor or director) can be enforced against the company. The AOA does not bind the company to an outsider but merely a contract with the members in respect of their rights as members. It is evidence of the existence of a contract.

4. Findings

The AOA components are very similar to that of English company law or English speaking countries. Under OHADA Law, a company has a life span of 99 years while in most English speaking countries; a company operates for an indefinite period of time. There is no limitation because they enjoy perpetual succession subject to their wind up. As such this makes the common law very flexible than the Uniform Act as under the UA, the duration of a company can only be extended by amending the AOA through an extraordinary shareholders meeting as per article 33 of the UACCEIG.

5. Conclusion

The AOA are important under the OHADA Law for the welfare of the company and for its smooth functioning in fulfilling its objectives as a company

6. Future Scope

Under the UACCEIG, Article 10 which directs members of a company to establish the AOA by a notarial deed should be amended to allow a uniform working of the Act in Anglophone and Francophone Cameroon. Also article 28 that limits the lifespan to 99 years should be amended since the company goes through perpetual succession its life span should not be limited as the death of a member or all of its member should not move the company. OHADA just like the company Law of most English speaking Countries have acknowledged the fact that a company must have an AOA and contain some special information.

References

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- [2] Under the UA.
- [3] See the Company' Ordinance Cap 37 of the revised laws of Nigeria.
- [4] Stephen Griffin, (1996), "Company Law Fundamental Principles" 2nded, London, Pitman, p. 112.
- [5] It is defined by Sealy and Worthington's in 'cases and Material in Company law" 10thed, pg. 55, as a kind of legal entity or corporate body which is brought into being by the registration procedure laid down by the Companies Act.
- [6] They are essentially the rule book of the company as per Mark Edward et al (2012-2013), 'Company law module manual', Sheffield Hallam University.
- [7] See article 33 UACCEIG.
- [8] It is defined by Sealy and Worthington's in 'cases and Material in Company law" 10thed, pg. 55, as a kind of legal entity or corporate body which is brought into being by the registration procedure laid down by the Companies Act.
- [9] They are essentially the rule book of the company as per Mark Edward et AL (2012-2013), 'Company law module manual', Sheffield Hallam University
- [10] Companies Act 2006 s 18(1). Also, It often defines the manner in which the shares are to be issued, dividend to be paid, the financial record to be audited and the power to be given to the share holders with voting rights.
- [11] Brenda Hannigam, "Company Law" 3rded, pg. 81-82.
- [12] They are referred to as Founders under the UACC.
- [13] Le Talbot, "Critical Company Law" Routledge
- [14] Simon TabeTabe (2018), "Understanding OHADA Company Law in Cameroon" 1st Ed, Bafoussam, Utranet, pg. 78.
- [15] Pougoue, P.G., et al., (1998), « Le Droit des Societe Commerciales et du Groupement d'Interet Economique OHADA »
- [16] Meissonier, G., et al., (1982), « Droit des Entreprises, Enclopedie Juridique de L'Afrique » les Nouvelles Ed Africain, Tome 7, p. 106.
- [17] James Chen et al, "what are Articles of Association"
- [18] Talbot, "Critical Company Law"
- [19] Easter Brook and Fischel, (1985), "Limited Liability and the corporation" 52 university of Chicago Law Review 89.
- [20] See Article 10 of the UACC.
- [21] See Article 11 of UACC, and Article 1111853 of the French Civil Code which states that the status must be established through a written agreement.
- [22] Pooja Das, (2020), "Contents of Articles of Association".
- [23] Article 13 UACC.
- [24] See Article 13 of the UACC.
- [25] All the informations found in the Memorandum of Association under the Companies Ordinance are now contained in the Article of Association under the UACC.
- [26] Article 14 UACC.
- [27] Alan Dignam & John Lowry 'Company Law' 7th edition oxford publishing, pg. 151.
- [28] See Companies Act 2006 s.82.
- [29] Article 16 UACC.
- [30] See Smith and Keenan's (1976), "Company Law" 3rded, London, Pitman.
- [31] CA 2006, S.53.
- [32] (1917).
- [33] CA, S.77.
- [34] Article 18 UACC.
- [35] Article 18 UACC.
- [36] Article 23 UACC
- [37] Article 24 UACC.
- [38] Martor, B., et al., (2000), "Business law in Africa, OHADA and the Harmonization Process", London, Eversheds, Kogan Page.66.
- [39] CA 2006, S.86.
- [40] Supreme Court of Cameroon-Yaounde Suit no 144/CIV/08.
- [41] Article 27 UACC.
- [42] Article 27 UACC.
- [43] Article 359(3) UACC.
- [44] By Article 551(2) UACC.
- [45] Article 28 UACC.
- [46] Article 29 UACC.
- [47] Article 30 UACC.
- [48] Article 32 UACC.
- [49] Article 35 UACC.

- [50] Article 34 UACC.
- [51] Ibid, article 19.
- [52] TabeTabe., Op.cit. pg.82.
- [53] Dickson B., (1994), “ Introduction to French Law” London , Pitman Publishing, P. 177.
- [54] Anouka, F., et , al. (2000), « OHADA Societe Com
- [55] See James H.Thompson, “Ultra vires etc » (1966) J.Bus .L.66 ;K.W.Wedder burn, « what is the point of ultra vires »(1966) 29 M.L.R 191;Kenneth Polack erciales et G.I.E » Collection The dierectors had power to delegate in this way by virtue of article (102) of table A in Sch.1 to the company Act, 1948 which were incorporated into the company’s articles.b
- [56] (1881-85),All ER 372.
- [57] (1884), 26 Ch. D. 107.
- [58] (1991).
- [59] Article 22 UACC.
- [60] Again it that rule which states that the company must not go beyond the activities stated in its object clause.
- [61] Article 37of the UACCEIG.
- [62] Ibid.
- [63] Ibid, article 40.
- [64] Ibid, article 389
- [65] Ibid , article 43.
- [66] Article 46 UACCEIG.
- [67] Ibid, article 45(2).
- [68] Ibid.
- [69] Ibid, article 40 which authorize only the supply of labour.
- [70] Ibid, article 61¹ CA,2006, s.86.
- [71] Ibid, article 65.
- [72] Ibid, article 311.
- [73] Ibid, article 66.
- [74] Ibid.
- [75] Ibid article 143(3) which states that except in the case of reduction of capital, no distribution of reserves to partners may be authorized where the equity capital is or may be following such distributions be lower than the capital plus reserves which may not be distributed according to the law or AA.
- [76] It is also previewed by article 67 of the UA.
- [77] Ibid, article 68.
- [78] Ibid, article 69.
- [79] Article 101 UACC.
- [80] Article 315 UACC
- [81] Smith and Keenan’s Company lawpg 159.
- [82] (1877) AC 299.
- [83] (1938) Ch 708 CA.
- [84] (1877) 6 Ch D70.
- [85] Suit NO HCF/59/92-2000 9(unreported).
- [86] (1960) 1 Ch.
- [87] (1889) 42. Ch D 636.
- [88] (1915) 1 Ch 881.
- [89] (1875) 1 Ch D 13.
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