Journal of
Corporate Governance and International Business Law

Volume 4, Issue 2, 2021
(July-December)
DOI (Journal): 10.37591/JCGIBL

http://lawjournals.celnet.in/index.php/jcgibl/index

Research JCGIBL

Evaluating the Forms and Stages of Financial Disclosure of Company Life under OHADA Law

Tambe Cyrile Bua*

Abstract

The general rule that commercial companies are required to make public their financial situation to the shareholders and other stakeholders such as investors has been established. However, this is not always the case as companies within the Organization for the Harmonization of Business Law in Africa (OHADA) have devised certain means to escape this responsibility or make improper and untrue disclosures. They exploit the loopholes of legal and institutional mechanisms for financial disclosure. An analytical approach of the various legislations related to financial disclosure of commercial companies under OHADA through the doctrinal research method along relevant texts on financial disclosure within companies within OHADA is therefore examined. This study has as its principal objective to examine the different stages of financial disclosure of commercial companies under OHADA Law. The achievement of this objective was guided by the Doctrinal research methodology consisting of primary and secondary data. Primary data consist principally of the OHADA Uniform Acts and other relevant legislations. Secondary data used is from textbooks, journals, internet and other. Our research outcome is to the effect that, despite the effective mechanism put in place by OHADA to encourage financial disclosure of companies, there is still need for more in relation of creating a sound atmosphere for financial disclosure as well as sanctions related to concealment or fraudulent disclosures. Recommendations are made to the effect that; a more explicit and unambiguous provisions be made by OHADA in the domain of Accounting Law and the OHADA legislature should provide a harmonised criminal law punishing disclosure ills rather than leaving member states the powers to do so.

Keywords: Financial disclosure, company, OHADA Law

GENERAL INTRODUCTION

Background to the study

The position held by financial disclosure in company life cannot be underestimated. Its primordial position as emphasized before is based on a couple of factors provided for under OHADA Law. A close study at OHADA Law will bring to light the fact that financial disclosure takes a couple of forms. Some disclosures are voluntarily done by the companies themselves; others are provided for by statute while some stem as a result of an order made by the competent court of the jurisdiction. Some financial disclosures, however, might fall within two categories. According to Chandler (1997), [1] Voluntary disclosure is a measure of self-regulation or a response to the expectations of stakeholders and civil society for more disclosure while mandatory disclosure results from legislation or regulation.

***Author for Correspondence**
Tambe Cyrile Bua
E-mail: tambecyrilebua@gmail.com

PhD Student, Department of English Law, International Trade and Investment Law in Africa, University of Dschang, Cameroon

Received Date: January 07, 2022
Accepted Date: January 20, 2022
Published Date: January 31, 2022

Citation: Tambe Cyrile Bua. Evaluating the Forms and Stages of Financial Disclosure of Company Life under OHADA Law. Journal of Corporate Governance & International Business Law. 2021; 4(2): 1–16p.

The first form of disclosure is done mostly to provide information of the running of affairs to the shareholders and may arise when shareholders demand for such information about the company. Those within the second category have been expressly provided for by statutes and in some cases, punishment is provided in case of any derogation [2]. The court on its part may require financial disclosure in case of administration proceedings, preventive settlement, insolvency proceedings, and liquidation proceedings. It should be noted that if non-disclosure or improper disclosure is left unpunished, it will lead to high risk of concealment and fraud.

Financial disclosure of commercial companies is an integral part in the company's life. It flows throughout the life of the company from its coming to existence during creation, its functioning, its restructuring and even its dissolution. The elements of financial disclosure and the degree of disclosure vary in all the stages. During the formation of the company, shareholders have to make contributions and deposit funds at the depository or the Notary. These funds must be fully disclosed. This goes same with contributions in kind which must be valued by an expert. The registered capital as well as the share value must also be disclosed. The reason for this is to make sure that, commercial companies respect the rules and regulations provided by OHADA concerning financial disclosure.

During the functioning of the company, there lies an obligation incumbent on the directing minds of the company to compulsorily hold an annual general meeting to present the financial report of each year to shareholders and holders of other securities. The Uniform Act on Accounting Law (UAAL) has also made provisions for accounting obligations to be carried out by commercial companies under OHADA [3].

When a company intends to change its legal form, either by changing the form of the company, or by mergers, amalgamation or spin off and partial business transfers, there is also need for financial disclosure. In the case of mergers, both companies would need to make open their financial stand for the benefit of one another. Public Limited Companies (*SA*s) under OHADA zone has been allowed to make public calls for capital. In this process where the company advertises her stocks in the stock exchange markets, there are a series of financial aspects she will need to disclose as well.

Administration, receivership, and liquidation proceedings are other areas where financial disclosure is required. This will enable the company's debtors and creditors to be able to exactly know what is left. In addition, it is incumbent on the company to provide certain documents of financial nature to the court's judge, court appointed administrators and liquidators in order for them to make proper assessments.

This part of the work also answers the question "why financial disclosure?" It elaborates on the various reasons why there is the necessity for financial disclosure throughout the company's life.

Objective of the Study

The objective of this study are two folds, first to examine the different forms of financial disclosure of companies under OHADA Law and secondly to examine the stages of financial disclosure of commercial companies under the OHADA system.

LITERATURE REVIEW

Haggard S. Martin, and Pereira R. (2008) [4] look at the notion of financial disclosure of commercial companies during the formation of the company by the promoters. To them, every company starts with an idea, which is manifested via creation of a legal entity known as a commercial company. Financial disclosure even starts before the existence of the company when the promoters' consent with one another to create a company, each promoter would be interested to have an estimate of the other promoters. They also posit that financial disclosure helps to provide information to the stock exchange markets when the company is making a public call for capital. Financial disclosure during company creation is a pivotal part of the disclosure process and this is why this work just like theirs lays emphasis on it. In addition, the area of this work dealing with the stock exchange market draws much inspiration from the works of these authors. However, limiting financial disclosure of company life merely during its formation would be disobliging and obstructive. It is for this reason that this work explains the different stages of the disclosure process to encompass financial disclosure during the creation, functioning, mergers, public calls for capital as well as dissolution. In addition, information during disclosure is not provided only for the stock exchange markets. Other stakeholders in the likes of other investors, banks, creditors and debtors, the tax authorities as well as shareholders need this information as well.

Martor B., *et al*. in their book' [5] talks about financial disclosure at different stages. They begin from financial disclosure at the creation process of the commercial company that is, in cases of registration, financial disclosure during the functioning of the company and financial disclosure of the company in case of liquidation and administration proceedings. Their work is consumable. In addition, they explain a totality of the OHADA Law from which we draw a lot of inspiration in carrying out this research work. However, they did not bother to provide recommendations for these companies in case of failure of financial disclosure or in case they make a false declaration which is done in detail in this research work.

Ho, Simon S.M, and Kar Shun Wong [6] in their article state that, financial disclosure of commercial companies in China takes principally two forms which are voluntary disclosures and mandatory disclosures. They also establish the differences between these two forms of disclosures. To them mandatory disclosures are corporate disclosures made in response to regulatory requirements, for example, rules and regulations are termed as compulsory disclosures, while those which are voluntary are discretional in nature. In a like manner, this work also classifies disclosure into voluntary disclosures and mandatory disclosures. However, this work is extensive in that apart from examining the various forms of financial disclosures and differentiating them, it examines the advantages and disadvantages of these forms of disclosures within the context of OHADA Law. Mandatory disclosures under the OHADA context touch on the accounting obligations provided in the UAAL.

RESEARCH METHODOLOGY

The methodology employed in carrying out this research is mainly doctrinal in nature. The work analyses data obtained from primary and secondary sources. The primary sources of data constitute: Statutes, regulations, and court decisions.

The work effectively analyses the existing laws relating to the subject matter such as the OHADA Uniform Acts relating to financial disclosure, the Tax Code of Cameroon, and other sectorial laws. What could not be found in the library of the University of Dschang was sought elsewhere. In this regard, data was obtained and analyzed from some law chambers and courts and in this way, we were able to have direct access to case files in the various courts visited. The use of books, journals, newspapers, indexes, theses, and the internet were credible to build our secondary data.

This method was chosen because it is highly reliable and verifiable in terms of Legal research. It equally provides a more expansive insight of the results obtained.

Reasons for Financial Disclosure

Publication and notice are always the case when it comes to financial issues regarding a company. This is incumbent on the fact that shareholders, bondholders, and holders of other securities do exists and need to be secured.

Rights of Shareholders

Shareholders who have made contributions either in cash, kind or in the form of services need security for their contributions. It is for this reason that an annual general meeting of shareholders is held once per year to present, discuss, and bring to light the financial situation of the company. The UACCEIG also provides for early warning procedures which could be initiated by the shareholders [7]. The management must respond to such questions within one month and if the company has an auditor, it must send a copy of its report to the auditor as well. In effect, one of the principal reasons for financial disclosure is the protection of the investment of shareholders [8].

Rights of Bondholders, other Creditors and Stakeholders to the Company

Bonds may also be issued by the company to raise funds by way of loans. Those who enter to a bond issue agreement with the company are described as bond holders and they have an interest in the company. This goes same with other creditors to the company and holders of other securities so long as such securities give their holders identical rights and grant them access, directly or indirectly, to a share in the company's capital or to general claim over the company's asset. It is for this reason that, financial aspects related to the company are always published so that holders of such security can see them and contest if need be [9].

Other persons interested in the company such as investors also need apt and correct information regarding the financial standing of any venture before making any investment thereof. According to Holland (1998) [10] the company's main aim for financial disclosure is to improve understanding of the company's activities to potential investors, to them, companies whose stocks are publicly listed do more disclosures that those who do not make public calls for capital. This is due to the fact that, the stock exchange markets are open to more investors. For this reason, Commercial companies must provide accurate information to help the investors make their investment decisions.

Forms of Financial Disclosure of Commercial Companies under OHADA

There are two main forms of financial disclosure of commercial companies under OHADA. This includes voluntary disclosure and mandatory disclosure.

Voluntary Disclosures

The provision of financial information in company life has great effects on the company. In business life, investors require prompt and correct information to make their decisions wither to invest or not. Financial information can be obtained through various means, and one of the most important aspects is the company's annual financial reports [11]. The most important role of annual reports is to provide relevant, useful, and reliable financial information to investors, shareholders and other interested people about the financial position and performance of the business as well as its future prospects to help users and readers of such financial information in decision making.

Voluntary disclosure occurs when the company's management provides information beyond ordinary requirements such as generally acceptable requirements, requirements of OHADA AND IFRS.

Voluntary disclosures are mostly carried out to improve transparency within the company [12]. However, the degree and form of voluntary disclosure is affected by aspects such as the geographic region of the company, the type of company in question and even by the size of the company [13]. The company's management structure is also another determinant for voluntary disclosure [14] as ownership structure.

The Various Types and Examples of Voluntary Financial Disclosures

Meek, Roberts and Gray in their article, classify voluntary disclosures into strategic, nonfinancial and financial [15]. In effect, strategic information includes aspects such as the company's characteristics and strategy. Non-financial information is information such as socially responsible practices and financial information is mostly contained in the company's annual fanatical statements. This study is however based on financial disclosure which might include aspects such as information regarding shares, information on new products, stockholders and creditors.

Voluntary per Management Decision

The managers of the company might at any time decide to make the financial situation of the company to be known by its members or other third parties without any law compelling them to do so. They may provide financial information to attract investments. Companies who publish their shares in the stock exchange market are supposed to provide financial information regarding the credit worthiness of the company. This can be used as an effective mechanism to attract investments.

Advantages of Voluntary Disclosures

According to Barako (2007) [16] the management of a company making great profit will voluntarily disclose more information to the market so that the companies value would be enhanced. In this regard, we can say that there is a direct relationship and link between voluntary disclosure and financial performance of a company. Stanwick (1998) [17] and Lang (1993) [18] also take the same stands as Barako, that is to say there is a positive relationship between show a positive relationship between voluntary disclosure and a firms market performance. This is because firms have to strive to disclose good information; hence the firm's performance will increase.

To summarize, voluntary financial disclosure has a couple of advantages associated to it. Some of these advantages include the following [19]:

- Voluntary disclosure will reduce the risk of the company management being the subject of an investigation and help avoid penalties;
- Avoid the damage of the company's reputation;
- Continue to compete for bank supported contracts
- Voluntary disclosure can be helpful because it allows the company to control the message and information you disclose to the public.

Mandatory Disclosures or Statutory Disclosure: Disclosures Required by Generally Accepted Accounting Principles

The OHADA legislator has laid down rules regarding accounting standards in commercial companies for her member countries. However, reference must be made to the International Financial Reporting Standards (IFRS) which are accounting standards that are issued by the International Accounting Standard Board (IASB) [20] with the objective of providing a common accounting language to increase transparency in the presentation of financial information. The accounting obligations and standards provided by OHADA are similar to those provided by the IFRS.

Difference between Voluntary and Mandatory Disclosures

The difference between voluntary disclosures and mandatory disclosures is that mandatory company financial disclosures are made in response to laid down rules and regulations, while voluntary disclosures are done without any legal rules or provisions made for them. For example, rules and regulations, while those which are voluntary are discretional in nature and are made by companies without any rule compelling them to do as such. Sometimes, this difference is confusing and ambiguous [21].

The Different stages of Financial Disclosure of Commercial Companies under OHADA

The stages of the disclosure process have been divided to financial disclosure during the creation of the company, financial disclosure during the functioning of the company as well as financial disclosure during company dissolution.

Financial Disclosure at the Creation of the Company

Every company starts with an idea, which is manifested via creation of a legal entity known as a commercial company. Financial disclosure even starts before the existence of the company. When the promoters consent with one another to create a company, each promoter would be interested to have an estimate of one another [22]. During this period, they may enter into agreements. The OHADA UA gives the company the possibility to incorporate the contracts entered into by the promoters before the company is fully registered as opposed by the view of Common Law [23].

Contributions

One of the first aspects regarding financial disclosure of commercial companies during their creation is contributions. Contribution is very important because without contributions, a company will not have the required capital to startup. The contributions made by members are one of the first financial items to be disclosed during the creation of the company.

The UACCEIG provides that each member shall contribute to the capital of the company and shall owe to the company the amount he has pledged to contribute [24]. When a company is owned by a sole proprietor, he shall make all the contributions himself.

As per the provisions of article 40 UACCEIG, each member contributes to the company in one of the following ways, contributions are cash, contributions in kind and contributions in the form of services.

From this provision, we can deduce that contributions take the form of cash, kind, and services. The shareholder who makes contributions in cash must transfer such funds to the company or if it is a noncash contribution, he shall transfer the rights in the property contributed and convey to the company the property to which such rights are related to [25]. It is only when the company acquires ownership and fully and finally receives the funds that cash contributions are said to be fully paid.

Members shall evaluate non-cash contributions. However, such evaluation shall be cross checked by a contribution valuer [26]. The rational for this evaluation is to know the amount of shares to be accorded to the shareholder who made the non-cash contribution. This is due to the fact that, shares are issued to members of the company in exchange for their contributions [27].

With regard to *SARL*, where the value of the contribution or the benefits in question, or the value of the overall contributions or benefits in question is more than five million (5 000 000) CFA francs, the valuation shall be carried out by a non-cash contribution valuer No mention has been made as to the amount required by the *SA* for there to be valuation. It can be implied that valuation is required for all *SA*s irrespective of the value of the contribution in question. The Uniform Act has given the latitude for members to choose a valuer. However, if they cannot come to a compromise, the court is permitted to step in and make a choice [28].

Funds derived from the payment for shares in a *SARL* are deposited in a bank account created in the company name. This is done by the company founders and a receipt is issued to them by the bank after the deposit is made. Such funds can also be deposited to the notary as the case may be. The Notary records such deposits by means of a notarized statement of subscription and payment. This statement indicates the list of subscribers with their full names and addresses if they are natural persons, for shareholders who are companies, their company name, legal status and registered office, as well as the banks of those concerned, and where necessary, the amounts paid by them [29]. This is the same situation with the *SA*. However, with the *SA*, the funds shall be deposited eight (8) days after it has been received [30].

Regarding the *SA*, the UACCEIG provides that, at least one quarter of the face value of shares representing contributions in cash is supposed to be paid up during the subscription of capital. The balance shall however be paid up within a three-year period counting from the date when the company is registered with the TPPCR [31]. The Notary is required to certify the validity of the notarized statements [32]. All of the above are instances of financial disclosure during contributions. The Notary is however required to make the statement available to subscribers who may examine it and obtain copies from his office.

Nominal Share Value

The second item of financial aspect that needs to be disclosed during the creation of the company is the nominal share value. As per the provisions of the UACCEIG, Shares issued by a company shall have a nominal value and shall have the same face value. Where a company is owned by a Sole Proprietor, he shall have sole ownership of shares. The Uniform Act places more emphasis on *SA* and *SARL* because they are unlimited liability companies. For *SA*, the company capital shall be divided into shares with a face value with a threshold of at least ten thousand (10,000) CFA francs. While for *SARL*, the registered capital shall divide into equal shares with a face value of at least five thousand (5 000) CFA francs [33].

The Registered Capital

The third item of financial disclosure during the creation of the company is the registered capital. The registered capital is the sum total of all the contributions. The Uniform Act (UA) makes provisions regarding the registered capital of companies when it states that all companies must have a registered capital, and this must be indicated in the Articles of Association (AOA). This capital shall be divided into shares for other forms of companies or stocks in the case of *SAs*. [34]. The UACCEIG allows the latitude for the minimum capital to be freely determined by the members. However, there is a base set by the uniform act depending on the type of company formed.

The UACCEIG does not provide any minimum capital for unlimited liability companies. But for those with limited liabilities which are the *SA* and *SARL*, limits have been set. As provided for in UACCEIG, the registered capital of a private limited company (*SARL*) shall be at least one million (1 000 000) CFA francs [35]. Regarding public limited companies (*SA*), the minimum authorized capital is fixed at ten million (10,000,000) CFA francs [36]. A company formed with a capital less that the minimum amount fixed by the UACCEIG may not be validly formed [37].

Unlike other forms of companies provided under OHADA, the capital of a Public Limited Company shall be fully subscribed before the date of signature of its Articles of Association or holding of the constituent general meeting [38].

Financial Disclosure during the Functioning of the Company

Apart from the various forms of financial disclosures discussed above that are undertaken during the formation of the company, the trend continues within the company life. Here the nature of disclosure includes the obligation to keep accounts, financial disclosure during increase and reduction of capital, financial disclosure during public calls for capital, financial disclosure during restructuring of the company.

Accounts and Audit Requirements

This includes principally the annual general meetings as well as the accounting obligations and requirements.

Shareholders' Ordinary General Meetings

The UACCEIG provides for three types of meetings, the ordinary general meeting, the extraordinary general meetings and the special general meetings. The ordinary general meeting is the point of focus here because it serves as a forum for financial disclosure during the company life. This meeting is always held to approve the company's financial statements, to decide upon distribution of profits, to appoint members of the board and auditors and to approve contracts concluded between the company and its directors. All this cannot be possible without financial disclosure.

The meeting might be called by a statutory auditor who have unsuccessfully requested the board of directors to call one, by a court appointed officer upon the request of any interested party or one or more shareholders or by a liquidator if the company is under liquidation.

Notice of this meeting must be published in a legal journal or made to each shareholder personally by letter delivered by hand against receipt or by registered mail. This notice must contain aspects such as the meetings agenda, time, date and venue. A proxy can be appointed by shareholders who cannot attend the meeting to do so on their behalf. The meeting is chaired by the chairman of the board or the most senior executive depending on the form of company. At each meeting, an attendance list is presented with names and details of all the shareholders and proxies that attended the meeting.

An ordinary general meeting must be held at least once a year to receive and consider the company's annual accounts, no later than six months after the end of the financial year to which such annual accounts relate, subject only to an extension of this period by court order [39].

Apart from the annual financial statement, the management must also prepare a management report. For companies with a statutory auditor, these documents must be forwarded to the auditor at least forty-five days before the date of the annual general meeting, which is held to approve the annual accounts [40].

In order for resolutions to be taken during this meeting, the aspects of quorum and majority must be respected depending on the form of company at hand. This is because the degree of quorum and majority varies with different companies. During this meeting, the financial situation of the company is made known to all the shareholders for them to deliberate and accept. Decisions at these meetings are made by means of voting [41].

As will be seen, the income financial statement must contain an income statement, balance sheet which includes assets and liabilities, statement of cash flow or table of income and expenditure, footnotes to the financial statements or attached statements.

Accounting requirements

The Uniform Act of 24th March 2000 on the Harmonization of the Accounts of Enterprises has made provisions concerning the substance of a financial statement as well as the various types of financial statements that need to be disclosed. This piece of law provides that the following shall be bound to keep accounts termed "General accounts." In effect, all companies shall have accounts for their own information and for the public [42].

Companies under OHADA Law must compulsorily keep accounting books and a ledger where they must make all entries in a clear and concise manner [43]. Blanks must not be left in this book or other forms of alterations are unaccepted as well. In addition, the presentation must be done in such a way as not to conceal any part of the financial life of the company subject to civil and penal sanctions.

Increase in Capital

Another arena of financial disclosure in the company's life is when they are to make an increase in capital. Increase in capital can be done either by providing more shares or increasing the value of already existing shares. Where new shares are issued, people would be called upon to buy them, hence increasing the capital of the company. Where nominal value of shares is increased, the existing shareholders would need to make more contributions to meet up with the balance between the old value of the shares and the new value which has been accorded to them [44].

According to the UACCEIG, the registered capital of companies shall be fixed. However, it may be increased or reduced under the conditions laid down by this Uniform Act for the amendment of the Articles of Association of each form of company [45]. From the forgoing, it is clear that the increase and reduction of capital will warrant financial disclosure. It should be noted that increase and reduction of capital would have an effect on the registered capital of the company.

The registered capital may be increased where new contributions are made to the company or where reserves, profits and issued premiums are capitalized. In addition, the registered capital may be reduced under the conditions laid down by this UACCEIG either by refunding part of the members' contributions or by imputing losses to the company [46]. However, where there is reduction of capital, the reduction should not go below the minimum provided by the UACCEIG [47].

As per the UACCEIG, with regards contributions, the same rules that apply to contributions when a company is formed are also applied when there is a need for capital increase [48]. A set-off may be used to make contributions in cash during an increase in capital of the company unless the AOA forbids it. The set-off must be made with an unquestionable, liquidated and due claim on the company [49].

As per *Moris L.J.* in *Hanak V. Green,* [50] "the question as to what is a set-off is to be determined as a matter of law and is not in any way governed by the language used by the parties in their pleadings" a set off exist when instead of the person interested to buy shares do so directly either in cash, kind or services, he ask the company to provide shares as payment of the debt owed to him by the same company. A set-off is confined to liquidated debts meaning the debt must be able to be calculated in monetary form. An unquestionable debt is one which is not contested, while a due debt is one which is under no condition or its time for payment has elapsed.

The UACCEIG makes special provisions for the increase in capital of *SA*s. It provides that increase in capital can be done by issuing new shares or increasing the nominal value of existing shares [51]. The new shares are paid in cash, kind or by set-off against debts of the company that are certain, liquidated and due, or by capitalization of reserves, profits or share premiums [52].

Increase in capital in the *SA*s is decided only upon an extra-ordinary general meeting of shareholders after a report has been presented by the board of directors or managing director, as well as the company's auditor. These results must provide the reasons for the increase as well as the changes in the company's business within the financial year. In effect, it must contain the financial standing of the company.

The price and value of new shares is decided by an extraordinary shareholders general meeting with the condition that two reports are presented by the board of directors or managing directors. One of the particulars of this report is the price of each share and the reasons for such price. The auditors must also verify and certify the information taken from the company's accounts by the board of directors or managing director to prepare his report [53]. The report at this stage is a special report because it is different from the general reports made by them. Such a report must also describe the details of the capital increase so that it can be known if such an increase is in respect of the rules provided by the UACCEIG.

During increase in capital, the general rules relating to subscription and payment for shares are applied. The management must deposit all the payments within eight days of their receipt in a bank account or with a Notary. This must be backed by a certificate acknowledging the receipt of funds [54].

A notarized statement of subscription and payment is prepared, and the notary certifies that the statements by the management and the amounts indicated on the bulletins correspond to the amounts received by him or indicated in the bank's certificate. When the increase is made via a setoff, the Notary delivers a report upon presentation of the accounting statement prepared by the management and certified by the company auditor [55].

Reduction in Capital

There is also financial disclosure during the reduction of the capital of a company. A reduction can be done either by reducing the amount of shares or reducing the nominal value of existing shares [56].

Just as is the case with increase in capital, the managing director, or the board of director of the *SA* must present a report, which must contain the amount of reduction and the reasons for such reduction.

As discussed above, the UACCEIG provides minimum capital required by the different forms of companies. In effect, one of the reasons for such a report is to make sure that the reduction does not cause the registered capital of the company to fall below the threshold provided by the UACCEIG. For example, in the *SA*, such reduction must not cause the registered capital to fall below 10 million FCFA.

In no case should the reduction of capital affect the equality amongst partners, except those partners with a disadvantage accord to such reduction after knowledge of the intention to reduce.

Public Calls for Capital

Public calls for capital enable companies to raise money and finance their projects by issuing shares or bonds that may be acquired by investors. The legal regime of public offerings within member states of OHADA is a complicated one. This is because public offering is governed by OHADA on one hand as well as UEMOA and CEMAC on the other hand [57].

Companies making public offerings are those seeking outside investment. The establishment and operations of these companies are governed by certain rules aimed at protecting the investors.

The UACCEIG considers public offerings to constitute Getting the shares of a company to be listed on the Stock Exchange of a State Party, with effect from the date of registration of such shares, Resorting to credit establishments or stock brokers or the use of any form of publicity or canvassing in order to offer any type of shares to the public in a state party and the distribution of shares to more than one (100) persons as a public call for capital [58].

In effect, public calls for capital must not necessitate those shares or stocks are listed in the stock exchange market. If a company has at least 100 shareholders and bondholders, it is deemed to make public offerings.

The OHADA Law allows only *SAs* to negotiate securities and offer them to the public. In effect, only they can make public calls for capital under OHADA. However, for an *SA* to meet these criteria, it must have a registered capital of at least 100 million FCFA and be administered by a board of directors [59].

The institutional and legal framework put in place by UEMOA and CEMAC for the promotion and organization of public offerings

The franc zone is an economic monetary area. In addition to France, its membership consists of predominantly former French colonies, although Equatorial Guinea and Guinea-Bissau are also members. The franc zone is divided into two principal sub-zones which are UEMOA which replaced UMOA for West Africa and CEMAC for central Africa.

UEMOA stands for Union Economique et Monetaire Ouest Africaine (West African Economic and Monetary Union). Cameroon is not a member of UEMOA. In the context of UEMOA, the regional financial market is organized around three major institutional bodies. The Regional Council for Public Savings and Financial Markets (CREPMF) which is the public body regulating public offerings, [60] the Regional Stock exchange (BRVM), replacing the pre-existing Abidjan Stock exchange in Cote d'Ivoire and the Depository/Settlement Bank.

CEMAC refers to Communaute Economique et monetaire de l'Afrique Centrale (the Central African Economic and Monetary Community). Cameroon is a member of CEMAC. The financial market in the CEMAC region has now been organized along the same lines as those in West Africa.

Two stock exchanges have been created within this sub-region. They are the Douala Stock Exchange Market (Bourse Cameroonaise des Valeurs Mobilieres (BCVM) [61] and at the regional level, we have the Central African Stock Exchange Market (Bourse des Valeurs Mobilieres d'Afrique Centrale (BVMAC) based in Libreville Gabon [62].

Procedure for public offerings

In order to ensure financial disclosure and protection of investors, companies making public calls for capital under OHADA must fulfill three conditions. First, a performance bond is required from one or more credit institutions in the country where the public offering is made if the value of the offering is superior to 50 million FCFA, they must use the services of such a financial institution to provide financial support and make a presentation of the public offering, and lastly, when the value of the offering exceeds 50 million FCFA, they must appoint one or more auditors in the member state or states where the offering is made to verify the financial statements and sign an information memorandum (Prospectus). All these procedures and conditions are geared towards financial disclosure [63].

Content of the prospectus

The prospectus must not contain information which is of little importance and may not influence the appraisal of the assets, financial performance or prospects of the issuer or to make disclosures which is contrary to public interest or may cause serious harm to the issuer and where the failure to publish same would not mislead the public. In addition, the UACCEIG has made in clear terms the content of every prospectus [64]. The prospectus shall contain a detailed presentation of the financial guarantors [65].

When the amount of the public offering is more than 50 million FCFA, the company is required to prepare a prospectus. This memorandum must at least carry the structure of the issuer, the financial standing, its activities and prospects for development and other information concerning the shares or bonds issued. After signature by the appointed auditor, this document must be approved by the competent stock exchange supervisory body or if no such body exists in the member state of the issuer, the Ministry of Finance of the state concerned can approve it. Such approval or denial must be made within a month. Failure of which the silence of the body would be considered an approval and it is then published in a legal journal [66].

In effect, any company which increases its capital by means of public offering must prepare an information memorandum and a notice with a specific content as well as circulars to inform the public of the transaction [67]. In addition, The UACCEIG provides that, during public offering, any person having an interest may apply for the winding-up of a listed company if the legal requirements regarding its minimum capital have not been complied with [68]. Furthermore, the management of a company that makes a public offering without complying with the publication procedure and/or publishing the information required under the UACCEIG may be subject to criminal penalties [69]. In this regard, the individual member states are free to determine the applicable penalties.

Financial Disclosures during Re-Structuring and Transformation of Commercial Companies

Restructuring of a company takes place when a company changes its form. Three main types of restructuring are recognized in Book six of the UACCEIG which include, Mergers, Divisions and partial transfers of assets. These aspects involve financial disclosure because it touches directly on the assets and liability of the companies involved. However, there must be financial disclosure for these processes to be effective.

Mergers, Division and Partial Transfer of Asserts

A merger is defined by the UACCEIG as "a transaction whereby two companies join to form a single company either by the creation of a new company or by absorption of one company by the other” [70]. During mergers, there is a total transfer to the acquiring company or the new company of the assets of the company or companies which no longer exist due to the merger.

A division on its part has been described as the operation whereby the assets of a company are shared among several existing or new companies [71]. From the wordings, division can take place via transfer to an existing or a newly formed company. During divisions, there is a total transfer of assets of the company who seizes to exist to the existing or the new company.

A partial business transfer is defined as a transaction whereby a company contributes an autonomous division of its activities to another existing or newly created company [72].

In this case, there is no need for liquidation of the absorbed company as everything is transferred. This is not the case with partial transfer of asserts where only the assets relating to the absorbed companies are transferred, but the company is not wound-up (dissolved). Liquidating companies can however only carry out mergers but not division or partial transfer of asserts [73].

One of the most important aspects in the definition of these three forms of restructuring involves the aspect of transfer of assets of the absorbed company to the absorbing companies. Such a transfer can be automatic. This is the case where all the assets and liabilities of the absorbed companies are transferred including those which have not been mentioned in the restructuring deed as a result of omissions or errors [74].

In addition, as per the provision of the UACCEIG, the shareholders of the absorbed companies automatically become shareholders in the absorbing company when the asserts are transferred [75]. It could be said that shareholders of the absorbed companies contribute their shares in exchange for shares in the absorbing company. In this regard, a merger and spinoff appraiser are appointed by the court to find a ratio between the shares of the absorbed company and those of the absorbing company. He is therefore required to prepare a report on the details of the operation [76]. He certifies the fairness in the determination of this ratio [77].

The UACCEIG also provides that mandatory employment law must be complied with. Recourse is therefore made to the Labour Code of Cameroon [78]. This law guarantees automatic continuation of employment contracts by the absorbing company. The absorbing company is therefore considered the new employer of the employees of the absorbed company.

The Restructuring Procedure

The procedure usually involves the drawing up of a restructuring deed [79] which shall be adopted by the board of directors, the managing director or the general manager as the case may be. As provided in Article 193 of the UACCEIG, the restructuring document must contain some compulsory element [80].

From the content of this document, it is evident that all the financial standing of the company must be brought to light so as to give a clear picture of the engagement to the absorbing company. The preparation of this document is accompanied by a two-stage publication procedure. The first involves filing copies of the deed at the registry of the Court of First Instance located in the jurisdiction of the company and this is followed by publication in a legal journal.

Financial Disclosure during the Dissolution and Liquidation of the Company

The dissolution of a company and liquidation are linked. This is due to the fact that one of the reasons for dissolution of a company provided by article 200(6) UACCEIG is that a company can be dissolved via a court judgement ordering the liquidation of the company’s assets. It will, however, be an affront to severe dissolution, liquidation and financial disclosure. Where a company dissolves for other reasons than court ordered liquidation, it shall entail liquidation if the company is composed of several members. However, if there is only one member, there would be a mere transmission of all the assets to the lone member.

In the event of any dissolution, the company must publish a notice in the legal journal and adjust her position in the Trade and Personal Property Credit Register.

Liquidation can take two main forms. It might be done out of court in accordance with the AOA or by a court order to liquidate. Where the company is not owned by a sole proprietor, it shall be liquated as soon as there is dissolution [81]. During the liquidation process, there is financial disclosure.

When liquidation is done by an order from a competent court, the liquidator must convene a meeting within six months where he shall produce a report on the assets and liabilities of the company. He shall also inform the members of the liquidation duration and the manner it would be conducted.

The liquidator has the widest powers possible to realize the assets of the company even out of court [82]. The liquidator also has the powers to draw up a summary financial statement from the inventory made from the various components of the assets and liabilities existing on that date and a written report in which he shall give an account of the liquidation exercise during the just ended fiscal year, hence financial disclosure [83].

Except upon the unanimous consent of the members, any transfer of the company's assets is prohibited to certain persons such as persons who had been partners of the company, active partners, and managers, members of the board of directors, managing directors or auditors. The only exception is if the court makes an authorization for such transfers [84].

Such transfer of asset is also prohibited to the liquidator, his employees, and spouse, ascendant or descendant [85]. Notwithstanding, the transfer of assets in the form of a merger is accepted during liquidation provided there is an agreement between the members to do so [86].

A final meeting is convened at the end of the process to make a decision on the final accounts provided by the liquidator which can either be approved by the members or refused.

At this instance, the court might rule on the issue. The liquidator is however required to file his accounts with the registry of the competent court. Any interested party may however visit the files from the registry at his own expense [87]. These files including the decision to end liquidation are filled at the TPPCR and an application is made for the company to be withdrawn from the TPPCR.

CONCLUSION

As discussed in this work, financial disclosure takes a couple of forms; these are voluntary disclosures and mandatory disclosures. Notwithstanding the form it takes, it is incumbent of the commercial companies to make their financial records open to the general public. Financial disclosure of commercial companies in Cameroon starts when the company is created, continues during its functioning, restructuring, when there is a reduction or increase in capital and even during its dissolution and liquidation. The reasons relating to financial disclosure can however be summarized as the protection of the rights of shareholders as well as the protection of the rights of other stakeholders.

REFERENCES

1. Chandler, R., (1997), "Accountability and Disclosure: Director's Remuneration in Privatized Utilities", *Public Money & Management,* Vol. 17, N^{0}2, PP. 43–48.

2. Karamanou, I. and Vafeas, N., (2005), “The Association between Corporate Boards, Audit Committees, and Management Earnings Forecasts: An Empirical Analysis”, *Journal of Accounting Research* Vol. 43 PP. 453-486.
3. Article 1 UAAL.
4. Haggard, S. Martin, X, & Pereira, R. (2008), “Does voluntary disclosure improve stock market in formativeness?” *Financial Management Association,* Vol. 37, N^{o} 4, PP. 747-768.
5. Martor, B., *et al.* (2002), *Business Law in Africa: OHADA and the Harmonization Process*, 2nd edition, United Kingdom, Eversheds Kogan Page Ltd.
6. Ho, Simon S.M, and Kar Shun Wong (2001). “A study of the Relationship Between Corporate Governance Structures and the Extent of Voluntary Disclosure” *Journal of international Accounting, Auditing and Taxation,* Vol. 10, N^{o} 2, PP. 139-156.
7. It provides that, any shareholder who is not a member of the management have the right twice a year to send written questions to the management regarding anything that may jeopardize the continuation of the company’s activities within his notice.
8. Articles 157 and 158 UACCEIG.
9. Martor, B., *et al*., (2002) “*Business Law in Africa: OHADA and the Harmonization Process*”, *op. cit.* at P.94.
10. Holland, J.B., (1998), “Private disclosure and financial reporting”, *Accounting and Business Research,* Vol. 28, N^{o}. 4, PP. 255-269.
11. Ho, Simon S.M, and Kar S.W., (2001), “A study of the Relationship Between Corporate Governance Structures and the Extent of Voluntary Disclosure” *Journal of international Accounting, Auditing and Taxation* Vol. 10, N^{o}. 2, PP. 139-156.
12. FASB, 2001. Improving Business Reporting: Insights into enhancing Voluntary Disclosures. Retrieved on April 20, 2012.
13. Ho, Simon S.M, and Kar S.W., (2001), “A study of the Relationship Between Corporate Governance Structures and the Extent of Voluntary Disclosure *op. cit* at PP. 139-156.
14. Eng L.L. & Mak Y.T., (2003). “Corporate governance and voluntary disclosure,” *Journal of Accounting and Public Policy,* Vol. 22, PP. 325-345.
15. Meek G.K., *et al.* (1995), “Factors Influencing Voluntary Annual Disclosures by U.S., UK. and Continental European Multinational Corporations,” *Journal of International Business Studies,* Vol. 26, N^{o} 3, PP. 555-572.
16. Barako, D. (2007), “Determinants of Voluntary Disclosure in Kenyan Companies Annual Reports”, *African Journal of Business Management,* Vol. 1, N^{o} 5, PP. 113-128.
17. Stanwick, P. (1998), “The Relationship between Corporate Social Performance, and Organizational Size, Financial Performance and Environmental Performance: An empirical evidence” *Journal of Business Ethics*, Vol. 17, N^{o} 2, PP. 195-204.
18. Lang, M., & Luncholm, R. (1993) “Cross Sectional Determinants of Analysts Ratings of Corporate Disclosures” *Journal of Accounting Research*, Vol. 31, N^{o} 2, PP. 246-271.
19. Mugo, N. W., (2014), “The Effect of Voluntary Disclosure on the Financial Performance of Commercial Banks in Kenya”, Masters Dissertation, University of Nairobi, Kenya.
20. The international Accounting Standard Board is an independent body formed in 2001 with the sole responsibility of establishing the International Financial Reporting Standards. It succeeded the International Accounting Standards Committee (IASC), which was earlier given the responsibility of establishing the international accounting standards. The IASB is based in London. It has also provided a conceptual framework for Financial Reporting issued in September 2010 which provides a conceptual understanding and the basis of the accounting practices under the IFRS.
21. Gary, K. M., *et al.* (2003), *International Accounting,* International Accounting Solution Manual, 7th Edition, P. 54.
22. *Ibid.*
23. Nah. T.F., (2009), “Protection Contracts and the Impossibility of Ratification Under Common Law-The Statutory Jettison of a Stifling Principle by the Civil Law Inspired Uniform Act Relating to Commercial Companies and Economic Interest Groups Enacted by OHADA”, *op. cit.*

24. Articles 37 and 38 UACCEIG.
25. *Ibid.* Article 41 and 45.
26. *Ibid.* Article 49.
27. *Ibid.* Article 51.
28. *Ibid*. Article 400.
29. This is financial disclosure done by a notarized statement of subscription and payment.
30. Article 393 UACCEIG.
31. *Ibid.* Article 389.
32. The Notary in the SA is required to state in the notarial statement of subscription and payment that the amount of subscriptions declared corresponds to the amount appearing on the allotment letters and that the amount paid corresponds to the total sums of money deposited in his chambers or, where necessary, appearing on the certificate referred to above.
33. Articles 311 and 387 UACCEIG.
34. *Ibid*. Article 64 UACCEIG.
35. *Ibid*. Article 311.
36. *Ibid*. Article 387.
37. *Ibid*. Article 66. Where, after being formed, the company's capital drops to an amount below the minimum fixed by this UACCEIG for that form of company, the company shall be dissolved, unless the capital is raised to an amount at least equal to the fixed minimum amount, under the conditions stipulated by the UACCEIG
38. *Ibid.* Article 388.
39. Article 548 UACCEIG for *SAs*.
40. *Ibid.* Article 140.
41. Martor, B., *et al*., (2002) "*Business Law in Africa: OHADA and the Harmonization Process*", *op. cit.* at P. 67.
42. Article 1 UAAL.
43. *Ibid*. Article 19.
44. Martor, B., *et al*., (2002) "*Business Law in Africa: OHADA and the Harmonization Process*", *op. cit.* at P. 99.
45. Article 67 UACCEIG.
46. *Ibid*. Articles 68 and 69.
47. If it does, the company's form should be changed, or else the company may not be validly formed.
48. Article 39 UACCEIG.
49. *Ibid.* Article 44.
50. *Hanak v. Green. (1976) 1 BLR 1.*
51. Article 562 UACCEIG.
52. *Ibid*. Article 563.
53. Article 591 UACCEIG.
54. *Ibid*. Article 610.
55. *Ibid.* Article 614.
56. *Ibid.* Article 627.
57. UEMOA covers the West African States and CEMAC covers the central African states.
58. Article 81 UACCEIG.
59. *Ibid.* Article 828.
60. The regional council was created by a convention dated 3 July 1996 adopted by the Council of Ministers of the then UMOA now UAMOA. Its powers are further defined by a regulation of the Council of Ministers of UMOA relating to the organization and functioning of the regional stock exchange market of UMOA. This regulation provides that the Regional Council will be in charge of organizing public offerings, authorizing and monitoring the market entities and traders and finally, monitoring the legality of transactions on the stock exchange.
61. The Douala stock exchange is a spot market, and the quotation will be made by a single entity. There are two divisions, the first reserved for companies with a registered capital of at least 500

million FCFA that have achieved a minimum net margin of 3 percent over the last three financial years and the second for companies with a registered capital of at least 200 million FCFA.
62. Martor, B., *et al*., (2002) "*Business Law in Africa: OHADA and the Harmonization Process*", *op. cit.* at P. 134.
63. Martor, B., *et al*., (2002) "Business Law in Africa: OHADA and the Harmonization Process", *op. cit* .at P. 137.
64. They include the income tax schedule, the establishments which provide financial backing to the issuer in that State Party, and the manner of publication of notices intended for investors.
65. Article 87 UACCEIG.
66. Martor, B., *et al*., (2002) "*Business Law in Africa: OHADA and the Harmonization Process*", *op. cit.* at P.137.
67. Articles 832,833 and 835 UACCEIG.
68. *Ibid.* Article 824.
69. *Ibid.* Article 905.
70. Article 189 UACCEIG.
71. *Ibid.* Article 190.
72. *Ibid.* Article 195.
73. In the case of a merger or division, there is the dissolution (winding-up) without liquidation of the disappearing companies, and the universal transfer to the beneficiary companies of their assets in the state in which they are on the date of wrapping up of the operation.
74. Article 191 UACCEIG.
75. *Ibid.* Article 191.
76. *Ibid.* Articles 382, 672 and 684.
77. However, no transfer may take place where the shares of the absorbed companies are held by the absorbing company or by the absorbed company herself.
78. Article 42 (1)(2) of Law Nº 92/007 of 14 August 1992 on the Labour Code of Cameroon.
79. This is the document prepared during a merger, division or a partial business transfer.
80. These elements include, the form, name and registered office of all the participating companies, the reasons and terms of the merger or division, a description and an evaluation of the assets and liabilities to be transferred to the acquiring or new companies, the terms of transfer of the shares or stocks and the date from which such shares or stocks give entitlement to profits, as well as any special conditions relating to such entitlement, and the date from which the operations of the acquired or split company shall be considered completed from the accounting standpoint by the companies receiving the contributions, the dates on which the accounts of the companies concerned which were used to establish the terms of the operation were adopted, the report on the exchange of company entitlements and, where necessary, the amount of the cash adjustment, the projected amount of the merger or division bonus, the rights other than shares, the rights granted to members having special rights, as well as special benefits, where necessary.
81. Article 204 UACCEIG.
82. *Ibid*. Article 320.
83. *Ibid*. Article 232.
84. *Ibid*. Article 213.
85. *Ibid.* Article 214.
86. *Ibid.* Article 215.
87. *Ibid*. Article 218.

