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THE REMEDIES PROVIDED BY THE OHADA COMPANY LAW FOR THE ABUSE OF MINORITY SHAREHOLDERS

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ABSTRACT:

Businesses can run through the medium of different forms of business organizations, one of which is a company. A company, once it acquires its legal personality, enjoys certain attributes that differentiate it from other forms of business organizations, such as partnerships. The minority shareholders may face dual disadvantages from managerial power and the majority rule. The objective is to show that minority shareholders are denied their rights by majority shareholders because of their status as minority shareholders. Minority shareholders are at a disadvantageous position, and they need protection from the law. The methodology applied is a qualitative research through primary and secondary data collection. This work is significant to legal scholars, corporate scholars, researchers, students, and many others. Findings show that minority shareholders need adequate protection from the majority shareholders in the day-to-day running of activities.

KEYWORDS: OHADA Company Law, Minority shareholders, Remedies.

"The minority possess their equal rights which equal law must protect, and to violate would be oppression."

- Thomas Jefferson

1. INTRODUCTION:

The OHADA Uniform Act on commercial companies has strong and weak sides in protecting the rights of minority shareholders. Among the strong sides, it grants proxy voting, one share one vote, oppressed minority mechanisms, pre-emptive rights, and the minimum percentage of share capital that entitles a shareholder to call an ordinary general meeting is less than or equal to 10 % is recognized. Those rights contribute to protecting minority shareholders from being

abused.[1] On the other hand, it has a deficiency in protecting minority shareholders from mismanagement.[2] It cannot protect the minority shareholders from abuse by management and the majority shareholders, nor does it recognize cumulative voting, difficulties to challenge votes, the impossibility to bring derivative action, difficulties to exit from the company, or grant veto power to them.[3] Generally, the shortcomings of the OHADA Uniform Act on commercial companies are weighted over its strengths as far as minority shareholders' protection is concerned. In practice, a majority shareholder means those shareholders who own more than 50% of the company's capital. According to the study findings, in most of the companies, there is an extreme majority and minority shareholders' problem. The minority shareholders do not exercise their right to vote.[4] The companies run by the will of the majority shareholders. There is no viable remedy if the minority shareholders' rights are abused either by the management of the company or by majority shareholders.[5] Due to a lack of awareness of the OHADA Uniform Act on commercial companies. However, we have examined the oppressed minority mechanism, which is the most common remedy requested in oppression actions, and a scenario by which a company itself or a majority shareholders are forced to buy the applicant's share. We equally analysed the main instruments to protect minority shareholders, such as the Super-majority requirement, the right to sue directors, Actions against general assembly's resolutions, unfair prejudice, and the Just and equitable winding up, amongst others.[6]

2. Oppressed minority mechanism:

The OHADA Uniform Act on commercial companies grants a remedy to the minority shareholders. An oppressed minority mechanism is the most common remedy requested in oppression actions. It is a scenario by which a company itself or a majority shareholders are forced to buy the applicant's share. If the decision of the management or the general meeting

[1] Fagbayibo, B. (2009), Towards the harmonisation of laws in Africa: is OHADA the way to go? *The Comparative and International Law Journal of Southern Africa* (January 01, 2025, 8:00 P.M.), http://www.jstor.org/stable/23253105

[2] Wedderburn, K. W., Oppression of Minority Shareholders. The Modern Law Review, (January 01, 2025, 8:00 P.M.) http://www.jstor.org/stable/1093575

[3] Cronqvist, H., & Mattias Nilsson, Agency Costs of Controlling Minority Shareholders. The Journal of Financial and Quantitative Analysis, (January 01, 2025, 8:00 P.M.), https://doi.org/10.2307/4126740

[4] *Ibid.*

[5] *Ibid.*

[6] Dugar, M. R. K., Minority Shareholders Buying Out Majority Shareholders - An Analysis. National Law School of India Review, (January 01, 2025, 8:00 P.M.) http://www.jstor.org/stable/44283792

is against the interest of the minority shareholders, they can challenge either by the judicial venue or by the right to exit from the company. It is one way of protecting minority shareholders through legal mechanisms to be used against perceived oppression by directors or by the general meetings. If the general meeting decision is against their interest, they may force the company to buy their share as long as the decision brings certain fundamental changes, such as mergers or asset sales.[7]

3. The main instruments to protect minority shareholders:

3.1 Super-majority requirement:

The instruments that help to protect minority shareholders can be categorized into two. Those are active and passive devices. The most common active device is a super majority requirement[8]. From the very beginning, the super majority requirement means 3/4th of the members should be present and vote. A simple majority means, on the other hand, fifty plus one. If an absolute majority instead of a simple majority is required, the minority may be capable of blocking a resolution. If the minority shareholders have 25% of shares in a company, they can get the opportunity not to give a vote and prevent the vote if there is an absolute majority requirement.[9] On the other hand, if it is a simple majority, it is hard to block vote by minority shareholders. As a rule, the simple majority requirement applies under the company law. Requiring absolute majority approval in some critical resolutions, like the amendment of the articles of association, changing the name of the company, and re-registration of the public company as a private company, may be significant.[10] One thing we have to note here is that even the requirement of a special resolution does not eliminate the possibility of a majority shareholder acting contrary to the minority shareholders or the company's interests. [11] However, to some extent, it makes it easier for the minority to block a resolution that has an adverse impact on minority shareholders. Hence, the super majority requirement is relatively safer to protect minority shareholders than the simple majority requirement.[12]

[7] Thompson, R. B., The Shareholder's Cause of Action for Oppression. The Business Lawyer, (January 01, 2025, 8:00 P.M.) http://www.jstor.org/stable/40687386
[8] Ibid
[9] Galani, A., & Rehn, N., Related Party Transactions: Empowering Boards and Minority Shareholders to Prevent Abuses. National Law School of India Review, (January 01, 2025, 8:00 P.M.). http://www.jstor.org/stable/44283790
[10] Ibid
[11] Harvard Law Review, https://doi.org/10.2307/1338376 (last visited on January 15, 2026).
[12] Burkart, M., Gromb, D., & Panunzi, F. (1998), Why Higher Takeover Premia Protect Minority Shareholders. Journal of Political Economy (January 01, 2025, 8:00 P.M.), https://doi.org/10.1086/250006

3.2 The right to sue directors:

Shares represent ownership stakes in a company, and when corporate directors undertake actions that harm the company, they damage the value of company shares. The company law may authorize shareholders to sue company directors for wrongful acts that harm the company or the value of its shares.[13] These are called shareholder class actions and shareholder derivative actions. It is an action brought by one or more shareholders to remedy or prevent a wrong to the company. In a situation where an individual shareholder or group of shareholders, on behalf of a company or in the name of the injured shareholder, sues the directors of a company. Company directors are subject to the fiduciary duties of care and loyalty. If one brings a derivative action, two conditions should be cumulatively fulfilled. These are "the wrongdoers must have been in control of the company, and they must have committed a wrong." Obviously, the directors have been in control of the company, and if they did wrong, the shareholders in general and minority shareholders, in particular, can bring a legal suit against them on behalf of the company. In doing this, minority shareholders can protect themselves from abuse by the company management.[14]

3.3 Actions against the general assembly's resolutions:

This action is similar to a derivative action. However, it is an action against the general assembly's resolution, and the derivative action, on the other hand, is an action against the directors. Directly or indirectly, the director's decision might be the decision of the general assembly since the general assembly also gives general guidelines on the company's policy. It is worthy to conclude that the general assembly is the ultimate decision maker in the company. In most legal systems, S. Co run and represented by a management board that is elected and removed by the general assembly. Actions against the general assembly's resolutions are the most important instrument of minority shareholders' protection. It gives the possibility of bringing a claim against a general assembly resolution if minority shareholder interest is abused. The action can be for the annulment of a resolution and/or for a declaration of the invalidity of a resolution. The company law of the country empowers the minority shareholder to challenge a resolution that aims to contravene the statutes of the company or good practices.

[13] Loderer, C., & Waelchli, U. (2010), Protecting Minority Shareholders: Listed versus Unlisted Firms. Financial Management, (January 01, 2025, 8:00 P.M.) http://www.jstor.org/stable/40732429

[14] Chander, A. (2003). Minorities, Shareholder and Otherwise. The Yale Law Journal, 113(1), (January 01, 2025, 8:00 P.M.), https://doi.org/10.2307/3657465

Furthermore, as long as the intention of the resolution is to harm the interests of the company or a shareholder, empowering them to bring legal action to avoid the decision is necessitated. The individual shareholder could bring this action if one of the two conditions is met.[15] That is, he/she voted against this resolution if they were present in the general assembly meeting. If they were not present at the general assembly because it was wrongly convened, or the resolution concerned a matter not included on the agenda. Nevertheless, it is hard to say that the OHADA Uniform Act on commercial companies recognizes actions against the general assemblies' resolution. It is adopted in a very exceptional way rather than being recognized as a rule.[16]

3.4 Unfair prejudice:

An unfair prejudice instrument is given by the company law to shareholders to bring a petition to the court because the company's affairs are being conducted in an unfairly prejudicial manner.[17] The shareholder who wants to sue the company must prove that his interests have been unfairly prejudiced because of the conduct of the company or a representative of the company. This is the other instrument to secure the interest of minority shareholders.

3.5 Just and equitable winding up:

This instrument is the last and ultimate instrument for resolving shareholders' disputes. It is not advisable most of the time due to its adverse consequences. The shareholders should exhaust all available remedies before using it.[18] As the name implies, winding up means merely ending the life of the company and going through the liquidation process. It is ordered by the court, and the court orders the winding up of a company if it believes the essence of the business relationship has been changed; the company should be wound up most of the time. The court does not expect to order a company to be wound up as long as there are other instruments available, although the petitioners are acting unreasonably. When we see the OHADA Uniform Act on commercial companies among the grounds for dissolution of a company, dissolution by

[15] Carney, W. J. (1980), Fundamental Corporate Changes, Minority Shareholders, and Business Purposes. American Bar Foundation Research Journal (January 01, 2025, 8:00 P.M.), http://www.jstor.org/stable/827965

[17] Dixit, K. R. (1967), MINORITY OPPRESSION: CORPORATE CONTROL. Journal of the Indian Law Institute, (January 01, 2025, 8:00 P.M.), http://www.jstor.org/stable/43949935

[18] Bhagat, S., & Brickley, J. A. (1984), Cumulative Voting: The Value of Minority Shareholder Voting Rights. The Journal of Law & Economics (January 01, 2025, 8:00 P.M.), http://www.jstor.org/stable/725580

order of the court for good cause on the application of a member is one. Just and equitable winding-up instrument of minority shareholder protection provided in the Ethiopian company law.[19]

4. Other instruments:

In addition to the above tools, to protect minority shareholders, there are also other instruments. For instance, the company law may entitle a shareholder holding at least 10% of the share capital to demand that an extraordinary meeting be called. Furthermore, if there is a class of shares like preference shareholders in a company, giving representation to them on the board of directors is another instrument. In some extraordinary decision, the minority shareholder may be entitled to veto power. However, veto power should be given in an exceptional scenario. If not, it may affect the majority shareholders' interests.

5. CONCLUSION:

In conclusion, the remedies provided by the OHADA company law for the abuse of minority shareholders' rights are, however, encouraging. An oppressed minority mechanism is used, which is the most common remedy requested in oppression actions. It is a scenario by which a company itself or a majority shareholders are forced to buy the applicant's share. If the decision of the management or the general meeting is against the interest of the minority shareholders, they can challenge either by the judicial venue or by the right to exit from the company. Instruments to protect or ensure remedies for minority shareholders have also been analysed, such as the super-majority requirement, the right to sue directors, that is, shares represent ownership stakes in a company, and when corporate directors undertake actions that harm the company, they damage the value of company shares. The company law may authorize shareholders to sue company directors for wrongful acts that harm the company or the value of its shares. These are called shareholder class actions and shareholder derivative actions. It is an action brought by one or more shareholders to remedy or prevent a wrong to the company. There are also actions against the general assembly's resolutions, that is, it is an action against the general assembly's resolution and the derivative action; on the other hand, an action against the directors. Directly or indirectly, the director's decision might be the decision of the general

[19] ELSON, A. (1967), SHAREHOLDERS AGREEMENTS, A SHIELD FOR MINORITY SHAREHOLDERS OF CLOSE CORPORATIONS. The Business Lawyer, (January 01, 2025, 8:00 P.M.), http://www.jstor.org/stable/40684172

assembly since the general assembly also gives general guidelines on the company's policy. An unfair prejudice instrument, which is given by the company law to shareholders to bring a petition to the court because the company's affairs are being conducted in an unfairly prejudicial manner. Lastly, we examined the Just and equitable winding up, where the shareholders decide to end the life of the company and go through the liquidation process. It is ordered by the court, and the court orders the winding up of a company if it believes the essence of the business relationship has been changed; the company should be wound up most of the time. The court does not expect to order a company to be wound up as long as there are other instruments available, although the petitioners are acting unreasonably.