



Legal framework of Directors' Duties in OHADA Law (Senegal)

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Abstract— This article is aimed to study the legal framework of directors' duties in Ohada law. The Organization for the Harmonization of Business Laws (OHADA), is a supranational system of business laws that, as implemented in Senegal is trying to regulate all the core businesses. Ohada displays two level of mixing. Firstly, Ohada Law is supranational, it becomes part of the internal law of each state member but still remains supranational characteristics. Secondly, Ohada being at least partially French-inspired, we can understand that the most of the countries which adopted Ohada Laws are French-speaking. The duties of Directors in Senegal are regulated mainly by the uniform companies' act which is part of the Ohada law. It should be noted that before the adoption of Ohada, company law was governed by the code of civil obligations and in its fourth part. For companies listed on the RSE, they must comply both with the general regulations of the BRVM and with the provisions of the Uniform Companies Act concerning publicly traded companies. This article aims to illuminate the lanterns on the question of the duties of directors in Ohada law, during my research I have observed that subjects such as corporate governance in general and the duties of directors in Ohada are left stranded by most researchers. This is why this topic has an interest in reabsorbing this gap insofar as the legal framework of the duties of directors often mentions many questions because of the lack of loyalty and diligence of certain directors.

Keywords—Company Law, Corporate Governance, Directors Duties, OHADA, Senegal

I. INTRODUCTION

Corporate governance is increasingly a topical issue. This notion was discovered in the United States before being exported to Great Britain. But there is a lack of a general and unanimous definition of Corporate Governance. However, Cadbury's definition of corporate governance can be retained as "the system through which corporations are directed and controlled." A more academic definition was given by Professor John Parkinson, who in more specific terms than Cadbury referred to it as « the processes of supervision and control (of governing) intended to ensure that the company's managements act in accordance with the interests of the shareholders¹ »

¹J.Parkinson, *Corporate power and Responsibility: Issues in the theory of Company Law* (Oxford University Press, 1993)

The Organization for the Harmonization of Business Laws (OHADA), is a supranational system of business laws that, as implemented in Senegal is trying to regulate all the core businesses. Ohada displays two level of mixing. Firstly, Ohada Law is supranational, it becomes part of the internal law of each state member but still remains supranational characteristics. Secondly, Ohada being at least partially French-inspired, we can understand that the most of the countries which adopted Ohada Laws are French-speaking.

The duties of Directors in Senegal are regulated mainly by the uniform companies' act which is part of the Ohada law. It should be noted that before the adoption of Ohada, company law was governed by the code of civil obligations and in its fourth part. For companies listed on the RSE, they must comply both with the general regulations of the BRVM and with the provisions of the Uniform Companies Act concerning publicly traded companies.

So we can ask ourselves what is the legal framework of the duties of directors in Senegal? We will try to discuss this issue in the course of the different parts of this article while trying to find out whether the framework is satisfactory and /or involves shortcomings.

This article aims to illuminate the lanterns on the question of the duties of directors in Ohada law, during my research I have observed that subjects such as corporate governance in general and the duties of director's in Ohada are left stranded by most researchers. This is why this topic has an interest in reabsorbing this gap insofar as the legal framework of the duties of directors often mentions many questions because of the lack of loyalty and diligence of certain directors.

Thus the plan of the article will be articulated around three parts. Firstly the history of Directors' duties legislation, secondly the Current regulations on Directors' duties, finally, the importance of the legal framework of directors duties of in Senegal.

II. DISCUSSIONS

HISTORY OF DIRECTORS' DUTIES LEGISLATION

Code of corporations and the economic interest group (Act No. 85-40 of 29 July 1985)

The fourth part (Law n ° 85-40 of July 29, 1985) bearing the Code of Corporations and Economic Interest group, completed the whole process of this legislation published under the Single Title of Code of Civil and Commercial Obligations.

The code of corporations and economic interest grouping were divided into several chapters. Chapter I dealt with the provisions applicable to civil company. The article 766 gives us a definition of the civil company "Civil Company is the contract by which two or more persons pool contributions and constitute a legal person to exploit them and share the profits or losses that result from this activity.

It is characterized by the non-requirement of writing as a condition of its validity".

In the regulation of this form of company, there is no explicit mention of the duties of managers of the company. It can just be read in section 792 that the managers are only revocable for legitimate reasons. The judge, if any, knowingly performed any acts contrary to the interests of the company. This is to say that a large place was left to the discretionary judgment of the judge.

Subsequently, Senegal, in association with fourteen other African countries, adopted the Treaty for the Harmonization of Business Law in Africa (OHADA), which led to the development of supranational laws called Uniform Acts, including a major segment of the Senegalese Code of Civil and Commercial Obligations.

Adoption of OHADA corporate Law

OHADA, the acronym for the Organization for Harmonization Africa, was established by the Treaty signed at Port Louis (the Mauritius) on 17 October 1993, entered into force on 18 September 1995 and revised on 17 October 2008 in Quebec, Canada. The objective of OHADA is to promote regional integration, promote economic development and ensure a secure legal environment through the harmonization of legal provisions in the business law. OHADA treaty has been ratified by 14 founding member states, includes seventeen (17) member states: Benin, Burkina Faso, Cameroon, Central Africa, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Democratic Republic of the Congo, Senegal, Chad and Togo. OHADA has adopted 8 Uniform Acts directly applicable and compulsory in the States Parties notwithstanding any prior contrary provisions of domestic law (Article 10 of the Treaty): arbitration, general commercial law, company law and economic interest grouping, cooperative companies, accounting law, securities, simplified collection and enforcement procedures, collective clearance procedures for passengers and the carriage of goods by road. OHADA is overseen by four bodies: the Assembly of Heads of State and Government, the Council of Ministers, the Common Court of Justice and Arbitration based in Abidjan (Ivory Coast) and the Permanent Secretariat based in Yaoundé (Cameroon).

CURRENT REGULATIONS ON DIRECTORS' DUTIES

Uniform Act on Company Law

The quality of director

At first glance, we will try to find an adequate definition for the concept of director. This will not be an easy task to the extent that as well in Ohada and French law there is an absence of legal definition. The new Uniform Act adopted on 30 January 2014 and published in the Ohada Official Gazette on 4

February 2014 adds to the list of categories of companies by adding the simplified joint-stock company 2. The Uniform Companies Act includes provisions specifically aimed at directors. It will be necessary to note concerning the directors there are provisions common to each of the five commercial companies and provisions particular to each type of companies³.

As regards the common provisions, Article 121 of the Uniform Act on companies provides that 'with regard to third parties, management and administrative bodies shall, within the limits laid down a uniform act for each type of company, to exercise the power to bind the company without having to prove a special warrant. Any limitation of their legal powers is not enforceable against bona fide third parties'.

Article 124 of the Uniform Companies Act stipulates that "the appointment or termination of the office of a chief executive officer shall be published in the Trade and Personal Property Register"⁴. This article would suggest that persons whose appointment shall be published in the register of commercial and movable credit are for each company concerned the directors of that company.

For some commercial companies with a manager, as the only management body is the directors, a big problem does not arise. On the other hand, for a public limited company with a board of directors⁵, the situation may be more complex, since several bodies contribute to the smooth running of the company, an administrative body (board of directors) and a body (CEO or Chairman of the Board of Directors and the CEO)⁶. The question arises as to whether a director as a member of the board of directors whose appointment or

²Uniform Companies Act, Article 6: "The commercial character of a company is determined by its form or by its object, form and for any purpose, partnerships, limited partnerships companies, limited liability companies, public limited companies and Corporations. "

³Partnership: sections 276 to 282 relate to the management (appointment, powers, remuneration and dismissal of the Manager); Partnerships simple: sections 298 to 301 relate to stewardship; Company Articles 323 to 332 relate to stewardship (mode of appointment, term of office, remuneration, revocation, resignation, powers and responsibility of the managers); Public Limited Company: Articles 414 to 515 relate to the administration and management of the public limited company; Joint stock company: sections 853-7 to 853-10 relate to the president and officers.

⁴Registration in the Trade and Credit Register does not affect the exercise of its powers by the Head of the Court of Justice and of Arbitration (CCJA), 2^{ch}. Civil Law, Judgment No. 025 of 8 April 2010, OHADATA J-II-69.

⁵Uniform Companies Act, article 414: "The mode of administration of each Company is determined unequivocally by the articles of incorporation which between the public limited company with board of directors; the company with the Deputy Head [...]. "

⁶Uniform Companies Act, article 415: "Joint stock company with board of directors is directed either by a president and chief executive officer or by a president the Board of Directors and a Chief Executive Officer. "

termination also to be published in the register of commercial and movable credit 7 is a director or not.

In our view, this question must be answered in the negative because, on the one hand, Article 415 of the Uniform Companies Act specifies that a public limited company with a board of directors is headed by a Chairman and Chief Executive Officer board of directors and that, on the other hand, the director alone has no powers or specific powers, except those which may be conferred by the board of directors on an ad hoc basis⁸. It is the board of directors, as a collegiate body, which "determines the direction of the company's activity and ensures their implementation. Subject to the powers expressly granted to meetings of shareholders and within the limits of the corporate purpose, he shall take up any matter affecting the proper functioning of the company and shall, by its deliberations, resolve matters affecting it ..."⁹.

Article 436 of the Uniform Companies Act reinforces the position of the board of directors in the sense that "in its relations with third parties, the company is engaged, including by decisions of the board which do not fall within the scope of the articles of association, social object [...]"

Concerning the simplified joint-stock company, the Uniform Companies Act leaves it to the statutes to determine "the conditions under which the company is managed"¹⁰. In any event, "the company shall be represented in respect of third parties by a chairman appointed in accordance with the provisions of the articles of association. The chairman is vested with the broadest powers to act in all circumstances in the name of the company within the limits of the corporate purpose"¹¹. If the by-laws so provide, a general manager or deputy general manager may also exercise the powers entrusted to the president. On the strength of these elements, it can be understood that directors are the persons (natural or legal, as the case may be) designated in the Uniform Companies Act, who have the power to manage, administer and direct the company, to act in the name and on behalf of the company and whose actions and decisions involve the company toward third parties.

In the light of these criteria, they would then have the status of corporate officers: the managers in the general partnership, the limited partnership and the limited liability company; the board of directors, the president and chief executive officer, the chairman of the board of directors, the director general, the deputy director general of the public limited company with

⁷Uniform Companies Act, article 427: "The appointment of directors shall be published in the Register of Commerce and Credit [...]" and article 434: "The termination of the duties of a director shall be published in the register trade and credit. "

⁸Uniform Companies Act, article 437: "The board of directors may entrust one or more of its members with special mandates for one or more determined objects.

⁹Uniform Companies Act, section 435.

¹⁰Uniform Companies Act, article 853-7.

¹¹Uniform Companies Act, article 853-8.

board of directors; the deputy head of the public limited company ; the President, the director general in the company by simplified action.

Duty of Loyalty, Diligence and Conflict of Interest

This notion of duty of loyalty and diligence of directors will be studied within the framework of the LLC and the PLC insofar as these two types of companies are the most common in Senegal.

The Limited Liability Company's framework

As a bonus on board, we will try to bring out the definition of the LLC. In the Uniform Companies Act at the Article 309 (1), LLC is defined as "a company in which shareholders are only liable for social debts to the extent of their contributions and whose rights are represented by shares."

The LLC is managed by one or more natural persons, whether associated or not. In order to emphasize the duties of the directors, reference should be made to the powers and responsibilities of the managers in Article 328 paragraph (1) "In relations between the partners and in the absence of the determination of its powers by the articles of incorporation, can do all acts of management in the interest of the company". It can be read in this article that the social manager to know the manager of the limited liability company has a duty to act only in the interest of the company. This duty of the manager may be assimilated to a duty of care in the acts of management of the company insofar as any act of management contrary to the interests of the company can engage its liability which could be civil or criminal.

On the other hand, in dealing with third parties, the manager is vested with the broadest powers to act in all circumstances in the name of the company, but there is, however, a limit laid down in the uniform company act in relation to the powers expressly attributed to the shareholders.¹²

The extent of the duties of the manager can be explained by the fact that even management actions that do not fall within the scope of the company's object are unenforceable to bona fide third parties. This provision of the uniform act tends to protect the interests of third parties in good faith in their dealings with the manager (s) of the LLC. In short, we can retain that the notion of the duties of managers of the LLC is to take management actions in the interest of the company, which contains a duty of loyalty and diligence of the directors toward the company but also with regard to third parties.

Public Limited Company's framework

Article 385 defines the PLC as "a company in which the shareholders are only liable for social debts to the extent of their contributions and whose rights are represented by shares. The PLC may include only one shareholder. "

The administration and the management of the PLC are a little more complex than that of the LLC insofar as it is possible to have a PLC with a board of directors, and a PLC with administrator general. So who are the directors of the

¹² Uniform Companies Act, article 329 paragraph 1

PLC? Article 415 of the Uniform Companies Act gives us an initial answer: "The PLC with Board of Directors is headed either by a Chairman or Chief Executive Officer or by a Chairman of the Board of Directors. It is legally possible to conclude that the three natural persons referred to in Article 415 are the legitimate directors of the PLC, but it should be noted that the Director-General is assisted in his mission by a Director General Deputy. So we will try to highlight the duties of these directors cited above.

Generally speaking, the managers all have the same powers, with some particularities related to the form of administration of the company¹³. In any event, the manager shall be responsible for the general management of the company and shall represent the latter in respect of third parties¹⁴. The most extensive powers to act in all circumstances in the name of the company) within the limits of the corporate purpose and the powers specifically vested in the other bodies by the legal or statutory provisions.

In its relations with third parties, the company is bound by the acts of the manager who do not fall within the scope of the corporate purpose unless it proves that the third parties knew that the act exceeded that object or that he could not in view of the circumstances, the publication of the statutes alone cannot constitute proof of such knowledge.

The stipulations of the articles of association or the decisions of the general meeting and, where applicable, the board of directors limiting the powers of the officer are not binding on bona fide third parties. In addition to the powers listed above, the Chairman presides the Board of Directors¹⁵ and the General Meetings. He also has a duty to inform and communicate to each director to whom he must transmit the necessary elements for the accomplishment of his mission. The

¹³Uniform Companies Act: the powers of each officer are described in Articles 465 (President and Chief Executive Officer), Article 472 (Deputy Director General), Articles 487 and 488 (Director General), Section 498 (Deputy Head) and 512 (Director General).

¹⁴The Abidjan Court of Appeal, Judgment No. 967 of 26 July 2002, OHADATA J-

03-26, on the basis of Articles 465 and 487 of the Uniform Companies Act, rejects the action brought by the Director of Risk and the Credit of a public limited company in the name and on its behalf, only the President and Chief Executive Officer or the Chief Executive Officer with standing. On the other hand, the special power given by the Director of risk and the credit itself having received delegation from the Director-General "to act and to appear in court on behalf of the company, to compromise, to compromise, to any court decision ... "is lawful once the provisions of Article 487 do not prohibit the Director-General from delegating his powers to a collaborator to act on behalf of the company. CCJA, Judgment No. 033/2007 of 28 November 2007, OHADATA J-08-243. To also retain the decision which annuls the service commanded directly to a public limited company, whereas this should have been addressed to the legal representative? Court of First Instance of Douala Bonanjo of 31 December 2002, OHADATA J-04-438.

¹⁵Uniform Companies Act. Article 453, paragraph 2: "The Board of Directors convened by its chairman, meets as often as necessary.

deputy's head assumes responsibility for both the administration and the general management of the company. It convenes and presides over general meetings of shareholders.

With regard to the Deputy Executive Officer, his powers may be limited by the Board of Directors for the Deputy Chief Executive Officer and by the General Assembly for the Deputy Chief Executive Officer, although these limitations are not binding on third parties. Indeed, in his dealings with third parties, the deputy officer holds the same powers as the officer he assists.¹⁶

Concerning the duties of the PLC's corporate officers, reference should be made to Article 891 of the Uniform Companies Act, which states that "the manager of the limited liability company, the directors, the Chairman and Chief Executive Officer, the Chief Executive Officer, the Deputy Chief Executive Officer, the President of the Simplified Corporation, the Deputy Head or the Deputy Chief Executive Officer who, in bad faith, make property or credit of the corporation, a use that they know contrary to the interests of the latter, for personal, material or moral purposes or to favor another legal person in which they are directly or indirectly interested."

On reading this article, it can clearly be inferred that directors have duties towards the company. They must use the property or credit only in the interest of the company, which may be a duty of loyalty and diligence to the company in that they should not act in their personal interests or engage in transactions or they would have direct or indirect interests other than that of the company. In the event of a breach of their duties towards the company, the directors are exposed to both civil and criminal penalties.

Regional Stock Exchange regulation for listed companies

The Regional Stock Exchange (RSE) is common to all eight countries of the West African Economic and Monetary Union (WAEMU) namely: Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal and Togo. The RSE is an economic, political, institutional and technical success. It is the only exchange in the world shared by several countries, totally electronic and perfectly integrated. The Regional Stock Exchange (RSE) is responsible for the organization of the stock market and the dissemination of information. It consists of a central site based in Ivory Coast and seven National Antennae in each of the countries of the Union, except Guinea Bissau.

The Regional Council for Public Savings and Financial Markets (RCPSFM) has issued a regulation on the

¹⁶The Deputy Director General shall have the same powers as the President General, even where the acts performed under those powers did not the corporate purpose. In this case, the sale of a vehicle is an act Deputy Director General may perform without a special warrant.

Court of Appeal of Abidjan, 4th Civilian and Commercial B Chamber, Judgment No. 734 of 28 December 2007. OHADATA J-11-05. Similarly, the Deputy Director-General was to act on behalf of the company since it is a legal entity of the public limited company and is vested with the powers conferred on it by the Board of Directors. Court of Mbouda, Judgment No. 1 / CIV / I'GI of 5 February 2009, OHADATA J-12-239

organization, operation and control of the regional financial market of the WAEMU. Article 5 stipulates that all activities carried out by market structures and commercial actors, either directly or through their subsidiaries, must be carried out with diligence, loyalty, neutrality and impartiality. The duty of loyalty and diligence of the actors acting on behalf of listed companies is an imperative for the good performance of the financial market, to the extent that it is a very sensitive sector.

The general regulation of the RSE in Article 11 stipulates that the regional stock exchange ensures that the persons placed under its own authority act on its behalf, respect their professional obligations. On reading this article it can be inferred that the RSE's general regulations place more emphasis on the respect of professional obligations for the persons under its authority (agents), and thus to resolve the question of the duties of directors of the publicly traded companies it will be necessary to refer to the infringements in case of public offer for the savings provided for by the uniform companies act.

Article 905 of the Uniform Companies Act provides that the presidents, directors or general managers of companies who have issued securities offered to the public incur a penal sanction:

1) without a notice being inserted in a newspaper entitled to receive legal announcements, prior to any advertising measure;

(2) the prospectuses and circulars do not contain the particulars of the notice provided for in (1) of this Article and shall contain a reference to the insertion of this notice in the journal entitled to receive legal notices with reference to the number in which it was published ;

(3) without the posters and advertisements in the newspapers reproducing the same mentions or at least an extract of those mentions with reference to the said notice, and details of the number of the newspaper entitled to receive the legal notices in which it was published ;

(4) without the posters, prospectuses and circulars shall indicate the signature of the person or representative of the company whose offer is made and whether the securities offered are quoted or not and if so, to which stock exchange.

It is clear that the managers of listed companies have a duty to inform and publicize the offers made to the public. And this duty of information requires insertion and formality of advertising. However, it must be noted that this information must be accurate and verifiable while bearing the signature of the person or representative of the company whose offer emanates.

The RCPSFM and the RSE have enacted general provisions concerning the organization, operation and control of the stock market, although there are gaps in relation to the duties of the corporate officers of listed companies. Thus, for a good understanding of the duties of managers of companies listed on the RSE, it will be necessary to refer to the Uniform Companies Act.

Importance of the Legal Framework of Directors Duties in Senegal

The control is the counterpart of the powers attributed to the executive officers and may lead to his / her civil /criminal liability in case of default. To some extent, liability can be both civil and criminal. This legal framework of the duties of directors demonstrates its paramount importance only in case of breaches of duties.

Civil liability of Directors in case of breach of duties

The civil liability of executive's directors can be incurred in case of breaches of their obligations or duties. Directors may commit offences related to the functioning of society, such as the abuse of social assets, and infringements of the rights of associates. The offences relating to management control must also be mentioned, an obstacle to control over the auditors' mission, verification and refusal to disclose documents. Ohada law also provides for the offence of misleading information as well as the non-disclosure of criminal acts. The list of offences that may be committed by directors cannot be exhaustive.

The principle laid down by the Uniform Companies Act is that each director is individually responsible to third parties and to company for misconduct committed in the exercise of his or her functions¹⁷. However, responsibility can be shared when several directors have concurred in the same facts that the competent court will determine the contributory share of each party in the compensation of the damage¹⁸. The civil liability of the manager is implemented differently depending on whether the claimant for compensation is an associate or a third party (individual share) or the company (social action).

The Uniform Companies Act contains general provisions which apply to each corporate officer, whatever the form of the company or his functions, but also the special provisions applicable to the directors of the limited liability company¹⁹ and the Public limited company²⁰. Article 162 of the Uniform Companies Act defines individual action as "an action for compensation for damage suffered by a third party or an associate, where the latter suffers a prejudice distinct from the prejudice suffered by the company, of the fault committed individually or collectively by the directors in the performance of their duties ". This action is brought by the person who suffers the damage.

As to social action, it is defined in Article 166 of the Uniform Act of Companies as "an action for compensation for damage suffered by the company as a result of the fault committed by the officer or officers in the exercise of their duties"²¹. In order to exercise social action it is provided that

¹⁷Uniform Companies Act, articles 161 and 165, paragraph 1

¹⁸Uniform Companies Act, Articles 161, paragraph 2, 165, paragraph 2, and 330 paragraph 2.

¹⁹Uniform Companies Act, Articles 330 to 332

²⁰Uniform Companies Act: Articles 738, 742 and 743 concerns, in particular, the civil liability of the deputy head.

²¹This action concerns only compensation for the injury caused by the manager and not by third parties. The Court of Cassation (Com 19 March 2013, Nos. 12-14.213) thus rejected the appeal of a company in so far as the companies at issue, defendants at the

the associates representing one-quarter of the shares may either individually or by combining to institute a social action in liability against the manager. However social action is not subordinated has the prior opinion or authorization of the meeting, it must be exercised in full freedom by the shareholders.

An action in civil liability is conditioned by the existence of a fault committed by the officer. What is the fault? They should be sought in Article 330 of the Uniform Companies Act relating to the liability of managers, which means fault: breaches of the laws or regulations applicable to the company, breaches of the by-laws and mismanagement. In the same way, this fault must be characterized by the elements which constitute the fault, namely intentionality, the presence of fraud or the commission of a criminal offence.

Criminal liability of directors in case of breaches of duties

The scope of the criminal liability of the directors is considerable, evidenced by the number of provisions enshrined there in the Uniform Companies Act. We will focus more on offences relating to the management, administration and management of the company. The best known is the misdemeanor for the manager, in bad faith, of making the property and the credit of the company, a use contrary to the interest of the company, for personal, material or moral purposes, or for another legal person in which he or she is interested, directly or indirectly.

The abuse of social assets as defined in Article 891 of the Uniform Act Societies is constituted when "a general practice has been established within the undertaking consisting in drawing from the funds of the enterprise by way of loan or reimbursement of prescription costs, in flagrant and manifest violation of the provisions of Article 891 of the Uniform Companies Act²².

In addition to the offence of abuse of social assets, the offence of distributing fictitious dividends is found in the title of the offence relating to the management, administration and management of companies. The absence of inventory or fraudulent inventory, the directors knowingly operated between the shareholders or the associates the distribution of fictitious dividends²³, and even in the absence of such distribution, defends the presentation of unreliable accounts.

In order to characterize these offences, it is incumbent on the evidence of the intentional element to be reported, in fact, the officer must have acted deliberately for the offence to be constituted.

The Uniform Companies Act enacts offences for which the officer may be guilty, but it is for the States Parties to fix the penalties. The Ohada law establishes a competition of normative competence in so far as it is for the national legislators to fix the penalties. To date, only two Member

Litigation, are not members of the board of directors or directors general.

²² District Court of Bobo-Dioulasso, Judgment No. 298 of 29 December 2004, OHADATA J-05-235.

²³Uniform Act Companies, section 889.

States of Ohada, Cameroon and Senegal have enacted penal laws for the application of the criminal provisions contained in the Uniform Act²⁴. From one Member State to another, the same offence the leader of a group of companies present in different countries of the Ohada space could incur completely different penalties or not be punished at all in the absence of sanctions enacted in the Member State or committed the offence. However, it is necessary to remedy this legal gap in certain member countries of Ohada, so that any criminal offense related to company law is punished, which will help to strengthen the good management of companies by the directors.

III. CONCLUSION

The duties of the directors in Senegal are regulated by several regulations but mainly by the Uniform Company Act of Ohada. In French law, the duty of loyalty and diligence has been consecrated by decisions jurisprudential. Officers must behave fairly to the company and the shareholders. This idea of moralization of public limited companies, based on the pragmatic need to protect the confidence of shareholders in management, is not recent. The standard of conduct by which this duty of loyalty is expressed is not to abuse the company's assets and manage it in the company's interest, not to compete with it and to inform partners, third parties and other managers. This duty of loyalty requires the officer to use his power only for the benefit of the company and its shareholders, as it must manage in the exclusive interest of the company.

Senegalese law carries the imprint of French law, the Ohada law in its regulation of the duties of directors it makes no mention of duty of loyalty and diligence of directors. But in reading "offences relating to the management and direction of the company", it can be deduced from it that directors have the duty of loyalty and diligence towards the company and must not act in their own interests. It is hoped that in the future the legal framework of the duties of directors will be taken into account explicitly by the Uniform Companies Act.

It is also high time to harmonize the criminal sanctions of directors to the extent there is a wide disparity in the application ranging from one country to another member of the Ohada.

As regards the regulation of the Regional Stock Exchange and the General Council for Public Savings and Financial Markets concerning publicly traded companies, there are many shortcomings with regard to the duties of corporate officers, insofar as these listed companies represent a showcase of their countries of origin, therefore, a good management of this one is paramount.

²⁴Senegal first introduced Law No 98-22 of 26 March 1998 on the criminal penalties applicable to offenses contained in the Uniform Act relating to the companies and the economic interest grouping, Cameroon with Law No. 20031008 of 10 July 2003 on the punishment of offenses contained in certain OHADA Uniform Acts. Also note that the Republic of the Central African Republic, in Act No. 10.001 of 6 January 2010 the Central African Penal Code, introduced penalties for the offenses in the Uniform Companies Act

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