MECHANISMS FOR THE RESTORATION OF FINANCIAL EQUILIBRIUM FOR ENTERPRISES IN DIFFICULTY

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ABSTRACT

Financial equilibrium is a state in which the financial system of an enterprise is stable. The very essence of business cannot be attained without the ability to make enough money from its operations to pay for its regular business expenses. It really seems difficult for companies to maintain reasonable financial equilibrium. What even make it worst is the owners and or managers always lack the necessary skills making and again, the rate at which enterprises keep falling and finally winding up. This piece reveals that all hope is not lost and that in deed measures can be taken. Though the future of seems really blurred when the enterprise is already in difficulty, we recommend reinforcement of base capital, curbing the responsibilities of the enterprise and even lay off at last resort.

Keywords**:** Financial Equilibrium, Winding Up, Base Capital, Lay Off.

INTRODUCTION

Financial stability in business refers to making enough money from your operations to meet up with your business expenses [1]. For an enterprise it can be defined as a situation of financial equilibrium in that enterprise. It also refers to a situation wherein the revenue or the resources of the enterprise have to be sufficient to match its expenditures. It enables the enterprise to evaluate its solvency and its capacity to honour the date lines of its financial engagements. It is an important aspect of business because it provides opportunities for expansion and growth. [2] Being in financial difficulty entails inability of a person or a moral entity (corporate body) to pay debts. It is a situation where it is impossible for an individual or a company to meet all his due liabilities with its available assets [3].

This financial stability can be obstructed or destabilized. This occurs when an enterprise finds itself in financial crisis. In such a case, she would have to adopt measures aimed at reinstituting its economic and financial situation, in order to attain its objectives. These measures can enable them to either reinforce real assets or reduce its debts [4]. Some salient measures will be analyzed. The reinforcement of registered capital, reduction in the redress of an enterprise, dismissal on economics

THE REINFORCEMENT OF THE REGISTERED CAPITAL OF THE ENTERPRISE IN DIFFICULTY

An enterprise which no longer has capital or that whose real assets are insufficient to handle its economic and financial difficulties, can decide to adopt favourable measures to enable it bush through with its activities. Such can include an increase in its capital and or a contribution of partners in order to redress the enterprise in difficulties.

An increase in the capital of the enterprise

In a general way, the registered capital represents the amount of capital contributions made by the members to the company, plus, where necessary, capitalization of reserves, profits or issue premiums [5]. The registered capital of a company can at a given time undergo modifications or variations amongst which is increment.

In effect, an increase of registered capital is a mechanism for financial restoration of an enterprise undergoing difficulty and thus appears as the method 'par excellence' to proceed to the reinforcement of its actual capital. Without giving a clear-cut definition, the OHADA legislator simply took upon itself to provide in the Uniform act on relating to commercial companies and economic interest groups, the various via which capital can be increased. It is however defined by an author [6] as an operation which is aimed either increasing the value of its registered capital in order that it becomes superior to what was previously written in its statutes or to bring back the value of the capital to match the previous statutory provisions. Article 68 of the UACCEIG provides to this effect that, : "registered capital maybe increased where new contributions are made to the company or where reserves, profits and issued premiums are added to capital". This provision brings out the various procedures via which registered capital can be increased. However, due to the fact that increase in capital consists of making provision of new funds to the enterprise, the increase in capital by the incorporation of reserves, of profits or of issued premiums, will not be raised here. We will base our analysis on the increment of capital by monetary inputs and the increase of capital by inputs in kind.

The increment in capital by monetary input

The increase in capital cash inputs is without doubts the most favourable procedure for an enterprise in difficulty. This operation is provided for in articles 360- 365 of the UACCEIG for Limited liability companies and from articles 562 to 580 of the same uniform act make provision for joint stock companies. The increase in capital by monetary inputs can be done following two mechanisms: either by the increase in the nominal value of existing shares, or via the call for new capital or shares.

The increase in capital via the maximization of the nominal value of existing shares is a process which aims at increasing the share capital previously taken by shareholders. It can thus only be decided upon with the unanimous consent of the latter. The increase in capital by the creation of new shares when it consists of the enterprise to call for new shares for a corresponding increase in capital, and on the contrary to the monetary inputs effected by the shareholders. These shares haves to effectively be liberated [7], in a bid to protect the shareholders and their rights, the OHADA legislator submits to the increment of capital by monetary subscription to

precised contributions, and to accord previous shareholders preferential rights on the contributions made.

The conditions for the increase in capital by monetary subscription

In order to be valuable, the operation of increase in capital by the monetary subscription has to obey many conditions. The latter is relative to the integral liberation of the capital previously contributed and the authorization of the competent organ.

Relative to the first condition, it is important to note that, the increase in the monetary capital will not be realized only in case of complete liberation of the initial capital subscribed. To this effect, article 572 of the UACCEIG precises that the registered capital has to be completely freed, on want of nullity of the operation, before every call for new capital to be provided for in cash [8]. The violation of this rule leads to civil and /or penal sanctions on the directors of the enterprise [9]. In companies with varying capital, it is their statutes or deeds that lay down the modalities for liberation.[10] But, partners or the shareholders can decide on the increment of capital even when the initial registered capital subscribed for has not been entirely provided for, by inserting a clause in the statutes. Whether they have been entirely provided for or not, the entire operation of capital increase has to be subjected to the authorization of the competent authority.

Due to the fact that the increase in the capital of limited liability companies leads to a modification in their status, it can then only be done after the authorization of partners who make up, up to three quarter of the registered capital [11], to the exception of increment by incorporation of reserves. In the previous case, decisions are taken by a representation of partners who own at least half of the company's running capital. In limited liability companies, the decision to increase capital is decided upon by an extraordinary of general assembly [12]. When an increment of salary is realized via the incorporation of reserves, profits or via the issue of premium, the general assembly seats on condition provided by articles 549 and 550 which governs quota and majority of attendants for extraordinary general assembly's [13]. However, the extraordinary general assembly can only validly exercise its powers if the shareholders present or represented possess at least half of the company's capital at the time of the first assembly and a quarter of the assets during the second convocation [14]. When the

quota is not arrives, the assembly can be called up for a meeting the third time within a time frame of at most two (2) months as from the date fixed by the second convocation. In limited liability companies, powers recognized in extraordinary general assemblies and ordinary sessions in matters of increase of capital are within the conditions provided by statutes, exercised collectively by partners [15].

Also, the requirements relative to the integral liberalization of capital, the OHADA legislator accords a right of preferential subscription to initial shareholders.

The preferential right of subscription of initial shareholders

The preferential right of subscription is an advantage offered as a priority to initial shareholders, proportionately to the nominal value of the shares they own, to enable them subscribe to new shares contributed to in monetary terms or cash in a bid to realize the increase in capital. The logic behind such an advantage is such that, the new shares to be subscribed first be proposed to the shareholders in place before any eventual call for capital for third parties, in case the company does not intend to get expected capital from initial shareholders. This is to say that this right is created only created for the subscription of monetary shares in corporations [16].

All monetary increase in capital enables shareholders, to, proportionately benefit from a right to preferential treatment at the time of subscription of new shares. [17] All unwritten clauses are rebuttable. It refers to right in public order which cannot be reduced [18]. However, the exercise of the preferential right to subscription is reserved to shareholders whose shares are entirely liberated. Shareholders who cannot exercise rights attached to their actions are equally deprived of their rights to exercise their preferential rights of subscriptions [19]. The dateline accorded to the shareholders for the exercise of preferential rights of subscription cannot be less than twenty (20) days from the date the subscription was made known. But this dateline can be closed by anticipation when all the rights to irreducible subscription have already been exercised or that the increase is capital has entirely been subscribed for after the individual renunciation to the right to subscription, by the shareholders who have not subscribed [20].

The preferential right of subscription is not an intangible right. If the laws cannot delete them, the shareholders assembly can however decide of the contrary [21]. Some procedures for the

increase require that the shareholders be deprived of their preferential right of subscription in an intangible way. Such is the case when an enterprise is in difficulty, when a third party wishes to enter into the company, or when an important creditor accepts to convert his credits into shares. The suppression of the preferential right of subscription is subject to the exclusive competence of the extraordinary general assembly. She can however delegate its powers to the administrative counsel, or to the general manager [22].

The decision of increase in capital as well as the modalities of call for new capital has to be made known to the shareholders before subscriptions are opened [23]. The company has to respect a number of publication formalities [24].

Apart from money inputs or contributions, the increase in capital can equally be done by contribution in kind.

Increase in capital in kind

Capital increment can also be done in kind [25]. To this effect the contributor transfer's not on the possession but also the property in question is transferred to the enterprise. Thus, the, enterprise could have it sold to use the outcome solely in its interest. Even though, the bottom line here is to enable enterprise to get its liquid cash as soon as possible, its aim it not to directly increase its ability to finance. She wants to first and foremost make sure the said asset gets in to the ownership and control of the enterprise, be they material or non-material.

The process of increase of capital in kind has its own peculiarities. The subscribers of the increase in capital who are generally known, does not offer any preferential rights to the initial shareholders [26]. Meanwhile, the operation can be realized even when the initial capital has not been entirely been paid in [27].

Whatever the case, the increase in capital in kind can only be efficient when the contribution concerned is done with full possession and ownership, following a well slated procedure.

The necessity of ensuring full ownership and/or possession

The increase of capital in kind would only efficiently contribute to the financing of an enterprise in difficulty if the contribution is made with full transfer of ownership and possession.

In effect, contribution with full proprietorship is realized not only via the transfer of the property of the asset contributed, but also, and most especially by making the said asset duly available to the company. This procedure therefore engulfs the transfer of the property rights from the contributor to the enterprise which in this case is the beneficiary. The transfer of property rights can be understood as a sale [28], but for the fact that the contributor instead receives shares or share capital in exchange [29]. As soon as the contribution agreement is made, the risk in the property is transferred to the enterprise; be it an eviction guarantee or otherwise. This operation can lead to various consequences on third parties. This is in a circumstance whereby; the contributor leases out his credits and reduces the consistence of their guarantee or simply make them disappear [30]. When the transfer of the asset is subjected to publicity, it becomes actionable by third parties only after the formalities have been fulfilled.

A contribution in possession on its part does not include transfer of the said property, but instead the usage of the asset concerned. However, when the contribution concerns things in kind or all natural assets renewable within the period of existence of the enterprise, the contract transfer's the property in the assets to the enterprise, on condition to be able to restitute the same quantity quality and value. In such a case, the contributor is a guarantor to the enterprise as a seller is to a buyer. Contribution to possession also includes a contribution in usufruct. The latter enables the contributor to transfer an asset to an enterprise in difficulty but for which he conserves the ownership [31].

A contributor in usufruct is a guarantor to the enterprise just like a landlord is to his tenant. He is required to maintain the asset in order that it serves the purpose for which it was given. However, when the said asset is one that can easily be exchanged for money, consumable or interchangeable, the enterprise acquires the property in the asset and would have to restitute to the contributor, during winding up, the same quantity and quality of the asset [32]. In this case, contribution of usufruct is submitted to the rules as contribution of full proprietorship as far as transmission of rights, guarantees and risks are concerned [33].

However, in order to be valid, the increase in capital via contribution in kind has to respect a précised procedure.

The procedure for capital increment in kind

The procedure for the increase in capital via contribution in kind follows a number of stages, which have to be respected by the beneficiary enterprise. This includes the conclusion of a contribution agreement, for the participation of an auditor, and of the holding of an extraordinary general assembly.

The increase in capital in kind first passes via the conclusion of a contribution agreement between the contributor and the beneficiary enterprise. The contribution contract contains essentially; the designation, description and evaluation for the assets which have to be given in as contribution. In other words, it contains the number of new shares to be gotten by the beneficiary enterprise, and on the other hand, the modalities. In addition to the requirements mentioned above, the contract has to contain the identity of the contributor. It has to be signed by the contributor and the legal representative of the enterprise, on the authorization of the board of directors or the general manager depending on the circumstances of each case. But the signing of this contract is subject to the approval of the extraordinary general assembly [35].

The increase in capital via contribution in kind further requires the intervention of an auditor. In this case, it is up to the partners, shareholders or still the board of directors or the general manager to request, from a competent jurisdiction in the seat of the enterprise, the designation of one or several auditors [36]. In limited liability companies however, the designation of an auditor to contribution is only required if the value of each contribution or the entire value of the contribution is above five million (5.000.000) francs CFA [37]. In a bid to better perform his task, the auditor for contributions is subjected to the same incompatibilities as the company's auditor. It can even happen that the company's auditor benefits from the privilege to audit him [38]. The contribution auditor has the responsibility to evaluate the worth of contributions in kind brought to the beneficiary company. In the course of his mission, the contribution auditor can be assisted by one or more experts of his choice, who would be remunerated by the beneficiary company [39]. He has to make a comparative estimate between

the value of the contribution and the purpose for which they are needed. At the end of his mission, the contribution auditor has to make a report in which he describes each and every contribution, indicating their method of evaluation. This report has to be made available to the shareholders or partners at the head quarter of the enterprise at least eight (8) days before the day of the extraordinary general assembly, called up to decide on the increase of the company's capital. This report has to be deposited within the same date line to the registrar of the jurisdiction in charge of the commercial affairs in the locus of the head quarter of the company [40].

The increase in capital via contribution in kind implies an increase in statutes. Consequently, the organization of an extraordinary general assembly becomes necessary, even though the later can delegate its powers to another organ of the beneficiary enterprise, of the company to partners and shareholders, and by partners comprising of up to (3/4) of the company's capital. [41]

In joint stock companies, an extraordinary general assembly which decides on the increase of capital equally has to decide on the increment of capital in kind. Meanwhile, the contributor does not have to participate during the votes for approval in any way [42], unless he does it as a representative for another contributor. In event of a contribution of a joint asset, all the proprietors are forbidden to participate in the vote [43].

The assembly remains sovereign to either approve or disapprove the evaluation of the contributions made. That is to say that they are not tied down to the various opinion of the contribution auditor. If the contributions in question have been over evaluated and approved by the extraordinary assembly, the deliberation approving the evaluation can be annulled. Consequently, the responsibilities of the managers and the contribution auditors can be set on basis of the publication of any faulty information [44].

Besides the increase in capital, the reinforcement of the real assets of the enterprise in difficulty can pass via the octroi of funds by partners.

The octroi of assets by partners in order to redress the enterprise

Given the numerous forms of interest that are harbored in a single enterprise, it becomes evident that, its disappearance could have reasonable effects. That is the reason for which everyone has

to "*put hands in their pockets*" to participate to make finances available for the up keep of the business structure. In a bid to support the finances of an enterprise in difficulty, directors and even workers can give it advances in their current accounts, legally referred to as "*current account of partners" [45].*

A current account of partners is a credit of the partners to the enterprise. It refers not only to due payments for partners from the enterprise, and to which they have voluntarily decided to give up at the benefit of the enterprise in order to reinforce its finances (costs of interest, dividends and remunerations) [46].

A distinction has to however be made depending on the type of company concerned. Thus, in limited liability companies, they will constitute non-refundable credits, and with no interest attached. In joint stock companies, it will amount to normal credits or debts, and in sole proprietorships it will refer to non- refundable advances because in most cases the creditor is the owner of the business. Amounts hereby borrowed are registered in the open accounts in the name of partners in their partnership deed

[47].

Whatever be the case, current account advances constitutes and advantageous means of obtaining loans both for the enterprise and for the partners, even if they are sometimes dangerous.

Current account advances, an advantage to the enterprise and its partners

Advances from the current accounts of partners can be understood as a contract for a loan entered into between the partner and the enterprise in difficulty. Thanks to this contract the partner makes finances available to the enterprise in a temporal way. These funds can be claimed with a more or less short period. The aim of the contract entered into by the enterprise and the partner if not aimed at giving rise to major obligations on the part of the enterprise or obliging it to conserve the advances, but it meant to enable the enterprise to use it at the appropriate time, to reinforce the consistency of its treasury. Loans consented to by the partners to deficient enterprises has various advantages on the partners as well as to the enterprise who are in this case beneficiaries.

Advantages of current account balances on the lending partners

Current account advances offer multitudes of advantages to its bearers. This notably refers to the remuneration of the lending partners which is nothing other than the interest [48] that comes from the loan. In effect, the beneficiary enterprise of the current accounts of the partners is required to makes payments of interest to the lending partners. They will thus not be referred to as dividends or all other benefits to spare it from its obligations as per the creator or owner of the account.

When the owner of the account is a physical person, the interest that results from the loan is higher than that from a bank account. This means that, as compared to the latter, current accounts of partners assure its owners an interest rate that's higher than what is offered by banks. The owners of partner accounts could even follow up the eventual destination of the funds they deposit or make available to the enterprise. They could even go further to take back the advances consented to with the enterprise, if they get to realize that the beneficiary enterprise is using the finances for reasons other than the reinforcement of its treasury [49]. But if they had subscribed for an increase in capital, the recovery of their money will only be possible if the get someone else to buy their shares.

Current accounts of partners appear as a social debt of the owners to the enterprise. The conditions of reimbursement are often précised in the statutes or result from agreements or contracts entered into by the beneficiary enterprise and the partner [50]. In other cases, reimbursement can be requested at all times by the partner. Apart from the lending partner, current accounts of partners are also advantageous to the beneficiary enterprises.

Advantages of current account advances on the enterprise in difficulty

A partner's current accounts constitute an efficient means of financing to an enterprise in difficulty.

Firstly, because capital is easily and quickly obtained from owners, be they moral or physical persons.

No guarantee is eventually requested in most cases by the lending partner as it often the case if ordinary loans. The adage "*a loan is an expression of confidence"* is duly represented herein,

due to the fact that, the economic link that exists between the partner and the enterprise since they day they obtained this various status created a certain level of confidence between the two, in such a way that, it is always difficult for the partner to impose conditions on the enterprise before giving it a loan on whatever guarantee [51].

Finally, current account advances represent a huge relieve [52] to the enterprise, in the case whereby it does not lead to the modification of its status as is the case with the increase in capital. On the contrary, the interest remunerating the loans are more than those requested by banking systems?

Despite the advantages that they have, the option of current account advances or current accounts of partners is not all-round embracing.

Dangers that come with current account advances

Current accounts of partners could be dangerous both to the lending partners as well as to the beneficiary enterprise.

Risk of current account advances on the lending partners

Lending partners who are owners of accounts do not obtain any guarantee of its credit during the conclusion of his loan contract with the enterprise in difficulty. Meanwhile the legislator on its part did not make provisions for the regulation of the current accounts of partners. It would thus be difficult, or even impossible to apply the rules of priority of payment of creditors [53] or that of the "*new money privilege* [54]*",* to lending creditors, even after they have given a loan or financial assistance to an enterprise in difficulty. In this case, the owners of the current accounts of partners will be classified as unsecured creditors that is, those creditors who do not benefit from any guarantee of payment after they give out a loan.

When the lending partner is equally the manager, he runs the risk of suffering from criminal sanctions if he takes back (refund of debts) an amount of money over and above the loan he gave. In this case, the lending partner or the manager will benefit on the one hand from the company's assets. Meanwhile such an act affects the company's assets and is consequently considered as a crime by the African legislator [55]. The latter can be qualified as a

misappropriation of a company's assets or classified as personal bankruptcy depending on the circumstances of each case.

The criminal act of abuse or misappropriation of company's assets is provided for managers of bad faith who use the assets or credits of the company not for general interest, but instead for personal interest [56]. He sis sanctioned by the criminal law with an imprisonment term of five years and of a fine of from (2.000.000) to twenty million (20.000.000) francs CFA [57].

The crime of bankruptcy on its part is evoked generally when the enterprise is undergoing a collective procedure, notably within the framework of reorganization proceedings or liquidation procedures. When it concerns bankruptcy in itself [58]., or crimes surrounding bankruptcy [59], it is worth précising which of the two crimes will be applicable to the manager, who after having consented to the giving enterprise of current account advances; he receives an amount which is higher than the loan he gave. It can be said that looking at the elements that make up the crime, if is fraudulent bankruptcy which would be applied to him [60]. By attributing themselves amounts superior to its credits, the lending director embezzles the assets of the enterprise. As well as the partners or the lending directors, current account advances equally present dangers for the beneficiary enterprises.

Dangers linked to the current account advances for beneficiary enterprises

In order to enable the beneficiary to get into possession of the funds provided, it has to be provided for in a blocked account, in such a way that she can make use of it at the appropriate time. But when the funds made available by the lending partner are not blocked, an eventual sudden withdrawal by the latter is not avoided, but for cases where by the parties had prior stated a clause to avoid any such. Meanwhile, the current accounts of partners or directors can be an outlet for misappropriation of company assets by the beneficiary. It can happen that some partners, managers, or individuals consent to the advances in current accounts for their personal interests with the aim of misappropriating parts of the company's capital [61]. It is thus said that, so many crimes are committed via current accounts of partners.

Accountant's current accounts can be subject to risks when the lenders and beneficiaries are companies. They can thus constitute an instrument for financing enterprises at risk, when the loan desired by the lending company can expose this lending company to evident financial

difficulties. This occurs most especially when the amount borrowed makes up a great deal of the capital of the lending company. Also, the economic support brought up by the mother company to the branches in the form of advances in current accounts can be a threat to the financial stability of the mother company and even go further to compromise its own activity.

Wherein, despite the various efforts made in other to reinforce is capital but the enterprise is still not able to regain its previous financial stability, it could therefore envisage other alternatives. This can constitute a reduction in its responsibilities.

REDUCTION IN THE RESPONSIBILITIES OF AN ENTERPRISE IN DIFFICULTY

Many solutions are open to a debtor enterprise which intends to multiply its chances of survival. She can also opt, depending on its level of difficulty for other techniques which can have financial effects, such as base capital, or still, measures which enable it to reduce its personnel and herein mentioned as the technique of dismissal on economic grounds.

The base salary of workers of an enterprise on economic grounds

Salary is the remuneration or incomes which can be evaluated in cash, either by agreement, or by regulatory or conventional provisions, which are due payment in a labour contract by an employer to an employee, either for some work done or to be done, or a service rendered or yet to be rendered [62]. It thus refers to the outcome of some hard work done by the staff of an enterprise be they workers or managers. Salaries are most often a resultant of a labour contract, which lays down its basis and modalities [63]. Salaries can be fixed, as well as it can have serious modifications due to the need for economic and financial restructuring of the enterprise. These modifications can consist of either an increase in the salaries of workers in a enterprise or a reduction in their incomes which is our point of interest in here.

In effect, the enterprise confronted to economic difficulties or to technological changes can envisage a reduction in salaries such as employees that managers of the moral persons such as inevitable measures [64]. The reduction of salaries comprises an alternative to the dismissal

and concurs consequently to maintain the employments. However, the enterprises which intend to reduce salaries of its workers have to respect a certain number of conditions, by following a well-structured procedure.

Conditions for the reduction of salaries of personnel of the enterprise

The enterprise which has financial problems and then intends to reduce the salaries of its workers has to obligatorily respect certain conditions. The latter are relative to the existence of real economic difficulties, to obtain a prior agreement between the workers and employers on one side and between shareholders [65] and partners on the other hand the respect of the minimal salary.

In effect, a reduction is the salaries of personnel can only be envisaged if the enterprise is undergoing real economic difficulties. In as much as the legislator does not define what is referred to as "*real economic difficulties*", one could be tempted to think that it refers to difficulties which result in an economic disequilibrium, financial, or human and consists of preventing a normal flow of the activities of the enterprise [66].

However, the employer will obtain a prior agreement for salaries. Due to the fact that salary is considered as an essential element of a labour contract, it cannot be seen as a reduction in unilateral way by the employer, but after a common agreement between the latter and the workers concerned [67]. Or still being a partners and shareholders, when it has to do with the remuneration of managers of the enterprise. To this effect, article 1134 of the Cameroonian civil code steps in to support this condition, when it provides: "legally signed conventions take the law who has made them. They cannot be revoked that their mutual consent, or for reasons authorized by law". According to this principle, it is thus impossible for the employer to modify and in occurrence to unilaterally reduce the remuneration of workers, be it when it concerns the workers on the basis of the base salary or its accessories [68], as far as it comes from the labour contract. To this effect, the employer is held to look for the express agreement of workers to reduce their salaries or all salary advantages resulting from the labour contract. Likewise, the acceptance of the worker has to be clear and unequivocal [69].

In general, the reduction of salaries is accompanied by a reduction of the hours of work. Meanwhile, the employer who wishes to reduce the salaries of its employers has to do it

following the rules of SMIG (Minimum Guarantee of inter-professional salary) [70]. The latter appears as the basis which has to receive each worker concerned. Consequently, the employer would not be above the value of the SMIG when it proceeds to the reduction of salaries. Even though, it is sometimes observed that in some situations, workers suggest their own leader for the reduction of their salaries [71], all decisions taken by the employer in violation of their rules would not only be null, but also leads to sanctions.

Once these conditions have been fulfilled, the employer would still follow a well-structured procedure.

The procedure of reduction of salaries of personnel of the enterprise on economic grounds

The employer who decides the reduction of the salary of workers attached to the structure would have to follow a well said procedure. The latter varies depending on simple workers or still the managers of the enterprise concerned.

As concerns the first hypothesis, this means that it only concerns the simple workers, it is worth noting that the employer who in turn take a relook at the reduction of salary of its employers, has to inform and prior consult the executives of the enterprise or the representatives of personnel of measures which they intend to take.

Each of the employers have to further be informed by a recommendation letter with prove of reception, of the reduction of workers envisaged, as well as the motives of justification. Once informed, the workers have a dateline of one (1) month to answer. If they accept the proposal in an express way, a prior labour contract is signed. If they refuse, the employer disposes of an option: either they renounce to the reduction of salaries, either they take a procedure of dismissal on economic grounds. Whatever be the date on which the worker has to respond, the dismissal con not be envisaged by the employer, as soon as the one (1) month dateline passes. If the worker does not respond within the one-month dateline, he is considered to have accepted. If many workers refuse a reduction of salaries on economic grounds, the employer would have to proceed to dismissal on economic grounds or still on other alternative measures.

Finally, in case of litigation relative to the modification of the labour contract, the judge would have to verify if economic motive is invoked by the employer is real to justify such a means.

The second hypothesis on its part aims to the procedure of reduction of salary of the managers of the enterprise in difficulty. The principle remains same: every service rendered has to be remunerated. This means that, just like the worker, the service rendered by the managers is the remuneration that they receive, to which is eventually added to certain advantages. However, when the amount of remuneration of the managers is excessive, an apriori control [72] becomes necessary and can lead to its reduction [73].

As for enterprises which have the form of a company, the reduction of the salary of workers leads to the modification of statutes. To this effect, the holding of the extraordinary general assembly becomes necessary.

The reduction of salaries has to be justified by its excessive character and the desire to maintain the enterprise alive. However, to the difference of workers whose salaries would not be within SMIG rules in event of reduction, no quota is fixed for the reduction of remuneration of managers. As such, the partners or shareholders are free to decide, after the general assembly, of the value of remuneration which would eventually be beneficial to the managers. The amount is generally fixed considering the length of work affected by the latter.

When it is confirmed that the amount fixed by the assembly of partners and shareholders do not correspond to the hours of work, in order that there should a certain equilibrium between the two.

If despite these measures the enterprise is still not able to maintain or reinforce its accounts, so it had to adapt for the other alternative techniques amongst which dismissal on economic grounds is found.

RECOURSE TO DISMISSAL ON ECONOMIC GROUNDS

One of the objectives followed by collective procedures is the reorganization of the enterprise when it is still viable, and considering the maintenance of these activities [74]. But in order to attain this objective, collective dismissal or dismissal on economic grounds of a good number of workers is sometimes indispensable. The revised UACP neither defines the notion of dismissal on economic grounds, nor the modalities of organization of such dismissal, simply

précises that they have to be done in the strict respect of the provisions of the national labour code.

In effect, the dismissal on economic grounds is defined as every dismissal effected by the employer for one or more reasons inherent in the person of the worker and leads to a suppression or transformation of employment or a modification of the labour contract, consecutive of the economic difficulties, due to the technological changes or internal restructuring [75]. It is observed from this definition that the economic grounds have to be distinct from personal motives, this entails inherent in the person of the worker.

Given that the general salary payments constitute a major part of the charges that the enterprise has to cover in order to avoid certain disagreement [76], dismissal on economic grounds will consist, in a practical way in reduction of the number of personnel of the enterprise in difficulty.

Dismissal on economic grounds can be individual or collective [77]. Be they individual or collective, the dismissal on economic grounds can only intervene when it reflects a certain number of criteria and follows a certain procedure.

Criteria of dismissal on economic grounds

Dismissal on economic grounds can only be pronounced when they are urgent indispensable and inevitable.

The urgent character from which this dismissal on economic grounds requires a certain celerity on the part of company managers in an action for the rescue of an enterprise in difficulties [78]. This means that once having knowledge of the critical financial situation in which the enterprise finds itself, the managers have to act fast, in order to avoid that all lateness should be such as to compromise the follow up and continuation of the exploitation.

The indispensable character of the dismissal is represented by the fact that the intervention or pronounced of these could have considerable repercussions on the chances to safe the enterprise and that all refusals could increase the difficulties exists and sometimes lead to the liquidation of the enterprise, which has to be avoided at all cost. The indispensable character of dismissal is provided for by article 110 sub of the revised UAPC.

The inevitable character of dismissal on its part reveals the fact that the economic difficulties cannot be overcome only by the considerable reduction of the personnel of the enterprise [78]. It can be justified by the exhaustion of the means of financial restructuration adopted by the enterprise. It is worth précising that only the commissioner judge was supposed to examine the financial situation of the enterprise and its prospects of reorganization, appreciate the different criteria via which dismissal on economic grounds could occur before qualifying them as any of such. As soon as they portray all the required characteristics, the dismissal on economic grounds must follow a well-defined procedure.

The procedure for dismissal on economic grounds

Be they collective or individual, dismissal on economic grounds follows a well-defined procedure. This is done by the establishment of a list of workers concerned by the debtor, the obligation to consult their social and administrative representatives and the control of the procedure by a competent organ.

In effect, the employer or the debtor who intends to dismiss on economic grounds has to follow the procedure provided for in article 40 of the labour code and in articles 110-111 of the UACP. It first and foremost refers to the need of the debtor or the employer to establish the list of workers to be dismissed, which taking a number of criteria into consideration, such as, professional aptitude, length of time spent by the worker in the enterprise and his family responsibilities [79].

The debtors or the employer equally has to precise in the list, the names of workers concerned which equate the number of employment posts to be deleted, as well as the order in which workers will be compensated.

However, it is observed with outmost disappointment that, these criteria are more or less put into practice by a majority of employers most at times when the reorganization of the enterprise is at stake via dismissal on economic grounds, this obviously always leads to opposition by such workers.

Once established, the list is thereafter sent via the syndic to the delegate of personnel, to the controller of representatives of personnel, as well as the labour inspector in writing for their opinion and suggestion; as provided for in article 110(4) of the UACP. After this stage, the

employer or debtor has to, in the presence of the delegate of personnel and the labour inspector, make all other measures which could help to avoid dismissal on economic grounds [80].

He can however happen that the list to be published involves one or many delegates of personnel. In such a case the dismissal of the latter will require the authorization of the labour output inspector [81].

After having taken notice of an approved list of workers followed by a, analysis, the delegate of personnel and the controller of representatives of personnel have to respond by writing within a dateline of eight days counted from the day of the reception of the demand for dismissal. To conclude, the request of the employer or debtor, as well as the response of the delegate of personnel and the controller of personnel representatives is sent without dateline to the minister of labour and social security for arbitration.

However, the opinion of the delegate of personnel, if it has been given, followed by the latter of communication of the labour inspector, are handed to the commissioner judge who after control, choses whether or not to authorize the dismissals envisaged [82]. In case of authorization, the decision will be sent to the workers concerned, as well as to the controller of representative of personnel for eventual contests if they are duly justified [83]. Once signalled the decision authorizing or refuting the dismissal subject to opposition with a dateline of fifteen (15) days from the date of pronouncement [84].

CONCLUSION

From the analysis above, it is worth noting that, the presence of difficulty within an enterprise can have an impact on its financial stability, in such a way that the resources that she owns are no longer able to meet its responsibilities. When it so happens, it becomes a necessity to its members to agree on measures which will enable it to re-establish its broken financial stability.

On the one hand, the enterprise could opt for an increase in capital through the reception of new contributions in cash and in kind, on the basis of a prior evaluation of the assets made available.

Meanwhile, the recourse from its members with the aim of ameliorating it treasury remains an efficient option. The debtor enterprise benefits in this case from funds that come from its members in the form of current account advances.

On the other hand, the restoration of the financial equilibrium of the deficient enterprise could lead to reduction in its responsibilities. It is not only a question of envisaging a reduction in the number of workers via the putting into place of dismissal on economic grounds or still, opting for a reduction in salaries when they are excessive. Such measures are of value to workers as well managers, legal representatives of the moral person or the enterprise.

Whatever the case, all these internal measures have to enable the enterprise to regain its initial financial stability and contribute to its rescue.

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2. Ashley Donohoe (2019) "importance of financial stability", bizfluent.com.
3. Naah Thomas F. 2 (2016) Arbitration law, lecture notes, UDS FSJP 2016.pp 3-7.
4. See Article 62 of the UACCEIG. The registered capital of an enterprise without which an enterprise cannot exist.
5. MBAYE NDIAYE (M.), « Capital social » POUGOUE (P.G), Encyclopédie du droit OHADA, P. 467.
6. New call for shares could be of nominal value, or on a material equivalent, (article 562 of the UACCEIG); the nominal value of shares is thus freely agreed upon by the general assembly which seats for the increase of capital. The value of a share is the amount that a shareholder pays in addition to the normal value of the said share capital. It thus has a dual objective; on the one hand it aims at increasing capital and on the other hand, it helps to evaluate the rights new and old shareholders.
7. The liberation of capital is materialized via the deposit of funds, notifies registration and shareholding.
8. This means that, the company has o first and foremost request its shareholders to free up shares for which they subscribed at the creation of the company or during the

previous increase in capital. Thus it is only afterwards that they can affect any transaction.

9. Penal sanctions are provided for in article 893 of the UACCEIG.
10. Generally, capital increase is decided for by three quarter of shareholders. (article 358 of the UACCEIG), but when contrary to this rule a decision has to be taken that can impact the survival of the enterprise, it could be conceived that there is an abuse of the opinion of the minority., however, as soon as the general assembly seats it cannot modify the decision taken by the previous general assembly. Cour de cass.com. 18th February 2004.
11. In SA companies, the increase in capital is suggested by the counsel of administrators or the general administration. A prior deliberation is done by the latter before a general assembly for the increase in capital is called. (Article 569 of the UACCEIG). Again a special report will be presented to the general assembly and to shareholders. This report would contain the possible suggestions on the increase in capital see: MBAYE NDIAYE (M.), « Capital social » POUGOUE (P.G), Encyclopedie du droit OHADA, P. 468.
12. Art. 565 of the UACCEIG
13. Art. 553 of the UACCEIG.
14. Art. 853 -11 of the UACCEIG.
15. Although the UACCEIG does not make any provision for SARL, nothing stops partners from inserting clauses in their statutes to this effect. KOUAGNE (J.C.) the law on preferential rights, PhD thesis in the University of Dschang, January 2012.
16. Art. 573 of the UACCEIG.
17. Art. 573- 2 of the UACCEIG.
18. Art. 577 of the UACCEIG.
19. Art. 578 of the UACCEIG.
20. In order to favour the opening of shares, of the company to external partners, the general assembly can vote a total or partial suppressing of the preferential rights of subscription. For better understanding see: GUIRAMAND (F.) and HERAUD (A.) droit des societees manuel et applications, 8th ed. 2001, P. 279.
21. Art. 592 -1, 2,3 of the UACCEIG.
22. Art. 598 of the UACCEIG.

23. A deposit of the subscription files at the registrar does not signify a purchase of shares but simply meant to notify third parties about the increase in salary.
24. All assets said to be brought in kind indicated at the beginning could also be used as share contribution for increase in capital. They could be material or not or still moveable and or landed property. Or still they could be converted to monetary terms if need be.
25. Art. 573 -2 of the UACCEIG.
26. Art. 389 - 4 of the UACCEIG.
27. Art. 46 of the UACCEIG, which provides that, when contribution is in kind, the shareholder is a guarantor to the enterprise for the value of the pledged asset.
28. MERLE (P.), commercial law and commercial companies, 9th ed. Dalloz, sept 2003, P. 899.
29. Art. 1166 and 1167 of the civil code, art. 67 and 68 of the UACP. According to which there could e cases wherein the potential shareholder is in cessation of payment at the time the contribution he promised is due payment, his inability to pay would be evaluated on the basis of the nature of his business 6 months ab initio.
30. Art 619 of the civil code provides that, an asset which is not duly allocated has a span of 30years.
31. ANOUKAHA FRANCOIS, CISSE- NIANG, DIOUF N. « OHADA commercial companies and economic interest groups, Droit Uniform Africains Bruylant Bruxelles, 2002. P. 56.
32. Art. 47 of the UACCEIG.
33. When the contribution contract has not been approved by the general assembly it remains a project. Art. 400 -3 of the UACCEIG.
34. Art. 363 -1 of the UACCEIG.
35. Art. -620 of the UACCEIG.
36. Art. 621 -2 of the UACCEIG.
37. The formalities of deposit in companies with variable capital (Art. 263- 3 of the UACCEIG.)
38. Art. 524 of the UACCEIG.
39. Art. 564 of the UACCEIG. (in case of SA)
40. When the contributions have been made by several persons, they become one and indivisible. In such a case, its use will follow a unique channel.

41. Art. 624 of the UACCEIG.
42. Art. 623-2 of the UACCEIG.
43. Art. 524 of the UACCEIG.
44. Art. 899 of the UACCEIG.
45. Seeking the help of active partners is definitely inevitable, especially given that, they are the brain behind the technical running of the enterprise.
46. Current account advances is just a transfer of a loan contract concluded between the partners and the enterprise.
47. URBRAIN- PARLEANI (I.), "current accounts of partners? Paris LGDJ, 1986, P. 7.
48. CERTI- GAUTIER (A), "currents accounts of partners and the fate of various interests", bulletin Joly Enterprise in difficulty, n° '4, 01 July 2013, P. 241.
49. The partners participate to the reinforcement or increase in the base capital of the enterprise only because they want to avoid that the enterprise falls into financial difficulties with their various interests. Thus, the partners can take back their contributions if they are not used to serve the said purpose.
50. COZIAN (M.) VIANDIER (A.), droits des sociétés, 27e ed. LexisNexis, Aught 2014, P. 144.
51. MAGUEU KAMDEM (J.D), the financing of enterprises in difficulties in OHADA Law, doctorate in Private law, University of Dschang. 2016.
52. This flexibility is justified by the fact that the operations of current account advances are accompanied by very little formalities (absence of writing in most cases) see VIANDIER (A.) and BOISSY (F.) Droits des societies, 853.
53. Art. 56-11, 11-1, 33-1 of the UACCEIG. Of the UACP
54. ASSONSTA (R.) and SILIENOU (H.I.) "The introduction of the new money privilege" in OHADA law on collective proceedings. African Annals, rev. of the FLPS of the University of Cheikh Antadiop, Vol. April 2017 N° 6 PP. 354- 3889.
55. The OHADA legislator prohibits managers of to embezzle the assets of the enterprise for their personal interest
56. Art. 891 of the UACCEIG.
57. MOMAHA NGAMENI (S.M), The protection of creditors in commercial criminal law, master's thesis University of Dschang, 2010-2011, P. 13-17.

58. Bankruptcy comprises of simple and fraudulent bankruptcy (article 226 to 229 of the UACP).
59. Article 230- 233 of the UACP.
60. Article 230- 233 of the UACP.
61. The managers can use the assets of the enterprise for interests but will have refund what he borrowed from the enterprise.
62. Article 61 al. of the Cameroonian.
63. The remuneration can be daily, monthly, or annually. All depends on the will of the persons who make up the decisions.
64. Just like workers, managers or directors of the debtor enterprise can see their own salaries could be reviewed from the base.
65. The second case can be seen from the reduction of the salaries of directors or managers of the enterprise in difficult, especially when the workers act according to the work done.
66. NGUIHE KANTE (P.), "reflection on the nation of an enterprise in difficulties in the uniform act on the organization of collective proceedings", Annals of the FSJP, university of Dschang, T5 2001, PUA, P. 190.
67. Court de cassation social, 2 novembre 2005, n° 03-44278.
68. KEM CHECKEM (B.M), Enterprises in difficulty and workers within the OAHADA zone: case of Cameroon, Masters Dissertation DEA UDS? 2004 P. 25- 32.
69. The absence of contest from workers no matter the length of time does not imply acceptance. (cour de cassation 6th October 2010, n° 09-68962).
70. The value of SMIG varies depending on each state the minimum salary for a worker in Cameroon is 36270FCFA.
71. Due to the importance of small sized enterprises to the economy and most especially, as far as employment is concerned sometimes workers will prefer that their salaries be reduced in order to maintain their employment.
72. The shareholders in a company can verify if the remuneration of the enterprise has to respect a certain amount of equilibrium is order not to weaken the general interest of the enterprise. If the remuneration is excessive, the director could be sanctioned in penal law for conversion or abuses of power.

73. Before the adoption and application of the UACP, collective procedure was meant to pay back the debts of creditors. The survival of the enterprise, thus the protection of the enterprise was religated to the back ground. But since the new UACP, the redress of the enterprise in difficulty is now a priority to the rest.
74. The non-payment of salaries by the enterprise can have some consequences; temporal as well as permanent such as successive strike actions to reinitialize the interest of the company.
75. we are always tempted to think that individual dismissal which targets a single worker is when many of them are concerned, it is referred to as collective dismissal.
76. The urgent character of dismissal for economic reasons is stated for in article 110 of the UACP.
77. This means that dismissal for economic reasons can only be resorted to as last resort.
78. Article 110-3 UACP.
79. Article 40- 3 of the Cameroonian labour code
80. Article 40- 3 of the Cameroonian labour code
81. The eventual authorization or not the dismissal of the receivers will depend on the necessity of these to redress the enterprise.
82. Article 111-2 of the UACP.
83. Article 111- 3 of the UACP.
84. Article 230- 233 of the UACP.