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Corporate Governance for Credit Establishments in the CEMAC Region

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ABSTRACT: Considering the banking crises around the world and in particular in the CEMAC region in the 1980s that led to massive collapse of many financial institutions for most part caused by a total absence of the application of good practices in matters of Corporate governance, corporate governance regulations and implementation has become very vital in all financial institutions. The main objective to the study is to assess how effective these corporate governance legal principles and practices for credit establishments in the CEMAC Region are implemented. More specifically, in order to come out with solutions to the numerous shortcomings in corporate governance practices observed in the regulatory system applicable, it investigates the extent of the effectiveness in the implementation and supervision of corporate governance practices in credit establishment in the CEMAC region. To achieve this objective, the study undertakes a Comprehensive literature review from previous authors on certain aspects concerning the topic to bring out the gap. It then adopts a qualitative approach to obtain primary and secondary data to use for the analysis. The major finding is that though the regulators have put in place very good and specific governance requirements for credit establishments with regular periodic supervision from COBAC; governance mal practices still persist at an alarming rate due to factors like some failures in the supervision of credit establishments as well as inadequate mastery of the numerous COBAC regulations by some credit establishments. We recommend adequate attention by credit establishments to corporate governance because of the importance of corporate governance in enhancing performance and reducing corporate risk. We equally recommend a better follow up of the credit establishments by COBAC and the establishments themselves to ensure adequate fulfillment of the governance requirements.

KEYWORD: corporate governance, credit establishments.

Introduction

Generally, there has been a great deal of attention given recently to the issues of corporate governance in various national and international for a especially following the collapse of many financial institutions around the world and within CEMAC in the 1980s and 1990s. They witnessed the collapse of major corporate and financial institutions around the world largely attributed to corporate management failures. As a result of this, corporate governance has become of critical consideration for both developed and developing nations in the wake of the current global economic and technological environment and challenges. In particular The

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Organization for Economic Cooperation and Development (OECD)[1] issued a set of corporate governance standards and guidelines[2] to help governments in their efforts to evaluate and improve the legal, institutional and regulatory frame work for corporate governance in their countries and to provide guidance and suggestions for stock exchange, investors, corporations and other parties that have a role In the process of developing good corporate governance.

The Basel [3]Committee in the same on-going efforts to address supervisory issues, has been active in drawing from the collective supervisory experience of it's members and other supervisors in issuing supervisory guidance to foster safe and sound banking corporate practices in their accords known as Basel accords 1,11,111,[4] The committee also published a paper on "Enhancing corporate governance for banking organizations in the same year on the OECD principles[5] to further draw attention to corporate governance issues for banks; where they emphasized the fact that "banking supervision cannot function as well if sound corporate governance is not in place and consequently, banking supervisors have a strong interest in ensuring that there is effective corporate governance at every banking organization…." [6]

The etymology of the term "Corporate governance" is from the Greek word " kyberman" meaning to tear, guide or govern[7] . It is difficult to find a "tight definition of Corporate governance. It means different things to different people in different contexts. When the term is used, the first question to ask is what sense is it being used by the writer[8] . This has given rise to varied definitions by different authors and organizations. The definition of corporate governance most widely used is that of Cadbury commission which states "it's the system by which companies are directed and controlled"[9] The OECD also defines corporate governance thus: Corporate governance involves a set of relationships between a company's" management, its board, it's shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interest of the company and its' shareholders and should facilitate effective monitoring[10] .

To further expatiate on corporate governance it should be noted that corporate governance movement started with non-financial institutions around the 1960s before extending to financial institutions. However there is a distinction in corporate governance for financial establishments and non-financial establishments. The two major differences between financial and non-financial establishments involve the element of high degree of

[1] The organization for Economic Cooperation and Development is an intergovernmental economic organization with 37 member countries founded in 1961 stimulate economic progress and world trade .www. Oecd. Org. Accessed on 20/02/2020.

[2] OECD,"OECD principles of Corporate Governance" issued June 21 1999.Available at www.oecd.org>officialdocuments. Accessed 20/02/2021

[3] The Basel committee on banking supervision. 1974

[4] Basel accords 1,11,111, Basel 1 1988, Basel 11 2004, Basel 111 2018. The Basel accords are aseries of three sequential banking regulation agreements set by the Basel Committee on banking supervision:The committee provides recommendations on banking and financial regulations, specifically concerning capital risk, market risk and operational risk

[5] Basel Committee on Banking supervision, "Enhancing corporate Governance for banking organizations". Basel . September 1999.

[6] I bid

[7] P.M SiSwati, Corporate Governance: . Need for Adoption of realistic methods rather than mere theoreticalsuggestions Available at hHp: //www.sw-g.org/index. Php. visited on 15/03/13. www. Academia .edu . Accessed on 14th January 2021

[8] S. MC Laughlin, unlocking Company Law

[9] Cadbury Committee, 1992

[10] OECD , « OECD publication services », 2004 II.

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regulations in financial establishments and very high exposure to credit risk. This of course is reasonable since financial corporations are in business to invest in debt instruments or to assume credit risk as a primary business endeavor. This explains why financial institutions employ large teams of credit risk managers since so much is at stake [11]. Due to this large differences, between non-financial institutions and financial institutions, they might require different approaches to corporate governance[12] . As such financial institutions require high level corporate governance and risk governance principles for their effective management. It is in this light that we shall proceed to examine corporate governance for credit establishments in the CEMAC region. This will include in the body of the work, background to study, statement of problem, objectives, methodology, theoretical framework, literature review as well as a critical analysis of what credit establishments are, categorization, governance models and mechanisms adopted by credit establishments in the CEMAC region, short comings, internal, regional as well as international regulations governing credit establishments within the CEMAC regions, It's effectiveness and possible policy recommendations.

Before the crisis of the late 1980s and 1990s that witnessed massive collapse of financial institutions around the world and in the CEMAC region in the most part as a result of failures in corporate governance practices, the banking law applicable in the CEMAC was essentially National laws, each State having a body of legislative and regulatory rules applicable on its territory. In Cameroon in particular, it was the ordinance of 31 August 1985 relating to the activity of credit institutions which could be considered as the basic text applicable to banking activity[13] . In most of the States in this geographical area, some of these texts were inherited from colonisation and no longer corresponded to the realities of the modern world[14]. However, the objectives of integrated development of the economies of the States of the same sub-region sharing a common currency made it necessary to adopt community texts applicable to banking activities[15] .

The economic community of central African states referred to as CEMAC with full meaning: Central African Economic and Monetary Community, was created in 1994 and went operational in 1999 replacing the defunct UDEAC created since 1972 with aim of achieving and integration through harmonization of policies. This organization is made up of six member states including Cameroon, the Central Africa Republic, Chad, Equatorial Guinea, Gabon and the republic of Congo with a common currency; the franc CFA.

The organization is further composed of six regional institutions including a Central bank (banque des Etats de l'Afrique Centrale, BEAC), a banking sector regulator Commission Bancaire de l'Afrique Centrale (, COBAC), a Financial market regulator (Commission de surveillance du marché financier de la Afrique Cantral (COSUMAF), a task force against money laundering (Group d'action contre le blanchiment d'Argent en Afrique Central GABAC) and a regional development bank(Banque des development des Etats de la Afrique Centrale, (BDEAC).

[11] Sylvain Boutiellé . The hand book of credit risk management.Originating, Assessing and managing credit riskexposures.Dian - Cogan publisher.Figure1 . 5.

[12] D. Vandenbussche Corporate governance of banks and the financial crisis. Master thesis international business law LLM. Tilburg university law school 2012-2013

[13] In addition to this ordinance, Cameroonian laws include ordinance No. 90/006 of 26 October 1990 amending and supplementing the provisions of ordinance No. 85/002 of 31 August 1985, and decree No. 96/198 of 24 June 1996 on the organization and operation of the National Credit Council Numerous decrees have also been issued in the banking sector. This is the case for Order n°244/MINEFI/DCE of 5 August 1989 on banking conditions as amended and completed by Order n°00001/MINFI/CSB/REP of 4 January 1995, Order n°000005/MINFI of 13 January 2011 on the institution of the minimum guaranteed banking service, etc

[14] See in particular the decree of 30/10/1935 unifying the law on cheques

[15] See the preamble of the CEMAC Treaty

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These regional institutions operate under assistance of the World Bank and the International monetary fund with aim of strengthening the capacity of Regional Credit establishments in the CEMAC Region[16] . Cameroon and the five other Central African states of the CEMAC Region share a common central bank, the bank of central African States (BEAC). BEAC is the central bank of the six states under the umbrella of the Central African Economic and Monetary policy. BEAC however does not carry out regulatory function but a separate commission called the Central African Banking Commission (COBAC) was created to take care of the administration, regulatory sanctioning over all banks that sought license with the Central bank[17]. The COBAC has authority over the territory of the states signatories for the exercise of the powers assigned to it by the convention of October 16 1990. Its' decisions are automatically enforceable upon notification to the monetary authority and to the institutions concern in accordance to this convention[18].

COBAC equally has numerous other conventions and regulations governing different aspects of credit establishments within the CEMAC Region. They include: convention on the harmonsation of banking regulations in the state of Central Africa dated January 17 1992, regulation No 0468 CEMAC/ UMAC/COBAC Relating to corporate governance in the credit establishments of the economic and monetary community of Central Africa dated October 6 2008, COBAC Regulation R-2016/04 Relating to internal control in credit institution and financial holdings dated March 08 2016, Regulation R- 2009/02 fixing the categories of credit establishments, in their legal form and authorized activities: dated 1st April 2009,Regulation No 0115/CEMAC, COBAC, UMAC amending and completing certain conditions relating to the practice of the banking profession in the economic and monitory community of Central Africa, dated March 27,2015, COBAC Regulation :2005/01 Relating to the diligence of the subject Establishments in the fight against money laundering and financing terrorism I Central Africa, dated 1st April 2005, COBAC Regulations R-2016/03 relating to the Net equity of credit establishments dated March 08 2016, COBAC Regulation No 02/14/CEMAC/UMAC/COBAC/CM of April 25th ,2014 relating to the treatment of credit establishments in difficulty in the CEMAC; regulation No 01/15/CEMAC/UMAC/COBAC/CM of March 27,2015 relating to the supervision of financial holding companies and cross – border supervision, COBAC R-2014/01regulation of March 21,2014 relating to the classification and provisioning of loans from credit establishments, regulation relating to the conditions of exercise and control of microfinance activity in CEMAC Region date 26 January 2002, regulation relating to due diligence of the auditors in credit establishments date July/2002, regulation r-2008/01 on the obligation of credit establishments to establish a continuity plan for their activities, dated 29 September 2008. And a host of others.

All these regulations and many others put together with the various regional instruments like the OHADA Uniform act on commercial company and economic interest groups 2014, OHADA Uniform Act on securities, OHADA uniform act on simplified recovery procedures, OHADA Uniform Act of preventive settlement of debts etc as well as national legislations on credit establishments in the different member states, all form part of regulatory instruments in corporate governance and risk governance for credit establishments within the CEMAC region; not leaving out other international instruments like the OECD principles of corporate governance, Basel conventions, accords 1, 11, 111 and UK Stewardship codes, London combine code for corporate governance etc. It is on the strength of this background that we shall be examining the extent of the effectiveness of corporate governance practices in credit establishment in the CEMAC Region**.**

[16] World bank Report No PAD 2558. " Strengthening the capacity of regional financial institutions in the CEMACRegion.April 5th ,2018.available in documents : world bank org> Accessed on 14 January 2021

[17] G.A. Akon" A critical look at the Banking Sector Regulations in Cameroon" available at www. Econrsg.org>papers lastly accessed on 21st February 2021

[18] Convention for the establishment of a Central African Banking Commission (COBAC) dated 16 October 1990

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STATEMENT OF PROBLEM

As the researcher earlier mentioned, considering that the banking crisis of the 1980s in CEMAC were for the most part caused by a total absence of the application of good practices in matters of corporate governance[19] ,the cemac member states agreed to create a banking Commission (COBAC) and to harmonize their banking regulations one of which was the Regulation relating to corporate governance in the credit establishments of cemac[20] Article 1 of this regulation states the purpose which is to establish and consolidate good corporate governance practices in credit establishments. The banking commission is responsible, under the conditions set out in the appendix, for ensuring that credit institutions comply with the legislative and regulatory provisions enacted by the authorities, by the Bank or by itself and which are applicable to them, and to sanction the short comings noted[21] .

However, fifteen years after the adoption of the cobac regulation on corporate governance, it is doubtful whether this regulation has achieved these objectives. Indeed on the contrary it is noted with disappointment that the cobacregulation on corporate governance 2008 and other accompanying legislations remains inadequately implemented amongs the cobac member states. Consequently the governance situation of most credit establishments in the cemacregion has become chaotic with severe consequences on their profitability and survival. For example the Bulletin of the Central African banking commission, on commitments on related parties in the cemac credit institutions[22] , laments on the deplorable situation on credit establishments that breach the regulation on 3rd party commitments and the devastating consequences on the credit establishments. Further issues of corporate governance failures such as vulnerability to credit risk, poor internal governance practices, high level of bad debts and acute shortageof cobac staff to effect an effective supervisory frame work, exposure to high security risks including money laundering and terrorism financing, systemic deficiencies in the financial system and institutional inadequacies of cemac bodies, COBAC is severely under staffed (that is there are only 10 staff assigned to the oversight of more than 800 microfinance institutions and credit establishments). The report on the assessment of compliance with the Basel core principles on effective banking supervision in the cemac revealed poor level of compliance with respect to the powers and responsibilities of the cobac and existing prudencial frame work. The above issues were highlighted in the IMF and world bank control team in their cemac financial Assessment reports[23] . The issue of high level bad debts and irrecoverable debts due to execution of defective security instruments and unsecured transactions as a result of poor implementation of the provisions of the ohada uniform acts on securities was also decried by Anne Afong in her book on ohada uniform acts on securities[24]

These negative results especially at the level of implementation of existing regulations is incommensurate with the expectations placed on the banking commission by the convention for the establishment of Central African Banking Commission 1990 which includes ensuring that credit institutions comply with the

[19] Introduction, para 6 page 2 of the regulation No. 04/08 relating to corporate governance for credit establishments in CEMAC October 6 2008

[20] Regulation No. 04/08 cemac / umac / cobac relating to corporate governance in the credit establishments cemac 2008

[21] Appendix para of the convention for the establishment of a Central African Banking commission 1990

[22] Bulletin of the Central African Banking commission on commitment on related parties in cemac credit establishments 30 June 2014 / 15

[23] Combined project information Documents / integrated safeguard datasheet (P I D/ I S D S). Appraisal stage / Date prepared / updated : 01 Mar. 2018 / Report No. P I D I S D S A 23149.Documents 1. World bank. Org. Accessed on 16 / June / 2022

IMF country report No. 19/383 on cemac. December 2019. Accessed on 16 / June / 2022

[24] Anne Afong, A practitioners guide to the application of the OHADA Uniform Acts on securities : mortgagesunder the OHADA Uniform Acts; 2nd Edition

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legislative and regulatory provisions enacted by the authorities by the Bank or by it self and which are applicable to them and to sanction the short comings noted.

Consequently, there are increasing voices questioning the effectiveness in the implementation of these regulations and it's capacity to provide relief to the numerous corporate governance crisis.

Furthermore, the issue of non-translation of the cobac regulations in to the other languages of the other member states contrary to the provisions of the convention for the establishment of a Central African Banking Commission 1990 that "these provisions , drawn up in a single copy in the French, English and Spanish languages, the French text being authentic in the event of discrepancy, shall come into force upon notification of the ratification of this convention by the signatory states to the Bank", is also an impediment to the smooth implementation of the regulations.

In the face of these problems at the level of the effective implementation of the cobac regulations on corporate governance alongside other regulations, it remains doubtful whether these regulations have achieved the purpose for which they were instituted and consequently met the expectations of the cemac member states.

RESEARCH QUESTIONS

This work raises a main research question and specific research question

Main research question:

To what extent are corporate governance provisions for credit establishment in the CEMAC Region effective?

Specific research question:

What is the "raison d'être" of corporate governance for credit establishments?.

RESEARCH OBJECTIVES

General objective:

The goal of this research is to carry out a critical appraisal of the extend of the effectiveness of corporate governance provision for credit establishments in the CEMAC region.

Specific objective:

To discuss the raison d'etre of corporate governance for credit establishments in Cemac Region.

RESEARCH METHODOLGY:

The research methodology used in this work is qualitative research methodology. Qualitative methodology includes the doctrinal research method that deals with content analysis of primary and secondary data, unstructured interviews, focus group discussions and observation

Primary data is obtain from COBAC regulations, OHADA Uniform Acts, International and National legislations by accessing online sources, purchasing journals and translating articles from French to English.

Secondary data is obtained from books, journal articles, reports, thesis and websites by accessing online sources and purchase. Also, the technique of legal reasoning employed in this research is that of inductive reasoning

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Generally research is the fountain of knowledge for the sake of knowledge and an important source of providing guidelines for solving different business, governmental and social problems. It is a sort of formal training which enables one to understand the new developments in one's field in a better way[25]

This is achieved through different research methods and methodologies. By research method we mean all those methods/techniques that are used for conduction of research. Research methods/ techniques thus refer to the methods the researchers used in performing research operations. Research methodology on the other hand is a way to systematically solve the research problem[26]. The methodology has to do with method for collecting data or sources of information. In law, the most suitable research method is the doctrinal research method which is purely qualitative opposed to quantitative. Quantitative research is based on the measurement of quantity or amount. It is applied to phenomena that can be expressed in terms of quantity.

Qualitative research on the other hand is concerned with qualitative phenomena[27] . Qualitative research is generally characterized by inductive approaches to knowledge building aimed at generating meaning. Researchers use this approach to explore, to robustly, investigate and learn about social phenomenon; to unpack the meaning people ascribe to activities, situations, events or understanding about some dimension of social life[28] .

The research method used in this work is purely doctrinal which is common in law. This research adopt the qualitative methods. This method is suitable for this research reasons being that it analysis the problem and does not make use of statistical data.

Furthermore, the technique of interviews or enquiries is employed. Broadly, there are two approaches to enquiry: the structured approach and the unstructured approach.

In the structured approach, everything that forms the research process - objective, design, sample and the question that you plan to ask from respondents is predetermined.

The unstructured approach by contrast, allows flexibility in all this aspects of the process. The structured approach is more appropriate to determine the extent of a problem; issues, or phenomenon, whereas the unstructured approach is predominantly used to explore its' nature, in other words, variation/diversity perse in a phenomenon, issues, problem or attitude toward an issue[29].

Also this research will also make use of focus group discussion and observations.

Focus group discussion involves gathering people from similar backgrounds or experiences together to discuss a specific topic of interest[30]. It is a form of qualitative research where questions are asked about their perceptions, attitude, beliefs, opinion or ideas.

Since 1980s, rapid innovations in the financial markets as a whole and the internationalization of financial transactions have changed the face of banking activities completely. Technological progress and improved regulations have both provided new opportunities from an increased competitive pressure among banks and non banks alike. Banks have responded to these new challenges with renewed vigor by entering new business areas focusing on superior information and knowledge management capabilities. Traditional banking

[25] C.R. KOTHARI, research methodology; methods and techniques, Daryaganj – New Delhi : New age international (p) limited publishers, 2004 page 7 - 10

[26] I bid page 8

[27] I bid page 3

[28] Patricia Leavy; Research Design, second Edition. New York : Guilford press . 2017

[29] Ranjit Kumar, research methodology: a step- by- step guide for beginners.3rd edition. Los Angeles: SAGE chapter 1

[30] Focus group discussion.www .herd .org .np . Accessed on 21/02/2021

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practices based on the receipt of deposits and the granting of loans is today only one part of banking transaction. Information based activities such as trading in financial markets and income generation through fees are now the major sources of banking profitability[31] The COBAC convention on the harmonization of banking regulation in the states of central Africa[32] in its articles 4 to 8 outlines these modern banking transactions for credit establishments within the CEMAC region to include receiving funds from the public, granting credit, issuing guarantees to other credit institutions, making available to customers and managing means of payment, leasing and in general any rental transaction with a purchase options, foreign exchange transactions, Transaction in gold precious metals and coins, rental of safe deposit boxes, placement, subscription, purchase, management, custody and sale of securities and any financial managements, financial engineering and in general all services intended to facilitate the creation and development of businesses; subject to the legislative provisions relating to the illegal exercise of certain provisions; simple rental operations of movable or immovable property for establishments authorized to carry out leasing operations[33].

As a result of these increase in activities and technological innovations in banking transactions, the correlation between different types of risk, both within an individual credit establishment and throughout the banking system as a whole, has therefore increased and become more complex. This could be evidenced in the numerous collapse of banks in the Cemac region in the late 1990s and by their effect of banking systems in the rest of the world. The evolution of the banking system and the markets has raised important concerns on the aspects of corporate governance and risk management for credit establishments which were identified as the major causes of the collapse of credit establishments. From the foregoing it goes without any argument that a strong governance is of paramount importance. It is in this vein that we shall proceed to examine the raison d'etre for corporate governance and the nature of Risk exposure of credit establishments that necessitates strong governance principles. This chapter therefore tackles the research question on raison d'etre of Corporate governance for credit establishments in the Cemac region and mostly apply the stakeholder and agency theory.

THE SPECIFIC NATURE OF THE BANKING ACTIVITY

Corporate governance may be said to be all about effective, transparent and accountable administration of affairs of an institution by it's management, while protecting the interests of it's stakeholders, creditors, regulators and the public[34] This include the banking sector as well where good governance is most important than in any other sector as a result of the complex nature of it's activities and it's high level of exposure to risks. The banking and financial can be distinguished from others as follows:

Unlike normal business entities which are founded mainly through shareholders, funds, banks, business involves funds raised mainly through deposit. The business raising public deposits places greater fiduciary responsibilities on the institution and it's managers, since depositors' funds need to be safeguarded in a special way.

Banks performs as financial intermediaries by lending and investing the funds mobilized and funding economic activities of others.

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[31] Hennie van Greuning and Sonja Brajovic Bratanovic. Analysing Banking Risk: A frame work forAssessingCorporate Governance and Risk management; 3rd edition, Washington DC: The world Bank April 2009, page 1& 2

[32] Covention for the Harminization of banking activities in cemac 17 Jan 1992

[33] Ibid

[34] Ajith Nivard Cabraal:" importance of corporate governance for the banking and financial sector", Key note address by mr. Ajith Nivard cabraal, Governor of the Central Bank of sri Lanka at the 9th summit Asia management forum, Dhaka

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Banks are the agents of the payment system where they facilitate payments domestically and internationally, through various instruments such as bank account, funds transfers, credit cards etc which exposes them to the risk of financial crimes such as money laundering, financing of terrorism, proliferation of funds etc

Banks are able to carry out all such business operations as a result of public trust and faith in the stability and soundness in the banks particularly and the system in general. The history on bank failures to a large extent in many countries indicates that loss of public confidence in banks could be contagious and could easily lead to systematic banking crisis situations[35].

In the nutshell, the banking business remains the key for monetary conditions in a country. Bank deposit and lending business influences the supply, cost and availability of money. Money is created by the banking system through the legal tender issues by the Central Banks and monetary authorities. Banking transaction thus places a huge responsibility on the monetary authorities to ensure the regulation and protection of banking and payment systems.

Weak corporate governance can lead to financial instability in the entire system and that would expose the banks and financial institutions to a greater risk. In a more direct sense, weaknesses in corporate governance arrangements in banks and financial institutions reduces their capacity to identify, monitor and manage their business risks involvement and that can result in wrongful lending and excessive risk- taking by the financial institutions. Depending on the resilience of the financial institutions and markets, this risk has the potential to spread across the wider financial system. In summary, inadequate corporate governance can lead to a poor credit culture, excessive exposure concentration, poor management of interest rate or exchange rate and inadequacies in the management of connected exposures. Some of these risks, regularly or collectively can lead to potential insolvency and financial instability.

Obviously Corporate Governance is now identified and acknowledged as a major tool to generate trust and confidence in credit establishments. In that context, good corporate governance remains very essential for banks because such institutions deal with funds raised from the public which are most likely to encounter greater risks including frauds and failures and if such frauds or failures occur in such institutions, it may pose issues relating to public confidence in the financial system stability in it self[36]

It is as a result of such realizations that many stakeholders and regulators are now consciously looking towards good corporate Governance, as one of the prime instruments in it's overall effort to maintain financial system stability. In the Cemac region COBAC have been put in place as mandatory regulation for best practice on corporate governance to credit establishments. This goes a long way to emphasize on the importance given to corporate governance principles for credit establishments in the region.

RISK EXPOSURE OF CREDIT ESTABLISHMENTS

Credit establishments are subjected to a wide array of risks in the course of their operations. In general, banking risk fall into three categories: financial, operational and environmental risks[37].

Financial risks are comprise of two types of risks. First are the traditional banking risks including balance sheet and income statement structure, credit and solvency risks which can result in loss for a bank if they are not properly managed. Secondly, treasury risks based on financial arbitrage which can result in a profit if the arbitrage is correct or a loss if it is incorrect. The main categories of treasury risk are Liquidity, interest rate, currency and market (counterparties) risk. Financial risks are also subject to complex interdependencies that

[35] I bid, page 3

[36] I bid, page 3

[37] Hennie van Greuning and Sonja Brajovic Bratanovic; Analysiing Banking risk: A frame work for Assessingcorporate governance and risk management; 3rd edition, Washington D.C. The world Bank 2009. Page 3-4

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may significantly increase a bank overall risk profile. For example, a bank engaged in the foreign currency business is normally exposed to currency risk, but it will also be exposed to additional liquidity and interest rate risk if the bank carries open positions or mismatches in its forward book.

Operational risks are related to a banks overall business processes and the potential impact thereon of compliance with bank policies and procedures, internal systems and technology, information security, measures against mismanagements and frauds, and business continuity concerns . Another aspect of operational risk encompasses the bank's strategic planning, governance and organizational structure, management of staff careers and internal resources, product and knowledge development and customer acquisition approach.

Environmental risks are associated with a bank business environment, including micro economic and policy concerns, legal and regulatory factors and the overall financial sector infrastructure and payment systems of the jurisdictions in which it operates. Environmental risks includes all types of exogenous risks that if they were to materializ, could jeopardize a bank's operations or undermine it's ability to continue in business[38].

The COBAC regulation relating to external control in credit institutions and financial holdings[39] provides in its article 56 that risk management concerns all the agents and units in charge of measuring, controlling and monitory risks. It is carried out under the authority of the executive body and the supervision of a risk committee set up by the deliberative body. The risk committee assists the decision-making body in steering the risk management. This committee has the following attributions:

Advising the deliberative body on the definition of a risk management policy;

Proposed limit for each type of risk and periodically ensured that these limits are respected by the executive body;

Periodically assess the quality of the system for measuring, controlling and monitoring risks at establishment or group level.

To ensure the adequacy of the information systems with regard to the nature of the activities of the establishments.

Ensuring the allocation of human and material recourses to the risk management function and guaranteeing the independence of this function. It further provides in it's Article 84 that the subject establishments put in place risk analysis, measurement and control systems by adopting them to the nature and volume of their operations in order to understand the risks of different kinds to which these operations expose them and in particular credit and counterparty risks, residual, concentration, market, global interest rate, base, intermediation, settlement delivery, liquidity, excessive leverage as well as system risk, risk related to model and operational risk. It further expatiates on the various types of risk in its article 100 to 130 precisely liquidity risk, operational risk, market risk, risk related to new products and activities such as risk of non-compliance.

The Cobac regulation relating to the risk coverage of credit institutions[40] in its article 1 provides "subject credit institutions are required, under the conditions provided for in the first regulation, to constantly respect a coverage ratio of risk, the ratio between the amount of their net equity capital and that of all the credit risks they incur as a result of their operations at least equal to 80%. The elements for calculating this ratio are taken from the social or consolidated accounts of the credit institution concerned.

[38] ibid, page 3-4

[39] COBAC Regulation R-2016/04 relating to internal control in credit institutions and financial holdings. Page 25 Article 56

[40] COBAC Regulation R-2010/01 relating to the risk coverage of credit institutions

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To further expatiate on the various types of modern risk to which credit establishments are exposed to, money laundering and terrorism financing are amongst the most serious risk which now pose as a threat to international peace and security around the world today. The Cemac region is particularly vulnerable to this risk because of under development in technological knowhow and the presence of armed groups operating within or near its borders, which are mainly fueled by illicit capital flows[41] .

Money laundering consists of giving a legitimate appearance to money in which in reality, comes from illicit activities (drug trafficking, crime, corruption, pimping, arms trafficking etc). More broadly it refers to funds linked to a criminal offence, including for example, those derived from tax fraud. Terrorist financing is the provision or collection of funds that could be used for terrorist activities.

This illicit activities jeopardize the security of people and goods as well as the stability of the economist and financial system of states; hence the need for an appropriate legal and judicial response. Until recently the entire franc zone did not have specific legislation in this area. The fight against these scourges was therefore more difficult, relying on unsuitable legal instruments. The adoption of regulation No. 1 / CEMAC / UMAC / CM of April /11,2016 on the prevention and repression money laundering and terrorist financing and proliferation in cemac fill this gaps[42] .

However, in spite of these efforts made by states both at the domestic and international levels, the risk associated with money laundering and terrorist financing remain significant. As such the need of stricter governance strategy and sanctions to combat this risk.

Debt governance and corporate governance systems for credit establishments.

Another aspect of justification of corporate governance for credit establishments is the need for debt governance. Most shareholders have incentives for excessive risk taking at the expense of debt holders; but they have only formal and no real control to do so. Real control resides with the managers who have no such incentives unless remuneration depends substantially on high powered options. Performance link pay may induce managers to talk excessive risk which will eventually be shifted to debt holders; hence the need for accurate corporate governance mechanisms to manage such conflicts of interest[43]

Furthermore, good corporate governance mechanism is also needed in credit establishments to prevent excessive risk taking by banks with their customers money which they might loose through reckless investments. For example the Cobac regulation relating to participations of credit establishments in the capital of companies[44] in its Article 3 states the participations in business must comply with both the following limits of 15% at most of the net equity of the establishment. Total investment must not exceed 45% from January 1, 1996.

However, it remain regrettable that in spite the above regulation, credit establishments still go ahead to indulge in excessive risky investments to the detriment of their depositors. Thus the need for appropriate governance and supervision.

[41] The rises of jihadist organization in the sahel, the case of the Bokoharam Group in Cameroon and Chad and other armed groups in the Central African Republic and Cameroon are all notable.

[42] Tankoua G brie pascal, the sovereign appreciation of the judges of the court of first instance under the CEMAC Regulation on the prevention of money laundering, terrorist financing and proliferation in Centrak Africa October 2020. www. Deep/. Com/ pro for more information

[43] Dirk Heremans; Corporate governance issues for banks: A financial stability perspective. Para 5 page 6

[44] COBAC Regulation R- 93 / 11 Relating to participations of credit establishments in the capital of Companies. April 19 , 1993

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The technological innovations of banking and its enormous risk:-

Electronic banking which includes internet banking, or net banking or online banking, telebanking etc is a form of banking in which funds are transferred through an exchange of electronic signals rather than through an exchange of cash, checks, or others types of paper documents. Transfers of funds occur between financial institutions such as banks and credit unions. Whenever some one withdraws cash from an automated teller machine (ATM) or pays for groceries using a debit card (which draws the amount owed to the store from a savings or checking account), the funds are transferred via electronic banking[45] . Electronic banking relies on intricate computer systems that communicate using telephone lines. These computer system record transfers and ownerships of funds and they control the methods customers and commercial institutions use to access funds[46] . A common method of access (or identification) is by access code, such as a personal identification member (PIN) that one might use to withdraw cash from an ATM machine.

There are various electronic banking systems, and they range in sizes. An example of a small system is an ATM network, a set of inter connected automated teller machines that are linked to a centralized financial institution and its computer system. An example of a large electronic banking system is the Federal Reserve wire Network, called Fed wire. This system allows participants to large, time- sensitive payments such as those required to settle real estate transactions[47] .

Some best features of e- banking includes the provision of access to financial a s well as non financial banking services, facility to check bank balance any time, make bill payments and fund transfer to other accounts, keep a check on mortgages, loans, savings account linked to the bank account, safe and secure model of banking, perfected with unique I.D and password, customers can apply for the issuance of a cheque book, buy general insurance, set up or cancel automatic recurring payments and standing orders linked to the bank account etc.

Some advantages include availability through out the year, 24 hours on 7 days; convenience of initiating financial transactions, proper tract of transactions, quick and secure; and non-financial transactions services such as balance check , application for insurance of cheque book etc[48] .

However, it should be noted that through this system of banking sounds so enticing they also carry along a lot of risk in their operation especially when not properly governed. Some of these risk include; security risk, reputational risk, legal risk, operational risk and strategic risks[49] . The Basel committee in banking supervision or Risk management principles for Electronic Banking[50], has listed some e- banking challenges to include: The speed of change relating to technological and customer service innovation in e- banking is unprecedented, transactional e- banking web sites and associated retail and wholesale business applications are typically integrated as much as possible with legacy computer system to allow more straight through processing of electronic transactions, e- banking increases banks dependence on information technology, thereby increasing the technical complexity of many operational and security issues and furthering a trend towards more partnerships, alliances and outsourcing arrangements with third parties, many of whom are unregulated. This development has been leading to the creation of new business models involving banks and non – bank entities, such as internet service providers, telecommunication companies and other technology firms. Also the internet is ubiquitous and global by nature. It is an open network accessible from anywhere in

[45] WWW.ency clopedia. Cor. Accessed on 23 June 2022

[46] I bid

[47] I bid

[48] WWW.paisabazear. Com . Accessed 23 June 2022

[49] Legalra; .com . Accessed on 23rd June 2022

[50] Basel Committee on Banking supervision, Risk management principles for Electronic banking July 2003

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the world by unknown parties, with routing of messages through unknown locations and via fast evolving wireless devices.

All these therefore significantly magnifies the importance of security controls, customer authentication techniques, data protection, audit trail procedures and customer privacy standards. The committee has proceeded to recommend some principles to help achieve this. Thus it remains undisputed that proper corporate governance is required in the whole operational system of e – banking. COBAC on its part has institute regulations.

These and many other aspects of banking security necessitates corporate governance for credit establishments.

RECOMMENDATIONS

Following the desire of the CEMAC region to strengthen its governance practices it resorted to mandatory regional regulations known as COBAC regulations as well as supranational best practice framework such as the Basel accords and Oecd, which has issued over arching governance recommendations that are voluntarily applicable across national boarders.

It is worth emphasizing that coming out with regulations and translating them in to real corporate action is not simple. That is, it is relatively simple for organizations to come together and come out with regulations but far more difficult to get establishments to effectively implement these regulations as part of their daily corporate life. Reasons why in spite all the so many laudible regulations and international rules on corporate governance put in place by the regional regulator Cobac and international bodies like Basel Committees, much still lives to be realized as far as effective implementation of these regulations are concerned to achieve the desired gold of good corporate governance practice for credit establishments in the CEMAC Region.

The researcher hereby puts forward the following recommendations which if implemented will go a long way to assist in effective governance practices in credit establishments in the Cemac region.

Priority attention given to corporate governance in credit establishments over risk management and other corporate concerns by the supervisory body and managing directors.

To begin with it should be noted that it was largely as a result of failures in corporate governance practices that most credit establishments in the 1980s collapsed which pushed the regional regulators on the Cemac region to push forth with stringent and mandatory reforms to prevent such from happening again. It recognized the importance of proper governance of processes to be able to achieve sustainability and safety in establishments. Amongst the numerous risks to which credit establishments are exposed to the risk of governance is paramount (from COBAC representative)[51] . As earlier mentioned origination of processes without proper guidelines can only result in failures at the end.

Therefore the question is what is the best way to organize credit risk management in a large organizations? The focus of attention must be on the processes that lead to risk taking; primarily origination, credit risk assessment and approval processes[52].

Best practice for the governance system revolves around four key principles which are critical to the quality of what gets originated. These are:

guidelines i.e. clear guidelines governing the approval of transactions generating credit risk;

skills i.e. Delegation of authority to Committees and people with appropriate skills;

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[51] Mr. DasylvaNneme responsible for services at the permanent supervision department of credit establishment at Libreville

[52] Sylvain Biniteillé, Diane Coogan- pushiner; the handbook of Credit Risk management, ch.2 para 2

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limits i.e. setting up of limits and oversight ie qualified staff with adequate independence and resources[53].

From the foregoing, it is clear that instead of COBAC supervisory bodies and directors to be focus on risk management, they should rather focus on corporate governance which embodies risk governance as a whole. By so doing the credit establishments will be compelled to focus more on right processes and proper implementation of regulations which will help them achieve better performances and greater risk avoidance. For example Mr. Anne Afongstates[54] in her book on mortgages under the OHADA Uniform Act, that the common law jurist has encountered enormous difficulty in applying the procedure to attach real property. The financial institutions are expressing absolute consternation over the inability to recover their dues irrespective of the fact that the loans were duly secured but unknown to them that the said securities were defective from the start just like it is often said a bad transaction can not be cured subsequently by any remedy.

Continuous Education and training of personnel on the numerous cobac regulations including that on Corporate governance:-

It should be noted that credit establishments are engaged in activities that are heavily regulated with summary regulatory instruments and bodies. According to the Cobac representative at the permanent supervision department of credit establishments, Libreville Gabon, this aspect constitutes a measure challenge to the credit establishments to have a proper mastery of all the regulations and to effectively implement them completely without any defects. That this is why we have so many sanctions being metered out to most of the credit establishments. But the continue to sanction them to help them comply by the rules.

However, the researcher's recommendation is for Cobac to embark on periodic and intensive education and training of these personnel to get them properly abreast with these regulation. It will be a laudibleeffort forCobac to organize periodic training seminars for the credit establishments staff. I think this will go a long way to increase their effectiveness in the implementation of these regulations as well as their performances.

Translation of the official texts of COBAC regulations in to English and other official Cobac Languages.

As a matter of fact COBAC from its creation has issued out so many regulations governing different aspects of credit establishments and other financial institutions and mostly in French.

It is our proposal that these texts be codified in to a single text and equally translated to English as well as other COBAC financial Languages so as to improve on the comprehension and effectiveness in its application by **the English and other language users of the text.**

Effective on the site supervision and control:-

The Cobac representative at the permanent supervision of department of credit establishments at Libreville, Gabon made mention of the fact that COBAC just like any other banking supervisory body in the world carries out Reporting and on- the – site supervision. But considering the size of the Cemac region with numerous credit establishments as well as other financial institutions under the supervision and control of COBAC coupled with shortage of staff? How effective can this be? For example in case of Cameroon were Cobac depends on a hand full of personnel from BEAC who are not even trained to carry out the functions of COBAC to represent them in Cameroon is carrying out their duties, it goes without any argument that such supervision whether reporting or on the site ensure that credit establishments functions well as required by

[53] I bid

[54] Mrs. Anne Afong,' Mortgages, under the OHADA Uniform Act ' 2nd edition page 1 para 2

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COBAC. This personnel crises is a major handicap for COBAC to carry out any meaningful supervision an control of the bodies under their supervision. Something which the regulations makes it mandatory for them.

As for COBAC to effectively perform it duties and to see their desired results from the financial institutions, they must embark on recruitment and training of their own staff to be able to meet up with the vast task awaiting them in the field. Only then can there be any effective reporting and on the site supervision by COBAC.

Increase in staffing at COBAC.

As a follow up to the previous recommendations, the researcher proceeds to say that with a handful of staff of COBAC vis-à-vis the volume of work it has in the supervision and control of not just credit establishments in the Cemac region but also other financial institutions in the region, no one can in his normal senses expect COBAC to be able to carry out any meaningful supervision.

It is their best interest to recruit and train more staff to be able to meet up with the volume of work awaiting them. Until this is done the disorder will persist while COBAC continuous to float the region with numerous regulations without any meaningful follow up to see if what they are sending out are being effectively implemented or implemented at all.

The need for credit establishments to pay greater attention to corporate governance principles

The researcher equally recommends adequate attention by credit establishments on corporate governance principles because of the benefits that these principles can have on their overall profitability, performance and stability.

COBAC regulations to be made compliant with ohada uniform acts and other accompanying laws:

Cobac regulation must be made compliant with the ohada uniform acts and other accompanying legislations so as to strengthen the banking legal frame work in Germany and to secure credit activities in particular e.g especially the uniform act on secured trsansactions which provides for various securities protecting creditors against the risk of default of their debtors. The availability and enforceability of these various types of securities are essential for project and structured finance in Africa.

The legislators should also look at the land tenure legislations in other to reconsider the requirement of land title for mortgages so as to make access to credit more available to all not just to a limited few.

The legislator should also reconsider simplifying the complexity in foreclosure proceedings and other recover proceedings of debts else most loans will continue to become bad debts.

COBAC should increase the financial resources made available to it’s personnel to increase their independence and their efficiency.

Taking into consideration the fact that Cobac depends on Beac for staffing and financial assistance is a major impediment to its effectiveness. Thus the researcher recommends that Cobac makes sufficient resource provision for its personnel not provided by Beac to make them more independent at the various states levels and more efficient in the execution of their duties

CONCLUSION

To conclude we can comfortably say that corporate governance in credit establishments in the CEMAC region is highly effective to an extent especially looking at so much work done by the COBAC regulators at the level of very positive regulations put in place as well as periodic reporting on on– the - site supervision by Cobac of the credit establishments with the aim to keep all establishments in compliance to the several texts put in place. Other measures to ensure effectiveness of governance in the credit establishments such as the

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interpellation about non- Compliance, injunctions warning, blame and even withdrawal of approval as credit establishments, are also instrumental. Also at the domestic level so much is being done looking at the domestic regulations put in place by national governments to ensure effective governance e.g. the recent law No 2022/006 of 27 April 2022 on banking secrecy in Cameroon[55] , and many others all in an attempt to combat banking frauds and achieve good governance.

However, to a large extent, all of these efforts still remain wanting as governance mal practices still persist for reasons such as insufficient implementation of governance principles put in place and lack of proper follow up strategies by Cobac and credit establishments themselves.

It is in this light that we recommend an extension of the focus of COBAC supervisors and credit establishments to issues of corporate governance as well as supervision on the proper implementation on governance principles in the credit establishments.

This will go a long way to bring a balance in the governance process and remarkable improvements in the overall performance of credit establishments in the Cemac region as a whole.

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