

Employee Protection During Corporate Rescue Under Insolvency Procedures Under OHADA Law: The Case of Cameroon

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Abstract

Corporate rescue under insolvency procedures is an important mechanism aimed at saving financially distressed companies while preserving economic activity. Under the OHADA Uniform Act on Collective Proceedings for the Wiping Off of Debts, which applies in Member States such as Cameroon, the law provides measures intended to restructure companies and protect stakeholders, including employees. In principle, these procedures seek to maintain employment and ensure that workers' rights are safeguarded while the company undergoes reorganization. Despite these legal provisions, the protection of employees during corporate rescue remains problematic in practice. Workers often face delays in wage payments, job insecurity, and limited participation in insolvency proceedings. The gap between the legal framework and its practical enforcement raises concerns about whether the existing OHADA rules adequately guarantee effective employee protection in Cameroon. The main research objective of this study is to examine the extent to which the OHADA insolvency regime effectively protects employees during corporate rescue procedures in Cameroon. The study is guided by the null hypothesis that the OHADA legal framework provides adequate and effective protection for employees during corporate rescue proceedings. Methodologically, the research adopts a doctrinal legal approach based on the analysis of statutes, case law, and relevant academic literature relating to OHADA insolvency law and labour protection. The study also considers practical experiences within the Cameroonian context. The findings suggest that although the OHADA framework formally recognizes employee interests, significant challenges persist in implementation, particularly regarding wage guarantees, job security, and enforcement mechanisms. The study recommends strengthening institutional enforcement and introducing clearer mechanisms for prioritizing employee claims during corporate rescue proceedings in Cameroon.

Keywords: OHADA Uniform Act on Collective Proceedings for the Wiping Off of Debts, corporate rescue, employee protection and insolvency procedures

development because they generate wealth, create employment, and facilitate economic growth. However, companies operate in a dynamic economic environment and may experience financial distress due to internal or external factors such as poor management, market competition, economic crises, or structural changes in the business environment. When such difficulties arise, they may threaten the survival of the enterprise and the interests of various stakeholders, including creditors, shareholders, and employees. In this context, insolvency law provides mechanisms aimed not only at settling debts but also at rescuing viable companies in order to preserve economic activity and employment.¹

As economic entities, companies may experience periods of prosperity as well as periods of financial distress. Financial difficulties may arise from several internal or external factors. Internal factors may include poor corporate governance, inefficient management practices, inadequate financial planning, or conflicts among shareholders and managers. External factors, on the other hand, may include economic recessions, increased competition, fluctuations in currency values, technological changes, and globalization pressures that affect the competitiveness of enterprises. When these difficulties are not properly managed, they may escalate and threaten the survival of the company, eventually leading to insolvency or liquidation.²

Corporate insolvency has far-reaching economic and social consequences because the failure of a company does not only affect the shareholders or the management of the enterprise but also impacts other stakeholders such as creditors, employees, suppliers, and the broader community. Among these stakeholders, employees are particularly vulnerable because their livelihood depends largely on the survival and operational continuity of the enterprise. When companies face financial distress, employees may suffer from delayed wages, reduced working conditions, or termination of employment contracts. Consequently, modern insolvency laws increasingly emphasize

corporate rescue mechanisms aimed at preserving viable businesses and protecting employment.³

Within the African business legal framework, the harmonization of business law is carried out by OHADA. This organization was established through the OHADA Treaty with the objective of creating a unified legal system capable of promoting economic development, investment, and legal certainty in business transactions across member states.⁴ One of the important instruments adopted under this framework is the OHADA Uniform Act on Collective Proceedings for the Wiping Off of Debts, which regulates insolvency procedures within member states, including Cameroon.

The OHADA insolvency regime establishes several mechanisms designed to address corporate financial distress and prevent the premature liquidation of viable businesses. These mechanisms include preventive procedures such as conciliation and preventive settlement, as well as judicial procedures such as reorganization and liquidation of assets. The primary objective of these mechanisms is to facilitate the recovery of financially distressed companies while ensuring the settlement of liabilities owed to creditors. Corporate rescue procedures are therefore considered an essential component of modern insolvency law because they aim to maintain business operations, preserve jobs, and reduce the negative economic consequences associated with business failure.

The fundamental objective of these insolvency procedures is not only to ensure the equitable settlement of creditors' claims but also to preserve viable companies and maintain economic activity. Corporate rescue procedures aim to reorganize financially distressed companies in order to restore their economic viability and allow them to continue operating as going concerns. By enabling companies to recover from temporary financial difficulties, these mechanisms contribute to the protection of employment, the preservation of productive

¹ World Bank. (2012). *Doing business 2012: Doing business in a more transparent world*. World Bank, 89.

² Jeantin, M. (1999). *Entreprises en difficulté*. Paris: LGDJ, 21.

³ Keay, A., & Walton, P. (2008). *Insolvency law: Corporate and personal* (2nd ed.). Bristol: Jordan Publishing, 14.

⁴ Organisation for the Harmonization of Business Law in Africa (OHADA). (2015). *Uniform Act on Collective Proceedings for the Wiping Off of Debts*.

capacity, and the stability of national economies.¹ Despite the existence of these legal mechanisms, the protection of employees during corporate rescue proceedings remains a significant concern. Employees constitute one of the most vulnerable stakeholders when a company faces financial distress because their livelihoods depend directly on the continuity of the enterprise. In many cases, insolvency proceedings may result in wage delays, job insecurity, or termination of employment contracts. Although the OHADA legal framework recognizes certain employee rights, the extent to which these protections are effectively implemented in practice remains subject to debate.²

In the context of Cameroon, the issue of employee protection during corporate rescue is particularly important given the role of companies as major sources of employment and economic stability. While the OHADA legal framework seeks to balance the interests of creditors, debtors, and other stakeholders, questions remain regarding whether the current insolvency regime sufficiently safeguards employee rights during corporate restructuring and rescue procedures. Consequently, examining employee protection within corporate rescue mechanisms under OHADA law is essential for assessing the effectiveness of the legal framework and identifying possible reforms that could strengthen the protection of workers in situations of corporate financial distress.

To examine the issue of employee protection during corporate rescue under OHADA law in Cameroon, this study is structured into four main parts. Part I provides the general introduction and situates the legal issues surrounding employee protection within the context of corporate insolvency. Part II examines the insolvency procedures for corporate rescue under OHADA law, focusing on both preventive and judicial mechanisms and analyzing their implications for employees. Part III explores the practical and institutional challenges that hinder employees from effectively benefiting from these protections, with particular emphasis on the Cameroonian context. Part IV concludes the

study by presenting key findings and offering recommendations aimed at strengthening employee protection during corporate rescue and enhancing the effectiveness of OHADA insolvency procedures.

2. Insolvency Procedures for Corporate Rescue

In OHADA law, prevention-detection results exclusively from the provisions of the OHADA Uniform Act relating to the law of commercial companies and economic interest groups (UACCEIG). In this legal order, prevention-detection is essentially centred on alerting the auditor and alerting partners. Overall, the doctrine has unanimously adhered to this prevention policy by placing greater emphasis on information here synonymous with detection. It must be early³ and spontaneous but not judicial. It is therefore a question, through the prevention-detection system, of attacking the source of the difficulties without waiting for their manifestations. Detection is a guarantee for better prevention. It must serve as a benchmark⁴, it must be a preliminary step to preventing the cessation of payments, in that it makes it possible to take stock of the difficulties.⁵

The effectiveness of prevention-detection systems in avoiding cessation of payments remains questionable despite their intended purpose of identifying financial difficulties at an early stage. In practice, these systems have produced disappointing results due to several structural weaknesses. One major limitation is that, although detection agents may identify difficulties within an enterprise, the system does not provide clear or effective solutions for addressing those problems. Additionally, there are significant challenges in assessing and applying the trigger criteria that determine when intervention should occur. Furthermore, the legal techniques that constitute these prevention mechanisms have limited scope and practical impact. These shortcomings collectively weaken the prevention-detection framework, reducing its attractiveness and ultimately leading to its overall ineffectiveness in preventing corporate financial distress.

The legislator has arranged the formal conditions

¹ Finch, V., & Milman, D. (2017). *Corporate insolvency law: Perspectives and principles* (3rd ed.). Cambridge: Cambridge University Press, 31.

² Allott, A. (1960). *Essays in African law*. London: Butterworths, 3.

³ Perochon, F. *Entreprises en difficulté* (10e éd.). L.G.D.J., 45.

⁴ *Ibid.*

⁵ Sortais, J. P. (2010). *Entreprises en difficultés: Les mécanismes d'alerte et de conciliation*. L.G.D.J., 17.

of the preventive settlement in a rather restrictive manner by conferring all rights on the debtor alone. The debtor and he alone is authorized to file the application initiating proceedings and to draw up the offer of preventive composition. The preventive arrangement is based on a contractual mechanism. The preventive arrangement under OHADA law is designed as a purely voluntary process, at least, in its triggering phase. This is evident under the provisions of article 5, UACP which provides that, “the competent court is seized by request of the debtor...” It is therefore it is up to the debtor and him alone to request the opening of the preventive settlement. The president does not may neither take legal action nor be seized by the public prosecutor, by a creditor, by a shareholder, or by the auditor; what is not without risk for the success of the procedure. Because, if the exclusion in particular of creditors appears well-founded, that of the public prosecutor and the president of the competent court appears more questionable, given the general interest represented by the survival or disappearance of commercial exploitation.

3. Challenges for Employee Protection Under Corporate Rescue

As already noted, when mention is made of companies in difficulties, it implies that the business has ceased to function in a harmonious manner. The enterprise is sick and there is either a breakdown in its activities or risk of discontinuity in its operations.¹ The OHADA law set out to save the life of the enterprise and jobs², ensure the payment of creditors including workers and sanctioned faulty traders.³ When an enterprise is in difficulties, not only the owners are interested in it redress but also all those who have relations of whatever nature with the company. Employees are often affected by measures adopted to redress or reorganize the enterprise. Such is the case if the enterprise can no longer carry out its activities normally or can do so by resorting to certain internal measures of reorganization such as partial liquidation and economic transformation with consequential

dismissal of some personnel.

In any case, the rights of the employees, especially financial rights affected by measures taken to redress or save their employer in difficulties need to be protected. These are all financial claims that the worker may have against the employer. They range from wages and accessories to wages due to the worker based on the contract of employment and services rendered. They also extend to claims for damages an any other financial compensation to which the worker is entitled. However, the OHADA Uniform Act Organizing Collective Proceedings has made a headway towards protecting the financial rights of workers, but the protection still has loopholes, either inherent in OHADA law itself or in national laws to which the OHADA lawmaker makes reference.

Employees have so many rights to be protected; some are individual and others collective. For the rights to be protected, OHADA lawmaker guarantees the payment of workers affected by crisis, at least for wages due, once collective proceedings are initiated.⁴ This is justified by the alimony nature of wages and the fact that wages constitute the only means of subsistence for the worker. Nevertheless, the specificity of insolvency proceedings is such that paying wages at all cost may create injustice or aggravate the situation of the enterprise. The principle is therefore, that the protection of employment that maintaining jobs and payment of wages should be guaranteed during insolvency proceedings to rescue the employers though at times with respect to certain amounts and if necessary, termination of contract of employment payment of workers is also protected.⁵

3.1 The Legal Protection of Employment During Restructuring of Companies in Difficulties

Protection of employment during restructuring is guaranteed through maintaining of jobs. The maintenance of jobs has a triple importance; to the employer, employer and the public authorities. To the employer, there is need to avoid paying pre-notification and dismissal

¹ Jeantin, M. (1995). *Droit commercial: Instruments de paiement et de crédit, entreprises en difficulté* (4e éd.). Dalloz, 267.

² Article 1 of the UACP.

³ Sawadogo, F. M. (2002). OHADA: Droit des entreprises en difficultés (Collection Droit uniforme africain). Bruylant, 4.

⁴ Kelese, N.G. (2015). The Protection of Employment under OHADA Insolvency Law. A Critical Study in the light of Cameroonian Employment Law. *Revue Africain de parlementarisme ET de Democratie*, 3(10), 261.

⁵ *Ibid.*

indemnities and to operate with unqualified staffs when the company regains it rails. To the employee, he needs to preserve his employment and only source of subsistence. To public authorities, maintaining of employment avoids over congestion of the labour market, as it is the social policy of the state to ensure that citizens are gainfully employed and ensure that those who employed maintain the employment.¹ This spirit of the state is adopted by the UACP as it insists on the safeguard of the company and also imposes on the company facing difficulties under restructuring to maintain on going contracts. The Uniform Act provides that, the cessation of payments ordered by a court decision shall not be a reason for cancellation of a contract and any rescissory clause for such a reason shall be deemed unwritten, except in the case of contracts concluded with regards to the person of the debtor and those expressly provided for by the law of each contracting state.²

The execution of on-going contracts includes employment contracts. However, it is not always essential to maintain employment contract during economic difficulties. In the face of difficulties, the company may have hitches maintaining the employment contracts in their initial clauses. This is because the employees themselves may seek to terminate their contracts and because execution of the contracts in their initial clauses may be an obstacle to the redress of the company.³ For this reason, employers in difficult situations adopts various techniques to do so. Where these techniques prove futile or cannot retain all the workers, there is bound to dismiss on economic grounds. This, where the employees do not seek to terminate their contracts, the company can maintain their jobs by employing two traditional techniques notably modification of contract of employment and suspension of contracts of employments. However, there is an exception to this rule of maintaining of jobs where the only possible solution is dismissal on economic ground.⁴

3.2 Modification of Employment Contracts During Restructuring Process

¹ *Ibid.*

² Section 107 UACP.

³ Kelese, N.G. (2015). The Protection of Employment under OHADA Insolvency Law. A Critical Study in the light of Cameroonian Employment Law. *Revue Africain de parlementarisme ET de Democratie*, 3(10), 261.

Generally, the presence of economic, financial difficulties and other challenges encountered during the functioning of an enterprise have revealed the necessity in ensuring that the business enterprise is protected and secured with the aim of fostering private sector job creation and firm growth. The failure to strike a balance between the conflicting interest of the employers and the workers, especially during the occurrence of emerging challenges thereby protecting private sector employment in Cameroon can have adverse consequences not only on the workers and their families but also on the employer, the entire enterprise and as well as the state. Cameroonian Labour Legislation takes into consideration this socio-economic concern during its enactment.

Consequently, the reforms brought about by Law No. 92/007 of 14 August 1992 on the Labour Code of Cameroon, the legislator has reinforced the safeguard of the enterprise and workers therein through regulated actions. This has also been taken into contemplation by the OHADA legislator. As a matter of fact, the OHADA insolvency law sets out to save the life of the enterprise and its workers through legal remedy which aimed at avoiding cessation in its activities during the occurrence of emerging challenges.⁵

The interest of the employer in the private sector of Cameroon on the one will as such, include anything that can enable the latter to protect and safeguard his business or enterprise and to protect and sustain its activity. That is, anything that can ensure the continuity and prosperity of the enterprise and enable the employer to make profit out of his investment. The protection of an enterprise as a center of production and as an economic unit whose survival is of general interest is, especially to the workers therein is therefore, very vital as a public economic policy.

In the private sector, an enterprise in difficulty or an enterprise that is experiencing challenge is one confronted with one or more problems which put to question the continuity of its activity and the stakes of workers' rights. Difficulties imply that the enterprise has ceased to function in a

⁴ *Ibid.*

⁵ *Ibid.*

harmonious manner. In other words, the enterprise is “sick”, there is either a breakdown in its continuous activities or risk of discontinuity in its operation. It may not necessarily be facing financial difficulties. In this case, the problems of the enterprise should be solved because its “illness” puts at stake several interests, including that of the employer and the employees. Solutions sought always depend on the gravity or the nature of the problem the enterprise is facing or the objective to be attained.

3.3 Suspension of Contract of Employment During Restructuring

One of the measures adopted during legal redress may be suspension of some contracts of employment. The practice of suspension of contract of employment in Cameroon is employer friendly. The employer is free to suspend the contract of his employee for obvious reasons provided that the procedure for this suspension as contemplated in section 30 of the 1992 Labour Code is respected. Such suspension must meet certain conditions failing which it is null and void¹. Sections 30(3) of the labour code provide such conditions. In this light, section 30(3) of the labour code is to the effect that:

Suspension of the worker from work shall be null and void unless the following conditions are met simultaneously:

- That it shall be for a maximum period of eight working days as from the time the penalty is inflicted;
- That the worker shall be notified in writing of the suspension and the reasons thereof; and
- That the labour inspector of the area shall be informed of the suspension within forty-eight hours.

Economic and financial difficulties have revealed the necessity in ensuring that the business enterprise is protected and secured with the aim of fostering private sector job creation and firm growth. The failure to protect contract of employment can have adverse consequences not only on the workers and their families but also on

the employer,² and the entire enterprise. The Cameroonian labour legislation took into consideration this socio-economic concern during its enactment.

It is one of the temporal solutions that could be adopted to ensure stability of employment if an enterprise is facing economic or financial difficulties. An employer who finds itself in a temporary difficult economic situation may, instead of dismissing its employees, lay them off temporarily.³ The workers are then placed in the situation of redundancy.⁴ In this case, it will propose their lay-off in the composition agreement. Suspension must be for a specified period. The Cameroonian labour code provides in its section 32 that: “a contract of employment shall be suspended during a period of lay-off not exceeding six months”. Suspension conserves the jobs of workers concerned for a maximum period of six months and reduces the financial burden of the enterprise, if there are no provisions of collective agreements more favourable to the worker. Provisions that are more favourable may be found in the contract of employment, though the law insists on collective agreements. As such, the employer may opt to prolong the duration of suspension to maintain its workers at its disposal while maintaining the totality of their wages. However, this may only be envisaged if the suspension of contract was for reasons other than economic crises.⁵ Where no such possibilities are envisaged, the employer under collective proceedings is bound to pay to the workers affected a pre-determined indemnity of suspension, whose amount diminishes progressively from the first month to the sixth month.

Where lay-off is adopted as a means of redress, it preserves the workers’ employment for its duration. This period which is usually referred to as the period of redundancy is agreed upon by the parties to a contract of employment. Under Cameroonian Law, it can go far as long as six months. If after this period the situation of the enterprise is not re-established and consequently

¹ See Section 30 (3) of the labour code.

² International Labour Organization. (2006). *The employment relationship: Report V(1), International Labour Conference, 95th Session*. International Labour Organization.

³ Lockton D. J. (1999). *Employment law*, 3rd Edition. London: Macmillan, 243.

⁴ Honeyball S. (2008). *Honeyball and Bowers’ Textbook on Employment Law*, 10th Edition. Oxford University Press, 201.

⁵ Kelese, N.G. (2015). The Protection of Employment under OHADA Insolvency Law. A Critical Study in the light of Cameroonian Employment Law. *Revue Africain de parlementarisme ET de Democratie*, 3(10), 261.

that workers will not resume work, they will be dismissed. The position is same under the OHADA Law where suspension was adopted as a means of redress. The Uniform Act provides that where the receiver is authorized by the official receiver to effect dismissals, it will be done “without prejudice to the right to a notice and to compensation relating to the termination of the contract of employment”.¹

Nevertheless, if after the six months of suspension of contract the employer still wants to preserve his workers, he may extend the period of suspension. The consequence here is that he will have to reinstate their wages. This is not easily conceivable since it will be an additional burden on the enterprise under redress. In any case, if the workers cannot resume work and there is no possibility of prolonging the suspension of their contracts, they must be dismissed. However, the dismissal may as well be beneficial to the enterprise as it can relieve the enterprise from financial burden and give room for future recruitment matching the resources of the enterprise. Dismissal on economic grounds usually goes through a defined procedure.

3.4 Dismissal on Economic Grounds as an Exception to the Continuity of Employment Contracts

One instance of dismissal is usually dismissal for economic reasons or dismissal on economic grounds. Dismissal on economic grounds is the object of section 40 of the Labour Code. In the wordings of section 40(2) of the Cameroonian Labour Code, dismissal on economic grounds is any dismissal effected by the employer for one or more reasons not inherent in the person of the worker and resulting from an abolition or transformation of posts or an amendment to the contract of employment consequent on economic difficulties, technological changes or internal reorganization and during the occurrence of challenges.²

In principle, dismissal on economic grounds cannot be effected unless abortive attempts have been made to save the enterprise and by

extension the workers’ employments.³ Dismissals for economic reasons may be individual or collective. Usually, collective dismissals trigger procedural requirements such as, consultation of workers’ representatives and notification of public authorities.⁴ There are various hypotheses of dismissals and guidelines laid down by the law-maker to control the procedure of dismissal for economic reasons.

Termination of contract of employment on economic grounds occurs at least in three situations. First, it may arise from refusal by workers of any substantial modification of their contracts of employment. Being a contract of successive performance and may go on for several years, an employment contract hardly remains unchanged.⁵ Conditions of work initially agreed may vary with time as in a situation where the company is facing difficulties thus, necessitating modification in some clauses of the contract. Modification of contract therefore, designates an alteration to its initial clauses; a change in one or more respects, which introduces new elements into the contract, but leaves the general purpose unaltered. It generally occurs when the parties agree to “alter a contractual provision or to include additional obligations, while leaving intact the overall nature of the original agreement”.⁶ Where the workers refuse the modification, they would be dismissed and their dues paid.

Second, the termination may be initiated directly as a measure of legal redress of a company in crises. In principle, there is the obligation to maintain jobs when the company is facing difficulties. Thus, the possibility of initiating dismissal as a measure of redress is accepted only when the post of the employee is suppressed or no longer exist, for example, where the company is changing its activity. In brief, the dismissals should be urgent and indispensable.⁷ The dismissal must be authorised by the official the receiver.

Third, dismissal may occur because of the

¹ Section 110 of UACP.

² Section 40(2) of the Cameroonian Labour Code.

³ Kelese, N.G., (op. cit).

⁴ Muller, A. (2012). Labour law reforms at the crossroads of ILO standards and OECD and World Bank indexes: A global review of regulation on collective redundancies. *Comparative Labor Law & Policy Journal*, 6.

⁵ Kenfack P. E. (1994). La modification du contrat de travail au Cameroun (étude critique de l’article 42 al. 2 du Code de Travail). *Revue Juridique Africaine*, 199.

⁶ *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461.

⁷ UACP, s. 110.

inability of the company to re-establish its normal activities after six months of suspensions of contract of employment. Where suspension of contracts of employment was adopted as a means of redress, the enterprise has the right to dismiss after six months, if the company cannot regain its rails. In any of the above cases, the employees need to be paid their dues as prescribed by the law. In this perspective, the Uniform Act provides that where the receiver is authorised by the official receiver to effect dismissals, it will be done “without prejudice to the right to a notice and to compensation relating to the termination of the contract of employment”.¹

Despite the obligation on the employer to search for alternative measures to dismissal in order to conserve valuable workers during economic difficulties, dismissal may not be avoided in certain situations, especially when it becomes urgent or indispensable.² It is also possible that workers in the may refuse proposals to amend their contracts of employment as a means of redressing the situation of the enterprise.³ In addition, it may be impossible for workers to resume work after the period of suspension of their contracts of employment.⁴

This negotiation phase constitutes the search for alternative measures that would avoid dismissal of workers in time of challenges. Such measures notably include the reduction of the hours of work, routine work, part time work, lay-off, reduction of various allowances and benefits and even wage cuts. Therefore, if the parties are able to reach an accord, a report signed by the parties specifies the measures retained and the duration of their validity, for they must be temporal.⁵ However, if a worker in time of challenges or difficulties refuses the proposed measures, he/she is dismissed with payment of indemnity if the conditions are fulfilled. If no accord is reached, the actual procedure for dismissal on economic grounds is opened with the establishment of the list of Workers to be dismissed.

Dismissal for economic reasons must be authorised by the official receiver. Before seeking the authorisation of the official receiver, the receiver must establish the order of dismissals in accordance with the applicable labour law.⁶ The uniform act has given guidelines on how the list of workers to be dismissed should be established. It states that: “Dismissal of workers with the least professional aptitudes for the jobs maintained shall be proposed first and, in the case of equality of professional aptitudes, the least senior workers in the company, seniority being calculated according to the applicable law provisions”.⁷

This aimed at avoiding arbitrariness in the choice of those to be dismissed in the face of the employer’s economic difficulties. Technically, it ensures that the enterprise is left with highly qualified and experienced workers capable of redressing its situation.

3.5 Guarantee of Payments During Restructuring

The employee’s wage is his only means of subsistence and that is why Labouré legislation always accords a particular attention to its payment. Thus, in struggling to save the life of a business or company, this most important right of the worker should not be tempered with. It is necessary to distinguish between payment of wages during preventive settlement and during legal redress as the two may present distinct measures of restructuring or rescue of difficulties in a company.

3.6 Payment of Workers’ Wages During Preventive Settlements

When the employer is facing difficulties there is always the tendency to effect partial payment or to unilaterally deduct wages thereby accumulating the arrears of same. The continuation of its activities after commencement of insolvency proceedings creates new wages claims.⁸ However, the principle is always that the workers should be paid the totality of their wages. Any deduction in wages should be made under circumstances provided by the law⁹ and

¹ *Ibid.*

² Muller, A. (op. cit) p. 6.

³ Kelese, N. G. (2016). The protection of employees’ financial rights under OHADA insolvency law. *Revue de la recherche juridique*, 1411–1432.

⁴ Ayuk Nkongho, M., & Ndukongs Nforkwe, M., op cit at p. 19.

⁵ *Ibid.*

⁶ Article 110(3), UACP.

⁷ *Ibid*, article 110(3).

⁸ Kem Chekem, B. M. (2004). *Entreprises en difficulté et droit des salariés dans la zone OHADA: Le cas du Cameroun* (Mémoire de DEA). Université de Dschang, 10.

⁹ Section 74 Cameroonian Labour Code.

when it is adopted in the composition agreement as a preventive measure. Hence, arrears of wages accumulated in disregard of the above exceptions may be claimed during preventive settlement. This right to claim arrears of wages during preventive settlement has as corollary the non-suspension of individual lawsuits for the claim of wages. Thus, the principle that the decision granting the application for preventive settlement suspends individual lawsuits does not apply to wages.

Under OHADA insolvency law, the decision authorising preventive settlement “suspends or prohibits all individual lawsuits for the payment of debts indicated by the debtor and contracted prior to the said decision... with the exception of creditors due wages”.¹ Thus, the workers have the right to initiate lawsuits to recover wages that have become due for immediate payment and have not been paid. This position adopted by the regional lawmaker is obviously in appreciation of the fact that the employee’s wages is his only means of subsistence² and the worker through his work has contributed in the growth and conservation of the employer’s wealth. The debtor seeking preventive settlement is bound to make known his situation with respect to wages. As such, in the petition for preventive settlement, the debtor employer is bound to include a document showing “the number of workers and the number of wages and wage costs”.³ This document will enable the president of the competent court to take a decision with respect to the payment of wages. The court cannot ratify the preventive composition agreement if the deadlines given for the payment of creditors due wages exceed one year.⁴ This means that even if the deadlines which go beyond one year are proposed with the consent of workers, the court still reserves the right to reject them. In addition, creditors due wages can neither grant any write-off nor accept any deadline that they themselves have not granted. All these restrictions are to enable the workers recover their arrears of remuneration within the shortest time possible.

The uniform act is silent as far as payment of workers is concerned during conciliation.

Nonetheless, it recognizes the situation of workers by stating that the application for conciliation must contain amongst others, “a document indicating the number of workers declared and registered on the date of the request”.⁵ The major shortcoming of this provision is that it insists on workers declared and registered. This implies that an unscrupulous employer who fails to declare and register its workers with the competent bodies (social insurance fund for example), exposes them to risk as they are not protected during reconciliation procedure. However, the protection of workers can be deduced generally from the fact that the procedure is a very brief one. It is a procedure that must not go beyond three months even though the legislator provides for its extension which cannot be more than one month.⁶ It is closely controlled by the president of the court with jurisdiction who granted the request for conciliation. For that reason, the conciliator must regularly render account to him on the progress of the procedure as well as formulate observations where necessary. The conciliator must also inform him of potential or actual cessation of payment without delay.⁷ This could be a great relief to an employee whose wages claim is in peril.

An important issue about conciliation which may be beneficial to employees is the fact that unlike in ordinary conciliation where the conciliator only proposes solutions, the decision of a conciliator in OHADA collective proceedings is really binding on the parties. As such, an employee who was involved in the conciliation may request that the decision of the conciliator be deposited with a notary public or request for an exequatur from the court with jurisdiction or competent authority. With the exequatur, the court with jurisdiction or competent authority can appose an executory formula on the conciliation decision.⁸ This will enable such an employee to recover his or her wages with ease.

3.7 Payment of Wages During Legal Redress

¹ Section 9 UACP.

² Afong A. (2012). *The Prevention of Company Insolvency under the OHADA Uniform Act*. Bamenda, Gospel Press, 93.

³ Section 6(4) UACP.

⁴ *Ibid*, section 15(2).

⁵ *Ibid*, section 5(2).

⁶ *Ibid*, section 5(3).

⁷ *Ibid*, section 5(6).

⁸ *Ibid*, section 5(10).

Legal redress is a form of administration¹ or proceedings aimed at safeguarding an enterprise and at wiping off its debts through composition with creditors. It consists of taking measures to restore the economic and financial health of a business, with a view to its continued survival. Several mechanisms are adopted to ensure payment of wages during legal redress by the uniform act, while others are drawn from ordinary law and practice.

Like in preventive settlement, a debtor seeking for legal redress must reveal his situation with respect to wages. In his declaration of cessation of payments, he is bound to show “the number of workers and the amount of wages and wage costs”. Since the court reserves the right to request information from or hear institutions representing the staff before taking any decision concerning employees, he must also give “the names and addresses of staff representatives”.² This ensures that decisions affecting workers’ wages are not taken without their consent or opinion. This right of workers is reinforced by the fact that where creditors request the official receiver to appoint assignees (controllers) to assist in legal redress of the employer, one of such must be representing the staff.³ The assignee representing the personnel is proposed for nomination by the production committee or staff representatives where the number of workers is more than ten. Where the committed or staff representative does not exist, the official receiver requests the workers to elect a representative amongst them. If the number of workers is not up to ten, the official receiver appoints one of them to represent the personnel.⁴ In any case, only one employee can be appointed and the appointment is mandatory. The active presence of workers during legal redress is, therefore, a guarantee towards protection of their rights especially the right to remuneration or payment of wages. In addition, the concept of highly preferred wages, which applies to the non-attachable portion of wages, has been given particular attention by the uniform act.⁵ Highly preferred wages constitute the part of wages that is not subject to attachment

and extends to indemnities relating to termination of contract and damages which should be paid to the employee for wrongful termination of contract. This supported by section 177 of the uniform act organising simplified recovery procedure and measures of execution.⁶ Where there is no money, he may pay them himself, or even cause a third party to pay. Whoever pays subrogates the creditors of highly preferred wages when funds are available.⁷

Where the enterprise is a small one and it requests for simplified procedure of legal redress as governed by the uniform act,⁸ it is bound to pay wages. It must indicate the number of workers, wages and costs and the names of staff representatives as required by section 26(6) and (7) of the uniform act. Furthermore, successive employers during legal redress have joint and several obligations towards creditors, if the modification in the legal status of the employer results in the transfer of the enterprise. This is not the case where a management lease has been adopted as a means of redress of the employer in difficulties.⁹

The proprietor of the business remains solely indebted to the workers. Even though not specified by the uniform act, wages claims will be settled in priority from any payments made for enjoyment of the business by the lease manager. As regulated by the OHADA uniform act on general commercial law (UAGCL) in a normal management lease, that is, where the latter is not resorted to as a means of redress but just as a means of business management, the owner of the business is jointly and severally liable for the debts of the lease manager arising from his operation between the day of the lease management contract and the day of its registration in the Trade and Personal Property Credit Register.¹⁰

It is important to mention that during legal redress, there is always the obligation to maintain

¹ Martor B., *et al.* Business Law in Africa: OHADA and the Harmonization Process, op. cit., p. 154.

² Section 26 UACP.

³ *Ibid*, section 48.

⁴ *Ibid*.

⁵ *Ibid*, section 95.

⁶ Adopted at Libreville on 10 April 1998.

⁷ Section 96 UACP.

⁸ *Ibid*, section 145.

⁹ *Ibid*, section 117.

¹⁰ Section 145 UAGCL.

jobs and consequently payment of wages.¹ Thus, if transfer of the enterprise is envisaged as a means of redress, the transfer of the enterprise entails transfer of debts owed workers by the former employer. This implies that workers can claim debts owed them by their former employer directly from their new boss. The French Cour de Cassation has even held that the successive employers are jointly and severally liability for the arrears of wages owed to workers. However, the transferee who pays the debts owed workers by the transferor has the right to ask for contribution from the latter.² This right which was justified by the doctrine of unjust enrichment³ has been consecrated by statute in France. The OHADA legislator does not provide for this remedy though it offers a double protection to the workers. The obligation of the new employer to pay the arrears of wages owed workers by the former employer is, however, lifted if legal redress or liquidation of the former employer was declared before the transfer; if it was declared posterior to the transfer, the obligation subsists. The new employer is also emancipated from the obligation if the transfer took place without a contract. This is not the case where partial transfer of assets of the employer is adopted as a means of redress.

4. Conclusion and Recommendations

From the foregoing analysis, it is evident that the protection of employees during corporate rescue under the OHADA insolvency framework remains an essential but complex aspect of collective proceedings. The OHADA Uniform Act Organizing Collective Proceedings seeks to

strike a delicate balance between two competing interests: on the one hand, the need to preserve enterprises facing financial distress, and on the other hand, the necessity of safeguarding the rights and welfare of employees whose livelihoods depends on such enterprises. In principle, the law recognizes the social and economic importance of maintaining employment and guaranteeing the payment of workers' wages during restructuring. This is reflected in provisions that emphasize the continuation of ongoing contracts, including employment contracts, and the special protection granted to workers' wage claims through mechanisms such as highly preferred wages and the possibility of pursuing individual actions for wage recovery during preventive settlement.

However, despite these legal safeguards, the practical protection of employees under OHADA insolvency proceedings remains imperfect. The restructuring process often results in measures such as modification of employment contracts, suspension of employment, or dismissal on economic grounds, which may adversely affect workers. While these measures are intended to facilitate the survival of the enterprise, they frequently expose employees to uncertainty, loss of income, or eventual termination of employment. Furthermore, certain gaps in the OHADA framework and the reliance on national labour laws create inconsistencies in the level of protection afforded to employees. For instance, the law's silence on some aspects of wage protection during conciliation, the vulnerability of undeclared workers, and the financial

¹ Kelese Nshom, G. (2015). The protection of employment under OHADA insolvency law: A critical study in the light of Cameroonian employment law. *Revue africaine de parlementarisme et de démocratie*, 3(10), 255–279.

² *Ibid.*

³ Unjust enrichment had its development from French law known in French as "*Enrichissement sans cause*" which is based on equity as an independent ground of imposing obligations. This is often expressed base on the observation that, it is indeed by nature fair, that nobody should be made richer through loss to another. Unjust enrichment could be defined as, the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected. Also, a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense. Generally, there are three requirements for any claim that is based on unjust enrichment: first, that the defendant has been enriched by the receipt of a benefit; second, that he has been enriched at the plaintiff's expense; and thirdly, that it would be unjust to allow him to retain that benefit.

limitations of enterprises undergoing restructuring may weaken the effective enforcement of employees' rights.

Consequently, although OHADA insolvency law demonstrates a clear intention to protect employees while promoting corporate rescue, the existing mechanisms require further strengthening to ensure that workers do not bear a disproportionate burden of the enterprise's financial distress. Effective protection of employees during corporate rescue is not only a matter of social justice but also a prerequisite for sustainable economic development and industrial stability.

Establishment of a Wage Guarantee Fund. One major challenge faced by employees during corporate rescue is the uncertainty surrounding the payment of wages and other employment-related claims when the employer lacks sufficient financial resources. To address this issue, OHADA member states should establish a wage guarantee fund similar to those existing in several jurisdictions. Such a fund would ensure that workers receive their outstanding wages, indemnities, and other employment benefits when the employer becomes insolvent. This mechanism would provide immediate financial relief to workers and prevent situations where employees suffer severe economic hardship due to the employer's financial difficulties.

Strengthening the Legal Protection of Employment Contracts during Restructuring. Although the OHADA Uniform Act emphasizes the continuation of ongoing contracts, greater safeguards should be introduced to prevent unnecessary termination of employment during restructuring. The law should impose stricter conditions before dismissal on economic grounds can be authorized, including mandatory attempts at alternative measures such as redeployment, reduction of working hours, retraining programs, or temporary wage adjustments. By reinforcing these safeguards, the law would better align corporate rescue objectives with the protection of workers' employment and social stability.

Improved Protection for Undeclared or Informal Workers. Another significant weakness in the current system is the limited protection available to workers who have not been formally declared or registered by their employers. Since the OHADA framework often requires documentation of employees in official records, undeclared workers risk being excluded from

protection during insolvency proceedings. To remedy this situation, legal reforms should allow such workers to prove their employment relationship through alternative evidence, such as witness testimony, payment records, or other documentation. This would prevent unscrupulous employers from evading their obligations and ensure that all workers receive fair treatment during corporate rescue.

Enhancing the Participation of Workers and Their Representatives in Insolvency Proceedings. Employees are among the most affected stakeholders when an enterprise faces financial difficulties, yet their participation in insolvency proceedings remains relatively limited. OHADA law should strengthen the role of workers' representatives in restructuring processes by granting them greater access to information about the financial situation of the enterprise and the proposed rescue measures. Additionally, workers' representatives should be actively involved in negotiations relating to restructuring plans, employment adjustments, and payment of wage arrears. Increased participation would promote transparency, fairness, and more balanced decision-making in corporate rescue procedures.

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