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Kelong, Richard William Ngwa

University of Stellenbosch

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EXECUTIVE REMUNERATION AS AN ASPECT OF CORPORATE GOVERNANCE UNDER OHADA'S CORPORATE SYSTEM

Kelong Richard William Ngwa*

ABSTRACT

With growing importance attached to the notion of executive remuneration, OHADA's policy makers have also considered the concept as a fundamental element in any corporate governance system. In this regard, they have put in place a policy framework that regulates executive remuneration within OHADA's corporate system to ensure that executive benefits are appropriate and lawful to enable directors remain objective in respect of their fiduciary duties towards the company. This paper discusses executive remuneration as an aspect of corporate governance under OHADA's corporate system. In doing so, the paper describes the executive remuneration policy under OHADA's corporate system and makes an appraisal of the abovementioned policy with the goal of stating its potential and limitation as well as proposing a reform that will guarantee its effectiveness as a mechanism in ensuring good corporate governance.

1. Introduction

Since its inception as an aspect of corporate governance, the concept of executive remuneration has received enormous attention as it strives to ensure accountability and promote economic efficiency among corporations. It is a theme as suggested by most post scandal commentaries that contributed significantly to some of the international corporate meltdown experienced across the world, such as Enron in the United States, One.tel in Australia and the fat cat scandals involving the British Gas Chief, Cedric Brown.¹

In view of the aforesaid, efforts have been made throughout the globe to develop regulatory framework that incorporates techniques to oversee and combat excessive executive remuneration.² An example of an existing framework in this regard, is the Uniform Act relating to Commercial Companies and Economic Interest Groups (hereinafter referred to as the Uniform Act or the Act)³ embodied in the treaty of OHADA to which there are 17

*LLB (University of Buea, Cameroon), LLM Mercantile Law (University of Stellenbosch, South Africa)

¹, J C Coffee What Caused Enron? A Capsule Social and Economic History of the 1990s" (2004) 89 *Cornell L Rev* 269 at 275-276. G P Miller "Catastrophic Financial Failures: Enron and More" 89 *Cornell L Rev* at 423 & 440.

² J G Hill "Regulatory Responses to Global Corporate Scandals" (2005) 23 *Wisconsin International L J* at 367.

³ <http://www.ohada.com/actes-uniformes/98/uniform-act-relating-to-commercial-companies-and-economic-interest-group.html>, (last accessed 28 September 2012)

signatories.⁴ This framework regulating investment vehicles within OHADA member states have put in place mechanisms to ensure that executive benefits are legitimate for directors to remain objective in respect of their fiduciary duties towards the company. OHADA's corporate system acknowledges that the goal of every corporation is to create profits and value for its owners and therefore designs its executive remuneration policy to align with the long term objectives of public limited companies as well as the interest of shareholders to avoid any conflict of interest within the company. This therefore highlights a potential of the abovementioned policy even though it is obvious from the provisions of the Uniform Act that OHADA's corporate system dispenses with the requirement of disclosure which thus casts certain doubts with regard to transparency in the administration of the aforesaid policy.

The objective of this paper is to explore the techniques used by OHADA's corporate system to regulate executive remuneration in public limited companies incorporated under the Uniform Act Relating to Commercial Companies and Economic Interest Groups. In doing so, the paper will discuss executive remuneration policy under the Uniform Act. Firstly, it will attempt a definition of remuneration as obtained in the Uniform Act. Furthermore, OHADA's corporate system's policy on executive remuneration will be described in detail to provide an understanding of how directors are remunerated under the aforesaid policy. Finally the paper will make an appraisal of the abovementioned policy by focusing on its strength and limitation while advocating for an institutional reform that will guarantee its effectiveness as a fundamental tool in OHADA's corporate governance system.

⁴OHADA Member States include: Benin, Burkina Faso, Cameroon, the Republic of Central Africa, Comoros, Congo, Cote d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, Senegal, Chad, Togo and the Democratic Republic of Congo. OHADA is the acronym for l'Organisation pour l'Harmonisation en Afrique du Droits des Affaires or in English the Organisation for the Harmonisation of Business Laws in Africa. Its purpose is to promote regional integration and economic growth by ensuring a secure legal environment through the harmonization of business laws in Africa.

2. Executive Remuneration under OHADA's Corporate System

2.1 Definition of Remuneration under the OHADA's Corporate System

Remuneration is defined as money received for a job done by an employee.⁵ In the context of law however, there have often been concerns expressed over the concept as it has been accorded several meanings in the confines of different statutes within the same jurisdiction. In South Africa for instance, the Basic Condition of Employment Act defines remuneration by referring to any category of payment whether in terms of money or other benefits such as housing, made to an employee as compensation for his services under a contract of employment.⁶ The South African Companies Act on the other hand characterises remuneration as fees paid out to directors for services rendered by them or on behalf of the company. These include any salary, bonuses and performance related payments; expenses allowances; contributions paid under any pension scheme; the value of any option or right given directly or indirectly to a director, past director or future director, or persons related to any of them; financial assistance to a director, past director or future director or persons related to any of them for the subscription of shares and with respect to any loan or other financial assistance rendered by the company to a director, past director or future director, or a person related to any of them, or any loan made by a third party to any such person, if the company is a guarantor of that loan.⁷

The South African Companies Act utilises a comprehensive approach and explicitly outlines components of a director's remuneration. This is unlike the Uniform Act which restrictively defines remuneration as sums of money paid out to directors under the scope of an employment contract with the company and for their activities on the board.⁸ This consist of the following components including, salary rendered under an employment contract, a fixed duty allowance, a special duty allowance, other benefits in kind and the reimbursement of any additional expenses incurred in the interest of the company determined and authorised either by the members of the board of directors or approved at the annual ordinary general

⁵Oxford Advanced Learner's Dictionary available online at <http://oald8.oxfordlearnersdictionaries.com/dictionary/salary>

⁶Basic Conditions of Employment Act 75 of 1997 (BCEA), available at <http://www.info.gov.za/view/DownloadFileAction?id=70820> (last accessed 8 October 2012).

⁷Section 30(6), South African Companies Act Government Gazette, Republic of South Africa Vol 526, No.71 (2008) available at <http://www.info.gov.za/view/DownloadFileAction?id=98894>. (Last accessed 17 September 2012).

⁸ Note 3 above at art 430

meeting of shareholders.⁹ It is indicative from this definition that unlike the South African Companies Act that outlines the various components of a director's remuneration, the Uniform Act utilises an ambiguous terminology of "other benefits in kind" with no clarity provided to its meaning. In this regard, it is therefore important for OHADA's corporate system to provide clarification to this and state what these benefits encompass. Furthermore and contrary to what is found in other corporate systems, loans are specifically excluded from the definition of remuneration under OHADA's corporate system. Under the Uniform Act, directors are forbidden from contracting loans from the company or for the company to stand as a surety in any of their transactions with third parties. This is so unless it is a corporate body acting in such capacity as a member of the board of directors, in which case the prohibition provided above by Uniform Act will not apply.¹⁰

2.2 The Remuneration of Directors under OHADA's Corporate System

2.2.1 Remuneration of Directors

OHADA's corporate system puts in place a legal framework embodied with techniques aimed at achieving a balance between the performances of corporate executives or directors and the incentives received for these performances. These techniques are embodied in the Uniform Act relating to Commercial Companies and Economic Interest Groups. Under the Uniform Act, the notion of a director is undefined but this normally refers to those involved in the day to day management of the company. As obtained in Common law jurisdictions, directors under the Uniform Act can be paid employees of the company. This allows them to conclude employment contracts with the company and which contract must correspond to an effective job distinguished from their activities as members of the board.¹¹ However such a contract must in principle be authorised by the board of directors and approved at the annual ordinary general meeting of shareholders unless it falls within the frame work of ordinary activities or transactions with the company.¹² The aforesaid contract entitles them to a sum of money determine at the annual ordinary general meeting of

⁹Id art 432

¹⁰Id art 450

¹¹B Martor et al *Business Law in Africa: OHADA and the Harmonisation Process*, (2002, 1st Ed Kogan page, London) at 88.

¹²Uniform Act art 438.

shareholders, unless the articles of association provides otherwise. They are further subjected to an annual duty allowance also approved at the annual ordinary general meeting as remuneration for their activities on the board which is shared freely amongst them by the board of directors.¹³ In making the quorum of the meeting that determines such allowances, shares of directors who are shareholders are taken into consideration and these directors shall also take part in voting at the meeting.¹⁴

Besides the annual duty allowances allocated to directors for their activities on the board, they are entitled to other exceptional benefits granted to them by the board of directors as remuneration for special services rendered. They may further be reimbursed any additional expenses incurred in the discharge of certain duties in their capacity as directors that are in the interest of the company.¹⁵ This includes expenses such as travelling cost. The list is not exhaustive and incorporates other incidental cost provided they are incurred in the interest of the company. However, this aspect is further regulated to ensure that it aligns with the activities of the company. If the duty to which they are entitled to reimbursement is within the framework of regulated agreements defined by the Uniform Act as transactions concluded directly or indirectly by a director or the Chief Executive Officer or his assistant that falls out of the scope of ordinary transactions with the company, such transaction must in principle be subjected to the authorisation of the board and approved at the annual ordinary general meeting.¹⁶ Any form of special remuneration received by directors as prescribed above, shall form the subject of disclosure by the auditor at the annual ordinary general meeting.¹⁷

Apart from the abovementioned components of the director's remuneration, directors shall not be entitled to any further benefits. The Uniform Act nullifies any statute subjecting directors to any other form of remuneration which falls out of the scope of those listed above.¹⁸ This also applies to any decision rendered that is contrary to the provisions on remuneration embodied in the Uniform Act with the only exception being dividends regularly shared amongst shareholders which can be received by a shareholder who also acts as a director.¹⁹ The remuneration of directors is further regulated by restricting directors from

¹³ Note 11 above at 88.

¹⁴ Note 3 above at art 431.

¹⁵ Id art 432.

¹⁶ Id art 438.

¹⁷ Id art 432.

¹⁸ Id art 430.

¹⁹ Id art 346.

holding several offices. The Uniform Act prohibits a director acting on his own name or as a corporate body's representative from becoming a member of more than five boards of directors in a public limited company having a registered office in the territory of the same member state.²⁰ A director that exceeds this limit is required to resign from the board of one of the said offices within three months and if he defaults, he shall automatically be considered to have resigned from the abovementioned office and thereafter, he is required to refund any incentives he received acting as a director in that office.²¹

2.2.2 Remuneration of Executive Directors

The aforesaid mechanism put in place by the Uniform Act to regulate the compensation received by directors in order that they remain objective to their duties towards the company applies to all directors that make up members of the board. However the Uniform Act has gone further to enhance its policy by specifically regulating the remuneration received by executive directors in the capacity of the Chief Executive Officer and Chairman of the Board of director. In doing so, the Act has made certain qualification taking into consideration the size of the company to distinguish between two different kinds of public limited companies. It has distinguished between a public limited company with a board of directors where the powers of management are shared between the Chairman and a Chief Executive Officer with the act providing the option for an individual to be nominated for both capacities and a public limited company without a board of directors managed solely by a Chief Executive Officer.²²

2.2.2.1 Public Limited Company with Board of Directors

In a public limited company with a board of directors, where the powers of management has been vested upon an individual as the Chairman of the board and the Chief Executive Officer and assisted by deputies, an individual acting in this capacity shall be entitled to an employment contract with the company subject to approval by the annual ordinary general meeting of shareholders.²³ The terms and amount of his remuneration under this contract is determined freely by the board of directors and he shall not apart from the remuneration he receives under this contract, receive any further benefits with the exception

²⁰Id art 425.

²¹Ibid.

²²Note 11 above at 83.

²³Note 3 above at art 466.

of the annual duty allowances discussed above, for his activities on the board.²⁴ Other benefits may accrue to him in this capacity which shall be fixed in the same way and subjected to the same conditions as his remuneration. Apart from the above, he shall receive no additional incentives from the company with any statutory provision or decision to the contrary nullified by the Uniform Act.²⁵ His deputy will also be remunerated under the same terms and conditions as applied to him with his remuneration to be determined by the board of directors that appoints him.²⁶

In a public limited company where the powers of management have been separated between a Chairman of the Board and the Chief Executive Officer, the Uniform Act prescribes terms of remuneration similar to that which is obtained by the Chairman/Chief Executive Officer discussed above. They may also be bound by employment contracts with the company under the same terms like directors of the company.²⁷ The details of the employment contract, the Chief Executive Officer has with the company is sanctioned by the board who appoints him.²⁸ His terms and amount of remuneration as well as that of the Chairman are determined by the board of directors and they shall receive no further benefits with the exception of the fixed annual duty allowance granted to them for their activities on the board as well as any other benefits in kind fixed in the same manner as their remuneration.²⁹ Any statutory provision or decision rendered by any institution that goes contrary to the compensation package above is declared null and void by the Uniform Act.³⁰

2.2.2.2 Public Limited Company with Managing Director

The aspect of executive remuneration illustrated above also applies to smaller public limited companies which as prescribed by the Uniform Act will be precluded from constituting a board of directors and shall solely be managed by an individual acting in the capacity of the Chief Executive Officer and assisted by one or more deputies.³¹ His term of remuneration under his contract of employment with the company is regulated in such a way that it does not conflict with his managerial functions.³² Apart from the remuneration he

²⁴Id art 431.

²⁵Id art 467.

²⁶Id art 473 & 474.

²⁷Id art 481 & 499.

²⁸Note 11 above at 93. Note 3 above at art 499.

²⁹Id art 482 & 490.

³⁰Id art 430.

³¹Note 11 above at 83.

³²Note 3 above at art 499.

receives under this contract of employment, he shall be entitled to an annual duty allowance for his duties as a Chief Executive Officer determined and approved by the ordinary general meeting of shareholders.³³ He shall further receive as determined at the annual ordinary general meeting, other special incentives for missions or tasks entrusted to him. Furthermore he shall be authorised to receive as reimbursement, any incidental costs or expenses he incurs in the discharge of duties which are of interest to the company. Finally other benefits may be allocated to him when necessary which is fixed in the same way as his remuneration.³⁴ In view of the aforesaid, he shall receive no additional incentives from the company as the Uniform Act extends further to prescribe null and void any decision or statute that states contrary to its provisions.³⁵

If the Chief Executive Officer is assisted by deputies, they may also be bound by employment contracts with the company sanctioned by the ordinary meeting of shareholders and remunerated on the same terms as the Chief Executive Officer.³⁶ These deputies shall also be entitled to annual duty allowances and other benefits which are subject to the approval of shareholders at the ordinary general meeting.³⁷ They are further precluded from receiving any other form of remuneration and the Uniform Act as in the cases above nullifies any statutory provision or decision that is contrary to its prescribed remuneration.³⁸

3. POLICY APPRAISAL

The foregoing description of the remuneration policy under OHADA's corporate system outlines its potential as a mechanism to combat excessive executive remuneration. The policy is designed to enhance efficiency among corporate executives in the management of the affairs of public limited companies. It aligns compensation practice with the long term objectives of companies as well as the interest of shareholders to avoid any conflict of interest within the company. This is evident from the fact that the incentives received by executive and non-executive directors are subject to determination by the board of directors or the approval of shareholders at the annual ordinary general meeting. The board of directors exercises its widest powers over management by appointing, remunerating and dismissing the

³³ Id art 501.

³⁴ Ibid.

³⁵ Id art 500.

³⁶ Id art 513.

³⁷ Id art 514.

³⁸ Note 35 above.

Chief Executive Officer.³⁹ Also, with the exception of the Chairman of the Board of directors and the Chief Executive Officer, the annual general meeting of shareholders determines the remuneration of all board members.⁴⁰ OHADA's corporate system therefore takes into account the interest of important stakeholders in the administration of its executive remuneration policy. With such practice in place, a transparent process is achieved whereby corporate executives do not set standards of remuneration for themselves at the expense of the company's performance. Besides, an integrated approach is developed that aligns remuneration to the effective management of the company by corporate executives to ensure that the company achieves its strategic objectives.

However, one glaring weakness of the policy is the fact that it dispenses with the requirement of disclosure. Apart from special incentives paid out to a director which forms the subject of disclosure at the annual ordinary meeting of shareholders by the auditor, the Uniform Act embodies no other provision requiring companies to disclose their remuneration policies and practices. This requirement is very instrumental as it promotes transparency in the administration of executive remuneration policies. As highlighted in the King II report on corporate governance⁴¹ and thereafter pointed out by Ulrich, this requirement is vital in any corporate governance system as it exposes fraudulent practices as well as underlines any form of mal-practice or non-performance within the company.⁴² The absence of this requirement under the Uniform Act therefore questions the ability of its executive remuneration policy and practice to remain transparent and ensure that executive pay is legitimate enough to avoid any conflict of interest within the company. The inclusion of this requirement is therefore essential to compel companies disclose their remuneration policies and practices as obtained in other corporate legislation such as the South African Companies Act.⁴³

Nevertheless, the aforesaid requirement of disclosure is not without certain limitations. Its incorporation in OHADA's corporate system might not guarantee any transparency in the implementation of its executive remuneration policy. As highlighted by,

³⁹Note 3 above art 435, 462, 467 & 469.

⁴⁰Note 11 above.

⁴¹King Committee on Corporate Governance, the King Report on Corporate Governance for South Africa. (2002) *Johannesburg: Institute of Directors of Southern Africa* at 147, available at http://library.ufs.ac.za/dl/userfiles/documents/Information_Resources/KingII%20Final%20doc.pdf

⁴²N Ulrich "Disclosure Of Executive Remuneration As A Corporate Governance control Measure In South African Listed Companies" (October 2010) *Submission in accordance with the requirement of the Degree of Doctor of Leadership, University of South Africa* at 137.

⁴³Note 7 above.

Herawaty and Hoque, lack of public interest in annual reports of companies disclosing their remuneration practice has not achieved any balance between the conflicting interest of shareholders and executives sought by the abovementioned practice.⁴⁴ Besides, as observed in countries such as South Africa, the publication of executive pay has had tremendous effects causing companies paying lower remuneration to increase executive pay over time in order to meet up with the practice of other companies and remain globally competitive, without having any regard to the link between these increments and executives' performance.⁴⁵ In line with such limitations therefore, it has been argued that, disclosure is not an efficient mechanism in ensuring corporate governance and aligning the interest of executives with that of the company as well as shareholders.⁴⁶

In view of the above limitations, it can therefore be argued that, although OHADA's corporate system dispenses with the requirement of disclosure of remuneration, it embodies other internal control techniques that extend support to the administration of its executive remuneration policy. For instance, the Uniform Act just like the Sabanese Oxley Act of 2002 in the United States emphasises its reliance on auditors as an efficient tool to oversee irregularities that could jeopardize the continuous functioning of the company.⁴⁷ The Act mandates companies to appoint auditors who have access to the company's documents or records at any time of the year, to examine them thoroughly and disclose any irregularities associated with them.⁴⁸ One very important task of the auditors that relates to aspects of executive remuneration is the certification of the regularity and the accuracy of the company's financial statement.⁴⁹ In view of the auditors' observation and certification of the authenticity of this document, they are mandated to pronounce judgment as to the financial situation of the company⁵⁰ and report any irregularity associated with the aforesaid document to the public prosecutor. A director associated with such irregularity is subjected to criminal

⁴⁴M Herawaty and Z Hoque "Disclosure in the annual reports of Australian government departments," (2007) *Journal of Accounting and Organizational Change* 13 (2) at 147-168.

⁴⁵ R Phiyega "Remuneration Observations: SOE and Public Office Bearers", (2011) SARA, available at <http://www.sara.co.za/sara/file%20storage/Documents/Riah%20Phiyega.pdf>. (last accessed 28 September 2012).

⁴⁶ Note 42 above at 162.

⁴⁷Note 3 above at art 694. See also the Sabanese Oxley Act of 2002. The Sabanese Oxley Act is an act passed by U.S. Congress in 2002 in response of accounting scandals in corporations to protect investors from the possibility of fraudulent accounting activities by corporations. The Act mandated strict reforms to improve financial disclosures from corporations and prevent accounting fraud. It is retrievable online at <http://www.sec.gov/about/laws/soa2002.pdf>, (last accessed 28 September 2012).

⁴⁸Id art 702.

⁴⁹Id art 711.

⁵⁰Id art 710-713.

and civil liabilities imposed by the Uniform Act.⁵¹ In this regard, it can therefore be said that OHADA's corporate system imposes strict auditing requirements that guarantee the independence of corporate executives and bring their remuneration in line with performance to avoid any discrepancy in the companies' financial report.

However even with extensive mechanisms on auditing, OHADA's corporate system counterparts like the Sabanese Oxley Act still considers disclosure as a very important tool and lays down extensive rules for the disclosure of executive remuneration to ensure transparency in the administration of executive remuneration policies by companies. The Sabanese Oxley Act mandates all public companies to have robust rules and procedures on disclosure in order to ensure quality public disclosures especially with regard to issues of executive compensation.⁵² The Security and Exchange Commission (SEC), entrusted with the task of implementing the internal rules of the abovementioned Act, has since 2006 overhauled its existing rules on disclosure requiring companies to review disclosure and control procedures in order to provide investors with a complete picture of the remuneration paid out to specified executives officers and directors.⁵³ In view of such policies in place by the aforesaid Act, decisions affecting management are therefore brought in line with the interest of shareholders,⁵⁴ which enables them to enhance their control over management and make informed decisions on investment.⁵⁵

In this regard, it is also imperative for OHADA's corporate system to consider similar policies on disclosure of executive compensation and liberate it from any anticipated challenges. In doing so, the Act should focus on rules that compel companies to include in their annual report a statement of the company's remuneration policy and practice. To enhance the objectivity of this practice will however require OHADA's corporate system to further advocate for institutions such as a remuneration committee, which is an aspect also left out in the Uniform Act. The work of this committee in overseeing aspects of executive remuneration has been observed in countries such as the United Kingdom and in South Africa. In these countries, corporate governance codes have been adopted with standard

⁵¹Id art 715 & 740.

⁵²Section 302, 306, 401 &402 Sarbanes–Oxley Act of 2002, available online at <http://www.sec.gov/about/laws/soa2002.pdf>. (Last accessed 26 September 2012).

⁵³S Morgan, S Daley, D Benderly, K Reinholdtsein, Perkin Coie LLP “Executive Compensation Hand book: A practical Guide of the new SEC's Rules” (Revised 2007) *RR Donnelley* at 9.

⁵⁴Ibid.

⁵⁵Note 42 above at 186.

requirements for all public listed companies to have a remuneration committee entrusted with the task of assisting the board in setting up remuneration for directors and administering the company's remuneration policies.⁵⁶ One primary goal of this committee is to assist the board of directors in ensuring that disclosure practices on remuneration meet the board's objective standards and observes all relevant legal requirements.⁵⁷ In compliance with the abovementioned practice, a certain degree of transparency in the administration of companies' executive remuneration policies has been observed. In this regard, it is also important to incorporate in the Uniform Act, a provision that advocates for the creation of a remuneration committee made up of independent non-executive directors through which OHADA's corporate system executive remuneration policies and practices can be informed through processes such as reports prepared by the said committee. In doing so, all stakeholders within the company will enhance their understanding on specific decisions made to management in terms of their remuneration and this will further strengthen the objectivity of the policy on executive remuneration under OHADA's corporate system and avoid any conflict of interest in companies incorporated under the above system.

4. Conclusion

An overview of OHADA's corporate system policy on executive remuneration demonstrates a strong commitment by OHADA's policy makers to bring executive compensation in line with the performances of companies in order to enable directors remain objective and create value or profits for companies. However a major lesson drawn from the policy lies in the need to institute reform in the form of a policy on disclosure to enhance transparency in the administration of the aforesaid policy. The adoption of this institutional reform will not only promote transparency but will also improve on the Act's corporate governance system and displace skepticism in the management of the affairs of companies in compliance with the Act's provisions and bring its executive remuneration policy in line with the needs of contemporary corporate governance. It will thus enhance a link between

⁵⁶Guide to the King III Code of Corporate Governance, available at <http://www.kpmg.com/ZA/en/IssuesAndInsights/ArticlesPublications/Tax-and-Legal-Publication>(Last accessed 26 September 2012)., See also the Combined Code of Corporate Governance available at http://www.ecgi.org/codes/documents/combined_code_final.pdf.(Last accessed 26 September 2012).

⁵⁷ V Cable, Executive Remuneration: Discussion paper, (September 2011) *Department for Business and Innovation Skills* 1-45, available at <http://www.bis.gov.uk/assets/biscore/business-law/docs/e/11-1287-executive-remuneration-discussion-paper.pdf>. (Last accessed 26 September 2012).

executive remuneration and companies' performance.⁵⁸ In view of the above, it is therefore essential for OHADA's corporate system to adopt this reform or even emulate from corporate systems or countries with similar practices.

However, it is worth exercising caution when emulating from the practices of other corporate systems in order to consider similar application to the context of OHADA's corporate system. An important factor for consideration is the fact that policies and practices on executive remuneration vary across countries and regions. In most instances, they are informed by a wide variety of socio-cultural, political and economic factors.⁵⁹ In this regard, it is important to note that, though OHADA's corporate system may have many lessons or aspects to learn from other systems, it is however crucial for policy makers to bear in mind that a similar implantation of these aspects might not facilitate any better results. Thus as qualified by other scholarly writers suggesting reforms to other core aspects of corporate governance under the OHADA's corporate system, proposed institutional reforms might not necessarily guarantee any additional value to OHADA's corporate governance system.⁶⁰ In spite of the above argument, they can however in the long run enhance the effectiveness of the OHADA's corporate governance machinery. In the realm of executive remuneration, the proposed reform can provide a benchmark by which investors in OHADA's jurisdiction can evaluate certain decisions made in companies with regard to the remuneration of corporate executives.

⁵⁸H E Scholtz & A Smit, Executive Remuneration and Company Performance for South African companies listed on the Alternative Exchange (AltX), (2012) *Southern African Business Review* Volume 16 Number 1 at 28.

⁵⁹Note 57 above at 13.

⁶⁰K A Shefa, "Supervision and Control of Corporate Management. Cameroon and Germany. A Comparative Analysis". (March 2009) ©*Central European University* at 57.

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Sarbanes–Oxley Act of 2002, available at <http://www.sec.gov/about/laws/soa2002.pdf>. (Last accessed 26 September 2012)

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Uniform Act on Commercial Companies and Economic Interest Groups, available at <http://www.ohada.com/actes-uniformes/98/uniform-act-relating-to-commercial-companies-and-economic-interest-group.html>,(last accessed 28 September 2012)

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