

# Who Can become a Member of a Company under OHADA Law: A Critical Appraisal

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**Abstract:** *OHADA Law plays a crucial role in fostering economic growth and regional integration by harmonizing business regulations in the era of globalization and trade liberalization. This study examines the legal framework surrounding company membership under OHADA Law. While certain individuals such as legally incapacitated persons or those facing legal prohibitions cannot become company members, the law provides alternative solutions. The study explores the distinction between members and shareholders and clarifies the eligibility criteria for company membership. Using an analytical approach, this research finds that any natural or corporate entity, unless restricted by legal incapacity, prohibition, or incompatibility, can be a company member under OHADA Uniform Act. Furthermore, the law offers flexibility for incapacitated individuals by allowing legal representatives to act on their behalf.*

**Keywords:** company membership, OHADA Law, corporate governance, shareholder rights, business law

## 1. Introduction

According to the Uniform Act on Commercial Company and Economic Interest Groups (UACCEIG), a commercial company shall be formed by two or more persons who agree, by contract, to assign assets in cash or in kind to an activity for the purpose of sharing profits or benefiting from savings that may accrue therefrom. The members of the company shall bear the losses in accordance with the conditions laid down by the law. It should be understood that a commercial company shall be formed in the common interest of the members [1]. Also, a commercial company may also be formed, as provided by a single person, who is referred to as a sole proprietor on the basis of a written document [3]. However, the commercial nature of a company shall be determined by its form or object. Private companies, sleeping partnerships, private limited companies and public limited companies are commercial companies by virtue of their form, irrespective of their object [4]. Company membership refers to individuals or entities including corporations, who collectively form the company and are legally recognized as its members. It includes the subscribers of a company's articles of association who are deemed to have agreed to become members of the company and where, upon its registration, they become members and are entered as such in its register of members [5]. There are many different ways of becoming a member of a company under the OHADA Uniform Act Relating to commercial companies and Economic Interest Groups. They are also similar to those provided under the Companies Ordinance. As such, membership may be acquired by allocation of shares, by subscribing to the Articles of Association, by appointment of first director, by transfer of shares, by registration, and by a written contract. Additionally, the UACC has as its general rule just like that of the Companies Ordinance that any legal person may become a member of a company. However, minors and other incapacitated persons may not be shareholders in companies where their liability for the company's debts may exceed their contributions [6]. The others are subject to special rules.

Membership in a company explores the concept of being a member within an organization, encompassing aspects like legal status, rights and responsibilities, engagement levels, and the impact of membership on company performance with key themes often focusing on the distinction between different types of members like shareholders, employees, board members, the role of corporate governance structure in managing membership, and psychological factors influencing member commitment and participation. This research aims to critically analyze the legal provisions defining who can become a member under OHADA Law, addressing ambiguities surrounding shareholders and membership eligibility.

Understanding the legal framework for company membership under OHADA Law is crucial for business operating in OHADA member states. This research contributes to legal scholarship by clarifying the eligibility criteria for company membership, distinguishing between shareholders and members and addressing gaps in existing literature.

## 2. Literature Survey

La Porta [7] examines the relationship between legal institutions environments and corporate governance, particularly focusing on shareholder protection. It involves analyzing how a country's legal framework, including its laws, regulations, and enforcement mechanisms, shape the practice and structures companies use to manage themselves, impacting aspects like shareholder rights, board composition, and transparency, essentially determining the quality of corporate governance within that jurisdiction. The theory that plays a good role in this is the institutional theory and the area of study mainly is ownership structure, board composition and accountability that is, the legal requirements for board members qualifications, independence and oversight responsibilities. The study relates to OHADA Law as the Uniform Act explicitly outlines company membership regulations. It is strictly governed by laws found in the different articles of the Uniform Act. The gap which the study covers is the different persons that can become a member of a company since author failed to outline this clearly.

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Jesen and Meckling [8], developed agency theory, highlighting the potential conflicts between owners and managers in a company [9]. They emphasize on the concept of agency cost which are the expenses incurred to align the agents interests with the principals' interests, including monitoring cost, bonding cost and residual cost. They argue that, the ownership structure of a company can significantly impacts agency costs, with more concentrated ownership potentially leading to a better alignment of interest.

One can see that there is a nexus of contracts where managers (agents) are hired by shareholders (principals) to run the company but because their interest may not align perfectly, managers could potentially - make decisions that benefit themselves at the expense of shareholders, leading to a conflict of interest, especially when their personal ownership stake in the company is low; essentially, the more diluted a managers membership in the company, the greater the potential for agency problem to rise. This study has impact on membership in a company especially when we have a member and a shareholder. Showing that when contracts are outcome based, the agent will behave in the interest of the principal.

However, the work did not discuss fully, the issue of who can become a member of company before diving into the relationship between the agent and the principal. This work intends to close that gap.

Freeman [10] in his study, introduced stakeholders' theory, emphasizing the importance of considering all stakeholders interests in corporate decision - making.

Luhmann asserted that organizations only exist through their ability to formalize behavioral expectations by coupling them to the question of membership. He defines membership as a special type of structure, that is, the role expectations that underlie and enable all other structures and processes of the organization [11]. Only through defining membership rolls, and setting generalized conditions for accepting the membership role, was the organization said to be able to gain its complexity and demarcate itself from its environment. Luhmann pointed out that through membership, an organization is capable of creating highly generalized expectations that are placed on its members, and these can be reliably expected to be expected. By acknowledging particular behavioral expectations upon entrance, the members also acknowledge all other formal expectations of the system, which then results in the acceptance of even those expectations that have not been formally specified, hence from every beginning, Luhmann was aware that formal expectations, such as contract or legal sanctions, were not the only expectations towards the member. The member role also provides access to the formal /informal roles and expectations in the system that are necessary for the organization as well. That is especially true for expectations that are not suitable for public, for internal criticism or just those that are impossible to formulate.

Many years after, Luhmann had to make a revision on the main pillars of his theory towards a communication - based understanding of social reality [12]. In this new understanding, societal macro - level realms, social movement, conflicts, families, face - t - face interactions and

organisations all became treated as a system that consist of communication and of communication only.

In addition, Luhmann defines the structures of an organization no longer in terms of formal/informal but on the premises for decision - making: for example, in the form of personel recruitment, communiation channels, hierarchies, rules and culture. In this understanding, membership is one of the premises for decision making, too. However, even in this new understanding, Luhmann kept emphasizing the special importance of the membership premise. Among all the organization's premises for decision - making, membership is considered as kind of a meta - premise, that is the premise for deciding on the premises for making decisions. [13] this new concept has been of great importance and a source of inspiration for a broad variety of works in organization studies. The above shows a reflection of the different possibilities for extending our understanding of the relationship through the application and further development Luhmann theory of social systems. The possible configurations and entanglements of these two concepts. A member is one of the company's owners whose name has been entered on the register of members. Member's delegate certain powers to the company's directors to run the company on their behalf.

### 3. Problems

There are some difficulties understanding membership of a company as individual who are legally incapacitated, banned or incompatible with legal guidelines cannot become members of a company this gives a complex understanding on membership; thus, clarification is very crucial.

### 4. Methodology

A content analyses of primary and secondary legal sources was conducted to examine the realities of company membership under OHADA Law in Cameroon. Primary data in the form of legislation, and existing statues on one hand, and secondary data including articles, books, journals, law reports on the other hand. This data shall be analyzed and relevant issues explained.

### 5. Discussion and Results

#### 1) Who can become a member in the different business structures (a company) under OHADA LAW

Under both common law and OHADA, many different corporate structures are provided. The UA states that any person regardless of nationality who wishes to engage in a commercial activity in the form of a company which sorts the activity envisaged.

#### 2) The difference between a member and a shareholder

A company's membership is known as it corporators. The term member is used interchangeably with the term shareholder but the two are not the same. for example, under English law, a company limited by guarantee or unlimited company may not have a share capital and therefore may have members who are not shareholders.

By definition, the term member in relation to a company means, one who has agreed to become the member of a company by entering his name into the register of member. Every person who has agreed in writing to become a part of the company and also holds shares of the company is considered the member of the company. Members of a limited company are individuals or entities who have subscribed to the company's memorandum of association at incorporation or who may not be a shareholder in the company. The term member is used in the context of their contribution to the management of the company by appointing and removing directors, voting on changes to the company's articles of association and other corporate decisions [14]. These actions are not related share or shareholding. On the contrary, a share is the interest in a company's share capital of a member who is entitled to share in the capital or income of a company [15]. A shareholder is defined as the proportionate owner of the company but he does not own the company's assets which belong to the company as a separate and independent legal entity [16]. Therefore, under the OHADA Law, a shareholder of a company having a share capital becomes a member when he signs the articles of association. Also, a holder of a bearer share warrant is a shareholder but not a member because his name has not been entered on the register of members as such, he has the right to vote, to a dividend if declared, to attend meetings and must pay for any amount outstanding on his share [17].

Better still, it should be understood that almost all shareholders are members, but not all members are necessary shareholders. Shareholders have an investment interest in the company, while members have a legal interest in the company's management and operation.

In addition, members are often referred to as shareholders in the context of their shares and investment in the company. For instance, when discussing the rights attached to their shares or a share reorganization [18].

There are some particular persons who can be a member of a company. A legal person can become a member of a company but there are some such as minors who do not benefit from legal capacity, may not become member of a company because their liability for the debts of the company may be above their contribution. Also, others are subjected to some special rules before they can become members in a company. These are husbands and wives, personal representatives, companies, aliens and trustees in bankruptcy. These persons shall be discussed below.

### 3) Aliens eligibility

Aliens are non - nationals which mean that, the law does not deny the non - nationals of becoming a member in a company [19]. It should be bear in mind that any persons whatever their nationality, wishing to engage in a commercial activity in the form of a company on the territory of one of the contracting states of may choose a form of a company which suits the activity envisaged from among those provided for the UA [20]. Meaning that non - nationals are not being denied of the right of creating a company, all they need to do is just to follow what the law says.

### 4) Lenders are eligible

If person lends money to a company in the name of a mortgage of its shares, can become liable as a member if the shares are registered in his name [21]. this gives rise to a legal mortgage [22]. But however, where the company consents to plan t pledge company shares under the conditions that govern the transfer of shares to third parties, such consent shall imply the approval in case of the compulsory liquidation of regular pledge company shares, unless the company prefers, after the transfer, to immediately redeem the said shares in order to reduce its capital [23] Such shares must be established by a notarial deed or private deed making the company to be aware of it and must be published in the Trade and Personal Property Credit Register in order for third parties to rely on it.

There are some conditions that the secured creditor will have to fulfill in front of the registry of the competent court whose jurisdiction the company is registered for the pledging of shares these [24] He shall present: the original copy of the secured deed where it is a private document, or an authentic copy thereof where it is a record or a court decision authorizing the creditor to have the pledge entered in the register; four copies of an entry form indicating the full name. business name, registered capital, domicile or registered office of parties, as well as the registration number of the company whose shares are pledge; the nature and date of the deeds deposited and also, the amount of money due on the last day preceding the entry and where applicable, the conditions of payment of the debt; in addition, the secured creditor's election of domicile within the jurisdiction of the court where the Trade and Personal Property Credit Register is kept. Any modification done by agreement or court order it shall be mentioned as an object in the new registration in the register under the same conditions and forms as provided for the initial entry.

The court registry has to conform the security deed being presented, enter it in the incoming register by mentioning the entry in the individual file opened in the name of the company whose shares are concerned with this security entry; file the deed and a copy of the declaration form that was given to him in the file kept in the name of the corporate body whose shares are concerned with this security entry; give the applicant the second copy of his declaration mentioning the date and the number of the entry [25]. The third and the fourth copies of the declaration form must be sent to the National Card Index which has to send one of them to the Regional Card -Index.

### 5) Infants

An infant may be a member of a company unless the articles of association forbid so. As stated, [26], minors and legally incapacitated persons may not be partners in a company where their liability for the company's debt exceeds their contributions. This put these categories of persons out of a partnership but can subscribe for shares in a limited partnership where they would not be active partners. Also, an infant is free to own shares in a limited company and public limited company where his/her liability will be limited to his/her contribution [27]. A minor is supposed to be emancipated before he/she can engage in any commercial activity. Emancipation could be when the minor is of marriage age [28] or when the minor is not married but could be emancipated when he/she is of the age of sixteen [29] or in

order for the unmarried minor to be freed, he must be heard by a judge of guardianship on the request of any of the parents.

In like manner, a person under the age of eighteen shall not join in the formation of a company or be a subscriber to the memorandum of association unless there are at least two other subscribers not qualify under the act from joining in forming a company [30]. There is a lot of different opinions as to who is qualify as a minor. An infant or minor is someone under the age of twenty – one. On the contrary, an emancipated minor is considered as an adult and can subscribe to the Articles of association of the company also he can acquire shares in a private and public limited company and even become a manager.

#### 6) Married woman

The position of married woman acquiring shares in a company is not very clear as the woman must have capacity to marry no matter the place that the marriage was contracted. If she has the capacity, she can own shares in a company because she now has the rights like any other person owning shares and she would be liable to the same obligations with regards to shares. This gives her right to become a member of a company and can own shares separately from that of her husband. This is particular in types of company. Though the law has a contrary view [31], this is explained in the sense that, a husband and wife may be members in a public and private limited company because they can jointly hold shares but it should be understood that, in a partnership and limited partnership, a married woman cannot be partner with the husband in such companies either of them would be an active partner and the other a silent partner [32].

In order for the woman to be a member in that company, there are certain things she has to do to show proof that she is a trader. They include: if she is carrying out activities in the banking sector, capital market, exchange, purchase of movable or immovable, brokerage insurance, or she may be involved in forwarding that is, any contract between commercial operators for the needs of their business, the industrial exploitation of mines, quarries and any other natural resources.

In addition, she may involve in the leasing of movable assets which includes manufacture, transport and telecommunication, the business of commercial intermediaries and any other property, business or shareholdings in commercial companies or property companies, transactions carried out by commercial companies and the issuance of bills of exchange and promissory notes. We can see that the position of a married woman becoming a member of a company is a little complicated as even if it been agreed, there are a lot of conditions that needs to be met with.

#### 7) The State

The position of the state in becoming a member of a company is very clear and well understood. A state or a public entity could be a member of a commercial company [33]. It will be good if a clarification is made here by explaining that, every commercial company, including those in which the state or a corporate body governed by public law is a partner whose

registered office is located on the territory of one of the contracting states to the treaty, shall be subjected to the provision of the UA. This has to do with limited liability companies such as the private limited, public limited, partnership and limited partnership company. Since involving the state means huge investment, the state in most cases is only involved in a public limited company. Thus, the state can hold shares in such a company in order to become a member.

#### 8) Bankrupts

It is another legal person having the capacity to be a member of a company. Even though his beneficial interest of the shares will be put in his trustee in bankruptcy as from the time when he is declared bankrupt, except the articles of association stipulates something else.

#### 9) Corporate bodies

A corporate body [34]. can be a member of a company since it is a person and it is not subjected to any restriction of being incapacitated or incompatibility [35]. It can still be through buying of shares from another company and also as a subscriber during formation of the company and when the company is fully incorporated, it becomes a member of the company.

It is clear that a company if it is permitted by the articles of association can hold shares in a company and be a member of another company as such it may attend meetings of the company by sending a representative has been authorized by a decision of its directors.

#### 10) Personal representatives

A personal representative could be an executor, that is, if a will has been made or an administrator, that is, if there is no will, could succeed a member's shares in a company if the member is dead. If there was a will, in order to succeed the shares of the deceased member, a letter of administration of the will or of the estate or probate of the will be enough. Again, these are the only persons who are being recognized as having interest in the deceased shares. They can sell or transfer the shares before becoming members of the company and also have the same right over dividends and all other advantages the other members of the company have as if they were registered members of the company (that is without being a personal representative). The only exception is that, they cannot exercise certain rights like other members whose shares are registered during meeting. But they can only be full members if they subscribe their name in the articles of association such provision is made in SA and SARL articles of association for shares to be transmitted to personal representatives.

## 6. Conclusion

The OHADA Uniform Act on Commercial Companies and Economic Interest Groups provides comprehensive legal framework defining company membership. While any individual or corporate entity may become a member, certain groups such as minors, legally incapacitated persons, and bankrupt individuals are subject to specific restrictions. The law remains flexible by allowing legal representatives to act on behalf of incapacitated individuals. Overall, OHADA Law aligns closely with the Companies Ordinance, ensuring a

clear and inclusive understanding of company membership. Future research should explore potential reforms, particularly concerning the membership eligibility of married couples in the same company

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- [16] See *Borland Trustee V. Steel Bros & Co. Ltd* (1901) 1 ch.279.
- [17] Art 52 of the UACC.
- [18] Ibid.
- [19] Such as partnership, limited partnership, private limited company and public limited company.
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- [24] Article 44 and of the Uniform Act on General Commercial LAW (UAGCL).
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- [26] Article 8 UACC.
- [27] Article 7 (1).
- [28] Article 476 of the French Civil Code.
- [29] Article 477 UACCEIG.
- [30] Section 20 of the Companies and Allied Matters act 1990.

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