THE INTERVENTION OF THE PROVISIONAL ADMINISTRATOR IN OHADA COMMERCIAL LAW

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ABSTRACT

The Organization for the harmonization of business law in Africa[i] is currently an unprecedented legislative effort[ii]. Among the matters dealt with by the OHADA legislator, the law of commercial companies has found its place in it; and on the substance, one of the main objectives of the Uniform Act dedicated to this matter is to improve the information and security of associates, through the intervention of the judge if necessary. However, the modalities of such intervention must be well established. Since the company is therefore the responsibility of the parties, a third party may be involved, which is the case with the provisional administrator. As a legal agent by nature, he will be assigned the duties of a corporate officer. It is therefore necessary to look at the rules governing this interference.

INTRODUCTION

OHADA is designed as a tool to help modernize business law in an integrated space[iii]. This is at least what emerged from the philosophy conveyed by the community legislature which guided the development of the arrangements put in place[iv]. Thus, among the various matters which have been the subject of harmonization, the law of commercial companies is prominent. The law governing commercial companies, which governs the organization and operation of small, medium-sized and large undertakings, is aimed at structures which, because of their number or size, generally have a certain economic weight. Consequently, the underlying trends in the matter could make it possible to orient, in one direction or another, the

activity of the groups concerned and, consequently, the economic impact of the rules laid down[v].

Since society is an agreement between the persons who make up it[vi], it may happen that, for certain reasons, whether provided for in the texts, the normal functioning of society becomes difficult or even impossible. Since at the base they are bound by the *affectio societatis* which bases the Common will to share a common interest. What is true is that once the decline of the company's situation is established, serious steps must immediately be taken to safeguard the investment of the partners.

In recent years, OHADA has laid down a normative foundation analyzed by a fertile doctrine, enriched by a constructive jurisprudence and widely explained in various programs[vii]. The changes made in the field of business law were necessary in view of the antiquity of the texts then in force, which was justified by the inadequacy of the provisions governing the situations constituting the activity of commercial companies. It could happen that the legislator, without knowing whether it was voluntary, ignored an existing situation, the practice of which was in practice. This is the case with the interim administration.

The provisional administrator, in the legal sense of the term, is a person appointed by the judicial authority to manage the assets of a natural person prevented from doing so or of a legal person deprived of its governing and administrative organs[viii]. Through its institutionalization, the legislator removes the legal regime of the provisional administrator of the "*maquis*" in the OHADA space. This progress was not made in a piecemeal fashion, but because of a long process already initiated by the case law of the various member states. The appointment of a provisional administrator is within the competence of the judge hearing the application for interim relief, since this act is the result of an urgent procedure designed to prevent the company from facing a serious risk because of its calamitous management. Thus, for a provisional director to be appointed, the normal management of the corporation, which may be exercised by the board of directors[ix], must be compromised so that it cannot continue to exist if it is left as it is[x]. When implemented, it allows the court seized to appoint "temporarily" a director at the head of a company instead of corporate bodies[xi].

Before the advent of OHADA in 1993, the ruling on the state of the economy and the law in Africa was harsh[xii]. The urgency of legislative intervention in various areas of Business Law was more pressing than ever. This may have justified, among other things, the

institutionalization of the provisional administration. It should be recalled that the family of social leaders also includes the " crisis leaders ". They are persons who are appointed as the head of the company, by the authorized authority, to resolve a given situation[xiii]. In this category, we find the temporary director appointed at the head of the company for resolving the social crisis that motivates its appointment. In fact, more than a judicial representative, the temporary director is first and foremost called upon to perform the functions of a crisis manager within the company in which he has been appointed. The provisional administrator can be defined as "the person designated by the judicial authority to temporarily manage the latter and to resolve the social crisis which motivates its intervention"[xiv]. This means that when circumstances so require, in particular in the event of a crisis endangering the very existence of society[xv]. As it is one of the judicial representatives, it is necessary to clarify a few points. First, the provisional administrator is not an ad hoc agent, in the sense that his task is to represent at a meeting the minority or egalitarian partners whose behavior is considered abusive and to vote on their behalf for decisions that are in the social Interest[xvi]. Secondly, the provisional administrator is not a management expert, since the latter is appointed by the competent court only for presenting a report on one or more management operations[xvii], and will therefore be a very limited and ad hoc intervention[xviii].

Since OHADA law is thus a law which secures its modernity and codification, it must provide unquestionable legal certainty[xix]. This imperative should therefore be reflected in the various matters that make up it, including the law of commercial companies. A commercial company is defined as a contract whereby two or more persons (natural or legal) agree to pool something to share the benefit or profit from the resulting savings[xx]. It may also designate the legal person arising from the contract. It is a legal entity separate from the persons who created it[xxi].

This study can be of both theoretical and practical interest. Theoretical, because in view of its origin and the tasks assigned to it, one would be tempted to say that the provisional administrator is an ambivalent body[xxii], because it can sometimes be considered as a judicial representative, sometimes as a director. And practical, because of the pervasiveness of the elements connecting him to the social leader, whose definition is not determined, and which extends to the regime of his criminal responsibility. However, while it is now generally accepted that the law is the basis for the binding force of the contract, that it helps to define or

even to modify its content, there is nothing to prevent the law from also attributing the status of party to a person who has not consented to it, when imperatives beyond his control so require. Indeed, from a Praetorian creation, provisional administration constitutes a technique of judicial administration of companies[xxiii]. In this sense, it was established to address crisis situations. The purpose of this institution is therefore purely ad hoc, since it must deal with a temporary malfunction or blockage and cannot, in principle, extend beyond it[xxiv].

The central issue in the present discussion is that of the system of provisional administration in commercial companies governed by OHADA law. Thus, the question arises as to whether it is possible to equate the interim director with an officer. Or is it not permissible to see a gap between the status of the provisional director and that of the director of a commercial company? In this way, the scope of the powers of the provisional administrator (I) will be presented first, before determining the regime of his responsibility and the termination of his functions (II).

I- THE SCOPE OF THE PROVISIONAL ADMINISTRATOR'S PREROGATIVES

The provisional administrator in Company Law can be defined as "the person designated by the judicial authority to temporarily manage the latter and to resolve the social crisis which motivates its intervention"[xxv]. It is therefore for the judge[xxvi] who appoints the administrator to specify the nature of his or her duties, the extent of his or her powers and the duration of his or her duties[xxvii]. Indeed, in the face of the refusal or failure of the organs to take decisions that allow society to function, the judge may be called upon to help. This faculty is a pure Praetorian creation. Since the appointment of the provisional administrator is reserved for the most serious cases, it is justified by the paralysis of the company organs resulting in the imminent risk of a definite peril for the company. It is in this respect that the intervention of the judge in the life of commercial companies is justified.

The appointment by the judge of a provisional administrator to replace the statutory management bodies for the duration of the crisis is a serious and exceptional measure. The provisional administration is surely the most complete formula of the judicial constructions of the solutions that can help to resolve the situations of social paralysis[xxviii]. The corollary of this

general management mandate will therefore be the divestment of the legal bodies[xxix]. It is a Praetorian construction that is today enshrined in the ohadien legislature[xxx], which allows the judge to interfere in the management of society when the survival of society is in question. The appointment of a temporary director is therefore only conceivable in the event of a crisis endangering the very existence of the company[xxxi]. Its extreme gravity must lead the judge to take sufficient precautions for this measure on the double condition that the proof is brought of a paralysis of the social organs and of an imminent peril. However, to speak of the scope of the powers of the provisional administrator is to present its powers on the one hand (A); and on the other hand, the limits to them (B).

A- Unpredictability of the provisional administrator's powers

The application for the appointment of a provisional administrator shall be submitted to the competent court[xxxii], usually by way of interim measures on grounds of urgency[xxxiii]. The judge's decision shall in principle determine the scope of the provisional administrator's duties. It is therefore accepted that the provisional director represents the company in the performance of its duties and within the limits of its powers, and any act which he performs more than those powers is unenforceable against the company[xxxiv]. But it is up to the latter to take the necessary measures as a matter of urgency to avoid the dangers threatening society. It must also deal with day-to-day management, which of course includes precautionary measures. Consequently, understanding the function of provisional administrator requires that we consider both a broad conception (1) and a restricted conception (2) of it.

1- Wide design

Acting as judicial representative, he shall be appointed in place of the company representative who has been unable to carry out the task assigned to him. That said, there may be cases where all the corporation's administrative powers are vested in the corporation[xxxv]. This is a position which had already been adopted by the case law long before. Indeed, the court of cassation seems to accept that the provisional administrator is vested with all the powers conferred by law on the governing bodies[xxxvi]. This means that from the time of its appointment it is in a position - unless of course limited by the instrument of appointment – to

take the place of defaulting managers, provided of course that it always carries out its duties in accordance with the social Interest which should guide it.

However, it should be noted that the appointment of a temporary director does not lead to the dismissal of the statutory officers, let alone the termination of their duties. This may lead us to question the coexistence of these two bodies which, by their very nature, are called upon to assume the same functions, will be called upon to coexist on the seat of the administration of the company. The solution would therefore lie in the choice made by the judge, either to leave all the prerogatives granted to a statutory administrator in the hands of the provisional administrator, or to circumscribe the duties of the latter in his instrument of appointment.

2- The restricted design

The act of appointment of the provisional administrator shall be the starting point for his mission. As a judicial representative, it is a principle that a certain number of prerogatives are granted to him. In a narrow conception, the law provided that the judge appointing a provisional administrator, define at the same time what is to be expected of him. It is in this sense that art 160-2 al 3 AUSCGIE provides that the decision of appointment of the provisional administrator determines the scope of its mission and its powers. Thus, it will obviously be for the provisional administrator to proceed to a management circumscribed and marked by the act that designates it. To this end, he may have as his task: the convocation of all the boards of Directors and general meetings and the right to attend and preside over them if necessary; the management of existing accounts; the opening and operation of new bank accounts; the possession of all documents and company books[xxxvii].

It is in fact a question of refocusing the duties of the provisional administrator through his appointment act out of fear of being confused. Thus, the Act provides that the interim director shall represent the corporation in the performance of its duties and within the limits of its powers. Any act he performs more than these powers is unenforceable against society[xxxviii].

B- The diversity of statutory limitations on the powers of the interim administrator

The institutionalization of the interim administrator by the OHADA legislature is a welcome initiative. The decision issued by the competent court shall determine the scope of the duties and the powers of the administrator, while recalling those of the management, management or administrative bodies which remain in office, specifying the powers and powers which shall be retained. Thus, at a time when the situation facing society has become critical, we must not lose sight of the fact that the legislator has been anxious not to make him - who at first is a third of society – an all-powerful within an organization that is alien to him. It is for this reason that certain limits have been imposed on him, which may relate to the nature of his powers (1), or to the duration of his mission (2).

1- Limits on the nature of powers

The interim administrator is a body appointed by the judge on an exceptional basis to manage a company in crisis. In other words, it is the person designated by the judicial authority to "temporarily" manage and resolve the social crisis that justifies its intervention. He will be required to represent the company only when the statutory bodies in place prove to be defective. Since the provisional administration is essentially a precautionary measure, it aims at restoring the normal functioning of society and cancelling the imminent peril that threatens it. This means that if the company is operating normally on certain points, there is no need to involve the interim administrator.

The powers of this body are a priori determined by the judge; they are the powers of representation. In that sense, the provisional administrator may not act in a management capacity going beyond the normal exercise of the functions conferred on the statutory officers. Since the latter is designated to resolve the crisis in society[xxxix], the judge will specify the scope of the mission conferred on him, and it is the order that has mandated him that determines his missions. In principle, it may be vested with all the powers conferred by law on the managers[xl], even in practice its task may range from the convening of a general meeting[xli] to the complete management of the company[xlii]. However, it cannot exceed the powers vested in it by its instrument of appointment. In fact, by transposition to the statutory officers of the company, the provisional administrator, who is a legal representative[xliii], is required to carry out its duties in accordance with the social Interest.

2- Limits on the duration of its powers

Framed by law, the competent court's power is to determine the duration of the provisional administrator's assignment, which may not exceed six (06) months, and in the event of a justified request for an extension, this request may not exceed twelve (12) months. The provisional administration presents itself as a panacea to put an end, at least temporarily, to the deficiency of social affairs in case of disagreement between partners, but also following an institutional blockage or financial crisis. In fact, the provisional administrator, who is only temporarily involved in the management of the company, will have to limit himself to that temporal range recognized by the legislator. This limitation de facto terminates the duties of the provisional administrator, whose term is of course fixed by the judge in his appointment document.

The advantage of limiting the functions of the provisional administrator lies in the fact that, since the company is in principle the business of the parties who set it up – the partners – and who have freely chosen the person who will have to oversee managing their affairs, the permanent admission of a third party would be inappropriate. Even if he arrives in business to save society, he is called to leave. Furthermore, its mission should always be guided by the concern to serve the social interest. It is in the name of this Social Interest that the judge can put himself above the partisan interests that he might have been tempted in other circumstances to consider.

II- RESPONSIBILITY AND TERMINATION OF INTERIM ADMINISTRATION

The first impression left by a brief reading of the various uniform acts is that there is a diversity, a variety of sources of inspiration for these texts[xliv]. It should be noted at the outset that the provisional administrator is first and foremost an agent, and as such, he may, in the same way as the statutory officers – who are corporate agents – engage his responsibility. To better understand the regime of this responsibility, it is important to first consider the concept of a social mandate. The term "social mandate" is only a descriptive term that departs from the legal characterization of a civil-law mandate[xlv]. In fact, the directors are not the partners ' representatives (even if they are appointed by them), because their acts do not directly bind the

partners, but the company. Nor are they Agents of the company, since the latter, an abstract entity, has no will of its own that can constitute that of the principal who assigns an agent of his choice to a mission that he determines. The term "corporate mandate" thus simply means that corporate officers perform a function on behalf of the corporation in whose name they are empowered to act. However, in the context of provisional administration, the mandate is given by the courts with a view to resolving a crisis, after which, like the directors, the provisional administrator may be held liable because of fraudulent acts committed by him (A), which may result in the termination of his function (B).

A- Implementation of the interim administrator's responsibility

The fact remains that the temporary director may be regarded as a substitute manager in a crisis because of the abnormal functioning of the company which justifies his intervention. Nevertheless, by his actions, the temporary director may be held liable under the same conditions as legal or de facto managers. Court administrators incur civil liability for damages caused by their negligence or oversight[xlvi]; their task is to supervise, assist or replace the debtor in the management of his business. Thus, while they manage the business, they are subject to the provisions concerning corporate officers[xlvii]. It is true that the acts committed by the managers lead the legal person responsible to assume responsibility for repairing the damage caused[xlviii]; but in this case, it is a question of taking an interest in their personal responsibility. The interim director represents the corporation in the performance of its duties and to the extent of its powers[xlix]. To this end, it is important to review the conditions for the implementation of this responsibility (1) before presenting the effects inherent in it (2).

1- Requirements

Based on the general scheme of fault liability, the very general scope of which derives its basis from article 1382 of the Civil Code, it should be recalled that the provisional administrator's liability does not stand on the sidelines of the threefold fault, damage suffered, causal link. Raised by the French Constitutional Council to the rank of general principle having constitutional value, from which the legislator cannot derogate[l]. However, far from us the idea of making a complete transposition of this Civilist approach, it is right to recall that in its

implementation, the responsibility of the provisional administrator is innervated by this principle that one would describe as classical. Thus, in our opinion, two conditions can be retained in the implementation of the provisional administrator's liability, namely: the requirement of a harmful fault on the one hand; and that this be "detachable" from the functions of the administrator.

This is a regime like that of the ruler. However, because of the difference their missions, it would be permissible to present that responsibility, which could not be of a type, but would be distinguished by the specificity inherent in the organ to which it was attached.

First, the requirement of a wrongful act presupposes that, in the performance of the duties assigned to him either by law or by his appointment, the temporary administrator, through wrongful acts of negligence or imprudence, causes internal or external damage to the company. Thus, the fact that he fulfils his duties in accordance with the Act appointing him proves to be an obligation to which the slightest derogation could lead to the implementation of his responsibility. Liability that will arise - as is the case with the legal or common – law officer- from a fault on his part in the management of the corporation. Thus, the fault must have caused damage either to the company or to a third party. As a result, its liability may arise from actions carried out under the same conditions as if it were in the presence of social leaders[li].

Secondly, the misconduct of the provisional administration should be severable from its duties as administrator. What is relevant here is that the determination of the scope of the powers of the provisional administrator is not difficult, because of the limits imposed either by the law or by the Act designating it, it is easier to detect acts going beyond or squarely out of its duties. By the instrument of appointment, the judge tacitly determines not only the functions of the provisional administrator, but also the cases in which it is impossible for his actions to render the company liable. Even in the case of a broad conception of the duties of the provisional administrator, it is impossible to accept acts going beyond the social Interest, which will still serve here as a "safeguard" for the misguidance of the latter. Thus, the "severable" nature of the administrator's wrongful act should serve as a basis for the implementation of his responsibility.

However, article 160-8 of the code does not mention anywhere if the liability incurred by the provisional administrator is of a civil or criminal nature. So, if in our view it is possible to transpose the rules governing the civil liability of managers to the provisional administrator,

the reality would be quite different in criminal matters. For, upstream the legislator in accordance with article 5 of the founding Treaty of OHADA[lii], did not even provide for a criminal offence to the fault of the provisional administrator. Indeed, by the principle of legality coupled with the principle of strict interpretation of the law, nothing here could justify the criminal liability of the provisional administrator. However, if he were to be prosecuted under criminal law, this would only be possible under another classification. Hence the use of national texts to regulate the issue. In fact, in Cameroon, article 136-1 of Law No. 989/PJL/AN of June 2016 on the Penal Code provides that : "any public official who, in charge of an administrative mission, even a temporary one, or of supervising, supervising or advising a private undertaking, exercises before a period of three (03) years from the date of the termination of the contract, shall be punished by a prison sentence of six (06) months to two (02) years and a fine of twenty thousand (20,000) to two million (2,000,000) francs, or by one of these two penalties only. of its functions, a social mandate or is engaged, even by a contract, an activity remunerated by that undertaking'.

As with any liability regime, the one that can be applied to the interim administrator is also bound to have an effect.

2- The effects produced

The interim administrator shall be liable for any damages that may result from the non-performance or improper execution of his mandate. He is responsible, among other things, not only for the fraud, but also for the mistakes he allegedly made in his management. The OHADA Legislature made this a requirement when it provided in Article 160-8 of the code that " the provisional administrator shall be liable to the company and to third parties for the harmful consequences of any misconduct he commits in the performance of his duties ". This leads us to consider the effects of the provisional administrator's claim on both the company and third parties.

Regarding the company, article 160 (4) of the Merger Regulation states quite clearly that ' the provisional administrator shall represent the company in the performance of its duties and within the limits of its powers. Any act which he performs in overstepping these powers is unenforceable against society". At this level, it is obvious that the provisional administrator

could only commit the company within the limits of the mission assigned to him by the act of his appointment. Moreover, the corporation cannot be held accountable for its actions if its powers are exceeded. Thus, the question is whether society will be able to assume its responsibility under the same conditions as those of the social leaders. An affirmative answer would be possible in our view. For the simple reason that, although not an officer, the provisional director is still in charge of the corporation, and as such, it would be obvious that his liability could be incurred as such. So, even if the OHADA legislator has remained vague about the implementation of its responsibility, we think that the company can very well through its governing bodies bring an action for liability against the provisional administrator.

Regarding the effects on third parties, a simple approach seems to us to be appropriate, namely the application of the common law liability regime. Thus, based on article 1382 of the Civil Code, third parties could incur liability in tort or delict on the part of the provisional administrator for acts harmful to them. As always, they will be required to prove the link between the administrator's fault and the damage they claim to have suffered.

However, because of the involvement of the interim administrator or not, it should be recalled that his mission is set to end.

B- Termination of the duties of the interim administrator

The provisional administrator's duties are necessarily limited in time and cannot be longer than the exceptional circumstances which justified them[liii]. Where a provisional administrator is appointed, his or her term shall end on the date specified in the appointment order, if he or she has not been extended. If the mission for which he has been appointed has not ended, the judge may renew his mandate only once. It should be stressed, however, that two hypotheses are possible: either the crisis justifying the intervention of the provisional administrator has been resolved or the situation has remained unchanged. Thus, two situations arise: on the one hand, one could witness the end of his duties as of right (1); on the other hand, a purpose brought about by a replacement (2).

1- Termination as of right

In the case of a *statu quo ante* in the company's situation, the judge is entitled to extend the administrator's mandate by a new mandate, which may allow the administrator to rectify the situation. However, the administrator's request for extension must be substantiated and must indicate, on pain of inadmissibility, the reasons why his assignment could not be completed, the measures he intends to take, and the time required to complete his assignment. The competent court shall fix the duration of the extension, but the total duration of the assignment shall not exceed 12 months[liv].

On the other hand, if the mission for which he was mandated is fulfilled and the difficulties faced by the company have been resolved, he is de facto released from his mandate. Because, there will be a return to calm, and the company being again in a regular situation, the director will just be held accountable to the judge who named him in a document in which he will have to detail how his mission went. However, his departure may also be caused.

2- The end after the replacement

There is an alternative possibility, that of replacing the temporary administrator in the event of his failure to act being established when carrying out his duties. Article 160-7 paragraph 1 provides that " the temporary administrator may be dismissed or replaced in the manner prescribed for his appointment ". It is not excluded to see through this provision, the replacement of the temporary administrator in office defaulting, by another, who will eventually come to attempt to resolve definitively the crisis that the society is going through.

As a result, the term of office of the interim administrator may end with the appointment of a new administrator. The appointment of a new provisional administrator will terminate the mandate of the former, since the latter has been unable to carry out his mission, or the judge considers that he no longer meets the criteria of a good administrator. In such a case, it will be for the judge to terminate the assignment of the first administrator, or to wait until the time provided in the appointment order has expired, to do so. The new administrator will therefore be appointed by the judge and his duties will also be defined in the order appointing him. However, the termination of the provisional administrator's duties may also occur at the request of the partners. Indeed, article 160-7 paragraph 2 of the AUSCGIE provides that " any partner may obtain in court the dismissal of the provisional administrator if this request is based on a

just reason "[lv]. In addition, the death of the interim administrator will also mean the end of his assignment.

CONCLUSION

The creation of a better legal environment for the functions of interim administrator seems to be an undeniable instrument for improving growth, corporate sustainability and business security. The normative content of OHADA law thus expresses a form of legal mimicry that is to be welcomed as it allows African economies to offer a secure legal framework to investors. However, Company Law is at the same time dominated by amalgams, approximative and diversified provisions which, without appearing to be identical, evoke the memory of a situation of uncertainty which prevailed in OHADA space before the advent of uniform acts. There is a plurality of the statutes of the directors, of which the provisional director is the mere manifestation; than to an essentially protean and equivocal conception of the quality of leader. Over time, it is to be feared that the stranglehold will be tightened around the judge who, in the absence of a legal basis, will not be able to penalize the provisional directors who will nevertheless have committed reprehensible acts and whose qualification is normally recognized to the directors of companies. This could be the starting point for the timid status of the provisional administrator.

For a long time, it has been accepted in OHADA law that the status of the executive was to overshadow that of the temporary administrator, who used only gaps left by the legislation of that time to be highlighted. Fortunately, the OHADA legislator, following the revision of the AUSCGIE in 2014, has come out this body already known in the jurisprudence of the " *maquis* ". Presumably, it seems logical to equate the provisional administrator with the managers, but it could only be legitimate to resign oneself to opting for such a view. For, if we stick to the various reforms introduced by the 2014 revision, the legislator has tried to attribute to this once clandestine body[lvi] a certain legitimacy. One comes to wonder if the introduction of the provisional administration by the OHADA legislator through the revision of the AUSCGIE of 2014 could be considered as a fertile meeting or simply a missed appointment?[lvii] This could lead, of course with certain reservations, to thinking of the influence of the

provisional administration in the Uniform Act, particularly about criminal liability resulting from the activity of that body.

REFERENCES

[i] OHADA, is an organization composed nowadays of Seventeen (17) member states including: Benin, Burkina Faso, Cameroon, Central African Republic, Islamic Federal Republic of Comoros, Congo, Ivory Coast, Gabon, Guinea-Bissau, Guinea Conakry, Equatorial Guinea, Mali, Niger, Senegal, Chad, and Democratic Republic of Congo. It came into being following the signing in Port-Louis on October 17, 1993, of the founding treaty, as revised in Quebec City on October 17, 2008.

[ii] TIGER (P), *Le droit des affaires en Afrique (OHADA)*, Que sais-je ?, PUF, 1999, p 7

[iii] POUGOUE (P.-G), « Présentation générale du système OHADA », in *Les mutations juridiques dans le système OHADA*, Harmattan-Cameroun, 2009, p 11. For this author, OHADA law is today a living Law, and the OHADA model a specific and living model; COSSI SOSSA (D), « L'OHADA au service de la croissance économique des Etats », in DIFFO TCHUNKAM (J), *L'OHADA au service de l'économie et de l'entreprise, efficacité et compétitivité*, Coll. Droit comparé en Afrique, 2013, p 15

[iv] MOULOUL (A), Comprendre l'OHADA,2e éd, PUA, 2009, p 17 ; ISSA SAYEGH (J), « Sécurité juridique et attractivité du droit OHADA », in *L'OHADA au service de l'économie et de l'entreprise, efficacité et compétitivité*, op cit, p 51

[v] LOUKAKOU (D), « Le régime juridique des sociétés commerciales : cadre incitatif ou dissuasif pour l'investissement dans l'espace OHADA ? », in *L'OHADA au service de l'économie et de l'entreprise, efficacité et compétitivité*, op cit, p 88

[vi] This is at least what emerges from the company's contractual thesis, but especially from article 2 of the Uniform Act on the law of commercial companies and economic interest groups of 17 April 1997 and revised on 30 January 2014 in Ouagadougou.

[vii]POUGOUE (P.-G), « L'OHADA entre son passé et son avenir », in *L'OHADA au service de l'économie et de l'entreprise, efficacité et compétitivité*, op cit, p 37

[viii] VERGE (E) et RIPERT (G), *Encyclopédie Dalloz droit commercial et des sociétés*, T.1 1956, p. 42 v. °Administrateur provisoire

[ix] In the specific case of public limited companies

[x] CA Littoral, Arrêt n°38/REF du 10 février 1999, Aff. REEMTSMA et autres C/ SITABAC et autres, *Juridis périodique* n°42, avril-mai-juin 2000, note KALIEU (Y.-R), p.54

[xi]To resolve minor or profound crises, the judge may designate external actors. It has to make a choice which is constantly expanding, while taking into account the conditions of appointment and the powers granted to the person who is appointed.. V. LEGEAIS (D), *Droit commercial*, Sirey, 12e éd., 1998, p. 131

[xii] POUGOUE (P.-G), « L'OHADA au service de l'économie », in DIFFO TCHUNKAM (J), *L'OHADA au service de l'économie et de l'entreprise, efficacité et compétitivité*, op cit, p 20

[xiii]NJOYA NKAMGA (B), « Les dirigeants sociaux », Thesis University of Dschang, 2006-2007, p 11 ; LOUKAKOU (D), « Le régime juridique des sociétés commerciales : cadre incitatif ou dissuasif pour l'investissement dans l'espace OHADA ? », op cit, p 97

[xiv]CHASSAGNON (Y), *Encyclopédie Dalloz société*, v. Administrateur provisoire

[xv]Art 160-1 AUSCGIE provides for this possibility " where the normal operation of the company is rendered impossible, either by the management, management or administrative bodies, or by the partners »

[xvi] Cf Art 131 AUSCGIE

[xvii] Cf art 159 AUSCGIE

[xviii] FOKO (A), « L'essor de l'expertise de gestion dans l'espace OHADA », in AKAM AKAM (dir), *Les mutations juridiques dans le système OHADA*, Harmattan-Cameroun, 2009, p 145

[xix]POUGOUE (P.-G), « L'OHADA entre son passé et son avenir », in *L'OHADA au service de l'économie et de l'entreprise, efficacité et compétitivité*, *op cit*, p 32 ; POUGOUE (P.-G), « Notion de droit OHADA », in *Encyclopédie du droit OHADA*, *op cit*, p 1203

[xx] Art 4 AUSCGIE

[xxi] AKAM AKAM (A) et VOUDWE (B), *Droit des sociétés commerciales*, L'Harmattan, 2017, pp 13 et svte ; COZIAN (M), VIANDIER (A) et DEBOISSY (F), *Droit des sociétés*, 21e éd., Litec, 2008, p 1 ; MODI KOKO BEBEY (H.-D), « La réforme du droit des sociétés commerciales de l'OHADA », *Revue des sociétés*, 2002 p. 255

[xxii] Ambivalence being understood here as the character of what is presented in two aspects, but without there being necessarily opposition or ambiguity

[xxiii] THIBIERGE-GUELFUCCI (C), *«* De l'élargissement de la notion de partie au contrat…à l'élargissement de la portée du principe de l'effet relatif », *RTD civ* 1994, n°24, chr. p 275 et svtes

[xxiv] LOUKAKOU (D), idem, p106

[xxv] CHASSAGNON (Y), *Encyclopédie Dalloz société*, v. Administrateur provisoire

[xxvi] When requested, the judge may take various measures, such as postponing a general meeting, appointing a receiver or an expert to investigate the issue, or even appointing a temporary administrator to replace the governing bodies.

[xxvii] DERRUPE (J), *Encyclopédie commerciale Dalloz*

[xxviii] NJOYA NKAMGA (B), « Les dirigeants sociaux », op cit, p 57

[xxix] In this sense CA Paris, 22 mai 1965, arrêt Fruehauf, *D* 1968, p 147

[xxx] We borrowed that expression from MOUKALA-MOUKOKO (C), « Le fondement juridique de la responsabilité pénale du dirigeant social : incidences entre Droit pénal interne et Droit pénal des affaires », www.ohada.com

[xxxi] It is this of assistance to a person in danger

[xxxii] Since the question of jurisdiction at member state level has not yet been settled by the OHADA legislature, it is appropriate to refer to national laws in order to identify the jurisdiction competent to appoint the provisional administrator.

[xxxiii] CA Littoral, Arrêt n°38/REF du 10 février 1999, Aff. REEMTSMA et autres C/ SITABAC and others; and TPI Bafang, Ord. de référé n°27/ORD/CIV/TPI/2007 du 25 mai 2007, Affaire Sieur NOUBICIER c/ Sieur NGAMAKO Michel, note KALIEU ELONGO (Y.-R), *Juridis périodique n°78*, avril-mai-juin 2009, jurisprudence pp 29-36

[xxxiv] Art 160-4 AUSCGIE

[xxxv] Art 160-6 AUSCGIE

[xxxvi] Cass com 6 mai 1986, *Rev. sociétés 1987*, p 286, note GUYON

[xxxvii] CA Littoral, Arrêt n°38/REF du 10 février 1999, Aff. REEMTSMA et autres C/ SITABAC and others

[xxxviii] Art 160-4 AUSCGIE

[xxxix]Because his appointment is necessary in case of paralysis of the social organs coupled with the existence of a serious danger

[xl] Com., 6 mai 1986, *Bull.* n°77

[xli] For example to adopt corrective measures

[xlii] Civ. 3e, 25 oct 2006, *Bull.* n°70

[xliii] If we keep to the definition given by the Civil Code of the mandate in article 1984 according to which it is an "act by which one person gives another the power to do something for the principal on his behalf", we can easily understand the nature of the powers of the provisional administrator who is appointed "for the purpose of temporarily ensuring the management of Social Affairs" (art. 160-1).*)*

[xliv] POUGOUE (P.-G), « Notion de droit OHADA », in *Encyclopédie du droit OHADA*, POUGOUE (P.-G) (dir), Lamy 2011, p 1203

[xlv] Art 1984 et svt du Code civil

[xlvi] Cass com, 5 juillet 1998, *Petites affiches*, 26 juillet 1989, p. 159

[xlvii] DELEBECQUE (P) et GERMAIN (M), *Traité de droit commercial*, T.2, 17e éd, LGDJ, 2004, p. 935

[xlviii] Legal persons, who act through their organs, natural persons, are responsible for the faults committed by the latter in this activity.V. BENABENT (A), *Droit des obligations*, LGDJ, Coll Domat, 15e éd, 2016, p 439

[xlix] Art 160-4 AUSCGIE

[l] Cons. Constit., 22 octobre 1982, *D.* 1983.189 note LUCHAIRE

[li]It appears at first sight that the OHADA Legislature has decided to rule out any possibility of calling in question the provisional administrator's personal liability towards the partners, which means that they may call in question his liability on behalf of the company.

[lii]Revised in Quebec City on October 17, 2008. This article states that " uniform acts may include provisions on criminalisation. The States parties undertake to determine criminal sanctions".

[liii] CA Littoral, Arrêt n°38/REF du 10 février 1999, Aff. REEMTSMA et autres C/ SITABAC et autres, *Juridis périodique* n°42, avril-mai-juin 2000 p.54 note KALIEU (Y.-R),

[liv] Art 160-2 al. 3 AUSCGIE

[lv] It will be noted that the concept of "just cause" itself is not the subject of a definition, so one will have to turn to the Civilist conception of the concept of "motive" to understand that indeed it can refer to the cause of the contract. In our case, however, this is not a contract in the strict sense of the word because the provisional administrator's mission is not based on an agreement in the formal sense of the word, but on a court decision even though he is considered to be an agent. For further clarification of the concept of cause, read with interest TERRE (F), SIMLER (P) et LEQUETTE (Y), *Droit civil Les obligations*, Dalloz, 7e éd, p 312 et svts ; MESTRE (J), « L'erreur sur les motifs ne suffit toujours pas à entraîner l'annulation du contrat », RTD civ 2001, Chr., p. 352

[lvi]This illegality is due to the fact that even before its legal consecration, the provisional administration was already recognized in the jurisprudence since the famous arrêt Fruehauf. In this sense, read CONTIN (R), « L'arrêt Fruehauf et l'évolution du droit des sociétés », *D, 1967*, chron. p 45

[lvii] In the sense that the legislator did not fully take the measure of things and maintained an otherwise inextricable regime of the provisional administration, at least unfinished, through its silence as to its criminal liability.