

THE STATUS OF THE MINOR IN OHADA COMMERCIAL COMPANIES

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INTRODUCTION

Research on the issue of minority has always been addressed through various legal mechanisms designed to enable those who are part of the minority to express themselvesⁱ. It is to take into account their deep aspirations in order to promote their participation in society. As noted, the minority underlying the minor's disability also requires that, in circumstances where the minor's abilities and performance would command him, he be given the opportunity to think and act on his own.

Indeed, access to the commercial company presupposes on the part of the one who aspires to it a certain aptitudeⁱⁱ. The term generally refers to the ability of a person to acquire and exercise his or her own rights. If in principle the law requires the capacity to give consent to a contract, the legislator has been concerned about persons not fulfilling this condition and the minor in law OHADA has found his place among the partners. However, following a classic image, he does not appear personally on the social scene. It must be said, the exercise of a right commends that the person is reached a certain age then, the minor not fulfilling this criterion is placed under a regime of protection which obliges him to erase himself for the benefit of another person whom the law imposes on him: the legal representative.

According to article 1123 of the Civil code, " Any person can contract if he is not declared incapacitated by law ". But it happens that (in the words of Terré and Fenouillet) the presumption that each subject is provided with a will of quality that makes him the best judge of his interests does not stand the test of facts. Thus, company law makes the "access" of the

minor to a company, an inseparable element of the acquisition of Partner status, subject to the condition of representationⁱⁱⁱ.

By status is meant the set of rules of law that govern access to an activity, which determines the rights and obligations associated with it.

Indeed, the commercial society is a person with many facets; it imprints various forms and names. Also, whether they are capital or people and no matter what their purpose, they are all commercial by form. Yet this does not mean that they all grant the quality of Trader. It is a priority of partnerships that in addition to the status of partner attribute to its members the status of Trader.

The requirement of a capacity therefore depends on the type of company but above all on the quality of the partners^{iv}. Commercial capacity is required in respect of all partners held jointly and severally and indefinitely in social debts because they all have the quality of merchant. In other forms of companies, only the rules of civil law are applicable.

Thus, when commercial capacity is not required, the minor may be associated, on the other hand, when it is, access to the commercial company is prohibited principle. This prohibition is based on the idea of protecting the interests of the subject in question^v ; a subject whose youth makes him the least suitable person to protect his interests in a universe where profit and power are the priority. However, when confronted with the facts, it is also recognized that this justification of protective exclusion is not sufficient to account for the psychological and social realities of a minor who, having arrived at certain ages, possesses the natural aptitudes to think and act. Thus, according to article 7 of the Revised Uniform Act of general commercial law, the prohibition is only valid for a non-emancipated minor. What does the status of the minor refer to in OHADA commercial companies? The minor now, depending on his civil status and in relation to the particular form of the company, can benefit from a status of partner (I) or a status of associate trader (II) as required by the Uniform Act on Commercial Company Law and the EIG.

ACQUISITION OF ASSOCIATE STATUS

The study we intend to carry out here focuses particularly on the access of the minor in the various forms of commercial companies^{vi}. At first glance, the subject may seem trivial but it is not the subject of any specific framework. In Company Law the regulation of the entry of the minor into commercial companies is quite disparate. The Civil code must be used to supplement the few existing corporate and commercial law provisions in this area.

The changes in the rights of the subject in question makes our work much more interesting. No one is unaware that the minor partner is not very appreciated either by the law or by business practitioners. While legal mistrust of the minor subject is based on his vulnerability and a concern for protection, those of practitioners are generally based on fears of incompetence, even Insolvency and even the excessive legal protection with which he is surrounded^{vii}.

In general, the minor becomes associated either with the constitution, or as a result of an estate, by donation, or by purchase of shares. But what should be noted here is that in reality, the exclusion or eligibility of the minor in a commercial company is based on a single determinant: his degree of commitment in that company, that is, the degree of risk that he will be taken to take on. If the access of the minor is rather easy in the companies of capital (A), it is probably because it protects better the patrimony seen that here, the associate is obliged only to the amount of his contribution and if the Access is rather difficult in the partnerships it is because the partners are liable to social debts beyond what they have contributed (B).

A- The minor's easy access to capital companies

Capital companies are those whose legal entity is quite distant and distinct from its members; they usually take the form of an SA, A SARL or a SAS and can be constituted by a single partner. In these forms of society, talent is not decisive and the social form reflects well this primacy of capital over the personality of the partner^{viii}. It is for this reason that the importance of the funds he makes available to society determines his place and powers.

Still called limited liability or capital companies, they have the advantage of not losing their members more than they have brought. Thus, the partners commit themselves with the assurance that they do not endanger their assets; they enter the company with full knowledge

of the degree of risk and therefore of responsibility that falls on them^{ix}. This is why these types of companies are best suited for minors whose property protection is a priority of the law. This is also the opinion of the OHADA legislator for which, the minor can be part of a company only on condition that he is liable for social debts only up to the amount of his contribution.

Indeed, while all minors can in principle access all forms of capital companies (1), the question of the constitution of a single-person company by such a subject further divides the doctrine (2).

The minor in multipersonal societies

In principle, the company does not have a contract, the consent of a plurality of individuals^x. That is to say that to constitute an SA, SARL and even an SAS the associates must be at least two; the minimum of 7 associates required for the SA having been abandoned. This is the classic conception of society as desired by the civil code in its article 1380 and taken up by the Uniform Act in its article 4. Indeed, the creation of these types of companies requires the gathering of large amounts of capital hence the need to regroup so that by a large number of partners results in substantial capital.

In private equity companies, the partners are most often simple funders they go and come as they see fit and this has no incident on the life of the trading company since the company is a separate person, its existence is not based on the active and continuous participation of any of its members.

This concept is even more important for the minor partner; for here he will not have to personally carry out the formalities of incorporation and the other partners surely do not expect him to be involved in the management of the commercial company; it is more the contribution than the capacity of the subject that confers the status of partner; the quality of the partner, the civil status of the person capable or incapable is not decisive for the acquisition of the status of partner. As a result, a minor has easy access to and place in it, not as a lesser partner but as a full partner entitled to vote, profits and losses in addition to all other property rights of the partner.

The issue of the minor partner was first addressed by the law of February 27, 1880, which already admitted that he could buy limited partner shares through his representative. Subsequently, article 8 of the Uniform Act on the law of commercial companies expands the scope of possibility of the minor and gives him access to all companies where he will not be held jointly and severally and indefinitely of social debts and therefore to all forms of capital companies^{xi}. The consequence is that the minor, whether emancipated or not, can become a partner of a limited liability company, a limited liability company and a simplified Joint Stock Company, forms of commercial companies whose priority is to limit the liability of their members to the amount of their contributions; hence the name limited risk companies^{xii}. Nevertheless, it should be noted that if the minor can become a partner in these forms of companies, he cannot act alone, his access is conditioned by the presence of a legal representative.

Moreover, if we take into account that the emancipated minor has the same abilities as an adult, then such a subject certainly does not need prior authorization to become an associate. Even better, he is considered in OHADA law as having the necessary skills to become an individual entrepreneur of a single-person company.

The minor in one-person society

A single-person company is not a particular form of commercial company. This is a derogation from the Multiple Personality of the company^{xiii}. The question is always to ask how a minor subject to the regime of incapacitated could become a sole partner of a commercial company knowing that the formation of a company requires the exercise of acts that go beyond his competence.

If already in doctrine the one-person company had completely questioned the contractual theory and renovated the theory of the commercial company, that of the minor individual entrepreneur has considerably reached the rule of incapacity in the law of commercial company^{xiv}. The deployment of the minor in the informal sector and in the economic world in general has changed the way in which the minor is perceived and also the rules in this regard. Faced with this rise in the capacity of the minor and the many questions it raises, julienne said

that " these questions must be placed in the context of a global movement in favor of the recognition of a pre-majority of minors found and defended ".

Indeed, since the 2010 revision, minor children working in the informal sector can create a single-person society. However, since not all minors can become a trader, it is in our view forbidden to the non-emancipated minor to create a single-person company because he will not be able to exercise the acts relating to the constitution or exercise the acts of administration and management necessary for its operation^{xv}. Under French law, on the other hand, even if not emancipated, the minor can under the authorization of his parents or guardian create an individual business and therefore become a partner in it^{xvi}.

The emancipated minor is able, on the basis of article 7 of the Uniform Act on general commercial law, to carry out an activity in the form of a commercial company alone. Contrary to French law where he must obtain the authorization of the guardianship judge, the emancipated minor has the full capacity to create and exercise alone all the acts relating to the constitution such as registration, the Keeping of accounting books, the payment of taxes and income and even the administration of the commercial company. The full commercial capacity it enjoys gives it the necessary capacity.

The limited risk, which is also a priority of single-person companies, has many advantages for the minor, while allowing him to separate his own assets from the activity he carries out, it protects his personal property from social risks.

However, the single personality of the company has a disadvantage, the risk is limited only when the company is in bonis, in malis the responsibility of the head of enterprise is unlimited and in case of opening a collective procedure on the single-person company it is all the assets of the minor that will be concerned. It is precisely for these reasons that the law is quite reluctant about the access of minors to partnerships.

The minor's difficult access to partnerships

As merchant companies, access to partnerships is rather difficult. In principle, it is forbidden to any incapable and incompatible commercial^{xvii}. Therefore, the minor cannot have access to it unless he is emancipated. In fact, partnerships are those in which all the partners have the

status of trader and are jointly and severally liable and indefinitely for social debts; they are constituted intuitu personae, that is, in consideration of the person of the partner^{xviii}. In view of the fact that the conclusion of the company contract is commercial, in view of the fact that the non-emancipated minor cannot do business either by himself or through his representative, he is simply excluded from non-collective companies and simple limited partnerships where this quality is required^{xix}. Nevertheless, two exceptions are made: the first concerns the emancipated minor who can have the status of trader and therefore be part of the form of company of his choice and the second concerns the non-emancipated minor who can be part of the limited partnership simple as a limited partner the commercial capacity is not required in this case. Thus, the minor may become a member of a general partnership if he is emancipated (1), otherwise he may always associate in a limited partnership (2).

The minor in the partnership

The company in name refers to the one where the partners all have the quality of trader and all answer in a solidary and indefinite way of social debts^{xx}. Here the consideration of the person is decisive and it is expected of all the partners that they are fully engaged in the commercial company therefore its responsibility extends in an unlimited way. The risk involved is therefore greater in general partnerships: have said that the company fits together with its members.

To say that the partners are solidary means to say that only one can be sued in payment of the social debt dependent for him to exercise a subrogatory action against the other partners. And to say that they are indefinitely bound is to say that the partners can answer for social debts beyond what they have brought. This applies even to a partner who did not participate in the creation of the trading company. In this respect, if the company were to be the subject of a collective procedure, the partners could suffer the counter-blow on their own assets.

Still called a merchant company, it requires its members to have commercial capacity. Therefore, the non-emancipated minor cannot have access to it; representation is not an effective enough remedy to overcome commercial incapacity. The importance of risk means that trade cannot be carried out by representation. The minor is therefore obliged to go through Emancipation^{xxi}.

What should be noted is that until a relatively recent date, the contractual capacity limit of the emancipated minor was that he could not be part of a partnership especially that in a collective name since even emancipation could not remedy his commercial incapacity^{xxii}. If the situation to completely change in OHADA law, this remains true in some legislations as in France or the minor can only exercise the trade if the judge or the president of the court gives him authorization.

In reality such a society is not very suitable for the minor because it does not protect its members in case of difficulties. When the debts are large, the partners are obliged to draw on their own wealth, which is precisely why they are used less than other forms of companies.

The minor in the limited partnership

The simple limited partnership is a rather special company, it puts together the trader and the investors or funders who have the means necessary to create a commercial company. Thus, a simple limited partnership is one in which two categories of partners, one general partner and another limited partner, coexist^{xxiii}.

Like the partners of general partnerships, the general partners are all traders and are indefinitely and jointly and severally liable for social debts. Being a general partner therefore requires the ability therefore a subject to commercial prohibition can therefore be part of that company as a general partner only.

Indeed, there is no Limited Partnership without a general partner it is from him that the company derives its legitimacy; it dissolves without him. But instead of moving away from the incapable and therefore from the minor, it allows him to put his funds at the disposal of traders who generally have little capital.

In addition, limited partners or limited partners are closer to the partners of capital companies, in particular because they are only liable for social debts within the limits of their contributions. They do not have the quality of trader and it is not required in this case that the associates are capable. Therefore, the minor can have access to it.

By allowing different categories of partners to coexist, the legislator opens up trading companies to non-traders and at the same time reduces the mistrust that investors have often had towards partnerships, in particular by giving them the opportunity to choose the degree of risk that they would take on^{xxiv}.

As a sponsor, the minor is liable for social debts only to the extent of his contribution and as a simple funder, his person does not count it is precisely this limited risk that results from his ability to access them.

If we assume that the minor chooses to be part of a partnership, even though he has the opportunity to invest in one of the forms of capital company, it is surely that he aspires to start a trust company where the person has the opportunity to invest completely as a partner since the disability very often takes away this possibility^{xxv}.

However, with the Emancipation mechanism, he will now be able to participate as a general partner or choose to participate in a SNC; which will produce two effects: the first is that he will now be able to take an active and personal part in the trading company^{xxvi}; and the second is that he will benefit from the status of a trader:

THE ACQUISITION OF THE STATUS OF TRADER

The merchant status that is the subject of this part is a consequence of the minor's access to partnerships. It is also an important factor in determining one's ability, or inability to exercise the rights of one's partner.

As noted above, the primary characteristic of partnerships is that they attribute to their members the quality of merchant. They require commercial capacity and in return give the Associated status to the partners^{xxvii}. This is the reason why in general, associates are automatically assimilated to traders' natural persons; quality which in principle is attributed only to individuals with legal capacity: that is to say to persons of legal age.

It is in this perspective that our work is attractive, in that it is interested in a subject that although not fulfilling this condition, is likely to acquire the quality of natural person trader. Indeed,

there is a legal mechanism that allows the minor to circumvent the ban: Emancipation^{xxviii}. Under commercial law, emancipation is a civil law mechanism that provides the minor with the only opportunity to engage in commercial activities.

Therefore, it is important in this part to examine the context of acquiring the status of a minor Trader (A) and beyond the traditional obligations of the trader, to examine the advantages and privileges that this status offers (B).

The background to the acquisition of the quality of minor trader

If it is said that The Associated minor is not highly valued by the law, the minor trader is even less so. As mentioned above, until a relatively recent period, even the emancipated minor was unfit to engage in trade and therefore could not have the status of a trader, let alone benefit from the privileges of such a status. Prior to the 2010 revision, the OHADA law made no distinction between the emancipated and the non-emancipated minor; they were all part of the incapacitated regime. However, the concept has evolved, reading article 7 of the Revised Uniform Act, all minors are no longer incapable only those who are not emancipated. Based on this observation, to better understand this notion, it is necessary to return to the rule of incapacity (1), in order to address the situation of the emancipated minor Trader (2).

1- The reticence of the legislator regarding the access of the minor to trade

The principle of capacity is laid down in article 6 of the Uniform Act as follows: "no one may perform acts of commerce as a profession unless he is legally capable of carrying on Business". Thus, despite the principle of freedom of trade and industry, the legislator had to bring some limits to the freedom to undertake and thereby excluded the minor from commercial activity^{xxix}.

This idea is based on the argument that trade and related obligations are too dangerous for a person as young and vulnerable as the minor. Thus, some authors have been led to argue that the constant risks faced by business practitioners justify the exclusion of weak people such as the minor who does not yet have the skills to deal with them^{xxx}. To exclude such a person is therefore to protect him and his property from the inconveniences of trade because it is said 'as much as the trader gets rich faster than the employee, he can quickly be led to bankruptcy^{xxxi}.

This rule, which is intended to protect the assets of the incapacitated, therefore wishes to exclude the minor from trade and its activities; this is an inability to enjoy.

In fact, unlike civil law where the incapacity is only for exercise, the incapacity of the minor in matters of commerce is twofold: this profession cannot be exercised by proxy or by representation, the law excludes him from both commerce and Commerce. This means that the minor is unfit in law and in practice, he can neither be a trader nor exercise commercial acts (it is also from this commercial incapacity that results his inability to access partnerships).

This rule therefore prohibits legal administrators from carrying on Business on behalf of the minor as required by article 10 of the Uniform Act on general commercial law.

Nevertheless, the doctrine recognizes that the incapacity thus posed meets situations of fact that lead to a nuance in its implementation: what to do when the minor receives in inheritance a business fund, if he is assured that he will not be able to exercise it either himself or through his representative? The solution indicated is that he can sell the fund but to a certain extent the inheritance in Africa especially has something sacred and in addition we cannot be assured that it will serve the interests of the minor, the economic situation may not be favorable^{xxxii}. The other solution is that he can put the fund for rent stewardship through his representative but there is no guarantee that the tenant manages it with talent. The solution probably best indicated in this case is that he can bring the fund in company however he cannot be associated in a company where the quality of trader is required.

Moreover, it must be recognized that the situation of the minor in our society especially was already quite uncomfortable. The fact is that in many cities in Africa and Cameroon in particular, a significant number of minors are engaged in trade and with more ease than some adults, these minors in question are autonomous live from their businesses. this situation is all the truer since many young people are forced to sell during the holidays to insure their tuition fees. Not because they are all poor although in most cases poverty is probably the main reason, but because they learn very early the importance of work in life, they have understood that it is up to each of us to be the main actor of his dreams, the craftsman of his destiny.

In practical terms, commercial capacity should not be measured by age but by the practical skills and competencies with which a person carries out this profession. This is probably the reason why some legislation has sought to differentiate between the categories of minors and the related capacity threshold^{xxxiii}.

Going further, the OHADA legislator directly adopts the commercial capacity of the emancipated minor. In doing so, it considerably achieves the general rule of the minor's incapacity to exercise^{xxxiv}.

2- Exemption from the minor's commercial incapacity: the opening of the commercial profession to the emancipated minor

Article 7 provides as follows: "the minor, unless he is emancipated, may not be a trader or carry out acts of Commerce". It is said that by this provision the legislator lifted the double incapacity to which the emancipated minor was subject in matters of commerce and at the same time endowed the commercial profession with a new actor: the minor trader.

It must be said that article L121-2 of the French law on trade surely did not take into account all the situations of facts relating to the minor when it provided that "the minor even emancipated, cannot have the quality of Trader"^{xxxv}. And, even the amendments made to this article by the law of 15 June were not enough to give full capacity to the emancipated minor in French Commercial Law. The emancipated minor's access to commerce is subject to prior authorization by the guardianship judge.

The adoption of the commercial capacity of the emancipated minor marks a profound change in the right of the minor^{xxxvi}. It opens to the minor not only the doors of commerce but also of Commerce. Thus, article 487 of the Civil code applicable to Cameroon now says this: "the emancipated minor who makes a trade is deemed to be of age for the facts relating to this trade"^{xxxvii}. It should be recalled that the only limit to the emancipated minor's ability was precisely his inability to be a trader. It can be said, by adopting the commercial capacity of the emancipated minor, the OHADA law gave a place to the minor, and not the least in the economic universe.

It is undoubtedly, in order to support economic development, to promote initiative and entrepreneurship, that the legislator decided to open the commercial profession completely to the emancipated minor. It must be said that the pursuit of its objectives of adequacy between the rules and the social realities of its environment obliged it in some ways. It has indeed undertaken a profound transformation of the business environment so that many economic actors, including the minor, who previously had no legal qualifications, operating in the informal sector now fall under commercial law. In any event, whether it is a minor or any other commercial professional, the status of a trader subjects the person in it to obligations, the observance of which conditions the exercise and enjoyment of the privileges related to that status.

The effects of trader status

Generally speaking, when we talk about the effects of being a trader, we naturally see the obligations of the trader. For this work we will proceed differently; here it will not be the registration obligation and the accounting and tax obligations of the minor trader, but rather the advantages and privileges that this legal status offers. Indeed, as soon as the miner becomes a trader several possibilities and advantages are offered to him. He can exercise as a trader natural person or bring his fund in a commercial company^{xxxviii}. No matter which option you choose, the law makes the protection of the merchant's property a priority. In fact, this protection is arranged so that it is all the more advantageous for the trader to bring his fund (1), than to exercise as a trader Natural Person (2).

1- The prerogatives of the minor trader

As soon as the minor acquires the status of a trader and enjoys the legal status connected with it, the law arranges the protection of his activity and the property assigned to it on several levels:

The first concerns the protection of the trader against attacks and bad faith of his competitors; this probably because of the important intellectual and financial investments he made during the establishment of his activity and the protection of the fund against unfair competition, the prohibition of cartels, abuse of dominant position and their sanctions.

The second concerns the protection of the goodwill from dissipation. This protection is beneficial both to the trader because he ensures the continuity of his business and to the creditor of the trader knowing that the goodwill constitutes part of his wealth^{xxxix}.

In addition to the prerogatives of the merchant, the benefit of special measures of renewal of his lease contract for the exercise of his activity, the speed of judgments of commercial disputes by the commercial court or the Chamber of Commerce, imprints them at a reduced rate.

However, this process is unseemly; with regard to the unit of assets, the rights of the merchant's creditors can be exercised in both professional and personal property^{xl}. Thus, creditors will be able to seize any property of the minor: it is said that the personal property of the trader constitutes the Pledge of his creditors and in the event of a collective procedure it is all the assets of the minor who will be concerned since any trader is indefinitely held.

In OHADA law indeed, each person has a patrimony and only one. Thus, when the trader is a natural person, there is no difference between his personal property and his professional property, just as there is no difference between the debts of the trader and his business assets^{xli}. And, even in the presence of the minor, this rather rigorous rule does not admit any mitigation.

However, it should have had a certain seal between the professional life and the private life of the natural person. This lack of tightness results in the unlimited liability of the professional in accordance with articles 2092 and 2093 of the Civil code. This is the reason why it is better for the minor trader to bring his fund into the trading company.

2- The effectiveness of the protection of the assets of the minor trader in the event of the contribution of the property in society

In the exercise of the commercial profession, it is more the commercial company than the trader natural person that generates significant profits; it can therefore be understood why the contribution to society is a rather frequent operation in practice, an operation by which the trader natural person performs transformation of his personal activity into a company member. Here a mutation takes place: one passes from the natural person to the legal person; the commercialization is no longer linked to the person but to the commercial society itself.

The trading company is an alternative that offers many advantages to the minor trader, including the breakdown of the legal unit of the patrimony, the protection guaranteed by the limitation of the trader's liability in case of difficulty and more importantly the easy assembly of capital^{xlii}.

With regard to the breakdown of the legal and patrimonial unit of the trader, we will say that the trading company is an independent legal entity, it is separate and distant from its members, it has its own patrimony that is the Pledge of its creditors^{xliii}. Thus, in the event of a collective procedure the individual assets of the partners will not be worried.

Limited risk is a mechanism devised by law to protect the assets of associates from the risks faced by the trader. In a limited liability company, the minor will only have to contribute to the debts to the extent of his contribution, that is, to the extent of his means without having to ruin himself; it is said that the limited risk preserves the assets, reduces losses and increases the probability of making profits. As such Daniel Tricot said that the notion of society is used as a financial means to create commercial or industrial activities by limiting risks. These advantages are not the only ones: by bringing his fund in company, the minor will have a more advantageous tax status^{xliv}. He will indeed take advantage of the tax opportunities offered by the commercial company.

In addition, his business will develop more easily if he creates a company, the investment of external capital, the plurality of individuals is a more effective way to raise capital and make his business a large-scale structure.

In any case, whether in partnership or capital companies, the creation or access to the commercial company is an effective means of protecting the assets of the minor; protection which in the circumstances is a priority of the law.

The legal status of a trader which is the subject of this part is of considerable importance for the minor's access to society but above all the determination of his capacity to exercise his rights.

CONCLUSION

At the end of this analysis, it emerges that the minor is a partner with an incapacity to exercise based on the concern for the protection of his assets from the risks that the partners generally face. However, we have been able to see that this protection, although it is based on the noblest intentions, ultimately prevents the minor with abilities, that is, the natural quality that makes certain acts and performances possible, from acting. Even though his factual skills (practical and proven aptitude) would command him, the minor unless he is emancipated is unfit in Commercial Company Law. In fact, when an individual grows up, he acquires skills and competencies in a natural or acquired way that he aspires more than anything to implement^{xlv}. And as mentioned above, the trading company is an auspicious setting in which it could exercise; to give him the opportunity to learn in such a setting is to make him a man able to do what is expected of him as soon as he is of age, that is, in a short time.

Indeed, one of the greatest aspirations of young people today is to integrate in a concrete way into the economic universe, and since the objective of law in the face of minority issues is to take into account their aspirations but still and above all to facilitate their integration into society, then it is all the more necessary for company law to recognize the abilities of the minor so as to really integrate him into the commercial society to such an extent that the inability will reach him only, or, because he belongs to the category of small minor (unconscious minor), or because his interests command him.

Thus, the notion of (subjective) minority goes far beyond the framework in which it is generally limited: that of age and incapacity reflects the degree of aptitude of the minor.

ENDNOTES

- ⁱ VOULAT (B.), KNUESEL (R.), « La question des minorités. Une perspective de sociologie politique », *Revue des sciences sociales du politique*, 1997, p. 136-149 ; FENET (A.), « Droit et minorité », analyses et textes, polytique étrangère, Decaux, 1996, p. 428-429.
- ⁱⁱ MIMBE (P.), « Contrat de société » in *Encyclopédie de droit OHADA* ; éd, Lamy, 2011, p. 559 ; Bokolo Elima (M.), « la capacité commerciale des incapables en droit OHADA : cas du mineur », 2014, <https://www.conseil-juridique.net...>
- ⁱⁱⁱ According to the terms of article 389 and following of the Cameroonian Civil code.
- ^{iv} TERRE (F) et FENOUILLET (D), *Droit civil : les personnes ; personnalité, incapacité, protection*, 8e éd, Paris, Dalloz, coll. Précis p.282.
- ^v Cette évolution de l'autonomie d'action s'est faite dans presque tous les domaines, mais elle est encore plus manifeste en matière de droit civil ; voir ici Mariame épouse HienZebro ; « Acte du mineur » 2016, afrilex.u-bordeaux4.fr.
- ^{vi} DUPOUY (N.), « Un mineur dans une société possible mais risqué », 20/04/2018, www.lesechos.fr.
- ^{vii} POUGOUE (G.), ANOUKAHA (F.), DIOUF (N.), THOUAKAM (J.), *Sociétés commerciales et groupement d'intérêt économique*, coll., *Droit uniforme africain* Bruyant Bruxelles, 2002 p. 19.
- ^{viii} Définition du mot statut, <http://fr.m.wikipedia.org/wiki/statut> consulté le 9 avril 2018.
- ^{ix} Disposition qui consacre la capacité commerciale du mineur émancipé en droit OHADA.
- ^x POUGOUE (G.), ANOUKAHA (F.), DIOUF (N.), THOUAKAM (J.), *op.cit.*, p. 21.
- ^{xi} L'article 4 De l'AUDSCGIE
- ^{xii} MESTRE (J) et FAYE(S), *Société commerciale*, éd, Paris Lamy, 1987/1989, p. 57.
- ^{xiii} MESTRE(J) et FAYE(S), *Société commerciale*, éd, Paris Lamy, 1987/1989, p. 57.
- ^{xiv} TIAMZEM (A.), *La protection du patrimoine de l'entrepreneur individuel dans l'espace OHADA*, Mémoire Université de Dschang, 2016, p 58.
- ^{xv} BAMBE (A.) ; « distinction entre l'obligation à la dette et contribution aux pertes » 28 février 2016, aurelienbambé.com.
- ^{xvi} Cette aptitude découle de sa capacité à être commerçant posé à l'article 7 de l'AUDSCGIE
- ^{xvii} Art 6 sur les incapacités et article 9 et 10 sur les incompatibilités et interdictions commerciales, AUDCG.
- ^{xviii} La loi française du 15 juin 2010 portant modification de l'article L 121-2 de la loi de commerce.
- ^{xix} MESTRE (J) et FAYE (S), *Société commerciale*, *op.cit.*, p. 42.
- ^{xx} Art 270 de l'AUDSGIE.
- ^{xxi} Art 31, 33 et 181 de l'AUPCAP.
- ^{xxii} Art 308 alinéa 2 de l'AUDSCGIE
- ^{xxiii} TIAMZEM (A.), *La protection du patrimoine de l'entrepreneur individuel dans l'espace OHADA*, Mémoire Université de Dschang 2016, p 52.
- ^{xxiv} Art 276 de l'AUDSGIE.
- ^{xxv} Art 6 sur les incapacités et article 9 et 10 sur les incompatibilités et interdictions commerciales, AUDCG.
- ^{xxvi} Art 308 alinéa 3 de l'AUDSCGIE
- ^{xxvii} KANCHOP (T.), *Le secteur informel à l'épreuve du droit des affaires* ; Mémoire DEA Université de Dschang, 2009.
- ^{xxviii} Art 270 de l'AUDSGIE.
- ^{xxix} POUGOUE (G.), ANOUKAHA (F.), DIOUF (N.) TCHOUAKAM (J.), *op.cit.* ; Zattara-Gros « le mineur en société après l'ordonnance du 15 octobre 2015 : danger patrimoniale ou sécurité patrimoniale ? », *Defrénois*, 30 /09/2016, n°18, p.938.
- ^{xxx} BOKALI (V-E.), « Commerçant », *Encyclopédie de droit OHADA*, *op.cit.*, p. 547.
- ^{xxxi} Article 10 de l'AU
- ^{xxxii} KANCHOP (T.), *Le secteur informel à l'épreuve du droit des affaires* ; Mémoire DEA Université de Dschang, 2009.
- ^{xxxiii} BAMBE (A.) ; « distinction entre l'obligation à la dette et contribution aux pertes » 28 février 2016, aurelienbambé.com.
- ^{xxxiv} TIAMZEM (A.), *La protection du patrimoine de l'entrepreneur individuel dans l'espace OHADA*, *op.cit.*, p 36.

^{xxxv} Art L 121- 2 de la Loi de commerce qui a été modifiée le 15 juin 2010.

^{xxxvi} ELIMA (E.) ; « La capacité commerciale des incapables en droit OHADA : cas du mineur », *op.cit.*, p 27.

^{xxxvii} Art 487 du code civil camerounais.

^{xxxviii} AKUETE (S.), Yado (T.), OHADA, Droit commercial général, éd, Bruxelles Bruylant, 2002 p. 78 ; voir aussi, Dekeuwer –Defossez (F.), Droit commercial : activité commerciales, fonds de commerce concurrence, consommation, 6e éd, Paris Montchrestien, 1999 p.153.

^{xxxix} ELIMA (E.) ; « La capacité commerciale des incapables en droit OHADA : cas du mineur », *op.cit.*, p 36.

^{xl} DIALLO (A.), Protection de l'entrepreneur individuel et du droit des créanciers : étude comparée droit français-droit de l'OHADA, Thèse Université de Poitiers. 16 décembre 2016.

^{xli} TRICOT (D.), « Abus de minorité », Revue trimestrielle de droit commercial, 1994 ; chroniques, p. 617.

^{xlii} SABI (G), « Les dispositions générales de constitution de la société commerciale en droit OHADA », 24/10/209, www.ohada.com.

^{xliii} On peut citer ici, l'entrepreneur individuel article 30, les différents intermédiaires de commerces articles 169 et suivant de l'AUDCG.

^{xliv} AKUETE (S.), Yado (T.), OHADA, Droit commercial général, éd, Bruxelles Bruylant, 2002 p. 78 ; voir aussi, Dekeuwer –Defossez (F.), Droit commercial : activité commerciales, fonds de commerce concurrence, consommation, 6e éd, Paris Montchrestien, 1999, p. 153.

^{xlv} TIANZEM (A.), La protection du patrimoine de l'entrepreneur individuel dans l'espace OHADA, *op.cit.*, p 67.