

ABSTRACT

Commercial companies governed by the OHADA law are designed to propel the economic development of States Parties that should be integrated, inevitably, in the move of globalization and trade liberalization. In order to allow them easily play this role, the lawmaker has established a set of consistent rules that unite both the legal and judicial security. The inclusion of the judicial safety calls to question the judge's powers in commercial companies of the OHADA law. The latter are, in principle, a resistant environment to the interference of an external actor. In fact, taking into account the contractual nature of commercial companies, the judge cannot intervene in the management of social affairs. However, due to the increasing downturn of the principle of non-interference of the judge in contractual matters in general, the contract ceases to be the secret garden of contractors to become a place where sometimes broken justice needs to be restored. This vision has been intensified in corporate law by taking into account the institutional nature of commercial companies. In addition to the objective of preserving the contractual balance, the aim is to ensure the life and the survival of the latter. From the definition of the concept of power as a finalized set of legal prerogatives, one can assume that the judge is acting exclusively in the interest of commercial companies. In this context it comes to determine what justifies his powers in commercial companies governed by the OHADA law. The answer varies depending on various situations where those powers are exercised.

On the one hand, the judge exercises an accompanying power of the parties in the process of creating commercial companies. In order to combine the respect of freedom of contract and submission to a minimum of legislative interventionism, the judge has in this context a double implication, moderate in executing the obligations of the parties involved in the creation of a commercial compagny, and emphasized in the implementation of the prerogatives they are entitled to. On the other hand, the judge is overseeing the commercial companies in operation either by maintaining the balance of social relations through the mechanisms of prevention and correction of the imbalance, or by searching for the sustainability of the corporation. The efficient performance of all of these powers requires from the judge a good dose of professionalism and ethical knowledge, if he is to truly make vital cog figure in the implementation of an OHADA integrated economic space.

Keywords: powers-judge-promise-company in the process of creation-prevention-sanction-rescue-abuse-regularization-exclusion-invalidity-forced execution.

