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L'Application des textes de l'OHADA aux entreprises publiques: l 'exemple de l'AUSC et GIE

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Résumé en français.

Sans une définition précise que ce soit sur le plan légal ou sur le plan juridique, l'entreprise publique ne doit son appellation que par la participation du pouvoir public dans son capital. Aussi, importe-t-il de préciser que la notion de pouvoir public n'est pas elle-même très claire. L'on estime qu'elle est l'Etat devenu actionnaire et donc garant de l'intérêt social. L'entreprise publique étant considérée comme celle qui appartient, en totalité à l'Etat et jouissant dans le même temps d'une autonomie, ne peut avoir sa « survie » que grâce à un droit adapté à sa nature et à une bonne organisation des organes qui la composent. Ainsi, ne peut-elle fonctionner que si les tâches à accomplir par les organes sociaux, sont reparties de façon précise et si le rôle de chacun dans l'entreprise publique est clairement défini par la loi. Le législateur OHADA n'a pas hésité à soumettre l'entreprise publique à l'AUSC et GIE. Mais l'origine publique de celle-ci constitue, tant soit peu, un frein à sa soumission stricte de l'AUSC et GIE. D'où un nécessaire rapprochement des ordres juridiques nationaux et communautaire par une coordination. Ce qui implique une interdépendance entre les dispositions de l'AUSC et GIE et celles issues des textes nationaux. Les deux ordres juridiques demeurent autonomes, et ne s'influencent pas mutuellement. L'on aboutit dans l'espace OHADA à une dualité textuelle pour répondre aux exigences de l'entreprise publique commerciale, avec comme repère et socle l'AUSC et GIE; les textes nationaux ne jouant qu'un rôle complémentaire et subsidiaire.

Mots clés en français: AUSC et GIE, ordres juridiques nationaux, entreprise publique, Etat actionnaire, organes sociaux, l'intérêt social.

Summary

Without a precise definition either legally or on the judicial basis, public company owes its name through the participation of public power in its capital. Also, one has to make it clear that the concept of public power is not itself very clear. It is estimated that it is the state which became a shareholder and thus guarantor of social interest. The public company is regarded as the one which belongs wholly to the state and at the same time enjoying autonomy, cannot have its "survival" thanks to a law adapted to its nature and a good organization bodies that comprise it. Thus, it can only work function if the tasks to be performed by the corporate bodies are distributed accurately and if the roles in the public company are clearly defined by law. OHADA legislators did not hesitate to submit to the public company the Uniform Act related to commercial enterprises (AUSC) and Economical interest groups (GIE). But public behind it is, ever so slightly, an obstacle to its strict submission of AUSC and Economical interest group. Hence, a necessary approximation of national and community by coordinating legal systems. This implies interdependence between the provisions of the Uniform Act related to commercial enterprises and the Economical interest groups and those from national laws. The two national legal systems remain autonomous and do not influence each other. The results are in OHADA space textual duality to meet the demands of commercial enterprise, with the base and mark of the Uniform Act related to commercial enterprises and the Economical interest group; national texts playing a complementary and subsidiary role.

French keywords: AUSC and GIE, national legal systems, public company shareholder, state governing bodies, corporate bodies, social interest.