



setting up a corporate entity in cameroon- public limited liability & private limited liability Cies

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to create a company according to the ohada implementation laws, view of administration and ruling

In this article, I will first give an overview of the corporate and business structures in Cameroon and then describe the process for creating each of the entities (subsidiary or branch)..

1. title 1 Corporate overview & Business structures

Cameroon is part of the Organization for the Harmonization of Business Law in Africa, known as “OHADA”, which establishes a modern and common legal framework for business activities, through eight Uniform Acts directly applicable its Member States.

Corporate issues are therefore regulated in Cameroon by the OHADA Uniform Act on Commercial Companies and Economic Interest Groups (hereinafter referred as the “Uniform Act”) which entered into force on 1 January 1998 and supersedes all contradictory provisions of national regulation. Considering that all the provisions of the Uniform Act are mandatory, they may only be derogated from when this is expressly stated therein.

Accordingly, any commercial companies having their registered office on the territory of one the Member States are subject to the same provisions of the Uniform Act regarding their formation, incorporation, management and dissolution, whether they are foreign-owned company or local company.

The different business vehicles recognized under the OHADA legal framework may be summarized as follows :

- 1) Join stock companies (*sociétés anonymes* or “SA”);
- 2) Private Limited Liability Companies (*société à responsabilité limitée* or “SARL”);
- 3) Unlimited liability companies, which may be further categorized as either :

(3.1) *société en nom collectif* or “SNC” which is a kind of private partnership where all the shareholders have commercial status and are jointly liable for the company’s debts;

(3.2) *société en commandite simple* which is a type of sleeping partnership;

(3.3) *société en participation* which is very flexible type of joint venture, unregistered and without its own corporate personality;

(3.4) *société de fait* which is a “de facto Partnerships”, where two or more individuals or corporate bodies act as if they were in partnership without having properly formed between themselves one of the types of company recognized by the Uniform Act.

4) Branch of foreign companies (this option will be further detailed under section 2).

I wish to present only Joint stock companies, Private Limited Liability Companies *and y branch of foreign companies*. Others companies are not good to international business.

The Uniform Act contains two sets of rules: general provisions that are applicable to all types of companies, with certain exceptions (see section 1.2 below) and specific provisions relating to particular types of companies (see sections 1.3 to 1.5 below).

1.1.title II General provisions for all type of companies

Shareholders

Pursuant to Article 7 of the Uniform Act, any individual or corporate legal entity may be a shareholder in a commercial company.

Shares

There is an obligation to set a nominal value for shares. All the shares issued by a company must have the same nominal value.

The issued shares give their holders the right to share in the company's profits and, when the company is wound up, in its net assets. These rights and obligations are proportional to the amount of each shareholder's contribution, unless the articles of association provide otherwise. Shares also impose upon holders the obligation to share the burden of the company's losses.

In principle, the shares give the shareholders the right to vote on any collective proceedings.

Articles of association

The articles of association must be established in writing either by notarized deed or by private contract duration;

If the articles of association are not established in writing, the company is not considered to be null and void but as de facto partnership.

Registered office

The address of the registered office must be chosen by the shareholders and mentioned in the articles of association.

The registered office may be either at the principal place of the company's activity or at the place where the financial and administrative management is located. The address cannot be a PO box, but in practice, the registered office may be temporarily located in a lawyer's or notary's office for the incorporation period.

Duration

The duration of a company must be indicated in its articles of association, since companies may not be established for an indefinite period of time.

Their duration may not exceed ninety nine (99) years from the date of the company's registration with the *Registre du Commerce et du Crédit Mobilier* (hereinafter "RCCM". Expiry of the term results in the automatic winding-up of the company. However, an extension of the term may be decided in accordance with the conditions laid down by the Uniform Act for amending the articles of associations.

Contributions

The Uniform Act provides for three (3) types of contribution :

ü In cash: made in full at the time of formation of the company or, in an SA, either in full or in instalments;

ü In kind: made by shareholders transferring to the company real or personal rights and making available to the physical assets to which such rights relate. The contribution in kind must be made in full at the time the company is created;

ü In services (known as "*apports en industrie*") : where the shareholder undertakes to work for the company. Please note that this type of contribution is possible only in SAs and SARLs.

Registration process

All companies except joint ventures in the form of a *société en participation* (partnership) must be registered with the RCCM.

Once a company has been registered with the RCCM it acquires its own separate legal personality. From the date of registration, the company is considered as a corporate body. Prior to registration, the existence of the company cannot be relied upon vis-à-vis third parties.

Accounts and auditing requirements

The financial year corresponds in principle to the calendar year, except the first year of the company's existence, which may have a longer or shorter duration. At the end of each financial year, the management must prepare the company's annual summary financial statements (known as "*états financiers de synthèse*") and must also prepare a management report.

Although the Uniform Act does not require the constitution of a specific committee, auditors or experts may be appointed by shareholders to play an audit role by examining the draft final financial statements and evaluates their risks.

In this respect, it should be noted that the appointment of statutory auditor (*Commissaires aux comptes*) is mandatory in an SA whereas it is in principle optional in an SARL, unless certain criterion are complied with, as further described below under section 1.4.5.

Management powers

The managers of the company, referred as the “governing body”, are in charge of the surveillance of the company’s organization and administration, and as such are accountable to majority and minority shareholders.

Management liabilities

Companies are committed for all acts of the managers which do not fall under the company’s object unless it is proven that the third party should have been aware that the act was over such object or could not be ignored given the circumstances.

Civil liability of the members of the management depends on the economic situation of the company:

ü If the company is in good conditions (*in bonis*) civil liability is almost identical to the general civil liability either under personal action or company action. Members of the management may be held liable either to the company or to third parties for faults committed in the performance of their duties or failure to comply with the law or the company’s articles of association;

ü if the company is not in good conditions, specific provisions of the OHADA Uniform Act ruling over insolvency proceedings shall apply. Members of the management who have contributed to the company’s situation of insolvency, may be ordered to pay part of or all of the company’s debts or may be declared themselves insolvent.

The Uniform Act also provides criminal liability of the management, in case notably of payment of fictitious dividends, publication of inaccurate accounts...etc.

Rights of shareholders and partners

The company must protect the rights of shareholders and partners, and ensure their equitable treatment. This includes both minority and non-resident shareholders and partners.

Shareholders and partners can exercise their rights at the general meeting of the company through their voting rights. The company shall make various documents (relating to the shareholding and control structure and the identity of the major shareholders and partners) available to shareholders and partners at least thirty (30) days before the general meeting.

Shareholders or partners are entitled to access to financial and accounting information.

Transparency and dissemination of financial information

Shareholders or partners must have quick and free-of-charge access to exact, precise, reliable, and complete information on all material matters concerning the company. This includes both financial and accounting information (which is to be to national or international standards), material or foreseeable risks or the governance policy of the company.

Shareholders may also ask written questions which shall be answered in writing.

1.1.1 title III: Subsidiary Vs Branch Subsidiary

Pursuant the OHADA uniform act, a subsidiary is a company incorporated in Cameroon whose share capital is possessed in more than 50% by another company. The subsidiary must be either a “Société Anonyme” (SA) or a “Société à Responsabilité Limitée” (Sarl) or one of the four types of unlimited liability company. Therefore you may incorporate any of these types of company with GSS owning less than 50% of the share capital. The company created will not be a subsidiary but merely a company controlled by GGS.

Société Anonyme (SA) [A kind of limited liability company]

Management of the SA

with a board of directors (2 options)

- Board of directors with a chairman of the board also acting as chief executive officer (CEO) and eventually assisted by one or more deputy general managers

- Board of directors with a chairman of the board assisted by a general manager acting as CEO

With a sole managing director acting as a CEO, assisted if required by one or more deputy managers

The share capital of a SA may be held by a unique shareholder. In this case, the SA is managed by a sole managing director assisted by a deputy managing director. There is no board of directors.

Boards Meetings: Quorum and majority

There is no obligation under the Uniform Act as to the number of board meetings to be held each year, save for the approval of the company's accounts for each financial year.

In general, all decisions are to be taken by a majority of the members of the board present. However, it is worth mentioning the possibility of providing for an increased majority vote in the articles of association.

Restriction of number of offices held

No person may simultaneously hold more than three offices as managing directors in an SA having their registered offices in the territory of the same member state of OHADA Likewise, it is prohibited to hold the position of chair person concurrently with the post of managing director or general manager on more than two SAs which have their registered office on the territory of the same member state.

Statutory auditors

The appointment of a statutory auditor (*Commissaire aux comptes*) and a deputy statutory auditor is mandatory in an SA. When the SA makes public offerings two statutory auditors and two deputy statutory auditors should be appointed.

Société à Responsabilité limitée (Sarl) [Another kind of Limited liability company]

Management of the Sarl

The Sarl is managed by one or more managers (known as “*gérants*”) who may be chosen either by the articles of association or during the life of the company, by the majority of shareholders holding more than one-half of the registered company.

Collective decisions

Collective decisions are generally taken at general meetings. However, it should be mentioned there is a possibility to provide for a written consultation^[3], in the articles of association. A general meeting must be held each year within six months from the closing date of the financial year. In addition, one or more shareholders holding one-half of the company's shares, or at least one-quarter of the shareholders in number holding at least one-quarter of the company's shares, may request the convening of a meeting at any time.

Statutory auditors

At least one (1) statutory auditor must be appointed in an SARL when one of the following three conditions is met:

- ü its share capital exceeds 10 million FCFA;
- ü the annual turnover exceeds 250 million FCFA;
- ü the permanent staff exceeds 50 employees.

When none of the above criteria is fulfilled, the appointment of a statutory auditor is optional.

However, it is important to take note that the OHADA Uniform act on company law states that within two years of his creation, the branch of the foreign company must be paid up in the share capital of an existing Cameroon legal entity or a Cameroon legal entity to be created. The Ministry in charge of trade may discharge a foreign from its obligation of transforming into a subsidiary by an executive order upon request of the branch.

The decision of creating a branch in Cameroon depends on the management of the foreign company that determines the activities of the branch appoints the manager and determines the limits of his function.