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DE facto partnership under the OHADA uniform Act

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Abstract

Moral personalities seem to gain grounds in law today, but loses at the practical level. While the personification of companies presents a progress, many of African entrepreneurs are out of the sphere. This situation usually results from, ignorance or disobedience. Those involve are not aware of the formality of registration [1]. For this reason, many entrepreneurs find themselves in uncomfortable situations. Their comportment towards each other results to their treatment as a regulated company. That is where de facto partnership intervenes.

According to article 4 of the Uniform Act of OHADA [2] relative to Commercial Companies and Economic Interest Groups, a company can be created by two or more people who accept through a contract to allocate to an activity, goods in cash, in kind, with aim to share the benefits that might result from it. The associates also engage themselves to share the deficit under the conditions provided by the present Uniform Act [3]. For such company to have a judicial life, it has to fulfill certain conditions, such as, the incorporation in the Trade and Personal Property credit Register (TPPR).

Moreover, the commercial character of a company is recognized either through its form or its object. The uniform act considers four forms of companies as commercial. They include; limited liability company (SARL) [4], limited joint stock company (SA) [5], "Société en Commandite Simple" (SCS) and "Société en Noms Collective" (SNC) [6]. Any commercial companies found in one of the member states of OHADA must respect the form of one of these companies. Otherwise, they will be under the regime of nullity.

The immoral effects of nullity, has caused the case law to remedy the situation to compensate good faith partners and third parties by conceiving of the theory of de facto partnership. It is defined by article 864 of the uniform act relating to commercial companies as "a situation whereby, two or more physical or moral persons behave as associates without constituting any of the legally recognized form of company".

The interpretation of this definition shows that de facto partnership is deduced from comportments, that is, it is a situation where two or more persons behave as associates, without expressing the will of forming a company [7]. De facto partnership is the fruit of behaviors between persons (concubines, parents, and friends). The legal qualification is done by the court or by the tax administration. This qualification is always done in cases where the partners officially had no legal relations between them. It can happen that, they were openly linked by a contract and the qualification of De facto partnership comes to establish the progressive transformation of their initial contractual link. that is why MM. Viandier and Caussain defines the facto partnership as " a subsidiary instrument whose utility and efficiency is seen only when the relations between the parties do not dwell in a real, perfect and well defined contract" [8]. This qualification intervenes generally at the occurrence of litigation either between associate or with third parties. The qualification can also be evoked out of court, by tax administration in its desire to submit behaviors to the tax regime of De facto partnership.

De facto partnership is under the regime of nullity, but the legislator finds the interest in its regulation in the uniform act. This regulation shows the interest with which the legislator wants to protect partners to an agreement and also third parties who contract with them, even in the informal sector. The regulation of De facto partnership highlights the OHADA legislator's worry to establish equality between parties to a contract and also to fight for the interest of good faith third parties. The questions we shall answer in this piece of work concerns the qualification of de facto partnership, and the legal rules that are applied it. To answer all these questions we shall examine the qualification of De facto partnership (I) and discuss its judicial regime (II).

Keywords: OHADA uniform Act, partnership, entrepreneurs

1. Introduction

The qualification of de facto partnership

De facto partnership is a sort of company which is not legally acknowledged. Its acknowledgement intervenes only during its dissolution. This is because at the constitution, the founders do not undertake any procedure for its judicial acknowledgement [9] neither do they have the intention to constitute a company.

The uniform act related to commercial companies and economic interest groups provided four legally recognized companies that can serve as a base for the operation of commercial activities [10]. These compagnies include; « Société en Noms Collective » [11], « Société en Commandite Simple » [12], « Société à Responsabilité Limité » [13], and « Société Anonyme ». In order to obtain their commercial character, they must be incorporated in the Trade and Personal Property Credit Register. There are other sorts of companies that operate without incorporation either because of ignorance or disobedience; they include "société en participation" and de facto partnership.

Our interest here is on the conditions for the acknowledgement of de facto partnership. It does not intervene before the moment of dissolution as is the case with other forms of

companies whose acknowledgement is automatic after the fulfillment of all the conditions of the constitution. Its existence is not based on an agreement between partners but rather, on the way they conduct themselves towards each other or towards third parties [14]. This conduct reveals itself most frequently in economic relations within the family [15], or even out of the framework of the family.

1.1 The acknowledgement of de facto partnership within the family

Most of the times, de facto partnership is being qualified within the members of a family. It is thus that, a famous court decision of 1974 decided that, de facto partnership can be qualified between an entrepreneur and his two brothers [16]. In this case, though the two brothers appeared in the pay book as wage-earners, they played an important role in the business; one of them acted a true animator, treating with suppliers and being considered by them as an associate. In this case, it was considered that, their contribution is by industry and their participation to the benefit result in that, the assets of the company is at their disposition. The situations where the qualification of de facto partnership is rampant are between concubines and between couples [17].

1.1.1 The qualification of de facto partnership between concubines

The law of 15th November 1999 integrated the definition of concubine in the civil code. According to article 515-8, the unique disposition of chapter two, of title seven in the first book of the civil code, defines the notion of concubine as "a union of fact, characterized by a common life, stability and continuity, between two persons of different or the same sex that live together as couples". It has a legal definition but it's not regulated by law. During the period of concubinage, so many activities are undertaken by the couples such as the involvement of one partner in the economic activities or business of the other. At the breach of this relationship, there is the need to regularize their patrimonial relations, which can be through the institution of an action of participation, destined to permit the equitable interest of each concubine. This specific action can lead to the qualification of de facto partnership [18].

There is much interest in the qualification of de facto partnership between concubines. Interest for creditors who can envisage it in other to operate a collective procedure against each of the concubines, and interest for one of the concubines who might have laboured in the personal business of his partner, they can request for the qualification of de facto partnership after the breach of their relationship, or at the death of the partner as a useful palliative to solve her problems [19].

The case law and the doctrine decided that, for the relationship of two concubines to be qualified as de facto partnership, it has to fulfill certain conditions. According to article 1832 of the civil code, the existence of de facto partnership between concubines demands the union of all the characteristic elements of a legal company which include; the existence of contributions, the intention to collaborate in an equal measure to the realisation of a common project, and the intention to participate in the benefits and the eventual deficits of the company; and finally, the determination of affectio societatis. The article also provides that, the cumulative elements have to be established separately and cannot be deduced one from the other [20].

Concerning contributions, it can be done in cash, in kind [21] or by industry. As to what concerns contribution by industry, it is greatly characterized in de facto partnership. The uniform act is contented in mentioning the existence of eventual contribution by industry without precising it regime. It is generally constituted by the hand work or the activities that the contributor effectuates or promises to effectuate in reason of his commercial or technical competence, or by the services to be rendered through his knowhow or his experience [22]. The contributor by industry is not subordinated to his co-associates; he does not receive a salary, but an eventual benefit from distributable dividend just as other associate. The contributor by industry has to be loyal to his co-associate; he has to conserve his industry only for the company and not to himself nor to the competitor [23].

Effectively, the particularity of de facto partnership is that, most of the contributions are done by industry. Especially, in de facto partnership between couples and concubines, where one of the spouse is founded to claim the existence of de facto partnership if her contribution is only by industry.

The acknowledgement of de facto partnership passes through the notice of the common search of benefits and the participation of every one to the positive results of the company [24] and even to the negative result [25]. The position of the case law is clear; there will be no acknowledgement, if one of the partners does not bear with others, the risk of the business.

Concerning affectio societatis, it is commonly called "the spirit of associate. It does not benefit from any legal definition. Gerard CORNU defines it as a psychological link between associates; it is one of the constitutive elements of a company whose components are the absence of subordination between associates, the will to collaborate to the advancement of the company by participating actively, or by controlling its management, and the acceptance of common risk. The constant case law gave a definition to affectio societatis in a decision rendered on the 9th November 1981. The commercial and financial chambers of the court of cassation estimated that, to decide for the existence of de facto partnership between concubines, instance judges have to examine, if the parties have the will to exploit their business in an equal measure, to share the benefits and the loses in case of deficit.

In the determination of the facto partnership between concubines, it is presented in a particular manner, given the fact that the member of de facto partnership does not manifest their will to be associates. The court essentially, verifies if the elements of affectio societatis are gathered. It is under these bases that, the case law is globally reserved in the establishment of de facto partnership. The case law considers that, the notion of de facto partnership used by concubines to remedy their patrimonial relations is a lame palliative, and that the simple community of life is not constitutive of the facto partnership. It is the same line that Jerome Bonard [26] says "affectio societatis is not affectio maritallis" [27]. In this case, two concubines envisage buying a land for construction. The man bought the land alone, both subscribed as co-lenders to finance the construction. Many years later the house was sold by the man. And the woman evoked the facto partnership in order to obtain half of the product of sale. She obtained a favorable decision before the court of appeal of FORT-DE-FRANCE in the decision of 16 august 2007. For the court of appeal, co-lending for the financing of the common project,

testifies the presence of affectio societatis, their goal being to have a stable family life. The court of appeal had it that, the concubine assured the upkeep of the house; these elements show the concubine's will to participate in the benefits and loses of the home. Thus, the qualification of de facto partnership.

The vigorous nature of the case law is justified by the existence of other means of resolving patrimonial issues between the concubines. To be in a relationship of concubinage, necessarily implies the acceptance of the risks of breach. At the occurrence, the parties are usually in a situation of patrimonial misunderstanding. At this stage, the parties can make use of so many parameters such as, civil responsibility, unjust enrichment [28] or case management.

1.1.2 The qualification of de facto partnership between couples.

Most frequently, the court qualifies as de facto partnership, the exploitation of an individual business in common by a couple married under separate property [29]. This claim can be evoked either by the spouse or by a third party [30]. It is mainly done by the creditors of one of the spouse, who can demand the payment of his credit from both partners [31].

The condition of separate property regime is because; each party has an exclusive right of ownership on his property, with its risks, debts, and credits. Thus if both parties intervene in the same economic activity, there will be at the need to regulate the patrimonial relations, based on the confusion of patrimony that has occurred between them.

A good example of de facto partnership between couple was given by the decision of the commercial chamber of the court of cassation on the 16th December 1975 [32]. In this case, the woman under the regime of separate property acquired a business with her husband and proceeded with lending operations, to ameliorate the arrangement of the business, commanded products and accepter commercial debts. Both were condemned to pay the bills of the merchandise. In this condition, the couple made contributions in cash and by industry both had the intention to be associates [33]. At divorce, the spouse can claim the existence of de facto partnership.

The situation of business co-exploitation by a couple has brought up this question. Can the spouse that co-exploited a common business, obtain with her husband the quality of merchants? The French law gives a negative response. The article L. 121-3 of the code of commerce disposes that, "the spouse of a merchant can obtain the quality of a merchant only if she exercises an activity different from that of the husband". Even the OHADA law prohibits that, for the sake of the protection of the family property. It is after a while that a good number of the doctrine and the case law decided that in case where the woman plays an important role in the business, there can be the presumption of commerciality. That is where the case law came to decide that, the quality of merchant can be given to both spouses [34]. It is to illustrate this that, in a decision of 17 June 1958, the commercial chamber admitted that two couples could be declared in bankruptcy if the court of appeal pronounces the bankruptcy of the de facto partnership that existed between them. This position is supported by the rule of equality between men and women and also on the disposition of article one of the code of commerce [35]. Thus, if they exercise the same trade under the same condition, with the same authority, in a conventional manner, they obtain the quality of merchants by application of article one above. The English law has added yet another condition through the case of Texas Partnership. The court reviewed the development of Texas Partnership law with respect to determining the existence of de facto partnership. The court stated that, the following five factors test for de facto partnership formation: the intention to form a partnership, the community of interest, an agreement to share profits, an agreement to share loses and mutual right of control and the management of the enterprise [36]. The party claiming de facto partnership has to proof the existence neither of these characteristic elements which is not an easy task neither for the parties involved nor for the judge. Hence, the acquisition of the quality of merchants by both spouses will automatically lead to the qualification of de facto partnership. Consequently, just as associates in a regular company, the creditors can decide to claim their debts on the property of each of the couples [37].

The acknowledgement of de facto partnership within the family has far reaching consequences, especially when the spouses are qualified as merchants. It puts the family property in jeopardy. It opens the possibility for the collective procedure against both of them [38]. There is also the possibility to declare them bankrupt. The existence of the facto partnership leads to the acknowledgement of a collective and a definite responsibility for social liabilities against both partners. What about the acknowledgement of de facto partnership between associates.

1.2 The qualification of de facto partnership between associates

The facto partnership can also be qualified between the members of a company such as a company under formation and others situations.

1.2.1 The qualification of de facto partnership in a company under formation

De facto partnership is a company that is deprived of moral personality just as a company under formation. But in de facto partnership, there have never been the desire to belong to a company, while the company under formation is growing towards legal recognition. How can we then admit that a company under formation marked by this, be degenerated to a de facto partnership [39] Nonetheless, the case law and the doctrine, to a certain measure admit the requalification of a company under formation to de facto partnership.

The case law and the doctrine hold divergent views concerning the conditions of its requalification. If the case law has admitted that a company under formation becomes de facto partnership, it varies on the criteria that permit such transformation. First of all, the union of all the elements of the constitution of a company [40], when once one of these elements are lacking, there will be no company, thus its requalification as de facto partnership. The case law also makes use of the criteria of the nature of act undertaken, and the intention of the author of the act to make the difference between de facto partnership and a company under formation. In the decision of 13th may 1997, the court of appeal of Paris made reference to the character of the act and the intention of the parties [41]. As fact, societe espace corée' under formation represented by its director, concluded a contract of location on the 7th September 1990 but the company was incorporated only on the 23rd October 1991 [42]. Within the interval of time, one of the associated signed a bounced check on its personal account for

money due by the company. Creditors then evoked the facto partnership. Another criteria used by the case law is the quality of the founder of the company. On the 24th September 1991, in a case concerning principally the quality of the founder of the company, the court of appeal concluded the existence of a company under formation because of the divers material acts undertaken by those concerned: signature of an agreement protocol, precise studies comprising notably of supplies, and a commercial plan of action, the accomplishment of various formalities including the demand for the designation of capital contributions appraisal and the complaint towards the partners against the weak nature of preliminary operations to the signing of statues.

The facts were as follows, an enterprise and an individual entered into discussion in order to constitute a common company. Divers expenses were done by the enterprise but the company was not constituted. The enterprise claimed half the expenses under the pretext that both were the founders of the company. Following the decision of 13th may 1997; the court of appeal of 13th June 1997 gave as criteria of transformation of one company to the other, not only the execution of commercial activity but also the realisation of an important turn-over [43].

From these decisions we notice the objective criterion: the beginning of social activity. This element of distinction appears to be preferable to that of the intention of parties [44]. In fact, contrarily to the last a criterion, the beginning of social exploitation is a material fact that is easily verified than the study of wills which is to the advantage of partner. This because, they will know at what moment the company will be transform into de facto partnership. They will know how to protect themselves from eventual surprises concerning the scope of their responsibility towards third parties. Moreover, this materiality facilitates the signing of diver's contracts for they will lessen the risk of seeing the creation of the facto partnership for acts of less important [45].

Concerning the doctrine, three conditions can cause the requalification of a company under formation. First of all, every company has to respect the time limit for the incorporation at the TPPR [46]. After this time limit, if the company has not acquired its moral personality, it is transformed into de facto partnership. This is because in economic affairs, economic actions always precede judicial information through its incorporation.

Another part of the doctrine thinks that, what determines the choice between the facto partnership and the company under formation is the beginning of social activity. Mr. Chaput makes use of another material element: the accomplishment of isolated acts. As soon as these acts are accomplished, if they arrive at a true commercial activity without incorporating the company, it will have to be qualified as de facto partnership [47].

Today, the case law considers that, the criteria of transformation from a company under formation to the facto partnership is found in the "important and durable manner of an activity which is more than the accomplishment of simple acts, necessary to the constitution of the company ".

1.2.2 The qualification of de facto partnership in other situations

De facto partnership can also be qualified in a situation of joint ownership. Though the law of 31 December 1976 relating to the reform of joint ownership, and the law of 4th January 1978 reforming the title of the civil code, relatively renewed the conception of joint ownership and its relationship with the company, the distinctions between the two notions are not less uncertain as before [48]. The doctrine proposes to distinguish joint ownership from a company by considering the subjective criterion of the will power [49]. It is justified by the fact that, the two institutions are fundamentally opposed by the intention that animates the respective parties. While the parties have the intention to continue their activity together in a framework of joint ownership, other parties are forced to exploit together because of the nature of the subject matter. Nonetheless, the dynamic exploitation of the property means, the existence of affectio societatis.

Consequently, the case law and especially in fiscal matters, proceeds through the requalification of the situation of joint ownership into a company either "société en participation" or de facto partnership, each time that the joint owners use their property as a common enterprise, without seeking to know if this situation is compatible or not with the qualification of joint ownership.

Also, the expiration of a convention of joint ownership can lead to its requalification as de facto partnership. It is important to note that, subsidiary character of de facto partnership prohibits its acknowledgement when the company is legal, constituted to realise a particular objective [50]. It also prohibits the qualification as associates, parties to the convention of joint ownership. But when the convention expires, the prohibition ceases. The ex-joint owners can become associates. This solution was given by the court of Appeal of Paris [51].

To this effect, after the time determined for the convention, except in case of renewal, the parties to the convention take a risk of requalification if they continue to manage together the joint property. They might become associates of de facto partnership.

Concerning the group of company, it can be qualified as de facto partnership at the demand of creditors of the insolvent company. A group of company having worked together can eventually become de facto partnership [52]. This does not happen in every situation. But the qualification of de facto partnership in a group of enterprise depends on whether; the company members of the group fulfil all the constitutive elements of a contract of company. That is why the judges can admit or reject the requalification.

A group of company can constitute de facto partnership when the companies grouped together, tendered together in a common goal, to a public work and each of them bringing their knowledge and their competence, that is, bringing together all the potentials of their respective activities, in order to obtain the result. Moreover, it should be through the means of these potential that the group of enterprise realised the work or the objective of their group.

2. The judicial regime of de facto partnership

After the qualification of de facto partnership, it is considered as a legally formed company and thus treated as one. The rules that govern "Société en Noms Collectives" are then applied on it. But before then, its validity has to be verified. When it is proven, it gives rise to diverse consequences.

2.1 The validity and proof of de facto partnership

It belongs to the judge to determine whether there is or not de

facto partnership. Before he does that, the claimant has to proof its existence and the judge verifies if the elements necessary for its qualification present. Thus the validity of de facto partnership lies in the hands of the judge (1) while the proof is in the hands of the claimant (2).

2.1.1 The validity of de facto partnership

For a common activity to be qualified as de facto partnership, the parties involve have to satisfy all the conditions of the validity of the contract [53]. These conditions include consent, capacity, object and cause. That is to say, any company that reposes on an unlawful cause could be null [54]. De facto partnership cannot result from a simple project of company [55]. In a case, it was decided that, an abandoned project of company could not be qualified as the de facto partnership because of the short duration of collaboration between the partners. In order to receive the stamp of validity, de facto partnership has to benefit from at least a beginning of execution [56].

What is particular about de facto partnership is that, it is acknowledged only at the moment of its liquidation. It is just a normal fact, given that; the parties during their activity have no intention to have their activity recognised as a company. De facto partnership is just the result of a simple economic compartment between parties. One party can evoke the its presence only at the end of their relationship in order to obtain a part of the fruits of the economic activity which he cannot obtain if he does not evoke the qualification of de facto partnership. As example, In the case of de facto partnership between couple or concubines, at the existence of the marriage or the relationship of concubines, the economic activity can be the personal property of either of one spouse or of one concubine. It is only at the breach of concubinage or at the divorce that one of them would evoke de facto partnership so that the economic activity belonging to one partner, object of the common exploitation could be liquidated as de facto partnership so that she can benefits from its fruits.

Apart from the partners, third parties can also evoke de facto partnership. In a case the court of cassation decided the liquidation of de facto partnership that existed between couples evoked by a third party. It is aimed at opening a collective procedure against the partners to ode facto partnership. When evoked by a third party, the judge can liquidate the company in other to compensate the creditors (third party). But yet, he has to bring the proof of what he claims.

2.1.2 The proof of de facto partnership

By principle it belongs to the person who alleged the existence of something to bring the proof of its existence [57]. If one of the associate of de facto partnership wants to establish its existence, he has to start by bringing out the different elements that constitute the contract of company. The claimant can either be a third party or a partner.

When the proof is brought by a third party, it is more relaxed. Third parties can evoke de facto partnership without proving the constitutive elements of the contract of society. It can be done through the theory of apparence [58]. It was decided that, a person who created the apparence of a company where he is an associate before third parties is held by the obligations contracted with these third parties.

When the claimant is an associate, the regime of proof becomes stiff. The associate has to start by bringing out the different elements that constitute the contract of company. These elements include contributions, affectio societatis, participation to gains and losses. The proof of these elements has to be done separately and not deduced one from another as analysed earlier. The concubine that wishes to establish the existence of de facto partnership in their common business has to demonstrate the existence of material contributions different from the charges of home upkeep and affectio societatis has to be demonstrated different from the desire to have a common life with the partners [59].

Moreover, the associate has to bring the proof of the fulfillment of the general conditions for the validity of a contract. He has to bring the proof that the associates have the capacity, their consent are clear and the object and causes of de facto partnership are lawful, without which the judge cannot decide on their partnership.

Nonetheless, the court of cassation has a sovereign power of appreciation over the proof of de facto partnership. Every means can be used to bring the proof of de facto partnership. The instant judges have the sovereign power of appreciation of the elements of proof submitted to them [60]. But the court of cassation does not abandon the judicial operation of qualification in the hands of the instance judges. In others word, with the elements of proof sovereignty appreciated, the court of cassation controls to see if the instance judges, had sufficient elements to admit the existence of de facto partnership [61]. According to the administrative high court, de facto partnership has to unite all the elements of the constitution of a company [62]. The absence of one of these conditions is an obstacle to the proof of the existence of de facto partnership. In a case where two brothers exercised together a fishing activity, and participated in an equal measure to the assets and charges of exploitation, the council of states decided that, the only fact that, they fished together on the same place but with their respective boats does not suffice to characterise de facto partnership [63].

On the fiscal domain, the particular fiscal regime applicable on de facto partnership has led the administration to take certain positions: in an instruction of 19th October 1984 the fiscal administration precise his criteria of the existence of de facto partnership. According to this case law the facto partnership supposes the union of three conditions: each member has to effectively participate to their contributions in cash, in kind or by industry; each member has to participate effectively to the management of the enterprise; to the functioning, the direction or the control and have to be able to engage the company towards third parties. Finally, each member has to participate effectively to the benefits or the deficit result of the enterprise. By principle the criteria of participation to the result is established in a written convention that provides a repartition of these results between the associate of facts. Meanwhile in the absence of this convention, it can result from the perception of a variable remuneration that remains sensibly equal to the proportion of benefits. The facto partnership can exist only between associate that fulfill simultaneously all three conditions [64]. This is to distinguish de facto partnership from a simple help between agricultural exploiters.

2.2 The effects of de facto partnership

The most glaring trait of de facto partnership is the lack of moral personality. This result from the fact that de facto partnership is not incorporated in the TPPR. It does not also

have a judicial existence.
De facto partnership has no proper patrimony. The contribution of each party does not constitute the patrimony of the de facto partnership but it belongs to each contributor, such that at his departure or at the dissolution of the company he can collect his property. Concerning goods and property found under joint ownership in the company, before the law of 4th January 1978, it was judge that any acquisition done in the frame work of de facto partnership could lead to a joint ownership. Towards third parties, each associate remain proprietor of the property he puts at the disposition of the company. It can also be agreed between associates that, one of them be towards third party, the proprietor of half or all of the goods acquired, for the realisation of social object.
Another consequence of the absence of morale personality is the inability to act in court not even for the recovery of credits [65]. De facto partnership cannot undergo collective procedure because it has no personal property. The only possibility is to act against each of the associates. It cannot also be represented in court because of it legal inexistence. But the partners of de facto partnership can either individually or collectively undergo collective procedure in case of confusion of property or of joint ownership.
The notion of confusion of patrimony, from first sight has no relationship with unincorporated companies. It is a notion linked to incorporated companies [66]. But the notion does not remain on incorporated companies alone. Though highly contested, the confusion of patrimony has acquired its autonomy. It was admitted by the case law, not only where there is fictively but also in situations where two or more physical or moral persons whose interests and patrimony are in a confused state [67]. The confusion of property renders inapplicable a procedure against one person. The only solution is the application of the procedure against all those whose patrimony is in a confused state.
The conception of confusion of patrimony permits to solve difficulties that come up with unincorporated companies such as de facto partnership between couples. The existence of de facto partnership is the consequence of the confused state of the patrimony of concubines. It is always easy in such cases to establish the confusion of patrimony considering the solution admitted by the case law.

2.2.1 The assimilation of de fact partnership to "Société en Non Collective

As earlier said, the governing rules of SNC are applied on de facto partnership. This is appreciable at the level of the fiscal regime. The fiscal regime of SNC is characterized by a remarkable flexibility, because the participants have the latitude to moderate the regime of imposition to benefit their situation. According to article 8 of the general code of taxation, the associates of SNC are personally submitted to taxation according to the revenue of social benefit corresponding to their right in the company. But this is only possible under two conditions [68]; the associate has to be collectively responsible, and their names and address have to exist in the administration of taxation.
Far from manifesting some sort of autonomy, the fiscal administration has purely and simply adopted the position of private law [69]. Article 6 -1 of finance law of 1979 certified the assimilation of the fiscal regime of de facto partnership to that of SNC.
The paradox in this situation is that, persons that are not aware of their belonging to a company are being imposed with the obligations of accountancy. A ministerial response added that, the assimilation of de facto partnership to the rules of SNC, is extended to the rules relative to the obligation of contribution; "the associate of the facto partnership are held by the obligation to pay the charges of contribution and to deposit the receipt of taxation at the administration territorially competent. Moreover, the transfer of the governing rules of SNC to de facto partnership is not perfect.
The dispositions of article 1873 of the civil code that provides the application of the rules of SNC to de facto partnership has always been approved because of the resemblance that exist between the two form of companies. But certain authors reserve their approval because of the different perspectives that animates the two companies. The facto partnership is an ignored company even by their founders, SNC is a contractual company wanted by the parties. We think, those who choose this regime did not measure the consequences.

2.2.2 The dissolution of de facto partnership

De facto partnership is not a company created willfully by the parties. So they cannot determine the duration of the company; it exists only as long the associates allow the contributions at the disposition of the common enterprise and when their consent to remain in the activity exists. The court of appeal and the court of cassation decided in a case where a couple transferred their contributions to another couple that, such action is a proof that they no more had the intention to remain associates; and wanted to dissolve the partnership [70].
The causes of dissolution of de facto partnership are numerous; the death of an associate can lead to the dissolution of de factor partnership just as in the case of SNC [70]. But the solutions would be different if there's the convention stipulating that, there will be the continuation of the activity in case of the death of one party. In the absence of such convention, the dissolution of de facto partnership leads to the fiscal consequences of the cession of the enterprise toward the associate. When the de facto partnership has a civil object, the death of an associate does not lead to an automatic dissolution of the partnership, in application of the combined disposition of article 1871-1 and 1870 of the civil code. According to article 1870, the civil company cannot be dissolved after the death of an associate, except there is contrary disposition in the convention of its creation.
Another cause of the dissolution of de facto partnership, not too different from the above is the resignation of an associate. This resignation can lead to the dissolution of the partnership if, it contained only two associates an also if the outgoing associate sells his shares to his partner [71]. If the outgoing associates concedes his share to a third parties, his resignation cannot lead to the dissolution of the de facto partnership and thus no fiscal incidence.
The exclusion of an associate from de facto partnership can lead to its dissolution. The associate of fact that brutally dismiss his partner from the partnership can be sanctioned to pay to the later, indemnities. The foundation of this sanction is found in the fault committed by the author of the breach [72].
Misunderstanding between associates can also lead to the dissolution of the partnership. It is an anticipated dissolution that can occur only in the case where, it has as effect to paralyses the functioning of the partnership. Moreover, the

union of the entire shares into one share can cause the dissolution of the partnership for it becomes a "one person enterprise".

Considering the fact that the qualification of de facto partnership is to protect third parties and good faith partners, it is normal that its dissolution be evoked by any of them. Third parties can evoke de facto partnership to profit from the liquidation. Instead of benefiting from an action against one associate, through the qualification of de facto partnership, third parties can benefit from an action against all of the associates indifferently. This is easier when the third party is of good faith.

3. Reference

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