OHADA’s new Uniform Act

Deadline for harmonizing corporate articles of association is approaching

The deadline of 5 May 2016, set by the Organization for the Harmonization of Business Law in Africa’s (OHADA’s) new Uniform Act ("the Act") on the law of companies and groups of economic interest for harmonizing corporate articles of association with the provisions of the Act is approaching. For companies that have not yet harmonized their articles of association, there are two options:

- Include this item on the agenda of the annual general meeting called to approve the financial statements for financial year 2015 which, according to the provisions of Article 140 of the Act, must be held within six months of the end of the year, or no later than 30 June 2016
- Hold a special general meeting before the deadline to rule on that issue in the event that the annual meeting is not held before 30 June 2016

If harmonization of the articles of association is not necessary, shareholders must still convene at least an ordinary general meeting to take note of this decision, and shall be subject to the same publication in the government gazette as companies that are amending their articles of association.

Registers of shares and securities

Prior to a company’s next general assembly meeting to approve the accounts, it is important to be aware of an essential requirement introduced by the Act, relating to the register of securities.

Articles 746-1 and 746-2 of the Act provide that limited companies and simplified limited companies (or other authorized persons) must establish registers of shares and securities and update them accordingly.

These records should include all operations-related references to:

- Share transfer
- Converted shares
- Mortgaged shares
- Escrow shares

All entries in the register must be signed by the legal representative of the company or an authorized person acting under the legal representative’s name.
Penalties

Failure to harmonize the articles of association with the new provisions of the Act will render all existing sections contrary to the new provisions null and void, and the new provisions will apply. It is important to note that certain provisions of the new OHADA law must be clearly outlined in the articles of association. For example, the possibility of attending a general or board meeting by tele or visio conference must be clearly stated in the articles of association. If these are not harmonized, the company will not be able to have a meeting by tele or visio conference.

In the absence of a share register, the Act reinforces this obligation by establishing a right of control of the statutory auditor. Accordingly, the records must be provided to the auditor and, during the annual general meeting, the auditor must certify their existence and opine on its compliance with the regulations.

In Gabon, the Finance Act 2016 introduced penalties for limited companies or simplified limited companies that do not maintain a register of the securities, including a fixed penalty of:

- XAF10 million (EUR 15,244) in the case of a business with a turnover of less than XAF500 million (EUR 762,245)
- XAF50 million (EUR 76,224) in the case of a business with a turnover equal to, or greater than, XAF500 million (EUR 762,245)

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