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Bill for simplification and improvement of the quality of law: a new reform of french corporate law in sight

The Bill for simplification and improvement of the quality of law (the "Bill") is a follow-up to the measures that have been taken over the past few years by the French Government and Parliament in order to reduce the complexity of French law.

Introduced on August 7, 2009 by Mr. Jean-Luc Warsmann, Member of Parliament of the Ardennes department, this Bill was amended and adopted in second reading by the French National Assembly on February 9, 2011. It should be re-examined by the French Senate in the coming weeks or months.

This trend towards simplification of French law is the result of a shared consensus on the evolution of French law, and more particularly, on the necessity to reduce the ever-increasing complexity of French legal and regulatory provisions. The successive legislative changes in virtually all areas of the law as well as the diversity of the sources of law have led in the past twenty years to a tangle of texts – sometimes lacking consistency with each other -, thereby resulting in increased legal uncertainty.

The Bill aims not only at eliminating the numerous existing outdated or obsolete rules but also at remedying the redundancies and inconsistencies resulting from successive legislative and regulatory changes. This is a far-reaching and ambitious project that resulted in the presentation of a catch-all text that, however, forecasts concrete reforms. The Bill is structured around three main themes:

- Improvement of the quality of the legal and regulatory framework and improvement of the relationship between citizens and administrative authorities;
- Simplification of the rules applicable to local and regional authorities;
- Clarification of criminal law;
- Simplification of certain rules applicable to companies and professionals.

Regarding specifically this last theme, several provisions of the Bill concern corporate governance and, more generally, corporate law:

1.Simplification of the procedure applicable to so-called "ordinary agreements" (in

***sociétés anonymes* (joint-stock corporations or hereinafter "SA") and *sociétés par actions simplifiées* (simplified joint-stock corporation or hereinafter "SAS")**

It should be recalled that agreements entered into between a company and some of its legal representatives, corporate officers or shareholders are classified either as ordinary agreements or regulated agreements, and are subject to a specific control procedure.

Ordinary or unregulated agreements concern day-to-day transactions, i.e. transactions performed in the usual course of business and entered into under normal business conditions.

Under the currently applicable legislation, ordinary agreements must be notified to the Chairman of the Board of Directors or Managing Committee of SAs (Articles L. 225-39 and L. 225-87 of the French Commercial Code) or to the President of SASs (Article L. 227-1 of the French Commercial Code), the list and purpose of such agreements must be communicated to the Board members and such agreements must be made available to the shareholders.

Pursuant to the Bill – as it currently stands – this burdensome process would be suppressed. This measure will undoubtedly be welcomed by the shareholders of SAs and SASs.

2. Simplification of the procedure governing share capital increases in SAs

2.1 Companies with no employee that increase their share capital by cash contributions will be exempted from the obligation to convene an extraordinary general meeting of shareholders to vote on a resolution offering employees having subscribed to an employees' savings plan the possibility to participate in the contemplated share capital increase.

This measure is rather a welcomed step insofar as the currently applicable legal rules do not provide for any exemption from the obligation to vote on a resolution proposing a share capital increase reserved to employees, even in companies that do not have any employees! Since non-compliance with this obligation may lead to the nullification of the share capital increase, all in-house counsels and external legal advisors comply with this obligation, even when the relevant company has no employee.

2.2 Similarly, controlled subsidiaries, as defined in Article L. 233- 16 of the French Commercial Code, i.e. subsidiaries integrated within a group of companies, shall be exempted from the obligation to offer employees the possibility to participate in a share capital increase and to convene every three years a general meeting of shareholders to vote on a resolution providing for a share capital increase reserved to employees when the employees hold less than 3% of the company's share capital, insofar as these obligations are complied with at the group level in the framework of an employee's savings plan.

2.3 Lastly, the rules governing the involvement of the statutory auditors in case of share capital increase with suppression of the pre-emptive subscription rights will be simplified.

3. Statutory auditors shall be entitled to resume an alert procedure that has been interrupted

As per the French Commercial Code, the alert procedure is aimed at drawing the attention of the corporate managers and officers on the necessity to take measures to remedy a worrisome evolution of their company's situation. The alert procedure can be initiated primarily by the statutory auditors and the Works Council.

Statutory auditors who interrupted a pending alert procedure because they received from business managers positive information on the continuation of the company's business shall be entitled to resume such procedure at any time if the continuation of the company's business becomes jeopardized. This possibility to resume the alert procedure will enable the statutory auditors to better adapt their assignment to factual circumstances and to the evolution of the company's business.

4. Reporting and documentation requirements in case of mergers and demergers

The Bill aims at transposing into French Law Directive 2009/109/EC of the European Parliament and of the Council of September 16, 2009 on reporting and documentation requirements in the case of mergers and divisions, which will not necessarily result in a simplification of the current legislation.

The Bill, in its current version, includes the following measures:

- Shareholders will have the possibility to exempt the Board of Directors or the Managing Committee in SAs or the competent corporate body in SASs from their obligation to issue a report on the contemplated merger ("merger report");
- If the shareholders do not grant such exemption, the competent corporate bodies in SAs or SASs will be required to provide detailed information to the shareholders on any significant changes that occur between the date of the merger report and the convening of the general meeting of shareholders due to vote on the contemplated merger;
- The rules governing the simplified merger procedure will be streamlined: the acquiring entity will be released from the obligation to convene a general meeting of shareholders whereas, to date, only the acquired entity benefits from this exemption (Article L. 236-11 of the French Commercial Code);
- The simplified merger procedure will be extended to mergers where the acquiring entity holds at least 90% of the voting rights in the acquired entity, instead of the currently required 100% threshold.

While the very principle of this broad-ranging Bill has been criticized because it addresses a multitude of issues and introduces dense and comprehensives measures, it remains however a potential masterpiece of legislation, notably in corporate law where any developments in connection with the forthcoming reform should be closely monitored.

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