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Simplification of French corporate law: Overview of some flagship measures

Following the so-called PACTE Law which amended several major areas of French corporate law (Law No. 2019-486 of May 22, 2019), the Law on the Simplification, Clarification and Modernization of Corporate Law (the "Law"), published in the Official Gazette on July 19, 2019 under the number 201-9-744, entered into force on July 21, 2019.

This law is the result of a proposal submitted in 2013, the scope of which has been significantly reduced as a result of the inclusion of several of its provisions in various pieces of legislation, including the PACTE Law, recently enacted.

Nevertheless, the changes brought about by the Law remain significant. This article highlights some of the key measures that have been introduced.

Regarding business going concerns

Contrary to what the title of the Law might suggest, some of its provisions concern the sale and lease management of business going concerns and the changes brought about in this respect are not insignificant.

As such, **the deed of sale of a business going concern must no longer contain the mandatory statements required by Article L. 141-1 of the French Commercial Code** under penalty of cancellation of

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the deed (i.e. identity of the previous operator and purchase price, statement of liens and pledges that may encumber the business going concern, turnover and results for the last three financial years). This above Article has been simply and purely repealed.

The obligation to comply with these formalistic requirements was intended to protect the buyer, as being potentially the weaker party to the transaction. As a result, is the purchaser of a business going concern now less protected? Enhanced attention will certainly be required, but in practice, the disclosure of pieces of information other than those legally required, which are equally essential to assess the actual composition of a business (in particular, the number of employees, current contracts, possible disputes), is generally requested from the seller before completion of the sale.

In addition, the pre-contractual obligation to provide information arising from Ordinance of 10 February 10, 2016[1] should, to a certain extent, protect purchasers from the non-disclosure of information which is decisive for them to consent to the transaction.

Another noteworthy measure is the repeal of Article L. 144-3 of the French Commercial Code, which required that **the business ought to be operated for a minimum of two years before it could be subject to a lease management agreement**. This requirement was supposed to guarantee to the tenant the existence of the clientele, but in practice it constituted an obstacle to the development or continuation of the business activity through the use of a lease management arrangement.

New conditions for a parent company operating in the form of a *société anonyme* (joint stock company) to grant guarantees on behalf of its subsidiaries

The Law has streamlined the procedure for authorizing sureties, endorsements and guarantees issued by *sociétés anonymes* to secure the commitments of their subsidiaries.

Before its entry into force, Articles L. 225-35 and L. 225-68 of the French Commercial Code provided that sureties, endorsements and guarantees given by *sociétés anonymes* other than those operating credit institutions ought to be authorized by the board of directors or the supervisory board, for a maximum period of one year and for a specified amount, on an aggregate basis or per commitment, beyond which the guarantee could not be issued without a new authorization.

In practice, it appeared that these formalistic requirements could, in corporate groups, and especially those doing business internationally, be an obstacle to the development of business operations by creating uncertainty about the validity of the granted guarantees; the beneficiaries, who are often lenders, could not materially ensure that the guarantees granted to them did not exceed the annual ceiling authorized by the board of directors.

The Law now facilitates the granting of such guarantees since the board of directors or supervisory board may now authorize **their issue**, on an annual and global basis, **without limitation on the amount**, provided that they guarantee the commitments of "controlled companies" within the meaning of Article L 233-16, II of the

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French Commercial Code[2]. In addition, the same board may authorize the general manager or the executive board to grant these same guarantees on a global basis and without limitation on the amount, provided that the latter reports on them at least once a year.

This measure should facilitate the granting of contracts or financings to foreign subsidiaries of French groups where the guarantee of French parent companies is often required.

Capital increase reserved for employees: end of the obligation to consult shareholders on a periodical basis

The Law abolished the obligation to consult shareholders periodically in order to decide on a capital increase reserved for employees.

Before the Law came into force, *sociétés anonymes* (joint-stock companies), *sociétés en commandite par actions* (limited partnerships with shares) and *société par actions simplifiée* (simplified joint stock companies) where employees held shares representing less than 3% of the capital, had to submit every three years to the general meeting of shareholders a draft resolution on a capital increase reserved for employees. This period was extended to five years in certain situations.

This system, designed to encourage employee share ownership, has proved ineffective in practice, as shareholders generally refused to adopt the draft resolutions submitted to them on this subject.

On the other hand, the obligation to vote on a draft resolution on a capital increase reserved for employees is maintained wherever it is decided to increase the share capital of a *société anonyme*, *société en commandite par actions* and *société par actions simplifiée* by way of a cash contribution[3].

Also to be noted…

The Law covers many subjects relating to the operation and organization of companies.

In particular:

- the distribution of voting rights between bare owners and beneficial owners in the event of the dismantling of shares[4] has been redefined[5];
- a procedure has been established to enable shareholders to extend the life of the company[6];
- the buy-back by an unlisted company of its own shares has been simplified[7];
- contributions in services or technical knowledge (*apports en industrie*) to a *société par action simplifiée* are exempt from valuation by an auditor[8];
- in *sociétés anonymes*, the mandatory nullity of the decisions of the general meeting of shareholders in case of failure to submit the statutory auditors' report on the annual accounts is restored and the nullity of the resolution adopted without having been included on the agenda is optional[9];
- the simplifications available wherever a subsidiary is merged into its parent company are extended to mergers between sister companies, partial contributions of assets from a parent company to a

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subsidiary and mergers between civil companies[10].

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[1] Article 1112-1 of the French Civil Code

[2] *II- Exclusive control by a company results from: 1° either the direct or indirectly holding of the majority of the voting rights in another company; 2° or the appointment, during two successive financial years, of the majority of the members in the administrative, management or supervisory bodies of another company, it being specified that a company is presumed to have made such appointment when it has, during that period, held directly or indirectly a fraction of the voting rights higher than 40% and when no other partner or shareholder held directly or indirectly a higher fraction than this; 3° or the right to exercise a dominant influence over a company dominant influence by virtue of a contract or by-law provisions, wherever permitted under applicable law.*

[3] Article L. 225-129-6 §1 of the French Commercial Code for *sociétés anonymes*, and by reference Articles L 227-1 §3 and L 226-1 §2 of the same Code for *sociétés en commandite par actions* and *sociétés par actions simplifiée*

[4] It should be noted that Article L. 225-110 of the French Commercial Code provides for a special regime for *sociétés anonymes* and *sociétés en commandite*, under which, subject to applicable by-laws provisions, the voting rights belong to the beneficial owner at ordinary general meetings and to the bare owner at extraordinary general meetings

[5] Article 1844 of the French Civil Code

[6] Article 1844-6 §2 and §3 of the French Civil Code

[7] Article L. 225-214f the French Commercial Code

[8] Article L. 227-1 §4 of the French Commercial Code

[9] Articles 16 to 19 of the Law

[10] Articles 6, 32 and 33 of the Law

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