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# **The law empowering the government to simplify and secure the life of businesses marks the starting point for the implementation of the “shock of simplification” announced by the government**

**Law n°2014-1 of January 2, 2014 (hereinafter the “Law”) empowers the Government, in order to “*act more quickly and more efficiently than through a standard legislative process*”<sup>[1]</sup>, to take measures that are a matter of law by way of executive orders, in the conditions set forth in Article 38 of the French Constitution<sup>[2]</sup>, including, but not limited to, in view to reduce the accounting burden imposed on small businesses (1) and simplify and clarify corporate law (2), and suppresses the prior declaration requirement imposed on foreign tradesmen who do not reside in France (3).**

## **1. Reduction of the accounting burden weighing on small businesses**

Article 1 of the Law empowers the Government to take, by way of executives orders, any measures that are a matter of law in order to relax the obligation to prepare and publish accounts imposed on very small businesses (VSBs or micro-companies) and the obligation to prepare accounts imposed on small businesses.

As per Article 22 of the Law, the executive order should be issued within 4 months from the publication of the Law.

## 2. Simplification and clarification of corporate law

Article 3 of the Law empowers the Government to take, by way of executive orders, any measures governed by statute law in order (notably) to:

- Simplify and clarify the rules applicable to agreements falling within the scope of Articles L.225-38 and L.225-86 of the French Commercial Code<sup>[3]</sup> (so-called “*regulated*” agreements), by:

- excluding from their scope agreements entered into between a company and a directly or indirectly wholly-owned subsidiary;
  - including in the report that the Board of Directors or Executive Board must present to the general meeting of shareholders information on the agreements entered into between a corporate officer, director or shareholder who owns more than 10% of the parent company and a directly or indirectly owned subsidiary;
  - making it compulsory to provide the motives of the Board of Director’s or Executive Board’s decisions approving such agreements and by submitting every year to said Board the agreements already approved and whose effects last in time;
- Securing the rules governing the buy-back of preferred shares, i.e. the conditions in which such buy-back can take place and the fate of the shares that have been bought-back;
- Simplifying and clarifying the legislation applicable to so-called “complex” securities<sup>[4]</sup> with respect to the issuance and protection of such securities, facilitating the identification of holders of bearer shares and adapting the set of rules governing transactions with securities and subscription rights;
- Allowing for the extension of the timeline within which the general meeting of shareholders in limited liability companies (*sociétés à responsabilité limitée* or “SARL”) must approve the annual accounts;
- Allowing single-member limited liability companies (*entreprises unipersonnelles à responsabilité limitée* or “EURL”) to own another EURL;
- Simplifying the formalities related to the disposal of shares held in general partnerships (*sociétés en nom collectif* or “SNC”) and SARL, while maintaining the publication formality;
- Amending Article 1843-4 of the French Civil Code<sup>[5]</sup> to ensure that any expert appointed to value the shares shall comply with the valuation rules agreed upon between the parties.

As per Article 22 of the Law, this executive order should be issued within 8 months from the publication of the

Law.

### 3. Abolition of the prior declaration requirement imposed on foreign tradesmen

Pursuant to the provisions set forth in Article 21 of the Law, Articles L.122-1, L.122-2, L.911-1 and L.951-1 of the French Commercial Code as well as Article I of executive order n°2004-279 of March 25, 2004 on the simplification and adaptation of the requirements for exercising certain professional activities are repealed.

For the record, these Articles imposed on any foreigner – other than the nationals of EU Member States, other States which are a party to the Agreement on the European Economic Area or the Swiss Confederation – exercising on the French territory, but without residing there, a commercial, industrial, craft or professional activity in conditions that require his registration or inclusion in the Register of Trade and Companies, the obligation to make a prior declaration to the territorially competent *préfet*<sup>[6]</sup>.

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[1] Bill authorizing the adoption, by way of executive orders, of various measures aimed at simplifying and securing the life of businesses presented to the Council of Ministers by the Minister of the Economy and Finance on September 3, 2013.

[2] *“In order to implement its program, the Government may ask Parliament for authorization, for a limited period, to take, by way of executive orders, measures that are normally the preserve of statute law.*

*Executive Orders shall be issued in the Council of Ministers, after consultation with the Conseil d’État. They shall come into force upon publication, but shall lapse in the event of failure to table before Parliament the Bill to ratify them by the date set by the Empowering Law. They may only be ratified in explicit terms.*

*At the end of the period referred to in the first paragraph hereinabove Executive Orders may be amended solely by Laws passed by the Parliament in those areas governed by statute law.”*

[3] Any and all agreements entered into directly or through a third-party between the company and its general manager, one of its delegated general managers, directors (or, as the case may be, a member of the Executive Board or Supervisory Board), or any of its shareholders owning more than 10% of the voting rights or, in the case of corporate shareholders, the company that controls such shareholder, within the meaning of Article L.233-3 of the Commercial Code, is subject to the prior approval of the Board of Directors (or, as the case may be, Supervisory Board).

The same applies to agreements in which any of the abovementioned persons is indirectly involved. Agreements between the company and another business, if the general manager, one of the delegated general managers or one of the directors (or, as the case may be, a member of the Executive Board or Supervisory Board) is the owner, a member with unlimited liability, manager, director, member of the Supervisory Board



or, more generally, part of management of such business, are also subject to prior authorization.

[4] Complex securities within the meaning of Articles L.228-91 et seq. of the French Commercial Code (securities giving access to the capital or granting entitlement to the allotment of debt securities: bonds with equity warrants, bonds exchangeable into shares, bonds convertible into shares, bonds redeemable in shares and unnamed debt instruments (warrants, contingent value rights, marketable debt instruments)).

[5] « *In all cases concerning the transfer of a shareholder's shares or the buyback of such shares by the company, the value of the shares shall be determined, in case of a dispute, by an expert appointed either by the parties or, in the absence of an agreement between the parties, pursuant to an order of the summary judge that will be considered as final and definitive.* »

[6] Local representative of the Government.

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