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The “Sapin II Law”: What impact on French corporate law ?

Adopted by the French Parliament on November 8, 2016, the Law on transparency, the fight against corruption and the modernization of the economy, commonly referred to as the “Sapin II Law” (the “Law”) *“is intended [according to the French Government], more than 20 years after the Law no. 93- 122 of January 29, 1993 on the prevention of corruption and the transparency of business life and public procedures, to support further progress with regard to transparency and modernization of business life and the relationships between economic players and public decision-makers”.*

This article focuses on measures that impact French corporate law.

The Law includes 9 Titles. This article highlights the main provisions set forth in Title VII that aims at *“improving the growth path of businesses”*, in particular by:

- Streamlining the disclosure obligations imposed on businesses;
- Reducing of the costs of setting up and operating businesses.

I. Streamlining the disclosure obligations imposed on businesses

Article 136 of the Law empowers the Government to use, within twelve months as from the enactment of the Law, executive orders to adopt measures aimed at streamlining the disclosure obligations imposed on businesses, in particular with a view to:

- Simplifying, reorganizing and modernizing of all or part of the information to be set forth in the report required under Articles L. 225-37, L. 225-68 and L. 226-10-1 of the French Commercial Code^[1], and in the report required *inter alia* under Articles L. 225-100, L. 225-100-1, L. 225-100-2, L. 225-100-3, L. 225-102 and L. 225-102-1 of said Code^[2];
- Reducing the obligations to file reports and information for each financial year, imposed on companies that are required to prepare the reference document provided for by the General Regulations of the *Autorité des marchés financiers* (French financial Markets Regulatory Authority or “AMF”);
- Authorizing, during a two-year period, companies referred to in Articles L. 232-21 to L. 232-23 of the French Commercial Code^[3], to file the annual accounts with the Registry of Trade and Companies in a dematerialized form automatically readable by a computer processing system;
- Streamlining the contents of the management report to be filed by small businesses, within the meaning of EU law^[4].

II. Reducing of the costs of setting up and operating businesses

1. Introduction of new exemptions to the obligation to appoint a contribution auditor

Articles 130 and 144 of the Law create new exemptions to the obligation to appoint a contribution auditor:

- Upon inception:
 - In case of a contribution in kind to a single-member SARL (i.e. EURL, single-member limited liability company) or single-member SAS (i.e. SASU, single-member simplified joint-stock corporation), “*wherever the sole shareholder, natural person exercising his/her professional activity in his/her own name before the creation of the company [...] contributes assets that were recorded in the balance sheet for the last financial year*”;
 - In case of a contribution in kind to a multi-member SAS, upon unanimous decision of the future shareholders “*wherever (i) the value of none of the contributions in kind exceeds an amount fixed by decree, and (ii) the aggregate value of all contributions in kind not subject to valuation by a contribution auditor does not exceed half of the share capital*”;
- Upon a share capital increase:

- In case of a contribution in kind to a multi-member SARL, upon unanimous decision of the shareholders, “wherever (i) the value of none of the contributions in kind exceeds [30,000 euros], and (ii) the aggregate value of all contributions in kind not subject to valuation by a contribution auditor does not exceed half of the share capital”.

2. Reduced formalities for the contribution of a business going concern (fonds de commerce) to a single-member company

Article 129 of the Law eases the formalities that are required to be complied with wherever a business going concern (*fonds de commerce*) is contributed to a single-member company. Specifically, it removes the obligation:

- To mention, in the contribution agreement, the following information on the contributed business going concern:
 - Origin of title;
 - Statement of liens and pledges;
 - Revenues and operating income of the last three financial years;
 - Lease agreement;

To bring to the attention of third parties the completion of the contribution through the publication of a notice in a newspaper authorized to publish legal and judicial notices and in the *Bulletin officiel des annonces civiles et commerciales* (official bulletin of civil and commercial announcements, commonly ref

[1] Report of the Chair of the Board of Directors or, as the case may be, Supervisory Board, to be annexed to the management report.

[2] Management report.

[3] i.e.: (i) *Sociétés en nom collectif* (general partnerships or “SNCs”) or *sociétés en commandite simple* (limited partnerships or “SCSs”), the shareholders - with unlimited liability - of which are *sociétés à responsabilité limitée* (limited liability companies or “SARLs”) or joint stock corporations, (ii) the SNCs or SCSs, the shareholders - with unlimited liability - of which are SARLs or joint stock corporations, (iii) SARLs, and (iv) joint stock corporations.

[4] i.e.: Traders, either natural persons or legal entities, who/which, for the last ended financial year and on an annual basis, do not exceed two of the three following thresholds: (i) balance sheet total: 4,000,000 Euros, (ii) net turnover: 8,000,000 Euros; (iii) average number of employees during the financial year: 50.

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