

Amendment to the PACTE Bill: The performance of a legal audit of small businesses, a new task allotted to statutory auditors

In a previous article published in October 2018^[1], we addressed the bill on business growth and transformation, known as the “PACTE Bill” in French, and commented the provisions concerning the increase of the thresholds applicable for the appointment of statutory auditors and the end of the compulsory appointment of statutory auditors in certain types of companies.

The National Assembly has passed an amendment to the Bill and adopted it in first reading. The new version of the Bill allots a new task to statutory auditors: The performance of a legal audit of small companies.

The thresholds applicable for the appointment of a statutory auditor contemplated by the PACTE Bill

In order to empower businesses to innovate and create jobs, the PACTE Bill, currently under consideration by the Senate, includes several measures aimed at simplifying the life of small- and medium-sized businesses and mid-market companies.

One of these measures is the increase of the legal certification thresholds that we addressed in the aforementioned article in order to enable companies that do not exceed two of the following thresholds:

- Balance sheet assets of 4 million euros;
- Turnover, excluding taxes, of 8 million euros; and/or

- 50 employees;

to be relieved from the obligation to appoint a statutory auditor, which means a drop in business of approx. 25% for statutory auditors.

In order to prevent business reorganizations aimed at dividing a company into several small entities to escape the mandatory appointment of a statutory auditor, the PACTE Bill already provides that parent companies controlling a group that exceeds as a whole the applicable thresholds will still have the obligation to appoint a statutory auditor.

This last measure was considered insufficient by the interested parties and the National Assembly has amended Article 9 of the Bill[2] in order to create a legal audit designed for small businesses, known as the “SB legal audit”.

A new legal audit for small businesses: When and how?

Inspired by the proposals put forward in the De Cambourg report on the future of the profession of statutory auditors[3], the objective of this new audit is to limit the impact that the increase of the thresholds applicable for the appointment of statutory auditors will have on the profession.

The statutory auditor would be mandatorily appointed for a term of three years[4] and its new task would be to certify the accounts of businesses that do not exceed the thresholds applicable for the standard certification of accounts. As part of this task, the statutory auditor would prepare a report to the corporate officers that would identify the accounting, financial and management risks to which the company is exposed.

For companies being at the head of a group, the report should cover all of the companies of the group.

The certification would be carried out according to streamlined terms and conditions that would depart from the general rules governing the performance of the mandate of statutory auditors. The statutory auditor would be relieved from the obligation to perform certain actions and to prepare certain reports, including:

- report on regulated agreements *in sociétés à responsabilité limitée* (limited liability companies or “SARLs”), *sociétés anonymes* (joint stock companies or “SAs”), *sociétés par actions simplifiées* (simplified joint-stock companies of “SASs”) and *sociétés en commandite par actions* (limited partnerships with shares or “SCAs”)[5];
- report to regularize a regulated agreement not validly approved in SAs with a board of director and in SCAs[6];
- report to be produced as per Article L.225-135 of the French Commercial Code in case of share capital increases with cancellation of preferential subscription rights in SAs and SCAs;
- report on corporate governance to be produced in SAs and SCAs[7];
- report to be produced in SAs and SCAs in case of conversion of the company into another legal form and attesting that the shareholders’ equity is at least equal to the amount of the share capital[8];
- report to be produced whenever the corporate officers do not fulfill their obligations concerning the

- forecast management documents^[9];
- convening of the general meeting of shareholders if this is not done by corporate officers in SAs and SCAs;
 - certification of the remunerations paid to the highest-paid people, of some payments made under the French Tax Code, and the list of philanthropic and sponsorship activities in SAs and SCAs;
 - indication in the report on the annual accounts of the equity investments made by the company;
 - indication in the report on the annual accounts of information relating to the identity of individuals and legal entities holding the share capital or voting rights, and to treasury shares;
 - hearing of the statutory auditor by the Commercial Court in case of transfer of all or part of the assets of a company in liquidation to some persons^[10];
 - certification of the valuation of leased shares^[11].

The terms and conditions of the assignment entrusted to the statutory auditor in the framework of the SB legal audit should be defined in professional standards approved by a Decree of the Minister of Justice (Text AN art. 9, I-17°, as amended^[12]).

Companies concerned

Some companies required to appoint a statutory auditor could also opt for this “alleviated” audit instead of the “standard” certification. Specifically, the following companies may opt for the SB legal audit:

1. Ultimate group companies required to appoint a statutory auditor insofar as the group, as a whole, that they control exceed the aforementioned thresholds;
2. Subsidiaries of the companies mentioned above required to appoint a statutory auditor insofar as their turnover for the last financial year exceeds a threshold to be set forth in Decree - such threshold could be 4 million euros (Text AN Article 9, I-16°, as amended^[13]);
3. Companies that voluntarily appoint a statutory auditor whereas they have no legal obligation to do so (Text AN new Article 9, I-16° bis^[14]).

Entry into force

According to the provisions of the Bill, companies that did not exceed, for the last financial year ended as of the entry into force of the law, the threshold applicable for the appointment of a statutory auditor could decide that the latter will serve the remainder of his/her terms of office under the new SB legal audit scheme, subject however to acceptance by the statutory auditor (Article 9, II of the draft PACTE Bill, as amended^[15]).

^[1] Cf. Article entitled *New reforms aimed at simplifying the internal operation of companies*

^[2] <http://www.senat.fr/leg/pjl18-028.html>

^[3]

https://www.economie.gouv.fr/files/files/2018/Rapport_Avenir_de_la_profession_des_CAC_-_20_juin_2018.pdf

[4] The statutory auditor appointed in the framework of the SB legal audit would be mandatorily appointed for a term of three years for companies required to appoint a statutory auditor, and as an option for the other companies

[5] Articles L. 223-19, L.227-10, L.225-40 and L.225-88 of the French Commercial Code

[6] The Bill does not include any provision on a possible exemption from the obligation to prepare the report for SAs with a management board and supervisory board

[7] Article L 225-235 of the French Commercial Code

[8] Article L 225-244 of the French Commercial Code

[9] Articles L 232-3 and L 232-4 of the French Commercial Code

[10] Article L 237-6 of the French Commercial Code

[11] Article L 239-2 of the French Commercial Code

[12] <http://www.assemblee-nationale.fr/15/ta/ta0179.asp>

[13] <http://www.assemblee-nationale.fr/15/ta/ta0179.asp>

[14] *Ibid*

[15] <http://www.senat.fr/leg/pjl18-028.html>

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