

Macron Bill: Continuation and... end of the saga?

After months of stormy debates, the Bill on growth, economic activity and equality of economic opportunity, commonly known as the “Macron Bill”, was finally enacted[1].

During such debates, we focused on the contemplated measures concerning the confidentiality of accounts, the rules governing the allocation of free shares and so-called *Bons de Souscription de Parts de Créateur d'Entreprise* (company founder share warrants, i.e. security giving access to share capital reserved for employees or executives of new companies)[2].

This article is primarily intended to provide additional information on these measures following the final provisions of the enacted Bill, as well as on takeover bids which have been already partly addressed on our Blog.

1. Confidentiality of accounts

Effective as from 2016, when filing their annual accounts with the clerk of the competent commercial court, companies that meet the definition of **small companies**[3] may request, subject to specific exceptions[4], that the **profit and loss account** be not made available to the public (the publication of the balance sheet and annexes shall still be required).

For further information on the scope of application of this new measure, we invite you to consult the article published on our Blog on March 27, 2015:

<https://www.soulieR-avocats.com/en/blog/the-macron-bill-focus-on-the-confidentiality-of-accounts/>.

It should, however, be noted that judicial authorities, administrative authorities^[5], the French Central Bank and the legal entities falling into one of the categories defined by a joint order of the Minister of Economy and the Minister of Finance, which, directly or indirectly, **finance or invest** in companies, or which supply services to the benefit of such legal entities, **shall retain access to all the items making up the annual accounts**^[6].

2. Management packages

- *Allocation of free shares*

From now on, for the shares authorized to be allocated as from August 7, 2015, it is only when the aggregate number of shares freely allocated exceeds 10% or 15%^[7] of the share capital that the difference between the number of shares allocated to each salaried employee may not be higher than a **one to five ratio**.

In addition, the duration of the so-called “**vesting**” period during which the rights resulting from the allocation of free shares are **non-transferrable** is reduced from two years to **one year**, and the minimum period during which the beneficiaries must hold the shares - period which starts running from the date on which the allotment of shares becomes definitive - may henceforth be less than two years, it being specified, however, that the **cumulated duration** of the vesting and holding periods may not be less than **two years**.

Further, the gain corresponding to the actual value of the shares on the vesting date is no longer considered as wages and salaries but is now taxed at the allottee’s level according to the rules which apply to **capital gain on securities**, thereby allowing for a potential tax rebate depending on how long such shares have been held.

It should be noted that specific provisions apply to **non-resident beneficiaries**.

Lastly, the rate of the **employer’s social security contribution** has been reduced to 20%^[8] (as opposed to 30% previously) and the gain on acquisition is henceforth subject to social levies applicable to property income (exemption from the employee social security contribution).

- *The Bons de Souscription de Parts de Créateur d’Entreprise (company founder share warrants or “BSPCEs”)*

Pursuant to Article 163 bis G of the French General Tax Code, such warrants may, subject to certain conditions, be issued by companies that have been **set up within the framework of a merger, a restructuring, an extension or resumption of pre-existing business activities**.

In addition, BSPCEs may henceforth be allotted, subject to certain conditions, to salaried employees and

corporate officers subject to the employee tax regime working in **companies in which the issuer holds** at least **75%** of the capital or voting rights.

For further information on the rules governing the allocation of free shares and the issuance of BSPCEs, we invite you to consult the article published on our Blog on April 28, 2015: <https://www.soulier-avocats.com/en/blog/the-macron-bill-focus-on-the-management-packages/>.

3. Obligation to file a takeover bid

Article 7 of the Law n°2014-384 of March 29, 2014 aimed at recapturing the real economy, known as the “Florange Law”, now stipulates that any natural person or legal entity who/that is a shareholder of a company having its registered office located in France and the shares of which are admitted to trading on a regulated market of a Member State of the European Union or another State that is a contracting party to the Agreement on the European Economic Area, acting alone or in concert within the meaning of Article L.233-10 of the French Commercial Code, who/that owned, as of **April 2, 2014**, directly or indirectly, more than **30%** of the capital or voting rights and who/that, following the attribution of **double voting rights** in accordance with the last paragraph of Article L.225-123 of said Code, comes to hold, **before December 31, 2018**, more than **30% of the voting rights**, or who/that increases, within a period of less than **12 consecutive months**, his/its number of voting rights comprised between 30% and 50% of the overall voting rights by more than **one hundredth**, is not required to draft bid to acquire a determined number of equity securities, insofar as the percentage of voting rights held between, April 3, 2014 and December 31, 2018 **continually be less than or equal to** the percentage of voting rights held as of April 2, 2014.

For further information on the measures concerning takeover bids, double voting rights and allocation of free shares under the provisions of the Florange Law, we invite you to consult the article published on our Blog on April 1, 2015: <https://www.soulier-avocats.com/en/blog/overview-of-the-provisions-of-the-so-called-florange-law-related-to-takeover-bids-double-voting-rights-and-allocation-of-free-shares/>.

[1] Law n°2015-990 of August 6, 2015 on growth, economic activity and equality of economic opportunity.

[2] Cf.: <https://www.soulier-avocats.com/en/blog/the-macron-bill-focus-on-the-management-packages/> and <https://www.soulier-avocats.com/en/blog/the-macron-bill-focus-on-the-confidentiality-of-accounts/>.

[3] Cf. Article D.123-200 of the French Commercial Code. It should be noted that wherever a company exceeds or ceases to exceed two of these three thresholds, this has only an impact if these thresholds are exceeded or cease to be exceeded over two consecutive financial years.

[4] Cf. Articles L.232-25 and L.123-16-2 of the French Commercial Code.

[5] Within the meaning of Article 1 of the Law n°2000-321 of April 12, 2000 on the rights of citizens in their relationships with public administrative authorities.

[6] Article L.232-25, as amended, of the French Commercial Code.

[7] Cf. Article L.225-197-1 of the French Commercial Code. Pursuant to this Article, the aggregate number of shares freely allocated may not exceed 10% of the share capital as of the date of the decision to allocate such shares. In companies whose securities are not admitted to trading on a regulated market or on a multilateral trading facility and that do not exceed, at the close of a financial year, the thresholds used to define small- and medium-sized businesses, as provided for by Article 2 of Annex I to Commission Recommendation 2003/361/EC of 6 May 6, 2003 concerning the definition of micro, small and medium-sized businesses (i.e.: less than 250 employees, or an annual turnover not exceeding 50 million euros, or an annual balance sheet total not exceeding 43 million euros), by-laws can, in case of allocation of free shares to certain categories of salaried employee only, provide for a higher percentage that may not, however, exceed 15% of the share capital as of the date on which the decision to allocate shares is made by the board of directors or the executive board.

[8] Cf. exemption (subject to specific conditions) available to Small- and Midsized Businesses that meet the definition of SMB within the meaning of EU law.

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