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French SMBs now have the obligation to inform their employees prior to the transfer of the business or more than half of the shares

Law n° 2014-856 of July 31, 2014 on the social and solidarity economy ("Law") imposes new obligations on Small- and Mid-sized Businesses ("SMBs") in case of share and business transfers.

Any transfer implemented in breach of these obligations could be nullified.

The new obligations introduced by the Law apply to the vast majority of French companies (as SMBs account for more than 90% of French businesses), including micro-companies since Articles 18 and 19 of the Law refer, in very general terms, to "*companies with less than 250 employees*" and "*companies employing between 50 and 249 employees*". As such, even if a company has only one employee, it will have to comply with these new obligations!

1. New obligation to provide periodical information (Article 18 of the Law)

Commercial companies with less than 250 employees must, **at least once every three years, provide their employees with information** on the legal terms and conditions of a staff buyout, on the associated advantages and drawbacks as well as on any aid measures they may benefit from.

The substance of the information to be provided as well as the procedures to be followed are set forth in a Decree that takes into account the size of the companies.

2. Companies must inform their employees prior to the transfer of the business or majority of the share capital (Articles 19 and 20 of the Law)

The new obligation shall apply to the following transactions:

- Transfer of the business or part of the business, including when the owner is not the operator of the business,
- The sale by a shareholder of **more than 50%** of (i) the shares held in a French *société à responsabilité limitée* (limited liability company), or (ii) securities giving access to the majority of the capital of a joint-stock company.

In companies with less than 50 employees, the employees must be informed **at least 2 months before the contemplated share/business transfer**, in order to enable them to make an offer to buy the shares or the business.

The contemplated transaction may be implemented before the expiry of this 2-month time-period if each employee has informed the seller of his/her decision not to submit an offer.

In companies employing between 50 and 249 employees, the employees must be informed at the latest when the Works Council is informed and consulted on the contemplated transaction.

If there is no Works Council and/or staff representatives due to the absence of candidates at the last elections, as evidenced in so-called “*procès-verbaux de carence*”, the contemplated transaction is subject to the aforementioned 2-month time period.

Provisions that apply to both share transfers and business transfers:

The information can be supplied to the employees “by any means” that enable to determine with certainty the date of receipt of such information; a forthcoming Decree will provide further details in this respect.

Any share/business transfer performed in breach of these obligations can be nullified at the request of any employee, within two months as from the publication of a notice of share/business transfer, or as from the date on which the employees received the information on the contemplated transaction.

Employees shall be bound by a confidentiality obligation, in the same conditions as those imposed on the members of the Works Councils under Article L.2325-5 of the French Labor Code.

Who must provide the information to the employees:

When the owner of the business is not the operator, the owner must inform the operator that will in turn notify the employees of the contemplated transaction. In this case, the 2-month period starts running as from the date on which the information is notified to the operator.

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In commercial companies, the selling shareholder must notify his/her decision to the company and it is then the company's legal representative who must inform the employees of the contemplated share transfer.

Exceptions:

This procedure applies neither in case of inheritance, liquidation of marital property, transfer to a spouse, ascendant or descendant, nor to companies subject to insolvency/bankruptcy proceedings (conciliation, safeguard, receivership or liquidation).

Effective date:

These new provisions shall apply to transactions **closing on or after November 1, 2014.**

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