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New thresholds immediately applicable for the appointment of statutory auditors

Following a report drawn up by the General Inspectorate of Finance on the certification of the accounts of French small businesses, the Government has included in the Law on business growth and transformation, known as the “PACTE” Law in French, provisions for an harmonization of the thresholds for the appointment of statutory auditors regardless of the corporate form of the company whose accounts are certified, thereby raising the certification thresholds in commercial companies to the level of the thresholds for small businesses provided for in the Accounting Directive 2013/34/EU of the European Parliament and the Council of June 26, 2013.

Focus on the Decree of May 24, 2019 allowing the entry into force of new thresholds contemplated by the PACTE law.

Decree No. 2019-514[1] was published on May 24, 2019 and entered into force on May 27, 2019. It raised the thresholds for the appointment of statutory auditors in commercial companies, bringing them in line with those provided for by the PACTE Law[2], and before that, by Directive 2013/34UE.

History of the applicable rules

In order to ensure security and reliability, France has traditionally chosen to make accounts certification mandatory for a large number of companies by setting low thresholds for the appointment of statutory auditors, despite the financial constraint that this entailed for these companies, particularly the smallest ones, since a certification of accounts represents an average cost of five thousand five hundred (5,500) euros.

In connection with the report of the General Inspectorate of Finance on “the legal certification of the accounts of French small businesses”, the investigations carried out showed that “the effect of the certification of accounts on the quality of such accounts, measured through the rate of tax reassessments and the rate of tax investigations without reassessment, is not significant for small companies that are near the thresholds of the statutory audit. The impact of the certification of accounts on the ability of small businesses that are near these same thresholds to obtain financing, as measured by the French Central Bank’s so-called FIBEN rating (business banking database), is equally not significant. The results of the default prevention assignment carried out by the statutory auditors through the alert procedure are also not measured for small businesses, since the default rate of small companies whose accounts have been certified does not differ from that of companies whose accounts are not certified.”

Reading this, the statutory audit of small companies therefore seemed of little use.

In order to strike a balance between, on the one hand, making the accounts more reliable and, on the other hand, reducing the costs borne by small businesses, the above-mentioned report of the General Inspectorate of Finance therefore recommended raising the thresholds for statutory audit for all commercial companies to the same level as the thresholds provided for in European Directive 2013/34EU.

In addition, the report also called for the certification of the accounts of the group ultimate parent company whose subsidiaries taken as a whole exceed the level of these thresholds in order to avoid any circumvention of the new rules by splitting a company into several distinct entities.

It is on the basis of this report that the PACTE Law adopted new thresholds which came into force the day after the publication of the implementing decree.

New rules applicable

The new rules on the thresholds for the appointment of a statutory auditor apply to all companies located in metropolitan France, regardless of their form, and concern new appointments.

As regards on-going terms of office, as the statutory auditors are appointed for a term of six financial years, in accordance with Article L. 823-3 of the French Commercial Code, such term of office will continue until their expiry date[3].

However, in cases where the term of office of the statutory auditor expired following the general meeting of shareholders approving the financial statements for the year ended on December 31, 2018, the exemption from the obligation to appoint an auditor for the 2019 accounts shall apply from May 27, 2019, provided that

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- Two out of the three new thresholds have not been crossed by the company[4]; and
- The general meeting asked to approve the annual accounts and renew the auditor's mandate has not been held before May 27, 2019.

Finally, it should be noted that in the overseas territories, the date of implementation has been postponed to January 1st, 2021[5].

Summary table of the thresholds for the mandatory appointment of statutory auditors in commercial companies (controlling companies and significant subsidiaries) that exceed two of the following three thresholds at the end of the financial year:

Two out of three criteria:	Balance sheet total	Turnover, VAT excluded	Number of employees
Commercial companies, regardless of their form (excluding Public Interest Entities (PIEs) required to appoint a statutory auditor without threshold conditions)	> € 4 M	> € 8 M	> 50
Two out of three criteria:	Aggregate balance sheet total ^[6]	Aggregate Turnover, VAT excluded ^[7]	Aggregate average number of employees ^[8]
Parent companies of groups of commercial companies (excluding PIEs)Exception to the obligation to appoint a statutory auditor for controlling companies, which are themselves controlled by a company that has appointed a statutory auditor[9]	> € 4 M	> € 8 M	> 50
Two out of three criteria:	Balance sheet total	Turnover, VAT excluded	Number of employees
Significant subsidiaries of groups of commercial companies[10]	> € 2 M	> € 4 M	> 25

Finally, commercial companies, parent companies of groups of commercial companies and significant subsidiaries will no longer be required to appoint a statutory auditor if they have not exceeded the thresholds during the two annual accounting periods preceding the expiry of the auditor's term of office[11].

While the drop in business resulting from the removal of the obligations to appoint a statutory auditor

wherever the applicable requirements are met is estimated at approx. six hundred and twenty million (620,000,000) euros, the effect on the profession of statutory auditors cannot be accurately assessed.

The report of the General Inspectorate of Finance nevertheless indicates that some of the companies that will no longer be subject to the obligation to certify their accounts will continue to do so on a voluntary basis. That remains to be seen.

[1]Decree No. 2019-514 of May 24, 2019, published in the Official Journal of May 26, 2019

[2]Article 20 of Law 2019-486 of May 22, 2019, published in the Official Journal of May 23, 2019

[3]Article 20, II, §2 of Law 2019-486 of May 22, 2019, published in the Official Journal of May 23, 2019

[4]Cf. thresholds in the table

[5]Article 20, III Article 20 of Law 2019-486 of May 22, 2019, published in the Official Journal of May 23, 2019

[6]The aggregate balance sheet total, the aggregate turnover, VAT excluded, and the aggregate average number of employees are determined by adding the balance sheet total, the turnover, VAT excluded, and the average number of employees of the entities included in the entire group they form with the companies they control (Articles L. 823-2-2 §1 and D. 823-1 of the French Commercial Code)

[7]Ibid

[8]Ibid

[9]Article L.823-2-2 §2 of the French Commercial Code

[10]These companies are controlled directly or indirectly by the above-mentioned controlling persons and entities (Articles L. 823-2-2-2 §3 and D. 823-1-1-1 French Commercial Code)

[11]Article D.823-1 of the French Commercial Code

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