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The “Macron Bill”: focus on the confidentiality of accounts

After many twists and turns, the Bill on growth, economic activity and equality of economic opportunity, commonly known as the “Macron Bill”, was eventually adopted on February 19, 2015 by the National Assembly through the use of Article 49§3^[1] of the French Constitution.

Article 58 quarter of this Bill, introduced by the special committee of the National Assembly, initially allowed any company, whatever its size, not to publish its accounts.

Following the general public outcry caused by this contemplated measure (what about applicable European texts^[2] ?? And, above all, what about the transparency advocated by the Government??), this article was finally amended^[3] to restrict its scope of application.

Article 58 quater of the Macron Bill provides as follows:

*“When filing [their accounts], companies that meet the definition of **small companies**, within the meaning of Article L. 123-16 [of the French Commercial Code], with the exception of the companies referred to in Article*

L.123-16-2 [of the French Commercial Code], may request that the **profit and loss account** be not made available to the public [the publication of the balance sheet and annexes would thus still be required]. Companies that belong to a **group**, within the meaning of Article L.223-16 [of the French Commercial Code], may not make use of that option.”

According to Articles L.123-16 and D.123-200 of the French Commercial Code, “small companies” means 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**.

As such, the following would not be affected by the contemplated measure:

- traders, either natural persons or legal entities, who/which, for the last ended financial year and on an annual basis, exceeded two of the three aforementioned thresholds;
- the companies referred to in Article L.123-16-2 of the French Commercial Code, *i.e.*:
 - the **credit institutions and financing companies** mentioned in Article L.511-1 of the French Monetary and Financial Code, as well as the payment institutions and electronic money institutions mentioned in Article L.521-1 of said Code;
 - the **insurance and reinsurance companies** mentioned in Articles L.310-1 and L.310-1-1 of the French Insurance Code, the social security bodies mentioned in Article L.114-8 of the French Social Security Code, the welfare bodies and their unions governed by the provisions set forth in Book IX Title III of the French Social Security Code as well as the supplementary health insurance funds and groupings of supplementary health insurance funds governed by the provisions set forth in Book II of the Supplemental Private Health Insurance Code;
 - the people and entities **whose securities are admitted to trading on a regulated market**;
 - the people and entities who/which appeal to the generosity of the public, within the meaning of Law n°91-772 of August 7, 1991 on representation leave for association and supplementary health insurance funds and the audit of the accounts of bodies that appeal to the generosity of the public;
- companies that belong to a group, within the meaning of Article L.233-16 of the French Commercial Code, *i.e.* companies (i) that “*exclusively or jointly*” control one or several companies, or (ii) that are controlled “*exclusively or jointly*” by one or several companies, as well as companies (iii) that exercise a “*significant influence*” on one or several companies or, (iv) on which is exercised, by one or several companies, a “*significant influence*”. Article L.233-16 of the French Commercial Code defines “*exclusive*” control, “*joint*” control and “*significant influence*” as follows:
 - “**exclusive**” control by a company results from :
 - either the direct or indirectly holding of the majority of the voting rights in another

company;

- or the appointment, during two successive financial years, of the majority of the members in the administrative, management or supervisory bodies of another company, it being specified that a company is presumed to have made such appointment *“when it has, during that period, held directly or indirectly a fraction of the voting rights higher than 40% and when no other partner or shareholder held directly or indirectly a higher fraction than this”*;
- **“joint” control** means the *“sharing of control of a company jointly operated by a limited number of partners or shareholders, so that the decisions result from their common agreement”*;
- **“significant influence”** over the management and financial policy of a company is presumed *“when a company holds, directly or indirectly, at least one fifth of the voting rights”* of this company.

For the record, under Article L.232-25 of the French Commercial Code, companies that meet the definition of **micro-companies**, within the meaning of Article L.123-16-1 of the French Commercial Code^[4], with the exception of the companies referred to in Article L.123-16-2 (as listed above) and of those whose activity is to manage shareholding interests and securities, may request that the accounts they file be exempt from publication.

[1] Article 49§3 of the French Constitution: *“The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before the National Assembly. In that event, the Bill shall be considered passed unless a resolution of no-confidence, tabled within the subsequent twenty-four hours, is carried as provided for in the foregoing paragraph. In addition, the Prime Minister may use the said procedure for one other Government or Private Members’ Bill per session”*.

[2] Article 31 of Directive 2013/34/EU of the European Parliament and of the Council of June 26, 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings: *“Member States may exempt small undertakings [and not all companies] from the obligation to publish their profit and loss accounts and management reports”*.

[3] Amendment n°2640.

[4] Pursuant to Articles L.123-16-1 and D.123-200 of the French Commercial Code, *“micro-companies”* are 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:

- Balance sheet total: 350,000 Euros;
- Net turnover: 700,000 Euros;
- Average number of employees during the financial year: 10.

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