



PACTE law for growth and transformation of companies modernizes corporate law rules

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Doing business in France has just become a little easier.

The French legislature has adopted the PACTE law for the growth and transformation of companies on 11 April 2019, part of a series of business-friendly reforms lightening constraints so as to encourage small and medium-sized companies (SME) to grow and create jobs. Following a review by the constitutional council, which approved a majority of its provisions², the PACTE law was published on 23 May 2019.³

Although new company creation rates in France appear satisfactory, contributing to the renewal of the economy, a lingering problem is that new companies are simply not growing enough and not creating enough new jobs, according to the impact study for the new law.⁴ Another problem is the small number of intermediate-size companies or of large SMEs, which is thought to hurt innovation and economic activity as these are the companies sizable enough to afford the costs of innovation and digital transformation, enter foreign markets and feed business to SMEs.

Measures to alleviate burdens to company growth at all stages of development include:

- Simplification of company creation, with a reduction in costs and time periods: this is achieved through the implementation of a unique online platform to manage creation tasks; integration of company registers to avoid double registrations and redundant administrative procedures; and reform of rules on legal notices so as to allow online publication of legal notices and simplify and reduce fees.
- Elimination of obligation for small companies to use outside auditor (“commissaire aux comptes”) for certification of financial statements: company size thresholds for outside auditor use obligation will be revised to align with European norms.

French companies and their shareholders or members will need to examine the impact of the new law, and decide whether any actions are needed in response. One key consideration will be whether a company needs to perform a re-assessment of its chosen company type, to ensure it is still the optimum one, among the various types of commercial companies available, such as SA, SARL or SAS.

A few provisions of the new law, dealing with corporate law, are analyzed in detail below.

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² The decision of the Constitutional council and associated press release (in French) are available at <https://www.conseil-constitutionnel.fr/decision/2019/2019781DC.htm>.

³ LOI n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises (available at <https://www.legifrance.gouv.fr/eli/loi/2019/5/22/2019-486/jo/texte>)

⁴ The impact study (in French) for the new law is available at <http://www.assemblee-nationale.fr/15/pdf/projets/pl1088-ei.pdf>.



I. Company registration simplification (art. 1)

Article 1 of the new law will streamline the company registration system, creating a unique electronic administrative center replacing the current complex system of 7 different networks of administrative centers⁵. These centers handle company and association⁶ creations, updates, and dissolutions. They also handle requests from European companies applying to do business in France in a regulated activity.

The current system poses a number of problems, such as administrative burdens and complexity, inconsistent quality of service for users (depending on which center is used), inconsistent practices, heterogeneous information systems with different transmission norms, duplicative websites, and confusion in company creators as to which center they need to use.

The unique administrative center to be created will collect all information and supporting documents and serve as the direct interface between companies and the various government agencies involved in the registration process (such as tax authorities, social security department, court clerks, company register keepers), regardless of the companies' activity, location and legal form. The unique center will handle companies of all sizes, from large ones to single-owner micro-enterprises.

Another problem being addressed by the new law is the current low level of automation in registration procedures and resulting inefficiency. The new law will promote the use of electronic registration processes, which will bring a variety of benefits such as efficiency, speed, improved data quality, and cost reductions.

The new unique administrative center will not take over user support in regard to their requests, except only for support for basic technical matters like website functioning, website connection, uploading of documents, or payment processing. User support for more substantive matters will continue to be provided by government agencies currently hosting administrative centers (e.g. chamber of commerce and industry for commercial businesses). Such support could be for example through the provision of internet access equipment for users without electronic capabilities.

French companies are behind their European counterparts in digital use. According to the European commission, in March 2017 France was in 16th place in the European Union's ranking for digital economy. Integration of key digital technologies by French companies is lower than the European

⁵ The current system consists of centers managed by the following agencies: social security department ("Urssaf"), corporate tax authority ("services des impôts des entreprises"), court's clerks ("greffes des tribunaux de commerce ou des tribunaux de grande instance"), chambers of commerce and industry, chambers of trades and crafts ("métiers et de l'artisanat"), chambers of agriculture, national chamber of small craft skippers ("batellerie artisanale").

⁶ An association must register itself with an administrative center (leading to its inclusion in the Sirene repository) when it meets one of the following conditions:

- it wishes to request public funding from the state or local authorities;
- it contemplates hiring employees;
- it carries out activities subject to value-added tax or corporate tax liability;
- it must be registered with the commercial and company register or the small business register ("répertoire des métiers").



average: only two out of four French small- and medium-sized companies (SMEs) are present in the internet, compared to three out of four European SMEs.

Nor will the new unique administrative center perform review and approval of registration requests. The center will communicate requests to competent agencies (e.g. court clerks) for review and approval of registration requests. The reform effected by the new law focuses on interaction with users, i.e. company creators and representatives.

Aside from efficiency gains, simplification of company registration processes is consistent with EU law, particularly the 2006 services directive, as complexity in these processes can be barriers to competition within the common market.

The new unique administrative center will be managed by the ministry of economy and finances, as an upgrade of an existing service called “Guichet entreprises”. This existing service currently handles creations of all companies (regardless of size), and modifications and dissolutions of micro-enterprises only.

The provisions of the new law on company creation simplification will become effective on a date determined by regulation to be issued by the State Council (Conseil d'état), but no later than 1 January 2023. The new unique administrative center shall be implemented by 1 January 2021, and a transition period will start from that implementation.

II. Unique electronic company register and simplification of declaration procedures (art. 2)

Article 2 of the new law contemplates the creation of a general, electronic register of companies, indicating the nature of their activity, for the purpose of collecting, preserving, and disseminating information relating to these companies. This new register will replace the existing company registers and trade directories (repertoires), except for the directory kept by the national institute of statistics and economic studies (INSEE) and certain court registers in a few geographic areas.

Article 2 empowers the government to issue regulation, within 24 months from the publication of the new law, implementing this new company register.

Article 2 of the new law also empowers the government to simplify declaration obligations of registered companies and persons, and verification procedures for declared information.

Today, there are several existing company registers and trade directories:

- Registers of commerce and companies (RCS)
- Special registers of EIRL (limited liability individual enterprises)
- Special registers of commercial agents
- Trade and craft industry directories (Répertoires de métiers)
- Agriculture registers
- Association registers

The registers contain information about companies and persons engaged in a particular business activity. In the case of the registers of commerce and companies (RCS), this information includes beneficial owner identity.

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There are several problems with the current system. In some cases, companies have to be registered in two or more of these existing registers or directories. This creates administrative burdens and costs for companies, redundancy and the risk of inconsistent information in different registers or directories.

The current system also makes it difficult for third parties, for whose information the registers exist in the first place as a form of notice, to access the information. Different registers have different access procedures, and the extent to which information is available varies. Free access in open data mode is not provided.

Not all existing directories are available online. For example, in the case of some trade and craft industry directories (*Répertoire de métiers*), a request for information about a company cannot be made online, or the information is not provided in electronic format.

The new law aims at simplifying procedures for companies' registration, reducing costs (both for registered companies and for third parties accessing registration information), and reinforcing transparency through greater access to information.

The consolidation of all these existing registers and directories into a single one, effected by the new law, will be a substantial undertaking. Looking only at the registers of commerce and companies (RCS), there are no fewer than 152 different registers which will need to be unified.

The new law is expected to have technical, organizational and headcount impacts on public authorities in charge of the existing registers and directories, resulting from the new company register being created. These impacts will be defined once the implementing regulation is prepared.

III. Outside Auditor ("*commissaire aux comptes*") for certification of financial statements (art. 20)

PACTE law lightens the obligations for companies to use an outside auditor for certification of their financial statements.

a) Prior law

For SA ("*société anonyme*"), use of an outside auditor was always required under prior law, regardless of the company size or number of employees.

For SARL ("*société à responsabilité limitée*"), the requirement under prior law for outside auditor use applied to companies meeting two out of the following three conditions at the end of a fiscal year:

- i) Balance sheet total > 1.550.000 €
- ii) Revenues excluding tax > 3.100.000 €
- iii) More than 50 employees on average



Under prior law, the obligation to use outside auditor ceased when two out of these three conditions were no longer met during the two fiscal years preceding the end of the auditor's 6-year appointment.

Even if the company ceased to meet two conditions shortly after the outside auditor's appointment, the company was still required to continue using the auditor, at least until two fiscal years prior to the end of the 6-year appointment.

For SAS ("*société par actions simplifiée*"), the requirement under prior law for outside auditor use applied to companies meeting two out of the following three conditions at the end of a fiscal year:

- i) Balance sheet total > 1.000.000 €
- ii) Revenues excluding tax > 2.000.000 €
- iii) More than 20 employees on average

Just like for SARL, in a SAS the obligation to use outside auditor ceased when two out of these three conditions were no longer met during the two fiscal years preceding the end of the auditor's 6-year appointment.

Even if the company ceased to meet two conditions shortly after the outside auditor's appointment, the company was still required to continue using the auditor, at least until two fiscal years prior to the end of the 6-year appointment.

For SAS, even if the size thresholds above were not met, the company was still required to use outside auditor if it controlled, or was controlled by, another French or foreign company.

In addition to the obligations to use outside auditor mentioned above, prior law also provides for the opportunity for minority shareholder(s) or member(s) to request the court to appoint an outside auditor. In the case of SARL or SAS, such minority shareholder(s) or member(s) must have a minimum 10% of the company capital.

In making its decision, the court considers whether appointment of outside auditor is justified by the circumstances, such as whether financial statements have been prepared in recent years.

b) PACTE law

PACTE law lightens audit obligations with the aim to encourage small companies to grow.

The impact study for PACTE law notes that the portion of French companies subject to an audit requirement for their financial statements (5,1%) is significantly higher than in Germany, UK or Spain, despite a high number of small companies in France. The only other Western European country with comparably high audit levels is Italy.

The study also reports that audits are not shown to have a significant impact on the quality of tax base of small companies, nor on their capacity to obtain financing. According to the study, the average cost of an audit for a small company is 5 511 € in auditor fees, and each audit takes 64 hours to complete.



One important change brought about by PACTE law is the elimination of the duty to use outside auditor for SA companies below certain size thresholds. As discussed above, previously SA companies were subject to an audit requirement, regardless of their size. This is no longer the case.

Another important change is an increase in the size thresholds when SARL and SAS companies are required to use outside auditor, to align with the directive 2013/14/EU of 26 June 2013. The French prior law in a conservative approach had set lower thresholds than what is required by the EU directive.

For SA, SARL and SAS (and all other commercial company types), the new requirement for outside auditor use applies to companies meeting two out of the following three conditions at the end of a fiscal year:

- i) Balance sheet total > 4.000.000 €
- ii) Revenues excluding tax > 8.000.000 €
- iii) More than 50 employees on average

In case a company has affiliates, the combined balance sheet totals and revenues of the company and its affiliates are considered together, in determining whether the thresholds are met. This is so, regardless of whether the company is required to file consolidated financial statements.⁷ These “group audits” ensure that “small” groups, not reaching the size where consolidated financial statements are required, but still large enough as a whole at group level (if not at each entity level) to meet the size thresholds, are subject to audit requirement at group level, i.e. parent company being audited.

PACTE law also eliminated the prior requirement for a SAS company to use outside auditor if it controlled, or was controlled by, another French or foreign company.

An exception to the size thresholds applies to “public interest entities”, which is a category referring to publicly-listed companies, banks and insurance companies. Public interest entities continue to be required pursuant to the 2013 EU directive to use outside auditors, regardless of their size.

To protect minority shareholders or members, especially in SARL or SAS companies not meeting the new higher size thresholds for outside auditor use requirement, PACTE law also provides for the right for minority shareholder(s) or member(s) to require their company to appoint an outside auditor. In the case of SARL or SAS, such minority shareholder(s) or member(s) have to have a minimum 25% of the company capital.

The provision of prior law, entitling 10% minority shareholders and members to request a court to appoint an outside auditor, is maintained.

Minority shareholders and members will need to assess whether they have reason to demand the appointment of outside auditor, in companies not meeting the size thresholds for mandatory use of outside auditor.

⁷ Groups of companies must have consolidated financial statements when they exceed two of the following thresholds during two consecutive fiscal years: 48 M€ of revenues excluding tax, 24 M€ of balance sheet total, and 250 employees. Under art. L. 823-2 of the French code of commerce, companies required to have consolidated financial statements must appoint two outside auditors.



For alignment of SA rules to existing SARL and SAS rules, PACTE law provides for the opportunity for minority shareholder(s) to request the court to appoint an outside auditor. Such minority shareholder(s) must have a minimum 10% of the company capital.

As for the duration of the outside auditor's appointment, PACTE law opens the possibility for companies to appoint an outside auditor for three fiscal years (instead of the prior law's six fiscal years), when the appointment is voluntary (i.e. not legally mandated). This possibility for a 3-year appointment gives companies flexibility and makes a voluntary appointment more attractive as being less committal.

The 3-year appointment is also possible for a company having an affiliate and being required to appoint an auditor by virtue of meeting the size thresholds.

PACTE law has an enormous economic impact on the outside auditor profession. The impact study states that there are approximately 120 000 assignments as outside auditor for companies above the prior law's size thresholds, but under the PACTE law's new higher thresholds, representing approximately 620 million euros in revenues.

Following the reform, outside auditors stand to lose up to 25% of their overall revenues, according to the impact study. The outside auditor association estimates this loss at 35% of overall revenues, and forecasts about 4 000 outside auditors at risk of going out of business (together with thousands of their associates).