

# PACTE Act (action plan for the growth and transformation of companies): the main changes made in terms of M&A/Corporate

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Presented as a flagship measure of economic reform during the five-year period, the law on growth and business transformation, known as the PACTE Act, was finally adopted by the Parliament on April 11, 2019. The Constitutional Council, which was seized on April 16, 2019, issued a decision on May 16, 2019 and validated most of the provisions of the PACTE Act. Therefore, it should be enacted very soon. The text is articulated around three main elements: to facilitate the creation as well as the life of the companies, to promote the innovation and to make the companies fairer. Among the many changes made, some deserve special attention.

**Introduction of thresholds for the obligation to the appointment of auditors** in SAs and SCAs.

**Lower threshold** from 95% to 90% for **squeeze-out for the French companies listed on a regulated market**.

**Relief from obligations** applicable to offers of securities to the public lower than 8 million euros.

**Modification of the preferred shares rules** with (i) the creation of preferred shares with multiple voting rights, (ii) the loss of the preferential subscription right for all preferred shares with limited financial rights and (iii) the modification of the scope of the special benefits procedure in the case of issuance of preferred shares.

**Modification of the rules applicable to the control of foreign investments** with an enlargement of the control system on foreign investments and a reinforcement of the sanctions.

**Development of employee share ownership in companies** by loosening the terms of offering shares to employees.

**Amendment of articles 1833 and 1835 of the Civil Code** to enshrine the case law notion of social interest and to affirm the need for companies to take into consideration the social and environmental issues inherent to their activities. The law also recognizes the possibility for companies that so wish to include a “raison d'être” in their by-laws.

**Creation of the company with mission** that will pursue social and environmental objectives within the framework of its activity.

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**Information relating to executive compensation** to be included in the corporate governance report, which must describe the variable components of compensation determined from the application of non-financial performance criteria. This report must indicate the compensation of the Chairman of the Board of Directors and of each Chief Executive Officer and Deputy Chief Executive Officer in terms of average compensation and median compensation on a full-time equivalent basis of employees and the evolution of this ratio over the last five financial years.

The law empowers the government to reform by way of ordinance the mechanism for the **executive compensation** of listed companies ultimately resulting from the said law “Sapin 2”.

**Changes relating to the Board of Directors** to strengthen the presence of employees on the board of directors or supervisory boards of companies with more than 1,000 employees in France or 5,000 employees in France and abroad with the appointment of at least two directors representing employees in companies whose number of directors is greater than eight (instead of twelve) and at least one if it is less than or equal to eight (instead of twelve). The text also reinforces the respect of gender parity rules on the board of directors. Finally, note that it removes the term “attendance fee” for board members to replace it by the term “compensation”.

A series of measures is intended to **transpose the EU Directive 2017/828 on shareholder rights** called “shareholders rights 2”.

These provisions include those relating to the supervision of the activity of the **voting advisors** and the transparency and engagement policy of **asset managers** and **institutional investors**.

**The procedure for monitoring related-party agreements** is clarified as to the exclusion of the related party from the procedure to be followed. The person interested in the agreement cannot take part in the vote regarding the authorization or in the vote in the approval of the agreement. In addition, the report on corporate governance of listed companies must also mention the agreements concluded between the corporate officers of the company concerned and any controlled company within the meaning of Article L. 233-3 of the French Commercial Code. Listed companies must publish on their website information on third-party agreements at the time of their conclusion. The list of this information will be fixed by decree of the Conseil d’Etat. It was also decided to put in place a procedure to check whether non-regulated agreements continue to fulfill the conditions laid down by law throughout their execution.

Creation of a national legal framework specific to the issuance of *Initial Coin Offering* (ICO).

These provisions will enter into force the day after the enactment of the law, except specific exemptions provided by the law. The entry into force of some provisions may be delayed and may depend on the publication of regulatory measures.

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