

PACTE Act: delegations regarding mergers and other restructuring operations

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Presented as a flagship measure of economic reform, the law on growth and business transformation, known as the PACTE Act, came into force on May 24, 2019. Among the changes in the corporate/M&A practice, article 102 of the PACTE Act deserves a particular attention.

Article L. 236-9 of the French Commercial code provides that a merger is decided by the extraordinary shareholders meeting in each company involved in the transaction.

Article L. 236-9 of the French Commercial code has been amended by the PACTE Act. As of now, it states that (i) the extraordinary shareholders meeting of the acquiring company may delegate to the board of directors (or, if applicable, to the executive board) its competence in making decisions relating to a merger for a period that cannot exceed 26 months and (ii) the extraordinary shareholders meeting of the acquiring company may decide the merger and grant the board of directors (or, if applicable, the executive board) the power to set definitive terms and conditions of this merger for a period that cannot exceed 5 years.

Should the extraordinary shareholders meeting delegate (i) its competence or (ii) its power and the board of directors or the executive board use one of these delegations, the PACTE Act, additionally provides that one or several shareholders holding 5% or more of the share capital of the acquiring company may request in a court of law, within a period set by decree (not yet published), that a representative may be designated, for the purpose of convening an extraordinary shareholders meeting to approve such merger.

This provision applies mergers, splits and partial contributions of assets involving joint stock companies.

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