Client Alert | Financial Restructuring and Insolvency

PACTE Act (action plan for the growth and transformation of companies): the main changes regarding distressed companies

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Presented as a major measure of the five-year French presidential term, the law "on growth and business transformation", also known as the PACTE Act, came into force on May 24th, 2019. Amongst the changes that were brought, some of them deserve a particular focus.

Two phases of the reform. The PACTE Act revises the insolvency legal framework and mainly empowers the executive to directly implement the EU insolvency directive and to reform the law on security interests within a period of two years.

The first phase of the reform

The PACTE Act does not overturn Book VI of the French *Code de commerce* but include several changes, which slightly reform the law.

More fluidity for sale plans (*plan de cession*)

For proceedings opened after the publication of the law, any clause binding the assignee of a lease, jointly and severally, with the seller shall be deemed null and void if the transfer of the lease is made as part of disposal plan which aims at the sale of the business, as a going concern. The invalidation of the clause will however not be effective if the lease is transferred as a stand-alone asset.

Choice of the judicial administrator (*administrateur judiciaire*)

The law authorizes the debtor requesting the opening of reorganization proceedings (*redressement judiciaire*) to suggest the name of one or more judicial administrators. Unless otherwise advised by the Public Prosecutor, the debtor will thus be able to nominate the judicial administrator who previously assisted him during safeguard proceedings that was converted into reorganization proceedings. This important change formalizes the current practice.

Legal representative's compensation

In the case of reorganization proceedings, the compensation is no longer automatically set by the supervisory judge (*juge-commissaire*). If the creditors' representative (*mandataire judiciaire*) does not so request, the company's legal representative shall keep the compensation he was entitled to before the opening of the proceedings. In the context of judicial liquidation proceedings (*liquidation judiciaire*), the supervisory judge must determine the compensation.

Simplified judicial liquidation proceedings

It becomes the rule for debtors (with no real estate assets), with less than five employees and less than 750,000 euros in turnover. The liquidation must be completed within six months to one year depending on certain thresholds that the debtor might exceed, which will be specified by decree; this time limit may be extended for a maximum period of three months.

Claims and disclosure of Tax privilege (*privilège du Trésor*)

To submit tax related proof of claims, it will now be necessary to assess whether or not the debtor is currently the subject of a tax control or rectification procedure. In the absence of such a procedure, the final settlement of claims provisionally admitted must be carried out, except in judicial liquidation, by the issue of an enforceable title within 12 months from the publication of the opening judgment of the proceedings. This measure will be applicable to all proceedings opened on or after 1 January 2020.

In other respects, the terms and conditions for the publication of the Tax privilege have been modified. Disclosure becomes mandatory when the amount of the sums due exceeds, at the end of a civil semester, an amount fixed by decree. The provision will apply to all outstanding claims from a date to be fixed by decree and at the very latest from 1 January 2020.

Finally, it should be noted that publication will no longer apply when the debtor files a complaint against a notice of collection accompanied by an express request for suspension of payment, to which it will be granted.

The use of professional recovery is fostered

It should be systematically considered for any qualifying debtor before judicial liquidation proceedings are opened. However, the provision is limited to physical individuals only.

The second phase of the reform

The PACTE Act authorizes the executive to implement by way ordinance and also to reform the law on security interests. This reform will in particular aim to simplify, clarify and modernize the rules relating to security interests and secured creditors in Book VI of the French *Code de commerce*, and should also provide incentives for encouraging the provision of new money to a debtor who is the subject of insolvency proceedings with continued activity, or who benefits from a safeguard plan or a reorganization plan adopted by the court. However, direct and inherent changes in insolvency law are also at work with regard to the authorization given to the executive by the PACTE Act to transpose the future insolvency directive.

It is from this perspective that the government is allowed to amend insolvency law and, in particular, (i) to replace the provisions relating to the adoption of safeguard plans by creditors' committees with a procedure for the adoption of such plans by classes of creditors, (ii) to enable the court to adopt a plan despite the opposition of one or more classes of creditors, (iii) to require compliance with subordination agreements concluded before the opening of safeguard proceedings and (iv) to adjust the rules on the automatic stay of individual actions against the debtor.

The greatest changes in this field are therefore to come.

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