

# Q U I D J U R I S ?

## THE PERIODICAL INFORMATION LETTER OF HAJJI & ASSOCIES LAW FIRM

Number 31  
July – August 2008

### COMPANY LAW :

Law nb 20 – 05 modifies and completes law nb 17 – 95 related to Public Limited Companies and became enforceable by its publication in the bulletin officiel.

Law nb 20 – 05 amends law nb 17 – 95 concerning the following points:

– **Possibility for the Board of directors to separate the positions of Chief executive and Chairman of the Board of directors:**

To reinforce the balance between the company's organs, law nb 20 – 05 provides for the Board of directors the possibility to separate the positions of Chief executive and Chairman of the Board of directors.

Article 67 of the law nb 17 – 95 modified by law nb 20 – 05 states that Boards of directors is entitled to choose, in compliance with the bylaw's statements, that the positions of Chief executive and Chairman of the Boards of directors would be occupied by two different people.

It can be noticed that this decision shall be, as soon as it's taken, notified to the very next general extraordinary meeting, in order to modify the bylaws.

– **Reinforcement of the control held over the company**

Articles 56 and 95 of Law 17 – 95 as modified by Law 20 – 05 have extended the scope of application of regulated conventions to some of the PLC's shareholders, whatever the company's organization is (Board of Directors ; or Supervisory Board and Board), as long as they hold 5% of the capital or of the voting rights.

In the same way, articles 62 and 100 of Law 17 – 95 as modified by Law 20 – 05 now set up the prohibition made to members of the Board of Directors, members of the Board, and members of the Supervisory Board other than artificial persons, to conclude loans with the company itself, but also with its subsidiaries and companies controlled by it, as defined in article 144 of Law 17 – 95.

– **Reinforcement of auditors independance**

According to the Law 17 – 95 article 161 statements as modified by Law nb 20 – 05, the positions of subsidiaries' and parent company's directors, as well as of any other person remunerated by the company are incompatible with the position of auditor. Indeed, it could put its independence into jeopardy.

– **Possibility to vote by way of Visio conference**

Articles 50, 110 and 111 as modified by Law 20 – 05 state that the bylaws can now provide that people who take part in the Board's meetings or in General Meetings by way of Visio conference, will be considered present during these meetings.

Nonetheless, the Board of Directors' meetings cannot be held by way of Visio conference for matters concerning the nomination or removal of the Chairman, of the Chief executive, or of a delegated chief executive.

– **Criminal device reduction**

Law nb 20 – 05 cancelled some criminal statements, replaced other ones by fines and reduced the amount of some other fines. For example, the fine provided by article 385 in order to punish the fact, for an administrator not to have the Board's deliberations registered by minutes, is divided by two. Imprisonment penalties provided by articles 408 and 420 are now cancelled.

– **Softening of the PLC setting up and organization formalities**

Law 20 – 05 cancelled the double formal publicity that was so far provided for by articles 30 and 33 of Law 17 – 95, and had to be done both before and after the registering. Only the latter now remains compulsory.

Article 31 of Law 17 – 95 as modified by Law 20 – 05, cancelled the obligation to deposit a conformity declaration during the setting up of the company, or in order to make a legal deposit subsequent to the company's constitution.

– **Other modifications**

The following other modifications brought by Law 20 – 05 have to be noticed :

- Cancelling of the qualification shares
- The shares minimum face value is now of 50 MAD if the company doesn't invite the public to form the registered capital, 10 MAD if it does.
- Auditor is now removable by the shareholder, whose have 5% of the registered capital and not 10% anymore.
- Any clause submitting shares admitted in markets cession to an agreement of the company is now void.
- Spreading of the scope of the commercial decline to persons condemned by law for stole or trust abuse within 5 years after their condemnation.
- In certain public limited companies, a shareholder can be represented by an artificial person if its object is transferable securities management.
- In some Public Limited Companies, auditor is entitled to had the CDVM known, irregularity he noticed.
- The merger of a subsidiary hold at 100% can be realised without any approbation of the general extraordinary meeting..

To conclude, it can be noticed that Law 20 – 05 is in compliance with professionals', investors' state of mind. This in inspiring from European Company Law. It must be continued in the same way, put together international evolution and local particularities.

**Hajji & Associés, Association d'Avocats. 28, Bd Moulay Youssef Casablanca 20000 - Maroc**

**Phone : (SB) + 212 (0) 22 48 74 74**

**Facsimile : + 212 (0) 22 48 74 75**

**+ 212 (0) 22 43 00 45**

**Email : partners@ahlo.ma**

**Site Web: www.ahlo.ma**

**Note:**

*The contained information in the hereby information letter QUID JURIS provided by Hajji & Associés law firm does not constitute a legal advice on any of the above mentioned subjects and it cannot commit the liability of any of the firm lawyers.*