

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 official gazette.

Law n° 20 – 05 amends law n° 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 n° 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 n° 17 – 95 modified by law n° 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 persons.

It should 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 states that the bylaws can now provide that persons 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 sanction reduction**

Law n° 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 non registration of the Board's deliberations registered by minutes, is divided by two. Imprisonment penalties provided by articles 408 and 420 are now repealed.

– **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 inform the CDVM (the financial market authority) informed of any irregularity he may have noticed; and
- 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 more favourably compliance with professionals' and investors' requirements. Such a process should be continued in the same way taking into consideration the international evolution and local particularities.

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