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Private limited liability companies are not subject to the rules pertaining to financial assistance set out in the law of 10 August 1915 on commercial companies, as amended

By the law of 6 August 2021 (the “**Law**”) amending the law of 10 August 1915 on commercial companies, as amended (the “**1915 Law**”), it has now been clarified that private limited liability companies (*sociétés à responsabilité limitée* or S.à r.l.) do not fall within the scope of the legal regime set out by the 1915 Law in relation to unlawful financial assistance and that, consequently, the related penalties are not applicable to their management.

The objective of the Law is to put an end to some hesitations and interpretation difficulties which had arisen in practice from the generic wording of article 1500-7 of the 1915 Law after its 2016 amendment (the “**2016 Amendment**”)[1]. Indeed, although the unlawful financial assistance regime was not as such prescribed in relation to private limited liability companies (all the more so that its application to them had been expressly shelved in the course of the preparatory works of the 2016 Amendment), the reference to *parts sociales*[2] in article 1500-7 of the 1915 Law (providing for criminal penalties, including a prison sentence and a fine, in case of unlawful financial assistance) had led practitioners to adopt a prudent approach in considering whether private limited liability companies might possibly fall within the scope of such regime.

For example, article 430-19 of the 1915 Law provides that a company[3] may not, directly or indirectly, advance funds, make loans or grant securities for the acquisition of its own shares by a third party, except under the limited conditions set out in said article. Article 430-21 of the 1915 Law further extends the financial assistance regime to a company pledging, directly or indirectly, its own shares. As mentioned above, article 1500-7 of the 1915 Law provides for the criminal penalties applicable to the company’s management in case of breach of these provisions.

It now results from the amendment set out in the Law that private limited liability companies are not subject to the provisions of these articles, thus reaffirming private limited liability companies’ objective of flexibility and bringing to an end any hesitations which might have arisen from the wording of article 1500-7. It is however worth mentioning that, even if these provisions do not apply, any decision to proceed with financial assistance should be assessed on a case by case basis, as for any decision of a company, in view, in particular, of such company’s corporate interest.

For completeness, it may be worth noting that the Law took the opportunity of the amendment of article 1500-7 of the 1915 Law to remove the redundant reference to public limited liability companies (*sociétés anonymes*) in its second paragraph. This reference is no longer needed because articles 430-19 and 430-21 to which this paragraph expressly refers are applicable to public limited liability companies anyhow.

The Law was published in the Official Journal (*Mémorial*) dated 12 August 2021 and thus came into force on 16 August 2021.

[1] The Law amended the second paragraph of article 1500-7 of the 1915 Law as follows (free translation):

“Article 1500-7. The same penalties shall apply to any person who, in this capacity as director, commissaire, manager or member of the supervisory committee, knowingly: (...)

2) made loans or advances using company funds or provided security with a view to the acquisition of shares or corporate units in the company or took a pledge on the company’s shares or corporate units, in violation of articles 430-19 and 430-21 in the case of public limited liability companies; (...).”

[2] Which is the name given by the 1915 Law to the shares or units issued by private limited liability companies.

[3] Being a public limited liability company (*société anonyme*), or by extension a corporate partnership limited by shares (*société en commandite par actions*) or a simplified joint stock company (*société par actions simplifiée*).

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