

Law No. 2005-96 of October 18, 2005, on strengthening the security of financial relations.

TITLE I

Strengthening the accuracy of company accounts

Chapter I

Strengthening the transparency of financial information

Article 1 - The provisions of Article 13, Article 123, and the first paragraph of Article 124 of the Commercial Companies Code are repealed and replaced by the following provisions:

Article 13 (new) - Commercial companies are required to appoint an auditor.

However, commercial companies other than joint stock companies are exempt from appointing an auditor:

- for the first financial year of their activity,
- if they do not meet two of the numerical limits relating to total assets, total revenue excluding taxes, and average number of employees,
- or if they no longer meet two of the numerical limits referred to in the second indent during the last two financial years of the auditor's term of office.

The auditor must be appointed from among the certified public accountants registered with the Tunisian Institute of Certified Public Accountants if two of the numerical limits relating to total assets, total revenue excluding tax, and average number of employees are met. If these numerical limits are not met, the auditor is appointed either from among the certified public accountants registered with the

Register of the Tunisian Institute of Chartered Accountants or from among the accounting specialists registered with the Tunisian Institute of Accountants.

The numerical limits and the method of calculating the average number of employees, as provided for in paragraphs 2 and 3 of this article, shall be set by decree.

Any auditor appointed in accordance with the provisions of this article shall be subject to the provisions referred to in Chapter Three of Subtitle Three of Title One of Book Four of this Code.

Article 123 (new) - Where the appointment of one or more auditors is required pursuant to Article

13 of this code, such appointment shall be made by the partners deliberating under the quorum and majority conditions specific to ordinary general meetings.

One or more partners, representing at least one-tenth of the share capital, may request that the appointment of one or more auditors be included on the agenda of the ordinary general meeting, even if the company is not required to do so because it does not meet the criteria set out in Article 13 of this Code. In this case, the ordinary general meeting shall examine the request in accordance with the procedures set out in the previous paragraph.

Article 124 (new first paragraph) - The appointment of one or more auditors shall be mandatory for a limited liability company if one or more shareholders representing at least one-fifth of the share capital so request, even if the company does not meet the conditions for appointment set out in Article 13 of this Code. The president of the court in whose jurisdiction the company's registered office is located shall appoint the auditor(s) by order upon request, at the request of the partner(s) referred to above.

Article 2 - The provisions of paragraph 2 of Article 258 of the Commercial Companies Code are repealed.

Chapter Two

Strengthening the independence of company auditors

Article 3 - The following Article 13 bis is added to the Commercial Companies Code:

Article 13 bis - The auditor shall be appointed for a renewable term of three years.

However, the number of successive terms of office, taking into account renewal, may not exceed, for commercial companies subject to the obligation to appoint an auditor registered with the Tunisian Institute of Chartered Accountants, three terms when the auditor is a natural person and five terms if the auditor is an accounting firm with at least three certified public accountants registered with the Tunisian Institute of Certified Public Accountants, provided that the professional who assumes personal responsibility for the content of the audit report is changed and the team involved in the audit is changed at least once after three terms of office. The terms and conditions for the application of this paragraph shall be laid down by decree.

The provisions of the second paragraph of this article shall apply to the renewal of mandates as of January 1, 2009.

Article 4 - The provisions of the first paragraph of Article 125, paragraph 3 of Article 172, paragraph 5 of Article 181, and the first paragraph of Article 260 of the Commercial Companies Code are repealed and replaced by the following provisions:

Article 125 (new first paragraph) - Without prejudice to the provisions of Article 13 bis of this Code, auditors shall in all cases be appointed for a period of three years. Their powers, duties, obligations, and responsibilities, as well as the conditions for their dismissal and remuneration, shall be determined in accordance with the provisions of Articles 258 to 273 of this Code.

Article 172 (new paragraph 3) - Their term of office may be renewed unless otherwise stipulated in the articles of association. Subject to the provisions of Article 13 bis of this Code, the auditor shall be appointed for a term of three years.

Article 181 (new paragraph 5) - Subject to the provisions of Article 13 bis of this Code, the first auditors shall be appointed by decision of the constituent general meeting for a term of three years.

Article 260 (new first paragraph) - Subject to the provisions of Article 13 bis of this Code, the general meeting of shareholders shall appoint one or more auditors for a term of three years.

Chapter Three

Strengthening of the audit of company accounts

Article 5 - The following Article 13 ter is added to the Commercial Companies Code:

Article 13 ter - The following are subject to the appointment of two or more auditors registered with the Tunisian Institute of Chartered Accountants:

- credit institutions offering securities to the public and multi-branch insurance companies,
- companies required to prepare consolidated financial statements in accordance with applicable legislation if their total balance sheet under the consolidated accounts exceeds an amount set by decree,
- companies whose total liabilities to credit institutions and outstanding bond issues exceed an amount set by decree.

These auditors must not be bound by any association or other ties that could limit their independence and are required to set the terms and conditions for preparing their reports based on the adversarial review procedure.

A professional standard shall lay down the rules and procedures relating to the joint auditing of companies.

Article 6 - The provisions of the second paragraph of Article 471 of the Commercial Companies Code are repealed and replaced by the following provisions:

Article 471 (new paragraph 2) - Consolidated financial statements shall be audited by the auditor(s) of the parent company, who must be registered with the Tunisian Institute of Chartered Accountants.

Chapter Four

Enhancing corporate transparency

Article 7 - The following Article 13 quater is added to the Commercial Companies Code:

Article 13 quater - Notwithstanding their legal obligations, auditors shall be required to provide the Central Bank of Tunisia with a copy of each report addressed to general meetings, for:

- companies that issue securities to the public,
- companies required to prepare consolidated financial statements in accordance with the legislation in force if their total balance sheet under the consolidated accounts exceeds an amount set by decree,
- companies whose total commitments to credit institutions and outstanding bond issues exceed an amount set by decree.

Article 8 - The following Article 3 sexis is added to Law No. 94-117 of November 14, 1994, on the reorganization of the financial market, as amended and supplemented by subsequent texts:

Article 3 sexis - Notwithstanding their legal obligations, each auditor of a publicly traded company must:

- 1- immediately report to the Financial Market Council any fact that could jeopardize the interests of the company or its security holders.

- 2- at the same time, submit to the Financial Market Council a copy of each report addressed to the general meeting.

Chapter Five

Strengthening the responsibility of supervisory and management bodies

Article 9 - The following Article 266 bis is added to the Commercial Companies Code:

Article 266 bis - The company's auditor(s) must be invited to attend all meetings of the board of directors or supervisory board and management board that prepare the annual financial statements or review the interim financial statements, as well as all general meetings.

Article 10: The following Article 13 quater shall be added to the Commercial Companies Code:

Article 13 quater - The management bodies and those responsible for the financial and accounting affairs of commercial companies which are subject to the obligation under this code to appoint one or more auditors registered with the Tunisian Institute of Chartered Accountants, shall be required to sign an annual statement submitted to the auditors certifying that they have taken the necessary steps to ensure that the financial statements are complete and comply with accounting legislation. The content of this declaration shall be determined by order of the Minister of Finance.

Article 11 - The following Article 13 sexies is added to the Commercial Companies Code:

Article 13 sexies -Any manager of a commercial company or economic interest group who obstructs the work of the auditors or refuses to provide, at their request, by any means that leaves a written record, the documents necessary for the performance of their duties shall be punished by six months' imprisonment and a fine of five thousand dinars or one of these two penalties.

TITLE TWO

Strengthening the policy of financial disclosure by companies and their good governance

Chapter One

Strengthening the creation of permanent audit committees

Article 12 - The following Article 256 bis is added to the Commercial Companies Code:

Article 256 bis - The creation of a standing audit committee is mandatory for:

- companies that issue securities to the public, with the exception of companies classified as such due to the issuance of bonds,
- the parent company when its total balance sheet under the consolidated financial statements exceeds an amount set by decree;
- companies that meet the limits set by decree relating to their total balance sheet and total commitments to credit institutions and outstanding bond issues.

The standing audit committee ensures that the company complies with the implementation of effective internal control systems designed to promote efficiency, effectiveness, protection of the company's assets, reliability of financial information, and compliance with legal and regulatory provisions. The committee monitors the work of the company's control bodies, proposes the appointment of the statutory auditor(s) and approves the appointment of internal auditors.

The standing audit committee is composed of at least three members, appointed as appropriate by the board of directors or the supervisory board from among their members.

The Chief Executive Officer, the Managing Director, or the Deputy Managing Director may not be a member of the Standing Audit Committee.

The members of the standing audit committee may receive, as remuneration for their activities, a fixed sum calculated in accordance with the conditions set out in Article 204 of the Commercial Companies Code relating to attendance fees.

Chapter Two

Revitalization of the commercial register system

Article 13 - The provisions of Article 51 of Law No. 95-44 of May 2, 1995, relating to the commercial register, are repealed and replaced by the following provisions:

Article 51 (new) - Natural persons who are required to keep accounts in accordance with the legislation in force, as well as legal persons, must file, as an appendix to the commercial register and in duplicate, the financial statements that they are required to prepare in accordance with the relevant laws and regulations. This filing must be made within one month of their approval by the general meetings, for legal entities, and in all cases, before the seventh month following the end of the financial year. Other documents may be added by order of the Minister of Justice.

The parent company, referred to in Article 461 of the Commercial Companies Code, is required to file, as an appendix to the commercial register and in duplicate, the documents referred to in Article 472 of the said code.

In addition to the above-mentioned documents, commercial companies must file, as an appendix to the commercial register and in duplicate, a list of shareholders or partners whose shareholding exceeds a proportion set by order of the Minister of Justice.

The above documents must be filed on paper and on magnetic media.

Article 14 - The provisions of the first paragraph of Article 68 of the aforementioned Law No. 95-44 are repealed and replaced by the following provisions:

Article 68 (new first paragraph) -Any person required to apply for registration, a corrective entry, or a deletion, or an additional entry, including the documents referred to in Article 51 of this law, who, within fifteen days of the date on which the order issued by the judge requiring them to apply for one of these formalities became final, has not, without a valid excuse, complied with this order, shall be punished by a fine of one hundred to one thousand dinars, in addition to any legal proceedings that may result.

Chapter Three

Reorganization of disclosure obligations incumbent upon publicly traded companies, their shareholders, and companies listed on the stock exchange

Article 15 - The provisions of Article 3 of the aforementioned Law No. 94-117 of November 14, 1994, are repealed and replaced by the following provisions:

Article 3 (new) - Without prejudice to the provisions relating to undertakings for collective investment in transferable securities, publicly traded companies are required to file or send, in paper and electronic form, to the Financial Market Council and the Tunis Stock Exchange provided for in Article 63 of this law, within four months of the end of the financial year and at least fifteen days before the ordinary general meeting:

- the agenda and draft resolutions proposed by the board of directors or the management board;
- the documents and reports provided for, as applicable, by Articles 201 or 235 of the Commercial Companies Code and Article 471 of the said code. The annual report on the management of the company must include the information specified by regulation of the Financial Market Council and, in particular, a statement on the results of operations, their foreseeable development and any changes in the methods of preparing and presenting the financial statements, as well as information on internal control;
- the reports of the auditor(s) referred to, as applicable, in articles 200, 269 and 472 of the code of commercial

commercial companies. These reports must contain a general assessment of internal control.

Article 3 bis - Companies making a public offering must publish their annual financial statements, accompanied by the full text of the auditor's opinion, in the official bulletin of the Financial Market Council and in a daily newspaper published in Tunis within the time limits specified in Article 3 of this law.

However, for the purposes of publication in the daily newspaper, companies may limit themselves to publishing the notes on the mandatory financial statements and the most relevant notes, subject to obtaining the written consent of the auditor.

Article 3b - Companies making a public offering must, within four business days of the date of the ordinary general meeting, file or send to the Financial Market Council and the Tunis Stock Exchange:

- the documents referred to in Article 3 of this law if they have been amended,
- the resolutions adopted by the ordinary general meeting,
- the statement of changes in equity, taking into account the decision on the allocation of accounting profit,
- the balance sheet after allocation of accounting profit,
- the list of shareholders,
- the list of holders of voting rights certificates,
- the list of holders of bonds convertible into shares.

Article 3 quater - Companies that issue securities to the public must publish in the official bulletin of the Financial Market Council and in a daily newspaper published in Tunis, within thirty days of the ordinary general meeting at the latest:

- the resolutions adopted by the ordinary general meeting,
- the statement of changes of capital of in taking into the allocation of accounting profit,
- the balance sheet after appropriation of accounting profit,
- and the financial statements when they have undergone changes.

Article 3 quinter - Companies making public offerings must file with the Financial Market Council and the Tunis Stock Exchange

at least fifteen days before the date of the extraordinary general meeting:

- the agenda and draft resolutions proposed by the board of directors or the management board,
- the report of the auditor(s), if any,
- the documents made available to shareholders in support of the proposed resolutions.

The resolutions shall be sent to the Financial Market Council and the Tunis Stock Exchange as soon as they are adopted by the general meeting.

Article 16 - The provisions of Articles 6, 7, and 8 of the aforementioned Law No. 94-117 are repealed and replaced by the following provisions:

Article 6 (new) - Any person or specific group of persons intending to acquire a block of securities likely to confer a proportion of voting rights exceeding a proportion set by decree, either from specific shareholders or through a public takeover bid, in a publicly traded company must submit a file on the matter to the Financial Market Council, which shall decide taking into account the interests of the other shareholders and order the applicant to make an offer to purchase the remaining capital that it does not hold, either in the form of a public tender offer or in the form of a fixed price maintenance procedure.

The Financial Market Council may exempt the applicant from making an offer to purchase the remaining shares if the company's shares are not the reason for its classification as a publicly traded company and if this transaction does not harm the interests of the holders of the securities that led to this classification.

Article 7 (new) - When a person, acting alone or in concert and by any means, comes to hold a number of securities that gives them a share of voting rights greater than a proportion set by decree in a publicly traded company, the Financial Market Council may order them to make an offer to purchase the remaining shares they do not hold in the form of a takeover bid or a fixed price maintenance procedure, provided that the price in both

cases is not lower than the minimum provided for in the general regulations of the stock exchange.

The provisions of Article 40 of this law shall apply to anyone who does not comply with the decision of the Financial Market Council, and the securities thus acquired shall be deprived of voting rights by decision of the Financial Market Council taken after hearing the interested party.

Article 8 (new) - Any natural or legal person, acting alone or in concert, who comes to hold, directly or indirectly, more than one-twentieth, one-tenth, one-fifth, one-third, one-half, or two-thirds of the capital of a company making a public offering shall be required to declare the crossing of one or more of the above thresholds to that company, to the Financial Market Council and to the Tunis Stock Exchange, within five business days of the date on which the threshold is crossed, and to declare the total number of shares and voting rights it holds in accordance with the conditions set by the Financial Market Council's regulations.

This declaration shall also be made within the same period and to the same bodies when the shareholding or the number of voting rights falls below the thresholds provided for in the first paragraph of this article.

For open-ended investment companies and mutual funds, the declaration shall be made by the manager.

The provisions of Article 40 of this Act shall apply to persons who contravene the provisions of this Article.

Article 17 - The following paragraph 2 is added to Article 15 of the aforementioned Act No. 94-117:

Article 15 (paragraph 2) - The Financial Market Council shall take the decision to impose the penalty after hearing the person concerned.

Article 18 - The provisions of Article 21 of the aforementioned Law No. 94-117 are repealed and replaced by the following provisions:

Article 21 (new) - Companies whose equity securities or securities giving access to equity are listed on the stock exchange are required to

file with the Financial Market Council and the Tunis Stock Exchange, or send them, in addition to the documents provided for in Article 3 of this law, activity indicators set according to sector by regulation of the Financial Market Council, no later than twenty days after the end of each quarter of the financial year.

The said companies must publish the said quarterly indicators in the official bulletin of the Financial Market Council and in a daily newspaper published in Tunis.

Article 21 bis - Companies whose equity securities or securities giving access to equity are listed on the stock exchange are required to file with the Financial Market Council and the Tunis Stock Exchange, or send to them, no later than two months after the end of the first half of the financial year, in paper and electronic form, interim financial statements accompanied by the full report of the auditor(s) concerned.

The said companies shall publish the interim financial statements accompanied by the full text of the report of the auditor(s) in the official bulletin of the Financial Market Council and in a daily newspaper published in Tunis after their filing or sending to the Financial Market Council, within the same time limit.

However, for the purposes of publication in the daily newspaper, companies may limit themselves to publishing the notes on the mandatory financial statements and the most relevant notes, subject to obtaining the written consent of the auditor.

Article 21 ter - Parent companies whose equity securities or securities giving access to equity are listed on the stock exchange and which are themselves subsidiaries of other companies must prepare consolidated financial statements in accordance with the accounting legislation in force.

The filing and publication requirements set forth in Articles 3, 3 bis, 3 quater, and 3 quinter of this law shall apply to companies whose equity securities or securities giving access to equity are listed on the stock exchange and which are required to prepare consolidated financial statements

in accordance with the accounting legislation in force and the provisions of the first paragraph of this article.

Such companies must disclose all their relationships with all persons belonging to the group of companies or involved in its management.

TITLE THREE

Specific provisions for strengthening the role of the Financial Market Council in the performance of its duties

Chapter I

The organization of securities portfolio management activities on behalf of third parties

Article 19 - Securities portfolio management on behalf of third parties consists of issuing orders relating to securities in the name of and on behalf of the client, pursuant to a written mandate.

Article 20 - The activity of managing securities portfolios on behalf of third parties is carried out by credit institutions governed by Law No. 2001-65 of July 10, 2001, relating to credit institutions, by stockbrokers governed by the aforementioned Law No. 94-117, and by management companies that are public limited companies whose purpose is to manage securities portfolios on behalf of third parties.

Article 21 - Institutions engaged in the management of securities portfolios on behalf of third parties are required to comply with the following conditions:

- carry out the activity with complete independence and provide sufficient guarantees relating to organization, technical means, and human resources;
- perform their duties with the diligence of a prudent professional and a loyal agent acting in the interests of their clients and the integrity of the market;

- avoid conflicts of interest and resolve them fairly, taking into account the interests of clients where applicable;
- provide the means and procedures to monitor activities to ensure compliance with good management practices in all aspects of the relationship with clients,
- identify the financial capabilities, objectives, and expectations of their clients,
- inform their clients of the risks inherent in the nature of the transactions they intend to carry out,
- put in place, on their own behalf, procedures to monitor transactions carried out by persons responsible for managing securities portfolios on behalf of third parties, in order to ensure transparency regardless of where securities accounts are opened and the obligations required of such persons to prevent the improper circulation of internal information,
- avoid anything that could lead to the interests of shareholders taking precedence over the interests of clients, and protect the independence of managers to ensure that the interests of clients take precedence,
- prohibit direct transactions between their clients' accounts, between their shareholders' accounts and their clients' accounts, or between their accounts and their clients' accounts.

Article 22 - Credit institutions and stockbrokers must declare the activity of managing securities portfolios on behalf of third parties to the Financial Market Council within one month of commencing the activity.

However, credit institutions and stockbrokers who are engaged in this activity on the date of entry into force of this law must report this activity to the Financial Market Council within six months of the date of promulgation of this law.

Article 23 - The exercise of securities portfolio management activities on behalf of third parties by management companies referred to in Article 20 of this law is subject to approval granted by the Financial Market Council under conditions set by decree.

The Financial Market Council shall decide to withdraw the authorization either at the request of the beneficiary of the authorization or on its own initiative after hearing the beneficiary of the authorization, and this:

- if the authorization has not been used within twelve months of the date of its grant,
- or if the beneficiary of the authorization no longer meets the conditions that led to the authorization being granted,
- or if has guilty guilty of a breach serious of the legislation or regulations in force ,

In the event of withdrawal of authorization, the company must be liquidated and its activities terminated within one year of the date of the withdrawal decision, in accordance with the legislation in force.

Article 24 - Institutions engaged in the management of securities portfolios on behalf of third parties, their managers and staff under their authority are subject to supervision by the Financial Market Council in respect of this activity.

The purpose of this supervision is to verify that the activity of managing securities portfolios on behalf of third parties complies with the legal and regulatory provisions in force, in particular the provisions of the aforementioned Law No. 94-117 of November 14, 1994. The institutions concerned must provide the Financial Market Council with all the information relating to this activity that it requests in order to enable it to carry out its supervision.

These institutions, as well as their managers and staff under their authority, are subject to the disciplinary power of the Financial Market Council with regard to the management of securities portfolios on behalf of third parties.

Article 25 - Any person or manager, de jure or de facto, of an institution that engages in the activity of managing securities portfolios on behalf of third parties without having obtained authorization or continues to engage in this activity shall be punished by imprisonment for a term of sixteen days to one year and a fine of two thousand to twenty thousand dinars, or by one of these two penalties. any person or de jure or de facto manager of an institution that engages in the activity of managing securities portfolios on behalf of third parties without having obtained authorization or continues to engage in this activity after the withdrawal of authorization. The penalty shall be doubled in the event of a repeat offense.

Any manager of a company that does not belong to the category of management companies and has used a name or business name or advertising or, in general, anything that suggests that the company he manages is approved as a management company or creates confusion in this regard shall be punished with the same penalty.

Any manager of a credit institution or stock exchange intermediary who fails to make the declaration referred to in Article 22 of this law shall be punished by a fine of two thousand to twenty thousand dinars.

Article 26 - The provisions of this chapter shall not apply to venture capital investment companies in respect of the special resources made available to them for management on behalf of third parties and referred to in Article 23 of Law No. 88-92 of August 2, 1988, on investment companies, as amended and supplemented by subsequent texts.

Chapter Two

Miscellaneous provisions

Article 27 - The following new paragraph 7 is added to Article 40 of the aforementioned Law No. 94-117:

Article 40 (new paragraph 7) - Fines shall be paid on the basis of a statement of liquidation drawn up by the President of the Financial Market Council or his legal representative and made enforceable by the President of the Court of First Instance of Tunis.

Article 28 - The provisions of paragraph 2 of Article 82 of the aforementioned Law No. 94-117 are repealed and replaced by the following provisions:

Article 82 (new paragraph 2) - The provisions of Article 40 of this Act shall apply to chief executive officers and managing directors, chairmen of the board of directors and sole managing directors who fail to comply with the obligations set out in Articles 3, 3 bis, 3 ter, 3 quater, 3 quinter, 4, 21, 21 bis and 21 ter of this Act.

Article 29 - The provisions of the last paragraph of Article 31 of Law No. 94-117 of November 14, 1994, referred to above, are repealed and replaced by the following provisions:

Article 31 (new last paragraph) - Extracts from individual decisions shall be published whenever their effects are of interest to third parties.

Article 30 - A third paragraph shall be added to Article 36 of the aforementioned Law No. 94-117 of November 14, 1994, worded as follows:

Article 36 (paragraph 3) - Professional secrecy may not be invoked in the context of the investigations referred to in the first paragraph of this article.

Article 31 - A paragraph 5 bis shall be added to Article 50 of the aforementioned Law No. 94-117 of November 14, 1994, worded as follows:

Article 50 (paragraph 5 bis) - Notification shall be made by telegram, telex, fax, or any other means that leaves a written record.