06 May 2022

Personal equity savings plans: unlisted securities of a company in court-ordered liquidation may be withdrawn from the plan without entailing its closure

As I stated in my last annual report URL = [https://www.amf-france.org/sites/default/files/private/2022-04/RMED%202021_VF_BD.pdf], the leading reason for case referral in 2021 were disputes concerning transfers of personal equity savings plans (PEA). Although the duration of the process may often be extended for various reasons, the delay observed in the case I am presenting to you this month could have been avoided simply by applying an option introduced since the French PACTE law was adopted. Unlisted securities of an issuer in court-ordered liquidation that are in a personal equity savings plan may be withdrawn from the plan, without leading to its closure, regardless of how long it has been in existence, to allow the transfer of the plan as desired by the client.

The facts

On 28 December 2020, Mr B requested that his PEA account, held with institution X, be transferred to a new account keeper.

When the transfer was delayed, Mr B sent several reminders to the institutions concerned. In addition, since his PEA included securities of an unlisted company that had been placed in court-ordered liquidation, he also proposed that the securities be withdrawn by the original

bank, but this was not done. Despite all these efforts, the tax information form had still not been sent to the new account keeper. However, without this form, the PEA cannot be activated with the new account keeper.

When he complained, Mr B was reportedly informed that the cash had been transferred, but not the securities, since the new account keeper did not accept the line of unlisted securities, which had become worthless following the company's liquidation.

Considering that it could not accept the said securities, the new account keeper advised Mr B that the only solution was to return his PEA to the original bank.

Mr B then requested my intervention so that the transfer formalities could be finalised promptly.

The investigation

As part of the investigation of this case, I contacted the original institution and the host institutions in question one after the other. The original institution was the first to give me its observations.

Firstly, it explained to me that after several discussions with the new institution managing the PEA and the company's liquidator, the transfer of Mr B's PEA had finally been completed.

Secondly, the original institution also told me that, given the refusal of the new account keeper to accept the securities of the company in court-ordered liquidation, and after obtaining information from the liquidator, these securities had been withdrawn from the PEA and registered in an ordinary securities account opened in its books in the investor's name (zero valuation). The tax information form for the transferred PEA was then amended accordingly and sent to the new account keeper, thereby confirming the transfer.

Recommendation

Although this case had a favourable outcome following my intervention, I nonetheless indicated in my opinion that I found it most regrettable that the professional had not mentioned the legal possibility offered by the law since the PACTE law came into force on 1 October 2019 (and included in Article L.221-32 of the Monetary and Financial Code since that date), following a recommendation from me. I had recommended that the securities of an issuer in court-ordered liquidation in the PEA be withdrawn from the PEA at no cost, and

without leading to the closure of the PEA, at the simple request of the holder, regardless of the period of existence of the PEA.

I also pointed out that, while it is true that worthless securities may not be removed from the portfolio before the judgement closing the court-ordered liquidation, which may be many years later, it would seem to be good practice for the professional to exempt his client from paying custody fees for the line concerned.

On this issue, the original institution confirmed to me that it would not charge custody fees on this line.

Lesson to be learned

As I have already pointed out in a previous Case of the Month, the presence of securities whose issuer is in court-ordered liquidation is likely to delay or even hinder the transfer of a securities account or a PEA.

It should be remembered that if the securities of a company become worthless under a court-ordered liquidation, this fact alone does not allow the securities to be removed from the portfolio as soon as the court-ordered liquidation is initiated. This only becomes possible when the company ceases to exist legally, i.e. once the court-ordered liquidation is closed.

Before the PACTE law came into force, this issue resulted in particular complications whenever it was encountered in a PEA, because any obstruction in the transfer of a single line in the portfolio brought the transfer of the entire plan to a standstill.

It was precisely to overcome this difficulty that I recommended that worthless securities whose issuer had been placed in court-ordered liquidation could be taken out of the PEA without this constituting a withdrawal within the meaning of the tax regulations, i.e. without leading to the closure of the plan if the PEA was less than five years old. This recommendation was first shared and recommended by the CCSF in 2018, and then included in the PACTE law of May 2019.

To avoid frustrating disputes, it would be good if financial institutions thought to remind their clients of this right relating to worthless securities, while exempting them from the custody fees that may be charged periodically. Indeed, in my opinion, if they fail to do so, the custodian account keeper runs the risk of having such a charge contested on the grounds that the consideration for the charge exists but that it is illusory or derisory since the securities are worthless (Article 1169 of the Civil Code).

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