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INVESTMENT IN FRANCE

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FIDAL

4-6, avenue d'Alsace
92982 Paris La Défense Cedex
France
www.fidal.com

PREFACE

"Investment in France" is one of a series of handbooks for clients contemplating making investments or doing business in a foreign country.

It is intended to provide general information on a number of subjects important to business activity in France.

Of course, it should not be considered as exhaustive and sufficient in itself to make investment decisions.

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CHAPTER 1

CORPORATE STRUCTURES

I. INTRODUCTION

In France, companies are deemed to be of either a civil or commercial nature. A civil company's activity is mainly restricted to either professional services or real estate activities. Commercial companies, which are the most common type of legal entity, engage in all kinds of trades and businesses and are subject to Book II of the French Commercial Code. They are, in turn, divided into Sociétés de capitaux (joint-stock companies) and Sociétés de personnes (partnerships).

A. *Sociétés de capitaux*

Sociétés de capitaux can be broken down into the following types:

- *Société Anonyme (SA)*, i.e., a corporation,
- *Société par Actions Simplifiée (SAS)*, i.e., a simplified joint-stock company,
- *Société par Actions Simplifiée Unipersonnelle (SASU)*, i.e., a SAS with a single shareholder,
- *Société à Responsabilité Limitée (SARL)*, i.e., a limited liability company,
- *Entreprise Unipersonnelle à Responsabilité Limitée (EURL)*, an SARL with a single shareholder, and
- *Société en Commandite par Actions (SCA)*, i.e., a partnership limited by shares, which, although previously considered somewhat old-fashioned, is now generating renewed interest because of the possibility it affords of separating management and financing.

The above types of entities normally confer limitations on their shareholders' liability, have 99-year corporate terms and a centralized management; however, no limitations of liability apply to the managing partners (*commandités*) of an SCA.

SAs, SASs and SARLs are by far the most common types of entities, but they are quite cumbersome structures for small businesses.

B. *Sociétés de personnes*

Sociétés de personnes can be broken down into the following types:

- *Société en Nom Collectif (SNC)*, i.e., a general partnership, and
- *Société en Commandite Simple (SCS)*, i.e., a limited partnership.

Although these two types of entities have legal statuses that are distinct from their members, they are very similar to partnerships. Also worth mentioning here are the *Groupement d'Intérêt Economique* (GIE), economic interest grouping, and the *Groupement Européen d'Intérêt Economique (GEIE)*, European economic interest grouping, which are special types of service entities and cooperation structures whose legal status is distinct from their members. The *Société en Participation (SEP),* a joint-venture company, is an exception to the general rule of French law in that it is not considered to be an entity distinct from its members.

C. *Societas Europæa* (SE), i.e., the European Company

The SE form is reserved for organizations or groups that already have establishments in several places in Europe, and for cross-border operations between multiple organizations.

An SE may be set up in one of four ways:

- merger: by the merger of two or more corporations if at least two of them are governed by the laws of different Member States,
- formation of an SE holding company: the shares of several corporations or limited liability companies, of which at least two are governed by the laws of different Member States or have a subsidiary or branch in another Member State, may be contributed to an SE, which will be created once the shares are contributed to it,
- formation of an SE subsidiary: several companies, whatever their legal form, may set up an SE by subscribing shares if at least two of them are governed by the laws of different Member States or have a subsidiary or branch in another Member State,
- transformation of an existing corporation into an SE: if the existing corporation has had a subsidiary governed by the laws of another Member State for at least two years.

Before an SE can be created, the provisions of the applicable Council Directives relating to employee involvement must be applied. An SE can be registered only once an agreement relating to employee involvement has been reached.

The minimum share capital is €120,000 and is divided into shares.

An SE may choose either a one-tier management system (with a Board of Directors) or a two-tier system (with an Executive Committee and a Supervisory Board). Subject to certain exceptions, the provisions of French law that govern SAs are also applicable to SEs.

SE shareholders may be individuals or legal entities.

Normally, an SE must have at least two shareholders (rule also applicable to SAs). An SE may, however, set up another SE of which it is the sole shareholder as long as this parent SE is not, itself, held by just one shareholder.

An SE can freely transfer its registered office from one EU Member State to another, without it being necessary to wind up the company and create a new legal entity.

II. *SOCIÉTÉS DE CAPITAUX*: SA, SCA, SAS, SASU, SARL & EURL

Such companies are characterized by (i) the absence of a minimum share capital (except for SAs and SCAs, for which a minimum share capital is required) (ii) the fact that they confer limitations on their shareholders' liability (except for the commandités of an SCA). Their shares may be paid for either in cash or in kind.

A. Incorporation

Minimum number of shareholders

The incorporation of an SA requires at least two shareholders whereas at least four shareholders (one *commandité* (general partner) and three commanditaires (limited partners) are required for the incorporation of an SCA. SASs and SARLs may have only one shareholder. An SARL must have no more than 100 shareholders.

Contributions

Contributions in cash are deposited in the company's name in a blocked account at a bank or a notary's office. They cannot be released until the incorporation process has been completed. Contributions-in-kind are estimated by a Contribution Appraiser *(Commissaire aux Apports)* either unanimously appointed by the shareholders in SARLs and SASs or appointed by the Commercial Court.

When made by individuals, contributions of real estate, leasehold rights and certain business assets are subject to a registration tax. If the individuals commit to keeping the shares received in exchange for their contributions for at least three years, such contributions are tax-exempt (even for real estate if included in an ongoing business).

Drafting of bylaws (statuts)

A company's bylaws (or articles of association) must set forth the details of its structure, corporate term, name and registered office, corporate purpose, amount of share capital, shareholders' names, the value of the contributions-in-kind, the nominal value of each share, any limitations on the transferability of shares, the authority of the company's legal representatives and the method to be used to allocate its profits and losses.

The company's first directors and representatives are generally appointed at the time the bylaws are signed.

Legal formalities

The appropriate documents must be filed with two different public agencies in order to incorporate a company:

– Certain legal formalities must be carried out through the Centre de Formalités des Entreprises (CFEs), i.e., Company Formality Centers. Among other documents, a copy of the lease or property deed for the registered office, a copy of the bylaws, the valuation auditor's report (wherever a contribution-in-kind has been made) and a company administrative declaration need to be filed,

– After sending all the above documents to the local CFE, the founders must file the same documents directly with the Commercial Court. The incorporation must be registered by the Commercial Court Clerk.

The legal formalities also include providing certain documents relating to the Directors (statement of non-conviction signed by the person who is to be appointed director, ID such as a passport). French law requires that foreign executives (e.g., chairmen, managing directors, delegates or deputy managing directors or managers) who are not EU or EEA citizens, who live or plan to live in France, obtain a temporary residence card authorizing them to work in France. Those foreign executives who neither live nor plan to live in France will have no specific formalities to perform. In addition, there are no specific formalities to be performed for an EU or EEA citizen appointed as Director in France whether residing in France or not.

A public notice indicating that the company has been incorporated must be published in a legal gazette. Additional tax and social security formalities will also need to be carried out at the time of the company's incorporation.

B. Registered capital

The amount of the company's share capital must be indicated in its bylaws. No minimum registered capital is required for SARLs, EURLs, SASs and SASUs while the minimum capital is set at €37,000 for SAs and SCAs.

The capital may be divided into several types of shares that give shareholders varying rights to participate in the company's profits and losses.

In an SA, an SCA or an SAS, contributions-in-kind must be paid in full immediately, and at least 50% of any contribution in cash must be paid immediately, with the remainder to be paid in full within five years.

At least 20% of any capital contributed to an SARL or EURL in cash must be paid immediately, and the remainder must be paid in full within five years. Contributions-in-kind must be paid in full immediately.

In SARLs, EURLs, SASs and SASUs, the bylaws may provide the terms and conditions under which shares may be subscribed in the form of services (apports en industrie).

The bylaws may also restrict the transfer of shares to third parties. In such cases, a shareholder that wishes to sell shares must: for an SA, obtain the Board of Directors' or the Supervisory Board's prior approval; for an SARL, obtain the shareholders' approval. However, the bylaws of such companies may not require the prior approval of share transfers to members of the shareholder's immediate family (father, mother, son, daughter or spouse). In SASs, however, the bylaws may stipulate that the shares may not be transferred or that a prior approval is required for any sale of shares. In SCAs, the transfer of the commandités' shares must in any case be approved by all the commandités and all or some of the commanditaires (depending on what the bylaws provide).

Any modification of the share capital must be decided upon by a majority of the shareholders, as follows: two-thirds for an SA or an SCA's commanditaires; the percentage stipulated in the bylaws for an SAS or an SCA's commandités; and two-thirds for an SARL (or three-quarters for an SARL incorporated before August 4, 2005). In addition, certain formalities must be performed with the Registre du Commerce et des Sociétés (i.e., *Companies and Commercial Registry*).

C. Restrictions on distributions

A company's distributable profit is defined as its accrued, realized profits minus any realized losses. A minimum of 5% of the previous fiscal year's profits must, however, be booked in a special legal reserve until said reserve represents 10% of the share capital. The legal reserve must be maintained throughout the entire corporate term.

D. Management

With respect to management, distinctions must be made between SAs, SASs, SARLs and EURLs.

Please note that under French law, in order to limit any conflict of interest between the company and its management or a shareholder holding more than 10% of the company's share capital, a specific procedure must be respected. Any contract signed between a company and either its manager or shareholder (holding more than 10% of the share capital) when such a contract is not executed in the ordinary course of business (convention présentant un caractère courant), is subject to a specific approval procedure, unless the contract is signed between an SA and its 100% subsidiary.

1. SA

An SA's management may be structured in one of two ways. An SA may either have (i) a *Conseil d'Administration* (Board of Directors) in conjunction with a *Président-Directeur Général* (Chairman-CEO, one-person management) or a *Président* and a *Directeur Général* (two-person management) or (ii) a *Directoire* (Executive Committee) working under the guidance of a *Conseil de Surveillance* (Supervisory Board).

Board of Directors

The Board of Directors may have from three to eighteen members who may be shareholders (if so provided for in the bylaws) and who are appointed for a maximum of six years at a General Shareholders' Meeting. The Board is vested with the broadest powers to act on behalf of the company. It (i) determines the strategic directions of the company's activities and oversees their implementation, (ii) is authorized to settle questions regarding the proper functioning of the company and (iii) carries out any controls and verifications that it considers appropriate. It may appoint a Président-Directeur Général or a Président and a Directeur Général, who must be individuals. The Président must be a member of the Board.

A *Président-Directeur Général* holds the positions of both Chairman and Managing Director (or CEO). He/she is responsible for the company's management, represents the company and ensures its proper functioning. He/she may be assisted by one or more Directors.

A *Président* who is assisted by a *Directeur Général* has the power to convene Board of Directors' Meetings and General Shareholders' Meetings and to chair such meetings. He/she must ensure that the corporate bodies (Board of Directors, General Shareholders' Meetings) function properly. The *Directeur Général* represents the company vis-a-vis third parties and ensures the general supervision of the company. The choice between the above two structures is made by the Board of Directors alone.

A Managing Director may hold only one Managing Director's office in a listed company (plus one in an affiliated company, plus one in another company if both of them are unlisted companies), whereas members of the Board (including the Président if he/she is not the *Président-Directeur Général*) may be members of up to five Boards of Directors.

French Act n°2015-990 dated August 6, 2015 (as known as the "Macron Act") limits the number of offices that a CEO, a managing director or a member of an executive committee (and as the case may be, the sole member of the executive committee for SAs with a share capital less than €150,000) of listed companies on EURONEXT Paris - which meet the employee threshold requirements (at least 5,000 permanent employees in France or 10,000 permanent employees in France and abroad) - to a maximum of three (3) offices (including the terms of office as a managing director, CEO, member of an executive committee or sole executive member of the executive committee), member of a board of director or a supervisory board) in other listed companies. This new limitation shall take effect on August 6, 2016.

Executive Committees and Supervisory Boards

An Executive Committee may have a maximum of five members in unlisted companies, seven in listed companies. If the company's capital is less than €150,000, it may have one Managing Director instead of an Executive Committee. The Executive Committee is appointed by the Supervisory Board and its members may be removed from office by either the Shareholders or the Supervisory Board (if so provided for in the bylaws). The Supervisory Board is composed of three to eighteen members, all of whom may be shareholders (if so provided for in the bylaws). The members of the Executive Committee need not be shareholders. The members of the Executive Committee may not be members of the Supervisory Board of the same SA, nor may they be on more than five Executive Committees or Supervisory Boards of SAs incorporated in metropolitan France. In general, the total number of corporate offices that may be held by one person is limited to five, regardless of the type of office (member of a Board of Directors, Executive Committee or Supervisory Board).

Common provisions

There are strict limitations on any compensation that either Board of Directors or Supervisory Board members may receive. Where there is a works council, two of its members are entitled to attend all Board of Directors', Supervisory Board's or shareholders' meetings in an advisory capacity.

A *Président-Directeur Général*, or a *Directeur Général* where the Board of Directors has chosen a two-person management, and the members of the Executive Committee may, under certain conditions, enter into employment contracts and thus be treated as employees for tax and social security purposes. Depending on the terms and conditions under which their employment contracts are performed, the *Président-Directeur Général* or *Directeur Général* and the members of the Executive Committee

sometimes may not be entitled to State unemployment coverage. A *Président-Directeur Général*, or a *Président* and a *Directeur Général*, may be removed from office for any reason, at any time and are not entitled to any forms of compensation when dismissed from their positions unless the conditions of the dismissal are proven to be unfair. The Board of Directors or the Executive Committee handles the SA's day-to-day management.

The shareholders are called to Ordinary and Extraordinary General Meetings to make major decisions. For Ordinary General Meetings, a quorum of shareholders representing (either by attendance or proxy) at least 20% of the total number of shares is required after the first calling; no quorum is required for meetings held after the second calling. In either case, a majority of more than 50% of the voting rights is required in order for decisions to be validly made.

For Extraordinary General Meetings, a quorum of shareholders representing (either by attendance or proxy) at least 25% of the total number of shares is required after the first calling and 20% after the second calling. In either case, a majority of more than two-thirds of the voting rights is required in order for decisions to be validly made.

2. SAS AND SASU

The management structure of an SAS may be determined freely in its bylaws. The only obligation is that the company must be represented by a President vis-a-vis third parties. The President may be an individual or a legal entity that has the broadest powers to act on the company's behalf.

Other management groups or positions can be determined by the shareholders in the bylaws. In this regard, members of a statutory body, whatever their title, who are empowered in the bylaws (individually or collectively) to direct, manage or act on the company's behalf on a regular basis, must be reported to the Commercial Registry.

Likewise, many of the management procedures can be determined by the shareholders in the bylaws. However, decisions involving share capital increases, decreases or depreciations, mergers, split-ups, company liquidation, statutory auditor appointments, annual financial statement approvals, profit and loss allocations and company transformations must all be made by the shareholders collectively in accordance with the conditions set forth in the bylaws. The SASU has only one shareholder and its annual financial statements are drawn up by the President and approved by the sole shareholder (who can also be the President).

An SAS can never be listed on a stock market and cannot make any public offerings: nevertheless, it can offer its shares, without the issuance of a prospectus, to (i) persons providing a portfolio management investment service for third parties, (ii) qualified investors (banks, insurance companies, etc.) or (iii) a restricted circle of investors (less than 150 investors), provided that such investors are acting for their own account. An SAS can use crowdfunding.

3. SARL AND EURL

SARLs and EURLs are managed by one or several Gérants (Managers), who do not have to be company shareholders. They are appointed by the shareholders and their compensation, if any, is decided on at General Shareholders' Meetings. *Gérants* are in charge of the company's day-to-day management and they are normally empowered to carry out any activities relating to the

management of the company. The bylaws may, however, limit their authority. In such cases, the limitations are not legally enforceable with respect to third parties unless those parties are aware of such limitations. If there are several *Gérants*, each of them has full power to act jointly or separately on the company's behalf unless otherwise provided in the bylaws. *Gérants* can be removed for any reason on reasonable grounds.

Gérants are not regarded as company employees and are not entitled to the protection that the law provides to employees with respect to dismissals. For tax and social security purposes, however, they are regarded as employees if they do not hold more than 50% of the company's capital, either directly with their spouses and children or through companies that are controlled by them. *Gérants* may enter into employment contracts with the company if, in addition to their positions as *Gérants*, they perform duties other than those connected with company management.

Within SARLs, the most important decisions are made by the shareholders at General Meetings. For instance, during Ordinary General Meetings shareholders decide on distributions of dividends.

For Ordinary General Meetings, a majority of over 50% of all the shares composing the share capital is required on first call and a majority of over 50% of only the present or represented voting rights is required on second call. The shareholders may decide that the bylaws shall provide that all decisions held at Ordinary General Meetings are taken at more than 50% of the present or represented voting rights.

During Extraordinary General Meetings, shareholders decide on any changes in the bylaws (corporate name, form of company, increases in capital, mergers, etc.).

To be validly conducted, they require a quorum of shareholders representing (either by attendance or proxy) at least 25% of the total number of shares after the first calling of the meeting, and 20% after the second calling. For decision-making purposes, they require a majority of two-thirds of the voting rights.

4. SCA

SCAs are managed by one or several *Gérants* (Managers), who may be individuals or legal entities and who may or may not also be commandités. Commanditaires cannot as such be Gérants because they are excluded from participating in the internal management of the company. The first Gérants are appointed in the bylaws, and any subsequent appointments are made by the Ordinary General Meeting with the unanimous consent of the commandités. The *Gérants* are in charge of the company's day-to-day management and are typically empowered to take any action relating to the management of the company. The bylaws may, however, limit their authority. In such cases, the limitations are not legally enforceable with respect to third parties unless those parties are aware of such limitations. The bylaws may lay down the conditions under which the *Gérants* can be removed.

Gérants are not regarded as company employees, and the tax treatment applicable to their compensation is similar to that applicable to SARL *Gérants* who are also majority shareholders.

Due to the existence of two categories of shareholders, certain decisions must be taken by both the General Meeting of Commanditaires and by the Meeting of Commandités. The rules governing Commanditaires' Meetings are similar to those set for Ordinary and Extraordinary General Meetings of SAs, whereas the rules applicable to Commandités' Meetings are not set by law, though they tend to resemble those used for SNC Partners' Meetings (see section III below).

E. Annual financial statements

A company's fiscal year is generally 12 months. This period may, however, be exceptionally either extended or shortened, especially for the first fiscal year and during the existence of the company, when the closing date of the annual accounts is amended.

The closing date is determined in the bylaws. Any change in the year-end requires a shareholders' decision made by a valid two-thirds majority for an SA or an SARL.

Every company is required to prepare an annual balance sheet and income statement, which must provide a true and fair view of its situation. The Annual General Meeting convened to approve the financial statements must be held within six months after the fiscal year-end. A copy of the approved financial statements must be filed with the Commercial Court within one month after their approval.

Commercial companies, other than companies whose securities are admitted on a regulated market or on Alternext, are no longer required to file their management report with the clerk of the Commercial Court.

The annual management report must describe the company's situation during the previous financial year, its future prospects, any important events that may have occurred between the end date of the financial year and the date on which the report was prepared, and the company's research and development activities. In 2010, France passed a law requiring companies to also provide information on the impact their activity may have on the environment, employees and any other party or entity. This obligation is henceforth applicable to listed and large companies. This information should be controlled by an independent third-party organism who delivers a certificate of compliance.

If, at the end of a financial year, one of two thresholds is reached, either the number of the company's employees exceeds 300 or its annual revenue before taxes exceeds €18,000,000, then the company must also prepare certain management planning documents, including: a statement of current assets (excluding operating assets) and current liabilities, a projected income statement, a cash flow statement and a financing plan.

EURLs and SASUs whose sole owner is an individual who personally assumes the management function may, subject to certain financial conditions (balance sheet total less than €1,000,000, net revenue less than €2,000,000 and less than 20 employees), be exempt from the requirement to prepare a management report.

The company's legal representative is responsible for (i) the content and preparation of such financial statements and (ii) ensuring their compliance with local regulations.

F. Accounting records and audit requirements

1. ACCOUNTING RECORDS

Every company is required by law to keep certain accounting books:

- a General Journal (*Journal Général or Livre-Journal)*, with pre-numbered pages initialed by a Commercial Court judge, used to record all the transactions carried out by the company on

a daily basis, or to recapitulate such transactions on a monthly basis provided that there are other documents to support the monthly figures,

- a Balance Sheet Book (*Livre d'inventaire*), with pre-numbered pages initialed by a Commercial Court judge.

The General Journal and the Balance Sheet Book may be kept on computer printouts if they are identified, numbered, and dated as soon as they are printed, and every means of substantiating the accuracy of the accounts can be made available.

SAs, SASs, SARLs, as well as GEIEs and GIEs, which will be discussed later in this chapter, with either annual revenues of over €18,000,000 or more than 300 employees, are required to provide their Statutory Auditors *(Commissaires aux Comptes)* and works councils with provisional accounts (financial forecasts, income statements, balance sheets).

Companies must retain all such books and supporting documents (invoices, contracts, etc.) for at least 10 years. Transactions may be recorded in foreign languages but the company may be required to provide a certified translation.

In the event of a tax audit it is compulsory for all companies that keep their accounting in computerized systems to submit their accounting records in electronic format, (i.e., the general ledger and the sub-ledger).

2. AUDIT REQUIREMENTS

SAs and SCAs must have a French Commissaire aux Comptes (Statutory Auditor).

SARLs are subject to this obligation when they meet two of the following three conditions: at least 50 employees, €1,550,000 or more in assets and €3,100,000 or more in annual revenue.

SASs must also have a Commissaire aux Comptes when they meet two of the following three conditions: at least 20 employees, €1,000,000 or more in assets and €2,000,000 or more in annual revenue. However, note that for SASs that are controlled by another company or which control another company (SASs within a group of companies), they are required to appoint a Commissaire aux Comptes even if they do not meet two of the three aforementioned conditions.

A Commissaire aux Comptes is appointed at a General Shareholders' Meeting for a fixed and irrevocable period of six fiscal years. At the end of this period, the *Commissaire aux Comptes* may be reappointed. Listed companies with consolidated accounts are required to appoint at least two Commissaires aux Comptes.

Their duties are to verify the accounting books and, after exercising due diligence, to issue their opinions on whether the financial statements provide a true and fair view of the company's financial position.

They should also provide their opinions on the various statements contained in the report that the Board of Directors prepares every year-end on the operations of the previous fiscal year and the prospects for the new fiscal year.

If any transactions have been entered into between the company and its Directors, Managers or main shareholders (holding more than 10% of the voting rights), the *Commissaires aux Comptes* should be

notified thereof by the Board or the Gérant. The *Commissaire aux Comptes* will then issue a special report aimed at ensuring that the shareholders' respective rights are upheld. The *Commissaire aux Comptes* must also issue a special report if the company is in financial difficulty and advise the Board of Directors and the works council of the situation. The *Commissaire aux Comptes* may then call a General Shareholders' Meeting. Lastly, the *Commissaire aux Comptes* may have to draw up a report in cases of capital increases or decreases, waivers of preferential rights upon new share issuances, and the creation of certain types of new shares.

In certain cases (e.g., mergers, spin-offs, in-kind capital contributions or the company's acquisition of assets from a shareholder), a Contribution Appraiser *(Commissaire aux Apports)* must be appointed either unanimously by the shareholders or by the Commercial Court in order to prepare reports on such transactions. Such reports are made available to the shareholders before the General Meeting.

Statutory Auditors, Contribution Appraisers and Merger Appraisers *(Commissaires à la Fusion)* must be members of the local Statutory Auditors Review Board *(Compagnie des Commissaires aux Comptes)*, which is the governing professional body. They should be qualified registered public accountants *(Experts-Comptables)* or have equivalent professional qualifications and work under the supervision of the French Ministry of Justice. They are obliged to report any violations they discover in the course of their duties to the Public Prosecutor, failing which they may be held professionally liable.

G. Capital impairment

French law provides that when, due to losses incurred, the net equity of an SA, an SCA, an SAS, an SASU, an SARL or an EURL falls under 50% of its share capital, an Extraordinary General Shareholders' Meeting should be called within four months following the date of approval of the corresponding financial statements. The shareholders will then decide either to close the company down or to carry on the business, and their decision will be published in a legal gazette. In the latter case, the company is required to remedy its capital impairment by the end of the second fiscal year following the year in which the General Meeting that approved the corresponding financial statements was held. The law provides for penalties against Directors and *Gérants* who fail to call such General Meetings. Furthermore, in the event that such a situation is not resolved, any third party is entitled to request the winding-up of the company by a judge, in which case the Directors and *Gérants* could be held liable.

H. Public offerings

Only SAs, SCAs and SEs may make public offerings. A company is deemed to make public offerings when it offers its securities to the public by (i) a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities or by (ii) the placing of its securities through financial intermediaries.

SASs can make offers of securities (i) reserved for qualified investors, (ii) reserved for restricted circles of investors, or (iii) under conditions in which the offer does not qualify as a "public offering".

Any operation that results in a public offering of a company's shares or in the listing of a company's shares on a regulated market (e.g. Euronext Paris) requires the issuance of a prospectus whose content must be approved by the *Autorité des Marchés Financiers* (AMF), which is the French equivalent of the Securities and Exchange Commission (SEC) in the United States. Any documents subsequently issued by the company in connection with a similar operation must refer to that prospectus.

Note that the listing of a company's shares on an organized market such as Alternext Paris requires the issuance of a Prospectus approved by the AMF if such listing is carried out through a public offering. If the listing is carried out through a private placement (reserved to qualified investors), it only requires the issuance of an offering circular which is not submitted to the approval of the AMF.

The AMF's duties include verifying the information provided by companies, detecting the use of any insider trading information and controlling the fairness of stock exchange transactions, especially with respect to any operations that may involve the controlling shareholders. Note that a shareholder controlling more than 30% of a listed company must file a public tender offer for all the outstanding shares in the company. The AMF may issue rules and conduct inquiries, and any suspicious behavior or fraud may, after an investigation by the AMF inspectors, either be fined by the AMF's disciplinary committee *(commission des sanctions)* or, at the request of the AMF's board *(collège)*, be brought before the public prosecutor.

The AMF may provide information to the public and decide that the selling of a given company's shares on the market will be temporarily suspended or that a company is entitled to become listed.

III. *SOCIÉTÉS DE PERSONNES* AND OTHER STRUCTURES

A. *Société en Nom Collectif (SNC)*

An SNC is a commercial company with unlimited liability. While very similar to a partnership, it differs in that it is a legal entity where all shareholders are commerçant (traders/merchants). It must have at least two "partners," who may be French or foreign individuals (in such a case, if the individual is a non EU or EEA individual and shall reside in France, he/she must have obtained a resident permit) or legal entities. One of the partners' names may be used as the name of the SNC, but there is no obligation to this effect.

The SNC must have capital, although there is no legal minimum. Its capital does not need to be paid in full.

The interests in the SNC's capital are not represented by negotiable instruments and, unless otherwise provided for in the bylaws, any transfer of interest in the capital is subject to the partners' unanimous consent. In any case, any transfers to third parties must be approved by the other partners.

The partners have joint, several and unlimited liability for an SNC's debts. There is no legal way of limiting such liability vis-a-vis third parties.

If not otherwise provided for in the SNC's bylaws, all its members are equally responsible for its management, including its day-to-day management. An SNC must have a *gérant* (manager), which may be an individual (please see above for the comment on non EU or EEA individuals residing in

France which also applies to the *Gérant*) or a legal entity and need not be either a French resident or a shareholder. The Gérant acts as the partnership's representative vis-a-vis third parties. If the SNC's *Gérant* is a company, then that company's President will act as Manager. No limits on the powers of an SNC's *Gérant* are legally enforceable with respect to third parties unless those parties are aware of such limitations.

Managers appointed by the SNC's partners may delegate part of their authority to one of the SNC's employees. It should be noted, however, that SNC's *Gérant* cannot delegate all their powers and that, in practice, the delegee may only be empowered to handle routine tasks, e.g., signing social security forms or tax returns, handling bank account transactions up to a certain amount.

An SNC's Gérant may be dismissed by the partners for any reason whatsoever, at any time according to specific procedures depending on whether the Gérant is or not a shareholder and whether he/she was appointed in the bylaws. In any case, if the dismissal is decided for unfair grounds, the *Gérant* may request damages.

The manner in which an SNC's profits and losses are shared is determined in its bylaws. Partners may be allocated a portion of the SNC's results that does not necessarily correspond to their proportional stake in the capital. The sharing rules applicable to profits may be different from those applicable to losses.

B. *Société en Commandite Simple (SCS)*

Like SCAs, SCSs have two types of members: *Commandités*, i.e., managing partners, and *Commanditaires*, limited partners. *Commandités* manage the company and do not benefit from any limitation of liability. The *Commanditaires* contribute funds and are not entitled to participate in the company's management; therefore their liability is limited to their capital contributions. If, however, they do take an active part in the management of the company, then they lose the benefit of the limitation of liability. Shares may be assigned only with the consent of all the partners. However, the articles of associations may specify: (i) that the shares of limited partners may be freely assigned between partners, (ii) that the shares of limited partners may be freely assigned to third parties outside the partnership with the consent of all the active partners and the majority by number and by capital of the limited partners, or (iii) that an active partner may assign some of their shares to a limited partner or to a third party outside the partnership subject to the conditions specified in (ii) above.

Such companies are managed by Managers. Unless otherwise provided in the bylaws, *Commandités* are considered as Managers. Of course, a *Commanditaire* cannot become a Manager without losing his/her *Commanditaire* status.

SCSs and SCAs are not very common at the present time.

C. *Groupement d'Intérêt Économique (GIE)*

GIEs (i.e., economic interest groupings) are distinct legal entities created primarily to serve or develop the activities of their members, and often perform an activity ancillary to those of their members. The purpose of a GIE is not to make profits per se, though it may realize profits in the normal course of its business. To be legally justified, a GIE simply needs to be engaged in an economic activity related

to its members' activities. It is not subject to any capital requirements. Its members are jointly and severally liable for the debts it may incur in the course of its activities.

A GIE may issue bonds if all its members are companies authorized to issue bonds. In such a case, the GIE's accounts need to be controlled by one or more Statutory Auditors.

The main advantage of this type of structure is its flexibility. It does, however, require the participation of several members wishing to carry on a common activity.

D. *Groupement Européen d'Intérêt Économique (GEIE)*

GEIEs (or "EEIGs", i.e. European Economic Interest Groupings) are subject to the same legal rules in all the EU Member States. The rules governing GEIEs are based on those governing the French GIE and are thus substantially the same as those described above. All GEIE members must be EU Member State residents.

E. *Société Civile (SC)*

SCs, i.e., Civil Companies, are subject to the rules of the Civil Code and not to those of the Commercial Code. They must, however, be registered with the Companies and Commercial Registry. SCs are managed by *Gérants* (managers), who must be approved by the SC's members. The members are jointly liable for their company's debts, but only in proportion to their respective equity interests. SCs are frequently used in the real estate business or for professional service providers.

F. *Société en Participation (SEP)*

An SEP is a sort of silent partnership. It is not a legal entity and therefore is not subject to any registration formalities. It may, depending on its activity, be deemed to be of either a commercial or civil nature. Its existence should, in principle, remain unknown to third parties.

Under such circumstances, only the active partner commits itself vis-a-vis any third parties.

It is generally felt that third parties can take no action against silent partners if the existence of the SEP is not disclosed.

The main advantage of this kind of arrangement is its flexibility.

G. *Société de Libre Partenariat (SLP)*

This legal entity was created by the French Act n°2015-990 dated August 6, 2015 (also known as the "Macron Act"). They are generally similar to English limited partnerships and to the Luxembourg special limited partnerships (SCSp) and are supposed to be more attractive than the existing mutual funds (especially in tax matters).

In France, SLPs increase the legal arsenal of investment vehicles dedicated to the alternative investment industry. SLPs are classified as alternative investment funds (AIFs) although they are

governed by specific rules applicable to SCSs, and in particular, regarding the types of members (managing partners and limited partners) and specific provisions applicable to AIFs. SLPs must be registered with the Companies and Commercial Registry and have legal personality.

The main advantage of an SLP is to offer legal security to investors while having enough flexibility to structure its businesses.

SLPs allow investors to be informed of several steps in the fund's life due to the legal publication of documents (i.e. it is notably required (i) to provide an annual report and a half-year report, (ii) to establish a prospectus including the by laws of the related SLP and, more generally, (iii) to communicate to the shareholders, upon their request, the composition of the assets within 8 weeks following the end of each semester).

H. Branch of a foreign company

1. OPENING A BRANCH

The branch must be registered with the local Companies and Commercial Registry. The registration application must be submitted to the Commercial Court within 15 days after the opening of the establishment, i.e. in practice, no later than the beginning of the branch's activity.

Branch *Gérants* (Managers) who are not EU or EEA citizens and who live or plan to live in France must obtain a temporary residence card authorizing them to work in France.

The application must include:

- one copy of the decision to open the French branch,
- one certified copy of the foreign company's up-to-date bylaws and its French certified translation,
- one certificate of incorporation of the foreign company, dated within the three months preceding the submission of the application and its French certified translation,
- the manager's residence card,
- a declaration of non-conviction signed by the manager of the branch and a copy of his/her passport,
- a copy of either the lease or the property deed for the branch's registered office,
- a form obtained from the local CFE describing the activity to be carried on and indicating the date on which the business will start in France, the number of employees in France and whether the business has been newly created or purchased.

In practice, a single application package is prepared and filed with the local CFE.

2. ACCOUNTING REQUIREMENTS

There are no specific rules regarding the accounting obligations of foreign company branches. In practice, however, they must, like French companies, record all their transactions in order to be in a position to substantiate their results. Therefore, the general obligations imposed on all traders/ merchants carrying on an activity in France are applicable to branches.

IV. LIQUIDATION AND INSOLVENCY PROCEDURES

A. Insolvency procedure / distressed companies

Under French law, when a company encounters financial difficulties, it can choose from among the following 5 types of legal proceedings.

1. PREVENTIVE PROCEEDINGS

When a company encounters financial difficulties but is not in bankruptcy, it can choose to resolve them through one of two types of extrajudicial procedures: Ad Hoc Mediation or Conciliation.

In either case, the Commercial Court President appoints a mediator/conciliator at the request of the company's Directors in order to negotiate an amicable settlement with the company's creditors.

Ad hoc mediation (*Mandat ad hoc*)

The main advantage of this procedure is that it is very flexible, as the judge determines the mediator's task on a case-by-case basis in light of the specific circumstances of the distressed company. Due to its flexibility and confidential nature, this procedure is highly appreciated by companies.

Conciliation (*Procédure de conciliation*)

This procedure is available to any company that faces current or foreseeable legal, economic or financial difficulties or that has ceased payments for no longer than 45 days.

The resulting settlement agreement can either be acknowledged by the President of the Commercial Court or be approved by the Commercial Court and, thus, become legally enforceable with respect to third parties if the settlement puts an end to the financial difficulties.

If the agreement is approved by the Court and a bankruptcy procedure is subsequently initiated, the "cessation of payment" date will not be set prior to the date of the agreement.

In this case, credit extensions (or goods & service deliveries) granted to the distressed company (with a view to ensuring the viability of its activity) during this procedure benefit from a higher priority than debt claims that arose prior to the start of the procedure. Additionally, if a bankruptcy procedure is subsequently opened against the company, this type of creditor is not obliged to accept the payment periods on the receivables or the discounting of debts provided by the recovery or safeguard plan adopted by the Court.

2. BANKRUPTCY PROCEEDINGS

There are five types of bankruptcy proceedings: safeguard procedure, accelerated financial safeguard procedure, accelerated safeguard procedure, court-supervised reorganization and court-ordered liquidation.

Safeguard procedure (*procédure de sauvegarde*)

This procedure is intended to facilitate a debtor company's restructuring before its financial difficulties become irremediable.

It can be initiated only by companies that can prove that, although not insolvent, they are encountering certain financial difficulties that they are unable to resolve on their own. Such financial difficulties must be likely to make the company insolvent.

This procedure, which begins with an observation period, results in the creation of a business continuation plan that may involve the sale of part of the company in order to pay the company's debts.

The main effects of initiating this procedure are that (i) the company is prohibited from paying any debts that arose prior to the initiation of the procedure, (ii) the accrual of interest on loans with terms of less than one year is suspended and (iii) the debts necessary for the company's activity are given priority over debts incurred prior to the commencement of the procedure.

Accelerated financial safeguard procedure (*procédure financière accélérée*)

An accelerated financial safeguard procedure is applicable since March 1, 2011. It is a hybrid procedure combining conciliation and the safeguard procedure. This procedure is applicable to large businesses with (i) more than 150 employees or revenue of more than €20,000,000 and (ii) financial statements certified by a statutory auditor or established by a chartered accountant, that are required to have a creditors' committee and a financial creditors' committee (financial institutions and bondholders' meetings). This procedure is much quicker than the Safeguard procedure (a maximum two-month period). The aim of the procedure is to enable the debtor who, in the framework of a conciliation procedure, does not succeed in obtaining the unanimous consent of its financial creditors on its restructuring proposal, to impose the adoption of its continuation plan on said creditors.

The procedure must be requested by the debtor prior to any suspension of payments and allows the company to consult its financial creditors. The debtor must justify that its proposed continuation plan can receive the consent of the majority of its financial creditors. Said creditors only have a short period of time (between eight and thirty days) to make a decision on the continuation plan proposed by the debtor.

The debtor must file a list of the involved creditors, certified by the auditor (or by the chartered accountant), with the registry of the court within 10 days from the opening of the financial safeguard procedure.

This procedure will allow the company to impose the restructuring of its financial liabilities on the remaining recalcitrant creditors without the usual publicity and stay of proceedings.

Accelerated safeguard procedure (procédure de sauvegarde accélérée)

It may be noted that a new Act passed on March 12, 2014 and due to enter into force as from July 1, 2014 creates a new procedure, the accelerated safeguard procedure (procédure de sauvegarde accélérée). This new procedure is available to companies encountering difficulties and which previously opened a conciliation procedure. It can be used when a company has come up with a draft conciliation agreement which most of its creditors support but which a few refuse. The debtor can then apply to the Court in order to have the conciliator appointed as judicial administrator and to request that the creditor committees vote on the conciliation agreement. This new procedure is broader in its application as it concerns all the creditors, except employees (unlike the above-mentioned procedure: the accelerated financial safeguard which concerns only financial creditors and which becomes de facto a type of accelerated safeguard). The maximum duration of this procedure is three months. Thus, it requires

the drafting of a conciliation agreement that is likely to have the support of a sufficiently large number of creditors to render its adoption possible within a three-month period and the setting-up of creditor committees.

Court-supervised reorganization (*redressement judiciaire*)

If a company is insolvent and cannot meet its liabilities with its available assets, it may, at the request of its Directors, Managers, outside creditors or the District Attorney, be subject to a court-supervised reorganization.

A court-supervised reorganization begins with an observation period during which a legal administrator reports on whether the company can be maintained as an ongoing business. If the judge decides that the activity cannot be continued because the losses incurred are too substantial, the liquidation of the company can be decided upon immediately. The ongoing concern of the company can also be sold to a third party.

The initiation of this procedure can entail the removal of the company's management.

Judicial liquidation (*liquidation judiciaire*)

This procedure is used when there is no hope of keeping a company in business and the only alternative is thus to sell its assets and pay off as many of its outstanding debts as possible. Preferential creditors (employees, the Tax Authorities, the Social Security Authorities, etc.) will, in accordance with their status, be paid before any unsecured creditors.

The initiation of this procedure entails the removal of the company's management in favor of the liquidator, who becomes the company's legal representative.

As a rule, Directors and Managers are not responsible for the unpaid portion of the company's liabilities. However, they may become personally liable if they have acted negligently or imprudently.

If the Directors are found to be guilty of fraud, they will be subject to criminal bankruptcy charges.

B. Company liquidation

A French company may be closed down and liquidated either for legal reasons or after a resolution to such effect has been passed by the shareholders in an Extraordinary General Shareholders' Meeting. The closing of a company has the following consequences:

- The termination of the Directors' terms of office,
- The appointment of a liquidator who has the authority to manage the company to the extent required for the liquidation and who is entitled to sell the company's assets and pay off its creditors,
- The company has the right to take the actions necessary to close its business down. Once the dissolution has been decided upon, the company cannot be reactivated.

In order to finalize the liquidation process, the liquidator must call a General Shareholders' Meeting to approve the liquidation accounts. Any surplus on liquidation will be apportioned among the

shareholders. After this is done, withdrawal formalities are carried out with the Companies and Commercial Registry.

Liquidation may also be effected under the supervision of the Court, by a court-appointed liquidator. This happens only when the shareholders are unable to come to an agreement. The corresponding procedures are much more complicated than in cases of normal liquidation.

It should be noted that if, instead of a surplus, there is a loss upon liquidation and certain creditors cannot be paid, the liquidator will then normally file a declaration of insolvency with the Commercial Court.

A formal liquidation is unnecessary to dissolve an EURL or an SAS that has only one shareholder since all the company's assets and liabilities will be automatically transferred to the sole shareholder. However, such an automatic transfer only applies where the sole shareholder is itself a company. If, on the other hand, the sole shareholder is an individual, the company must first be dissolved and then liquidated.

Nevertheless, creditors may prevent any such dissolution by objecting to it within 30 days of the publication of the notice of the dissolution in a legal gazette.

CHAPTER 2

TAXATION OF BUSINESS PROFITS AND DIVIDENDS

TAXATION OF BUSINESS PROFITS

I. LIABILITY

A. Overview of the French income tax system

For income tax purposes, a distinction must be made among several categories of income:

- Industrial and commercial profits,
- Non-commercial profits,
- Rental income from real estate,
- Agricultural income, and
- Income from dividends, interest and royalties.

The implications of the above distinctions are extremely important. For instance, industrial and commercial profits are determined based on the accrual method, whereas noncommercial profits are computed on a cash basis if they are not made by a commercial company (an SA, SAS, SARL, SNC, SCS or SCA).

The tax treatment of industrial and commercial profits will apply to:

- Any individuals carrying on industrial or commercial activities,
- Companies engaged in a commercial activity, whether subject to corporate tax or not. It should be noted that, for such companies, the tax treatment of industrial and commercial income is extended to any type of income received by the companies. In other words, the tax treatment applicable to industrial and commercial income will apply to any agricultural, rental or noncommercial income earned by such companies,
- Foreign entities' French branches engaged in industrial or commercial activities.

B. The territoriality principle

Except in cases where Article 209 B of the French Tax Code (Code général des impôts, see section IV, Anti-Tax Haven Provisions) applies, industrial and commercial profits are subject to French income tax only if they are earned in France or if the right to tax such income has been attributed to France under a tax treaty. Activities that a French company carries on abroad through a foreign branch are, in principle, not subject to tax in France.

In addition, if a so-termed "complete business cycle" is performed outside France (if both the purchase and resale of the same goods take place abroad) the related profits and losses will not be taken into account in computing French tax liability (see section III of this chapter, Relief for losses). According to French case law, the foreign tax paid abroad should be deductible in France unless a tax treaty provides otherwise. No tax credit will be available in France for any tax losses realized by a foreign branch or permanent establishment.

Specific territoriality rules are applicable to income and capital gains deriving from real estate assets.

C. Legal entities subject to corporate tax

Income received by SAs, SASs, SASUs, SARLs and SCAs is, with limited exceptions, subject to corporate income tax. SNCs and SEPs are excluded from the scope of corporate income tax, but may become subject to said tax if they so elect. This election is irrevocable. SEPs are also subject to corporate income tax if their partners' names are not disclosed to the Tax Authorities (See Chapter 1 for details concerning the different types of corporate structures).

The tax treatment of an EURL depends on its shareholder's status: if the shareholder is an individual, the EURL is not subject to corporate income tax (except upon specific election). On the other hand, if the shareholder is a company, the EURL is automatically subject to corporate income tax.

An SC (*Société Civile*) is subject to corporate income tax if it carries on a commercial activity. Otherwise, the SC is treated as a transparent entity and is not subject to corporate income tax unless it so elects. Once made, this election is irrevocable.

In an SCS, only the portion of profits corresponding to the rights of the Commandités (Managing partners) is taxed in their hands, according to the applicable tax regime. However, the portion of profits attributable to the Commanditaires (Limited partners) is subject to corporate income tax at the company level.

Foreign companies' branches operating in France are, as a rule, subject to corporate income tax.

Entities that are not subject to corporate income tax basically receive partnership treatment (they are not considered as taxable entities). Each of the members will be subject to taxation according to the regime applicable to itself (personal or corporate income tax), on the portion of income derived from the entity. If, for instance, an SA is a partner in an SNC, any income that the SA derives from said partnership will be subject to corporate tax at the SA level.

II. COMPUTATION OF PROFITS AND GAINS

A. Taxable Income

1. GENERAL

In determining profits and losses, French companies must follow the rules set forth in Articles 38 and 39 of the French Tax Code. Any income received, whether realized or accrued, needs to be

taken into account when computing taxable profits. Special rules apply to both long-term service contracts and capital gains.

2. EXEMPT INCOME

Apart from the participation exemption on dividends and capital gains, there are no significant corporate tax exemptions. These partial exemptions will be explored later in this chapter.

3. DEDUCTIBLE EXPENSES

Four main categories of expenses shall be taken into account: general expenses (with specific limitations), depreciation, provisions and waiver of debt.

General expenses

General expenses include all expenses connected with the day-to-day operations of the company, including:

- Purchases of goods and raw materials,
- Salary expenses and related social security, insurance and pension contributions,
- Taxes (except some situations where the deduction is expressly prohibited under French law such as corporate income tax, 3% contribution on distributions, 3% tax on real estate, company car tax and penalties),
- Rental fees,
- Repairs (unless such repairs are capitalized according to sound accounting practices),
- Financial expenses: subject to numerous limitations with severe sanctions for non-compliance (Please see details below).
- Expenses resulting from transactions with affiliated parties (Please see details below).

Limitations to the deductibility of financial expenses

As a rule, financial expenses incurred in the normal course of business are deductible unless there is a specific provision to the contrary.

However, specific rules apply to limit the deductibility of financial expenses, to prevent certain avoidance schemes:

First anti-abuse rule

- The deductibility of interest paid relating to loans obtained from (French or foreign) related parties is allowed only if the lender is subject, during the same tax year, to an income tax on the interest received equal to at least 25% of the French standard corporate income tax which would have been owed under standard French tax rules. Proof of this "sufficient taxation" has to be provided upon request from the tax authorities.

Please note that this limitation applies before the application of any other interest limitation provision, such as the thin capitalization rules or the general 25% reduction (please see below).

Thin-capitalization rules

All sums made available to French companies by "associated companies" (as defined in the Article 39-12 of the French Tax Code) are within the scope of the thin capitalization rules. Loans guaranteed by an affiliated company (though a third-party company) are also included (subject to certain exceptions).

The thin-capitalization mechanism provides for two limits to the tax deductibility of intra-group interest:

- Firstly, interest accrued is tax-deductible at a rate limited to the annual average of the effective rates that credit institutions offer companies for variable interest rate loans with an initial term of at least two years (based on average quarterly rates published in the Journal Officiel). Nevertheless, a higher rate is accepted if it is proven that it corresponds to a rate the borrowing company could have obtained from unrelated financial institutions in similar circumstances,
- Secondly, if the following three conditions are simultaneously met in respect of a given fiscal year, a portion of the interest must be added back into the borrowing company's taxable income:
  - The entire amount of sums that "associated companies" have made available to the borrowing company exceeds 1.5 times the amount of the borrower's net equity (debt-to-equity ratio);
  - The amount of interest paid to "associated companies" exceeds 25% of the pre-tax profits, adjusted for intra-group loan interest and the depreciation considered to determine said pre-tax operating result;
  - The total amount of interest paid to "associated companies" exceeds the amount of interest that the borrowing company receives from "associated companies".

The amount of interest that exceeds the highest of these three limits will be added back to taxable income unless the excess portion is less than €150,000. It should be noted that this limitation will not apply if the borrower can prove that its rate of indebtedness is less than or equal to the overall rate of the group to which it belongs.

The excess portion may be carried forward to subsequent fiscal years subject to the condition that the deferred interest plus the intra-group interest borne during the considered period does not exceed 25% of the adjusted pre-tax profit. The deferred interest that has not been deducted is decreased 5% per annum from the start of the second year of the carry-forward period.

There are several exceptions to the application of the second limit that should be taken into consideration regarding the particular situation of each company.

In the scope of the tax-consolidation regime, each tax-consolidated company determines its deductible interest on the basis of its individual result.

Nonetheless, a portion of the interest "in excess" at the member companies' levels may be partially deductible from the group's result. The only portion of interest that remains non-deductible is the portion paid to affiliated but non-tax-consolidated companies that exceeds 25% of the tax- consolidated companies' total operating income before taxes, intra-group interest and depreciation allowances, and adjusted for intra-group dividends.

The net excess interest will remain available only for the tax group's head company to carry forward against the group's results of the subsequent fiscal years subject to the maximum noted above. The deduction allowed is decreased 5% per annum from the start of the second year of the carry-forward period.

General limitation of the tax deductibility of net financing expenses

The tax deductibility of net financing expenses may be limited to 75% of the total amount if the total exceeds €3 million. If the net expenses are at least €3 million, the limitation applies from the first euro.

Net expenses are equal to the difference between financial expenses (after application of the thin-cap rules and other anti-abuse measures) and financial income. "Financial expenses" refers to all the financial expenses paid on money left or made available for a company which is larger than pure interest expenses. Rents related to operating leases on movable assets with related parties and financial leases are taken into account (after deducting the annual depreciation of the assets concerned by the rents).

Those financial expenses already considered as non-deductible under thin capitalization rules are not taken into account for the application of this 75% limitation.

Within tax-consolidated groups, the limitation will be applied at the tax-consolidated group's level (and not at the level of each company in the group). As a result:

- From a practical standpoint, the limitation will only apply to financial expenses paid to/received from non-tax-consolidated entities (intra-group financial expenses will offset intra-group financial income),
- The €3 million threshold will apply once, at the tax-consolidated group's level,
- The potential add-back made at the tax-consolidated group's level may potentially be offset against the group's tax-loss carry-forwards (under ordinary conditions) but not against any tax-loss carry-forwards that are potentially available at the level of each company (pre-tax consolidation losses).

Deduction of interest expenses relating to the acquisition of qualifying participations

The deduction of interest expenses relating to the acquisition of qualifying participations (i.e., participations that qualify for the participation exemption regime for capital gains purposes) requires substantiating that those participations are effectively managed (i) by the company holding them or (ii) by a company established in France and belonging to the same economic group (subject to certain conditions). In addition, when the subsidiary can be considered as "controlled" by another company as defined by the French Commercial Code, such a control must be effectively exercised by the company holding the shares or by another company established in France and belonging to the same economic group (subject to certain conditions).

However, no such substantiation is required when: (i) the qualifying participation has not been debt-financed; or (ii) the aggregated book value of all qualifying participations is less than €1,000,000; or (iii) the company holding the participations has a debt/equity ratio that is lower than that of the group to which it belongs.

When one of the 3 requirements above cannot be met (and when the French taxpayer is not able to demonstrate that the participations are effectively managed from France, under the above conditions), a portion of all the taxpayer's interest expenses is considered to be non-tax-deductible and must be added back to its taxable income. This add-back is made over a period of eight years, beginning with the year following that of the acquisition of the qualifying participations. Finally, in instances of restructuring operations (such as mergers, de-mergers or contributions in kind), any previous existing add-back obligation is transferred to the merging company and/or to the company benefiting from the contribution.

Expenses resulting from transactions with affiliated non-resident parties

These expenses are deductible only when based on the "arm's-length principle." This applies, for example, to purchases from an affiliated company as well as fees or royalty payments. Management services are also subject to close scrutiny.

The French Tax Authorities often request information on the nature of the services rendered, especially for inter-company transactions. They generally disallow mere stewardship expenses and all other expenditures normally attributable to shareholders. As disputes between taxpayers and the Tax Authorities often arise in connection with management fees, appropriate substantiating documentation is required to ensure deductibility.

Transfer pricing documentation requirements have recently been reinforced and now impose significant sanctions in case of non-compliance (see section IV Anti-Tax Haven Provisions).

Depreciation

"Per component" depreciation method

French companies must comply with the "per component" depreciation method ("méthode de comptabilisation par composants"). Under this method, companies must account for and depreciate the principal components of tangible assets separately when such components (i) must be frequently renewed, (ii) have different uses or (iii) provide economic benefits that vary over time.

When such components are identified, each one must be accounted for individually under a specific depreciation schedule. In addition, the depreciation period of an asset is determined on the basis of its "expected useful life". For tax purposes, however, the asset's depreciation period remains based on the "standard useful life". The Tax Authorities have thus changed their previous position according to which the tax and accounting depreciation periods had to be identical. Consequently, where the accounting depreciation period exceeds the tax depreciation period, companies are allowed to record an exceptional depreciation of the difference between the tax and accounting depreciation. Conversely, where the accounting depreciation period is shorter than that used for tax purposes, companies must add the portion of the accounting depreciation that exceeds the allowable tax depreciation back into their taxable income.

Methods and rates

Based on the French tax rules, the taxpayer may use three main depreciation methods to determine its tax-deductible allowances:

- *Straight-line depreciation*

This is the standard method which must be applied to all assets that are ineligible for the other methods mentioned below. As a general principle, straight-line depreciation rates are computed by dividing the expenditure by the estimated useful life as determined in accordance with the accepted business practice.

The rates commonly accepted are 2% to 5% for commercial buildings, 5% for industrial buildings, 4% for office buildings and 10% to 15% for equipment. Higher depreciation rates may be used if it can be proven, based on relevant and detailed technical arguments, that certain components are subject to more rapid wear and obsolescence.

Should a company fail to record the annual straight-line depreciation in a given year, the amount not recorded in due time becomes definitively non-deductible.

- *Accelerated depreciation (declining-balance depreciation)*

This method, which is optional, consists of multiplying the straight-line rate by a multiplier based on the asset's expected useful life. The accelerated depreciation method applies only to assets that are

(i) new or renovated, (ii) have an estimated useful life of at least three years and (iii) are not expressly excluded from the scope of this method.

- *Exceptional depreciation*

Exceptional depreciation is optional for certain assets expressly designated in the French Tax Code (notably for energy-saving equipment, nonpolluting vehicles, investment in robotics or 3D printing made by certain SMEs, etc.).

Provisions

Provisions are tax-deductible only where certain conditions are met:

- the loss or charge to which the provision applies is specific in both its nature and its amount. Such loss or charge should itself be deductible and clearly identified. Statistical provisions can be used in practice provided that they are based on objective criteria and statistics of the company or the business allowing to assess the probable loss or charge with a sufficient degree of certainty,
- the corresponding loss or charge must be probable and not merely possible,
- the likelihood of the loss or charge should result from the factual situation that exists at the time the provision was recorded,
- the provision must be recorded in the company's books.

According to an important case law decision (French Supreme Administrative Court, December 23, 2013, n°346018, Min. vs. SAS Foncière du Rond-Point), when a provision fulfills all the above conditions, the company should deduct it for tax purposes.

In the case at hand, the Court stated that even though a provision was not actually deducted for corporate income tax purposes, its recapture is taxable when the provision originally met all the conditions of tax deductibility.

This solution leads to a double taxation of the provision (in some situations, arguments exist to avoid/challenge this double taxation).

As a consequence, it is particularly important to document not only the conditions justifying the tax deductibility of a provision but also the reasons of the non-deductibility of the provision reinstated into the tax result as the case may be.

Special mention should be made here of a certain type of tax provision that is intended to offer protection against what may be considered as inflationary profits on items held in stock. If the purchase price or cost of items produced by a company increases by more than 10% over two consecutive fiscal years, the portion of the price increase that exceeds the aforementioned limit may be provisioned *("provision pour hausse des prix")* and tax-deducted. This provision is capped at €15,000,000 per fiscal year. Any such provision should, however, be added back into taxable profits after six years.

Waivers of debt

Only waivers of debt qualified as "commercial" are in principle tax deductible.

Waivers of debt qualified as "financial" are not tax-deductible, except in cases of insolvency, bankruptcy or moratorium proceedings in which they are partially or totally deductible subject to certain conditions.

B. Participation Exemption (Parent Companies)

To compute taxable profit, specific tax rules may apply to dividends received by French companies that qualify as parent companies and receive dividends from French or foreign companies in which they hold substantial interests.

In order to qualify for this favorable treatment, the following conditions must be met:

- the parent company must be liable for corporate income tax,
- the parent company must hold a minimum of 5% of the distributing company's capital ,
- the shares must be registered in the parent company's name or deposited with a financial institution,
- the shares need to be held by the parent company for at least two years. However, if the two-year holding period is not met when the dividend is paid, the participation exemption still applies, but will become retroactively negated if the conditions are not met.

If the above conditions are met, 95% of the dividends received from the subsidiary are exempt from corporate income tax at the parent company level. The remaining 5% is deemed to correspond to the business expenses that the parent company incurred in holding its subsidiary's shares. Specific rules apply under the tax-consolidation regime.

Anti-optimization measures exist:

- For fiscal years begun on or after January 1, 2015, the portion of dividends deriving from distributable profits considered as corporate income tax (or equivalent) tax deductible for the

paying company cannot benefit from the participation-exemption regime. This anti-abuse measure aims to fight against hybrid financing schemes,

- The regime is not applicable to dividends received from entities established in a non-cooperative country / territory (see section IV below).

C. Capital Gains and Losses

Capital gains are taxable items for companies. A distinction must be made between short- and long-term capital gains. The rules described hereinafter apply to companies subject to corporate income tax.

1. SHORT-TERM CAPITAL GAINS/LOSSES REGIME

Short-term capital gains/losses are those made on:

- assets other than substantial shareholdings, and
- substantial shareholdings if held for less than two years.

Short-term capital gains are in principle subject to the standard corporate tax rate (i.e. 33⅓% or 28% depending on the situation of the company or 15% within the threshold of €38,120 for small companies, subject to conditions). This rate can be increased to an overall effective maximum tax rate of 34.43% (including the 3.3% surtax applicable when corporate income tax liability exceeds €763,000).

Any short-term capital gains and losses arising in the same year are netted. Any net loss is deductible from taxable income in the year during which it is realized.

Capital losses realized on the transfer of qualifying participations held for less than two years between related entities is subject to a deferral deduction mechanism - generally not taxpayer - favorable because it prevents the capital losses from being deducted from the tax result subject to the standard rate of corporate income tax. This rule prevents the recognition of short-term capital losses (fully deductible from income subject to the standard corporate income tax rate) upon the sale of equity securities held for less than two years to an affiliated company. The deferral deduction mechanism will cease if (i) the qualifying participations are sold to a non-related company, or (ii) the entities cease to be related. Should the end of the deferral deduction mechanism occur within the two-year period, capital losses will be fully deductible. After that period, capital losses will be subject to the regime applicable to long-term capital losses.

It is worth noting that special rules may also apply in the context of qualifying participations obtained consequently to a contribution to a distressed company *("entreprise en difficulté")*, limiting the deductibility of a portion of capital losses in certain circumstances.

2. LONG-TERM CAPITAL GAINS/LOSSES REGIME

Long-term capital gains/losses are those made on certain assets that have been held for more than two years.

Only a few categories of assets are eligible for the long-term regime: certain participating interests (see comments below concerning participating interest held in predominantly French real estate companies), investments in authorized venture capital mutual funds if held for at least five years, royalties from licensed patents (under specific conditions) and income deriving from the sale of licensed patents to unrelated parties.

Any long-term capital gains and losses arising in the same year are netted.

Long-term capital gains derived from disposals of substantial shareholdings are tax-exempt, except for a 12% share of expenses, leading to an effective tax rate of approximately 4.56% for large corporate taxpayers (see section VI below).

The 12% lump sum portion is computed based on the gross amount of capital gains.

Subject to certain conditions, income derived from the sale or licensing of qualifying Intellectual Property ("IP" hereinafter) rights can benefit from a reduced corporate income tax rate of 15%. License fees paid by the licensee generally can be deducted from the tax base subject to the standard rate of corporate income tax. Anti-abuse measures relating to this specific regime are applicable as follows:

- When the relationship between the licensor and the licensee is not "arm's length", the latter must, in order to benefit from a full tax deduction of the license fees paid, be able to prove/ document that: (i) the IP rights are effectively exploited, (ii) the license creates an added value with regards to the entire licensing period; and (iii) the license is "real" and cannot be regarded as an artificial scheme aimed at circumventing the application of French tax law. If the licensee is not able to demonstrate that these three conditions are met, only a fraction would be tax-deductible (equal to 45% (i.e. 15/ 33⅓) of the amount of license fees paid),
- Concerning sub-licenses, the reduced 15% tax rate applies to the difference between the license fees received from the sub-licensee and those paid to the licensor. Finally, if the sub-license is concluded after the main license, a recapture mechanism of the license fees previously deducted by the sub-licensor applies - unless the sub-licensor justifies that the three conditions listed above are met,
- Concerning the sale of qualifying Intellectual Property (IP) rights, the 15% rate is applicable only provided that no dependency relationship exists between the seller and the buyer.

3. CAPITAL GAINS ON FOREIGN COMPANIES' SALES OF SHARES IN FRENCH COMPANIES

Article 244 bis B of the French Tax Code provides that, when a foreign entity realizes a capital gain on the sale of its shareholding in a French company subject to corporate income tax, said capital gain is taxable in France if the foreign entity has held at least 25% of the financial rights in the French company at any time during the preceding five years. This tax is levied through a withholding tax at a rate of 45%, applicable only in the absence of a tax treaty providing otherwise. This 45% rate can be reduced or eliminated upon request depending on the applicable tax treaty between France and the country of residence of the seller.

Moreover, according to the French Tax Authorities' Guidelines, companies with places of management located inside the European Union or a State of the European Economic Area that has

concluded a tax treaty with France are able to apply for a reimbursement of the portion of the tax paid from 1st January 2006 that exceeds the tax that a French holding company would have paid in the same situation (effective tax rate around 4%).

As an anti-abuse measure, capital gains realized by entities established in non-cooperative countries/territories on the sale of shares in French companies are subject to a 75% withholding tax without a holding threshold condition (see section IV below).

4. CAPITAL GAINS/LOSSES ON SHARES IN PREDOMINANTLY REAL ESTATE COMPANIES *(sociétés à prépondérance immobilière)*

A company is deemed to be "predominantly real estate" where more than 50% of their assets are real estate assets.

Long-term capital gains derived from the disposal of substantial shareholdings in listed French predominantly real estate companies are taxed at 19%.

Capital gains on shares in non-listed real estate companies are taxed at the rate of 33⅓% (the 3.3% additional contribution described in section VI below may also apply).

D. Tax on Dividend Distributions

A 3% tax is assessed on dividend distributions (including constructive dividends) made to resident and non-resident shareholders.

This tax is not applicable to:

- distributions made to investment funds or micro, small and medium-sized companies as defined under EU law,
- distributions made between companies belonging to the same tax-consolidated group or, as from 1st January 2017, between companies meeting the conditions to be part of the same tax-consolidated group even if not formally constituted (foreign companies meeting the conditions to be part of a French tax-consolidated group also benefit from this measure provided that they are subject to equivalent corporate income tax in their country of residence and the 95% holding threshold is met)
- distributions made to central bodies of listed banks by their affiliates pursuant to the provisions of Article 206, 6, 2°of the French Tax Code,
- certain dividends paid in shares, to the extent that no share buy-back is decided in the context of a share capital reduction (not motivated by losses) within the following year,
- certain distributions made between listed real-estate investment companies which have opted for the specific regime provided by Article 208 of the French Tax Code ("SIIC").

In principle, the 3% tax on dividends is not deductible for corporate income tax purposes. Neither tax credits of any kind, nor carry-back receivables can be offset against this tax.

Please note that the question of the compatibility of this tax with the Parent Company Directive is pending before the CJEU.

E. Incentives and Special Deductions

1. EXEMPTIONS FROM CORPORATE INCOME TAX

Newly-created companies

Certain newly-created companies can benefit from a graduated exemption (which decreases from 100% to 25%) from corporate income tax on profits (retained under specific limits) made during the first five years, if the following conditions are met:

- the company's registered head office and overall business, assets and personnel must be located in specific areas,
- the company's activity must be industrial or commercial. Companies with a non-commercial activity may benefit from the regime provided that they are subject to corporate tax and have at least three employees at the end of their first year of activity and throughout the period for which such relief is granted,
- the activity and the company must be effectively new. Companies that result from a corporate restructuring or from the expansion of a company's activity are not considered as newly-created companies,
- no more than 50% of the new company's capital is directly or indirectly held by one or more other companies.

Companies established in urban Tax-Free Zones (UFZs)

Companies conducting certain business activities (with some exceptions) and created in a UTFZ ("*zone franche urbaine*") between January 1, 2006 and December 31, 2020, or established in certain UFZ areas before January 1, 2006 (further analysis of the location and date of creation should be conducted in order to determine eligibility), may benefit from a corporate income tax exemption during their first five years and from a declining exemption during the following three years (60%, 40% and 20%). The taxable profit eligible for the UFZ exemption is capped at €50,000 per twelve-month period. The excess part of taxable profit is subject to corporate income tax.

The UTFZ income tax exemption applies only to small and midsize companies (fewer than 50 employees, annual revenue < €10,000,000, balance sheet totals < €10,000,000).

Employment areas to be revitalized

Newly-created companies in one of the specified employment areas are eligible for various tax incentives, such as a five-year exemption from corporate income tax. This exemption should also apply for business tax (CET) and property tax.

Companies established in ZRDs *(Zones de Restructuration de la Défense)*

Companies that set up certain business activities (with some exceptions and subject to conditions) in a ZRD, a zone previously used for national defense activities, benefit from an exemption from corporate income tax on their income deriving from their activity realized in the ZRD.

- 100% over the first five years,

- 2/3 during the sixth year,
- 1/3 during the seventh year.

Innovative start-up companies

Small and midsize companies (fewer than 250 employees, annual revenue <€50,000,000 or balance sheet totals <€43,000,000) that are less than eight years old and have annual R&D expenses exceeding 15% of their overall tax-deductible expenses may benefit from a one-year corporate tax exemption and a 50% rebate for the year after.

At least 50% of such companies' share capital must be held by individuals (directly or through other small or midsize companies), certain venture capital companies and/or certain scientific foundations or associations.

This status should apply to innovative start-up companies created until 31 December 2019.

Rural regeneration areas

Companies created in one of the rural regeneration areas may be eligible for various tax incentives, such as a five-year exemption from corporate income tax followed by a decreasing allowance for 75% on the sixth year, 50% on the seventh year and 25% on the eighth year. This exemption should also apply for business tax (CET) and property tax.

"De minimis" regulations

Please note that the above-described exemptions of corporate income tax are capped according to the "de minimis" and "State aid" regulations (i.e. a three year global cap at €200,000 for all incentives within the scope of the de minimis provisions). Further analysis should be made in order to determine the situation of the taxpayer with regards to de minimis regulations.

2. RESEARCH AND DEVELOPMENT (R&D) TAX CREDIT

The R&D tax credit is computed on the portion of eligible expenses incurred during a given calendar year. The applicable rate is 30% for the portion of the R&D expenses below €100,000,000 and reduced to 5% for the portion exceeding €100,000,000.

In order to compute the R&D tax credit, qualifying R&D expenses include:

- payroll expenses (subject to certain conditions, payroll expenses relating to "young PhDs" count twice as much for the first 24 months),
- depreciation allowances for equipment directly involved in carrying out R&D programs,
- expenses relating to the registration, maintenance and defense of patents (excluding designs, models and trademarks). Insurance premiums paid to cover any litigation relating to patents and plant variety protection certificates are eligible for up to €60,000,
- depreciation allowance of patents (but not know-how or royalties) acquired from third parties (including "associated companies"),
- operating expenses calculated on a standardized basis and amounting to 50% of personnel expenses plus 75% of the depreciation allowances booked on fixed assets attributed to

research work (operating expenses related to payroll expenses of young PhDs are valued at 200% of the payroll expenses over the first 24-month period),

- expenses for research entrusted to public or private research institutions, universities and technical centers, companies held by public research entities or higher education institutions, and non-profit entities (under certain conditions), capped at €10,000,000 in the absence of a link between the company and the institution (increased to €12,000,000 for expenses corresponding to operations subcontracted with certain public bodies or universities) or at €2,000,000 if a link between the company and the institution exists, though the threshold can be higher in limited situations (agricultural technical institutes),
- expenses for keeping up with technological innovation, limited at €60,000 per annum.

Some amounts should be deducted from the R&D tax credit calculation basis:

- fees incurred for third-party advisory services rendered for purposes of securing the benefit of the R&D tax credit will have to be deducted from the R&D tax credit calculation basis, as follows:
  - either the entire fee amount must be deducted if it was set in proportion to the amount of the R&D tax credit for which the company qualifies (success fees);
  - or the higher of the following two amounts must be deducted:
    – €15,000 (excluding tax) or
    – 5% of the total R&D tax credit-eligible expenses minus public subsidies received.
  - any subsidies received are deducted from the R&D tax credit base of the year of their payment and, in the event of any subsequent reimbursements, are added back into the R&D tax credit base.

The R&D tax credit can be used to pay the corporate income tax due for the year during which the R&D expenses were incurred and, where applicable, for the following three years. Any amount of R&D tax credit remaining after said three-year period will be reimbursed by the French Treasury.

SMEs, as defined by EU law, can obtain immediate reimbursement of any R&D tax credit receivables calculated on expenses incurred.

Special rules apply to the R&D tax credit calculation basis in the context of a tax consolidated group.

According to the applicable statutes of limitations, the R&D tax credit may only be audited until the end of the third year following that of the filing of the R&D tax credit form, and the question of whether or not the R&D tax credit has been offset or refunded is no longer relevant.

Finally, it is worth noting that companies may apply for a ruling prior to engaging in research operations. A legal and technical pre-review can be done to ensure eligibility for the favorable R&D tax credit regime.

3. ENTERTAINMENT TAX CREDITS (CINEMA AND AUDIOVISUAL PRODUCTIONS AND VIDEO GAMES)

Film and audiovisual production companies subject to corporate income tax are eligible for a tax credit equal to 20% or 30% of the technical expenses incurred to develop film and audiovisual

productions (under certain conditions). The main condition for eligibility is approval by the president of the French National Film and Moving Image Center. The tax credit covers technical expenses incurred for film and audiovisual productions primarily located in France and realized in the French language or regional languages existing in France, though some exceptions apply to fiscal years begun on or after January 1, 2016, depending on the nature of the production.

In principle, the tax credit relating to film production costs is capped:

- at €30,000,000 for fiscal years begun on or after January 1, 2016 (previously limited to €4,000,000),
- the total amount of tax credit granted (plus other public subsidies) cannot exceed 50% of the total production budget,
- additional limitations per minute produced apply, depending on the nature of the production.

Video games companies are eligible for a tax credit equal to 20% of the technical expenses incurred to develop video games (under certain conditions). Approval by the president of the French National Film and Moving Image Center is also required. Technical expenses must be related to expenses incurred in France, in a European Union state, Norway, Island or Liechtenstein.

The tax credit is capped at €3,000,000 per financial year.

The aforementioned tax credits can be used to offset the company's corporate income tax liability for the year in which the expenses were incurred. Any credit exceeding said liability is refundable.

4. APPRENTICESHIP TAX CREDIT

Companies that have industrial, agricultural, commercial or non-commercial activities and employ trainees are entitled to a training tax credit (under certain conditions).

The amount of the tax credit is calculated by multiplying €1,600 (or €2,200 under certain conditions) by the annual average number of trainees.

The training tax credit is capped at the amount of trainee payroll expenses minus any related public grants (such as the apprenticeship premium).

This tax credit is available only to companies that employ apprentices who participate in specific training or degree programs, and is limited to the first year of the apprenticeship program.

Any credit exceeding said liability is refundable.

5. FAMILY TAX CREDIT

Companies that have industrial, agricultural, commercial or non-commercial activities and that are taxed on their actual income are entitled to a family tax credit equal to (i) 50% of the expenses paid to set up and operate on-site child care facilities, (ii) 25% of the expenses paid to emit employment/services vouchers, or (iii) 10% of the expenses paid to compensate employees during maternity, paternity or parental leaves, to train new employees under certain conditions, or to indemnify employees who incur exceptional expenses because of their jobs.

The credit is capped at €500,000 per year and per company and may be offset against the company's corporate income tax liability. Any credit exceeding said liability is refundable.

6. COMPETITIVENESS TAX CREDIT

The competitiveness tax credit is based on the gross amount of salaries (as defined for the social contributions calculations) below the threshold of two and a half times the minimum wage in France. Should that threshold be exceeded, the totality of the paid salary should be excluded from the competitiveness tax credit basis.

The tax credit represents 7% of the eligible expenses incurred as from 1st January 2017 (previously 6%).

This tax credit can neither be used for financing an increase in the profit distributed, nor for increasing the compensation of the company's executives.. The company should declare the eligible expenses through its nominal social declaration ("Déclaration sociale nominale" in French and on the 2069 RCI form so called "recapitulative declaration of tax credits and tax reductions").

The tax credit can be offset against the Corporate Income Tax liability for the years during which eligible wages were paid.

If the available tax credit exceeds the Corporate Income Tax liability, an immediate refund is available for small and medium-sized companies. For larger companies, the refund will be available only if the remaining tax credit has not been offset against the corporate income tax related to the following three years.

7. TEMPORARY INCENTIVE FOR CERTAIN INVESTMENTS

A temporary incentive has been enacted to encourage industrial investments. For certain types of industrial equipment and investments, purchased or produced between April 15, 2015 and April 14, 2017, an exceptional deduction from the taxable result equal to 40% of the "original value" is allowed (excluding related financial expenses). A special "extension" of the regime should apply to purchase orders made before 15 April 2017, subject to certain conditions including the payment of an instalment.

III. TAX LOSSES

NOLs can be carried forward or back, under certain conditions and with specific limitations in some situations.

(i) The NOLs carryforward is unlimited in time. However, the available amount of tax losses off-settable against future profits is restricted to 50% of the tax profit exceeding €1,000,000 per fiscal year. The non-off-settable tax losses portion can be carried forward for an unlimited period.

(ii) The NOLs carryback is limited to one year which means that tax losses incurred at the end of a given fiscal year can only be offset on the tax profits made the year before (subject to conditions to be checked in relation with the situation of the company, notably in case of restructuring operations). A second limitation is applicable regarding the amount of NOLs to be carried back which cannot exceed €1,000,000. The option for the NOLs carry-back gives rise to a credit equal to ⅓ of the NOLs

carried back. That credit may either be used to offset corporate income tax liability or be carried forward against future tax profits. After five years, any remaining unused credit may be reimbursed to the company.

(iii)Special situations:

- In the event of a change in activity, the company's tax losses are definitively forfeited. A change in activity is defined as a "real change of business" which includes notably the addition, discontinuance or transfer of an activity that entails respectively an increase or decrease of over 50% (compared to the previous fiscal year) in either (i) revenue or (ii) the average headcount and gross amount of fixed assets. In certain specific situations, however, a ruling can be requested,
- In the event of a merger, the absorbed company's losses cannot be transferred to the absorbing company unless a special ruling has been obtained from the Tax Authorities, subject to certain conditions. Among them, the condition of identity of activity should be met. In other words, business that gave rise to the losses should not have undergone any significant change over the course of the fiscal year that generated the losses, particularly in terms of clientele, employment, operating means, the nature and volume of the business. In line with the principle of identity of activity, business should continue during at least three fiscal years following the restructuring operation. In addition, losses stemming either from a securities management activity performed by a company whose assets are mainly composed of financial investments, or from the management of real estate assets, would not be transferrable.

IV. ANTI-TAX HAVEN PROVISIONS

French law contains various anti-tax haven provisions.

A. Non-cooperative countries or territories

A list of Non-Cooperative Countries or Territories is issued and updated each year by the French Tax Authorities.

Non-EU countries or territories that have been examined by the OECD with regards to tax information transparency and have signed neither a tax treaty with France containing an administrative assistance clause nor tax treaties containing an administrative assistance clause with at least twelve countries or territories, should in principle be considered as Non-Cooperative Countries or Territories

As of January 1, 2017 the listed countries are Botswana, Brunei, Guatemala, Marshall Islands, Nauru, Niue and Panama.

B. Payments made to companies in tax-haven countries (Article 238 A, French Tax Code) and in countries that have no tax treaty with France

For certain payments such as fees, royalties and commissions made to companies established in low- tax countries (i.e., where the corporate tax charge is more than 50% lower than the French

corporate tax), the burden of proof is placed on the taxpayer to provide evidence of both the services rendered and the reasonableness of the compensation. Otherwise, such payments are not tax-deductible.

The above-mentioned types of payments made to companies established in non-cooperative countries/territories are not tax-deductible unless (i) the taxpayer provides evidence substantiating the operation in question and (ii) the main purpose of the operation is not to locate the expense in a non-cooperative country/territory. A specific tax form detailing the payments made abroad must be filed each year. Specific rules are applicable to interest payments (see section II above).

In addition, similar payments made to foreign companies are subject to a 15%, 33⅓% or 75% withholding tax (depending on the situation) if they relate to services rendered or used in France. Nevertheless, these provisions mainly apply in the absence of a tax treaty with France as, in the case of a tax treaty, other provisions could apply.

C. Controlled Foreign Companies (CFCs) rules (Article 209 B, French Tax Code)

Profits made by Controlled Foreign Companies (CFCs) that are established in low-tax countries and whose parent company is subject to French corporate tax are subject to said tax at the French parent company's level (i) if the French company directly or indirectly holds more than 50% of the subsidiary's capital (5% if more than 50% of the CFC is held by either companies located in France or companies that control or are controlled by companies located in France) and (ii) if it cannot be proven that the subsidiary's main activity is truly industrial or commercial and that it is essentially carried on with non-affiliated companies in said low-tax country.

Two safe-harbor clauses are also provided:

- Article 209 B does not apply to companies established in the European Union unless the structure constitutes an artificial scheme aimed at avoiding the application of French legislation,
- Article 209 B does not apply if the French entity proves that the operations carried out by the CFC are not tax-driven in purpose and effect. This condition is satisfied notably when the CFC carries on an effective business or industrial activity although it can be tough in practice to convince the French Tax Administration of the reality of the business versus a tax-oriented location of activities. Therefore it is advisable to anticipate the potential requests of the French Tax Administration before any tax audit in that respect.

D. Transfer pricing regulations

See Chapter 3

V. TAX RETURNS

Corporate taxpayers must file a tax return every year, normally within three months after the end of their fiscal year. Calendar-year taxpayers must file their tax returns no later than the second working day after May 1 of each year.

VI. PAYMENT OF CORPORATE INCOME TAX

A. Corporate income tax rate

The normal rate of corporate income tax is 33⅓%.

However, normal corporate income tax should decrease progressively to 28%. For fiscal years open as from 1st January 2017, this decreased rate applies to small EU companies (i.e. fewer than 250 employees, annual revenue <€50,000,000 or balance sheet totals <€43,000,000) for a portion of the yearly profits made, up to €75,000. This threshold should be progressively extended in 2018 (€500,000), 2019 (€1,000,000) and 2020 (normal rate should become 28% for all companies).An additional 3.3% contribution is levied on the portion of corporate income tax that exceeds €763,000. Small companies are exempt from the 3.3% contribution.

Taking into account the existing 3.3% social contribution, the current effective corporate income tax rate for large corporate taxpayers can now be as high as 34.43% for companies subject to the normal rate of corporate income tax at 33⅓%.

B. Computation and settlement

The computation and settlement of corporate income tax liability is done directly by the companies that owe it. In principle, four advance payments should be made (by March 15th, June 15th, September 15th and December 15th for companies whose fiscal year coincides with the calendar year). The advance payments are assessed on the previous fiscal year's taxable profits and are equal, in principle, to 8⅓% of such profits (if subject to the normal corporate income tax rate at 33⅓%). The amount of the last advance payment has been increased for large companies, subject to conditions depending on their turnover.

For calendar-year taxpayers, the deadline for paying the balance of corporate income tax has been pushed back to May 15th of each fiscal year.

All companies subject to corporate income tax shall pay their corporate income tax online (regardless of their previous year's revenue).

C. Other corporate tax rates

Revenues derived from the licensing of patents, as well as any capital gains derived from the disposal of patents, are taxed at 15% provided that certain conditions are met (to which the additional 3.3% contribution must be added).

Small companies with gross revenues of under €7,630,000 benefit from a reduced corporate income tax rate of 15%. The reduced rate applies only to the portion of taxable income that does not exceed €38,120.

Non-profit entities are in principle taxed at the rate of 24% on real estate and securities income related to the non-profit sector (10% for certain securities income and 15% for dividends). Please note that further analysis should be made regarding the status of non-profit organization under French laws as exemptions may apply.

VII. TAX AUDITS

Any taxpayer may be subject to a tax audit. The French statute of limitations expires at the end of the third year following that for which the tax is due. With respect to companies, the Tax Authorities may audit years that are normally time-barred if the losses reported for those years have been used to offset the profits of a year that is not time-barred.

A. Procedure

The Tax Authorities send a notice to inform the taxpayer of the initiation of the audit. The tax audit is then carried out on the taxpayer's premises and the inspectors may ask for any data they need. For large companies, there is no limit to the length of time that the inspectors may remain on the premises. Once this stage is completed, the Tax Authorities will then notify the taxpayer of their intention, if any, to increase their tax assessment before proceeding any further. The notice must give detailed reasons for the proposed adjustments, so that the taxpayer can provide a detailed reply. If the taxpayer wishes to challenge the adjustments, this must be done within 30 days. An additional 30-day period may be granted at the taxpayer's request. The Tax Authorities are required to reply to the taxpayer's arguments. If they do not abandon their proposed adjustments, a tax collection notice will be issued.

B. Claims

The taxpayer has the right to appeal any tax reassessments issued by the Tax Authorities.

The appeal procedure involves various steps. First, the taxpayer must submit a claim to the relevant tax department. Said department must issue an opinion on the claim within six months. If the department does not do so, the claim is deemed to be denied.

In principle, a taxpayer that challenges the reassessment notice is still required to pay all the tax due, but may request that payment be postponed until an administrative court of first instance issues a ruling. Once requested, the postponement of payment is automatic, though it may be subject to a financial guarantee. The taxpayer may then refer the case to the local administrative court, which will typically issue its decision in the range of two to three years. Within two months of the notification of this decision, an appeal may be filed with the Court of Appeals and, further on, the Supreme Tax Court.

C. Penalties

If the taxpayer is found to have acted in good faith, a simple late-payment interest charge of 0.40% per month will be due on the additional tax. This interest is in principle computed from the date on which the tax should have been paid to the end of the month following the date on which the tax reassessment notice is received. If, on the other hand, the taxpayer is found to have acted in bad faith or to have been engaged in fraud or an abuse of law, additional penalties of 40% or 80%, respectively, may apply.

Article L. 62 of the French Tax Procedure Code provides that the monthly rate of late-payment interest can be reduced to 0.28% in cases where (i) before receiving any reassessment notices, the taxpayer asks to correct any discrepancies in its tax returns, (ii) such discrepancies do not result from bad faith, and (iii) the taxpayer files a supplementary tax return accompanied by any payment due within 30 days of the request to correct the discrepancies.

WITHHOLDING TAX

I. WITHHOLDING TAX ON DIVIDENDS

Dividends paid by a French company to its foreign parent company are in principle subject to a 30% withholding tax.

However, this rate can be reduced or eliminated when a tax treaty applies.

In addition, dividends paid to parent companies established in an EEA member state are exempt from this withholding tax under certain conditions.

In order to qualify for this favorable tax treatment, the following conditions must be met:

- the parent has one of the legal forms listed within the 2011/96/EU Directive dated November 30, 2011 or equivalent, is not deemed by a treaty to be domiciled outside the EEA member state, and is effectively subject to corporate income tax,
- the parent holds directly at least 10% of the shares of the subsidiary (full or bare ownership) continuously for at least two years. The exemption applies immediately without waiting for the end of the two-year holding period, but the EEA parent company must undertake to keep the shares for at least two years.

The exemption is applicable to distributions made to a permanent establishment located in an EEA member state (including France).

Dividends paid to an entity established in a non-cooperative country/territory are subject to a 75% withholding tax. An exception is made in case of application of the "safeguard clause" allowing such distributions to benefit from the parent-subsidiary regime, provided there is evidence that the operations or transactions conducted by the subsidiary neither have the purpose nor the effect to allow the localization of profits in these states or territories with the intent of committing tax fraud.

II. WITHHOLDING TAX ON ROYALTIES

Royalties paid by French companies to foreign companies are, in principle, subject to a withholding tax of 15% or 33⅓%, increased to 75% for royalties paid by French companies to entities established in a non-cooperative country/territory. This rule is not applicable if the concerned entity provides evidence that the transaction is not mainly driven by an intention to allocate royalties to an entity established in a non-cooperative country/territory.

The above rates can be reduced or eliminated when a tax treaty applies.

Outbound payments are exempt from the above mentioned withholding tax provided that the beneficial owner of the payment is an "associated company" (according to EU requirements) and is resident in an EU Member State.

Two companies are “associated companies” if (i) one of them has a direct minimum holding of 25% in the capital of the other or (ii) a third EU company has a direct minimum holding of 25% in the capital of both companies. The relevant companies must have a legal form listed in the EC Directive 2003/49/EC and be subject to corporate income tax. Furthermore, a minimum holding period of two years is required.

III. WITHHOLDING TAX ON INTEREST

In principle, interest payments may be made free of any withholding tax. Only the interest paid by French companies to entities established in a non-cooperative country/territory is subject to a withholding tax at a rate of 75%. However, the withholding tax is not applicable if the concerned entity provides evidence that the transaction is not mainly driven by an intention to allocate interest to an entity established in a non-cooperative country/territory.

IV. WITHHOLDING TAX ON FOREIGN COMPANIES’ BRANCHES IN FRANCE

Foreign companies’ French branches are subject to corporate income tax. In addition, for French tax purposes, such branches’ after-tax profits are deemed to be distributed to the foreign company’s shareholders. Consequently, a 30% withholding tax applies to their after-tax profits. The French branches of companies established in EU Member States are exempt from said withholding tax.

The above rate can be reduced or eliminated when a tax treaty applies or when evidence can be provided that the foreign company has distributed no dividends. It can also be eliminated on any distributions that the foreign company makes to French residents.

SPECIAL SYSTEMS

I. GROUPS OF COMPANIES: TAX-CONSOLIDATION REGIME

When a French parent company (or a foreign company's French branch if it is subject to corporate tax in France) holds, from the beginning of the fiscal year, at least 95% of the capital of other French companies, the subsidiaries may be treated, for tax purposes, as the parent company's branches (referred to as "vertical tax-consolidation regime"). A tax-consolidation may also be set up between sister companies directly or indirectly held by an entity located in an EEA member state provided that certain conditions are met (referred to as "horizontal tax-consolidation regime").

The profits or losses of all the members of the tax-consolidation group are then included in the parent company's tax results on which corporate income tax is assessed.

A. Conditions

To benefit from this favorable tax treatment, the parent company and its tax-consolidated subsidiaries must file an election for this regime, which will be binding for five fiscal years.

A horizontal tax-consolidation group may be set up between French subsidiaries 95% held by the same non-resident company located in an EEA member state, and subject to tax equivalent to French corporate income tax. In this specific case, one of the French eligible subsidiaries of the non-resident "parent" company should opt for the quality of "parent company of the French tax-consolidation group" with the express agreement of the non-resident parent company. In addition, the capital of the non-resident parent entity should not be, directly or indirectly, held by another French or EEA company subject to French corporate income tax or equivalent.

To qualify, all the tax-consolidation group's member companies must be subject to French corporate income tax at the full standard rate and have 12-month fiscal years that end on the same date.

For vertical tax-consolidation groups, any subsidiary member of the tax-consolidated group must be at least 95% held, directly or indirectly, by other French tax-consolidated companies; this requirement can even be met through a foreign subsidiary or permanent establishment. The foreign subsidiary or permanent establishment must be located in an EEA member state and must consent to the entry of its French subsidiary in the French tax-consolidated group. Even though the foreign intermediary entity is excluded from the tax-consolidated group, it must fulfill the same conditions as the tax- consolidated group's member companies (i.e. be held at least 95% by French tax-consolidated companies, be subject to French corporate tax or to an equivalent corporate income tax, etc.).

Tax-consolidated group's member companies may, once during the five-year group election, change their fiscal year-end date by reducing or extending the normal 12-month fiscal year period. This must be done in writing before the date on which the corporate tax return for the previous year is to be filed, which means within three months from the beginning of the fiscal year affected by the change.

The election for tax-consolidation is renewed automatically for subsequent five-year periods unless the head company expressly waives the option for the tax-consolidation regime.

Lastly, specific rules aimed at giving a maximum level of flexibility may apply when a tax group's head company is purchased by a French company and joins the purchaser's tax group or when the head of a tax group is absorbed by a French company.

B. Specific provisions

The financial cost that a group incurs to purchase shares in a company already controlled by related companies is not tax-deductible if the company whose shares are purchased becomes a member of the tax-consolidated group (the "Charasse" amendement rule). For purposes of this rule, the concept of "control" is defined by Article L. 233-3 of the French Commercial Code.

The non-deductible amount is the portion of the group's financial charges that is equal to the ratio of the purchase price of the shares to the total average of the group's debts (the acquiring company's cash increase in capital, carried out at the same time as the acquisition, is deductible from the purchase price under certain conditions).

These provisions do not apply, however, when "associated companies" purchase the shares from unrelated parties in order to immediately place them under a related French entity or when the share transfer is carried out between companies in a tax-consolidated group. The add-back of interest ceases when the purchased company leaves the group..

These specific provisions also apply when a tax-consolidated company purchases shares (i) in a French subsidiary from an intermediary foreign company or (ii) in the foreign intermediary company.

As a reminder, special rules apply at the level of the tax-consolidated group regarding the deductibility of financial expenses (see section II above).

C. Specific adjustments

For fiscal years opened on or after January 1, 2016, a reduced 1% service charge should be applicable in the event of a distribution received by a company, member of a French tax-consolidated group, from another company of the same tax-consolidated group, or from a company established in an EEA member state provided that this company, had it been French, would have met the conditions to be member of the tax-consolidated group.

Waivers of debt as well as direct and indirect subsidies are neutralized in a tax-consolidated group by (i) adding the waived sums or subsidies back into the results of the company granting the waiver or subsidy and (ii) deducting these sums from the results of the company benefiting from such advantages.

The parent company must attach a list of any waivers of debt and/or direct and indirect subsidies to the group's tax return.

If the tax-consolidated group's head company does not comply with this requirement, it is subject to a fine equal to 5% of the sums not reported (reduced to 1% when the sums granted are deductible from the taxable result of the granting company).

Specific adjustments are also applicable to the results of subsidiaries that are members of the tax- consolidated group through a foreign subsidiary or permanent establishment. The aim of these adjustments is to avoid double deductions or the double taxation of profits.

D. Cessation of a tax-consolidated group

If a tax-consolidated company ceases to be a member of the group, the consequences are as follows:

- The departing company's taxable result is not included in the group's taxable result for the fiscal year of its departure,
- Any subsidiaries that belong to the group via the intermediary of the departing company also leave the group,
- The tax losses realized by group members during their membership are no longer available at their level,
- Any previous capital gains or losses on intra-group sales of assets are deducted or added back to the group's tax result,
- Indirect subsidies resulting from transfers of fixed assets at prices lower than their real values are added back to the taxable result for the year of departure of the company benefiting from such transactions,
- The other subsidies and waivers of debt are added back into the taxable result for the year of the departure of the company receiving or paying them, but only where they have been deducted from the group's taxable result in one of the five fiscal years preceding the departure.

Some specific rules apply to horizontal tax-consolidation groups.

Specific rules may apply if an agreement has been drawn up between the parent company and its subsidiary.

II. TAX TREATMENT OF HEADQUARTERS

A. Corporate tax due from headquarters

1. SCOPE

General definition and activities involved

For French tax purposes, a group's headquarters is defined as a company with a registered office in France, or a French permanent establishment of a company with a registered office abroad that ensures executive management, management coordination and/or control functions for the sole benefit of the group to which it belongs.

From a legal standpoint, a headquarters may take the following forms:

- A French company,

- A foreign company's simple establishment with no legal personality,
- A department or division attached to a holding company or to a (commercial or industrial) line of business of a pre-existing company.

Geographical scope of action

When a headquarters acts for a limited geographical area, this area must nevertheless be extensive enough to allow the headquarters to fulfill its international purpose.

2. TAXATION

Such international headquarters may apply to the Direction des Grandes Entreprises (DGE) to have their French-source taxable income based on a percentage of their costs. In this respect, the French Tax Authorities provide, in particular, that expenditures corresponding to activities that are subcontracted to third parties are fully included in the tax base.

The aforementioned percentage of costs (generally between 8% and 10% with exceptional rates of 5% and 12% in certain special situations) is defined in an agreement negotiated with the Tax Authorities. Corporate tax is then assessed on this formal tax base at the standard rate. This agreement, however, is only applicable for a period of between three and five years, after which a new agreement must be negotiated with the Tax Authorities.

B. Corporate tax due from logistics centers

1. DEFINITION

For French tax purposes, a logistics center is (i) a company with a registered office in France or (ii) a French permanent establishment of a company with a registered office abroad that is part of an international group controlled from France or from abroad, which ensures, for the benefit of the group in question, the functions of storage, conditioning, labeling or distribution (but not final sales) of products, and any administrative activities connected with said functions, as detailed below.

2. ACTIVITIES

Most of a logistics center's activities are of a preparatory or ancillary nature and, as such, do not directly constitute productive functions.

Said activities include, for instance:

- Purchases of raw and other materials for the group companies;
- Storage, handling, packaging and packing of raw and other materials;
- Transportation and delivery of raw and other materials only to the group companies, etc.

3. GEOGRAPHICAL SCOPE OF ACTION

In principle, a logistics center's scope of action is not limited to a defined geographical area, even though, in practice, such centers generally act for limited geographical areas. A center's services must essentially be rendered to companies located outside France.

4. TAXATION

The calculation of a center's corporate income tax base is made in substantially the same manner as that of a headquarters.

C. Corporate tax due from research and development coordination centers

1. DEFINITION

For French tax purposes, a research and development coordination center is (i) a company with a registered office in France or (ii) a French permanent establishment of a company with a registered office abroad part of an international group controlled from France or from abroad, which ensures, for the benefit of the group in question, the functions of coordination of research.

2. ACTIVITIES

Eligible activities concern research coordination services rendered within a group, excluding any commercialization to third-parties.

These activities include, for instance:

- centralization and coordination of scientific research,
- planning and development of research programs (including products, processes as well as manufacturing methods),
- coordination, centralization and standardization of quality control processes (without operational intervention),
- creation and administrative management of research centers, follow-up and assessment of their activities.

Eligible activities do not include operational research or patent exploitation, for example. The regime is limited to coordination activities.

3. TAXATION

The calculation of a research and development coordination center's corporate income tax base is made in substantially the same manner as that of a headquarters.

III. TAX TREATMENT OF MERGERS, PARTIAL BUSINESS TRANSFERS, CONTRIBUTIONS OF BUSINESS, SPLIT-UPS AND SPIN-OFFS

A. Corporate income tax regime

In principle, such transactions are regarded as the termination of a business and give rise to heavy capital gains and registration tax liabilities (standard tax treatment).

Mergers, partial business transfers, contributions of business, spin-offs and split-ups can, however, be performed under a favorable tax-neutral regime and treated as purely interim transactions. Article 210

A of the French Tax Code provides for a deferral of taxation of capital gains arising during mergers and dissolution without liquidation transactions, under certain conditions. According to Article 210 B of the French Tax Code, this favorable regime is also applicable to partial business transfers and spin-offs when (i) the operation relates to a complete and autonomous activity and (ii) the contributing company commits to keep the shares it receives from the spin-off for at least three years and to compute any future capital gains on the disposal of said shares based on the original value of the assets contributed.

In order for a merger, partial business transfer, contribution of business, spin-off or split-up to be eligible for the favorable regime, both of the companies participating in the transaction must be subject to corporate income tax. When French companies make contributions to foreign companies, however, application of the favorable regime is subject to the French Finance Ministry's prior approval (Article 210 C of the French Tax Code). However, this provision may not be applicable to operations with EU companies according to a recent Court of Justice of the European Union decision.

In merger transactions, the absorbed company's losses cannot, in principle, be offset against the absorbing company's profits. Prior to the merger, however, a special ruling can be obtained from the Tax Authorities, allowing the absorbed company's tax-loss carryforwards to be transferred (with no ceiling) if the merger benefits from the favorable tax regime.

In the event of a merger, partial business transfer, contribution of business, spin-off or split-up involving companies placed under common control, the contributed assets must be recorded at their net book value.

Nevertheless:

- In transactions involving companies under common control, the contributions may be recorded at their fair market value if a net book valuation is currently not possible,
- Spin-offs involving companies under common control must be recorded at their fair market value when the recipient company is to be transferred to an unrelated party.

In transactions involving companies under separate control, the contributed assets must be booked at their fair market value. However, in reverse mergers involving companies under separate control, the contributions must be recorded at their net book value.

B. Registration tax

Under the provisions of Articles 816 and 817 of the French Tax Code, a merger (or partial business transfer, contribution of business, spin-off or split-up) of two companies gives rise to a registration tax, payable by the absorbing company, of €375 if the absorbed company's share capital is lower than €225,000, and of €500 if it is higher.

IV. TRANSFER OF A FRENCH COMPANY'S HEAD OFFICE TO ANOTHER EU MEMBER STATE

From a tax standpoint, the transfer of a French company's head office will have different consequences depending on the assets transferred outside of France to the other EU member state.

If no assets are transferred, no taxation will be triggered.

If any assets are transferred, latent and deferred capital gains on the transferred assets are taxable. In principle, the corresponding corporate income tax should be fully paid within two months following the transfer of assets. However it may, upon explicit request of the company, be paid in five annual installments of 20% each. Outstanding installments will become immediately payable if: (i) an installment is not paid when due (anniversary date of the transfer at the latest), (ii) the transferred assets are sold to another party (whether related or not), (iii) the transferred assets are transferred into a non-EU/eligible EEA member state, or (iv) if the company is wound-up.

The transfer of the totality of assets will trigger the termination of business, the company will no longer be subject to corporate income tax and immediate taxation of profits will be due within three months following the transfer. It is worth noting that the French Tax Authorities may consider that a partial transfer of assets triggers the same consequences if there is a change of activity.

CHAPTER 3

TRANSFER PRICING GUIDELINES

ARM'S LENGTH PRICING

French companies and French branches of overseas companies falling within the definitions of French transfer pricing legislation, Article 57 of the French General Tax Code, are required to adopt arm's- length prices in their transactions with related parties overseas. This part of the Tax Code has been in place since 1933.

I. TRANSFER PRICING DOCUMENTATION REQUIREMENTS

A French transfer pricing documentation requirement, codified as Article L13AA, was enacted into law on December 31, 2009, and modified on June 3, 2013. This documentation obligation applies to all corporate bodies present in France:

a) with at least €400 million in revenue, excluding tax, and/or total gross assets of at least €400 million; or

b) that own at financial year end, directly or indirectly, more than half of a corporate entity's capital or of a corporate entity's voting shares (i.e. a legal entity, organization, trust company or comparable institution established or formed in France or outside of France), meeting the condition defined in a) above; or

c) with more than half of its capital or voting shares belonging directly or indirectly, at financial year end, to a corporate body meeting the condition outlined in a) above; or

d) belonging to a group subject to the French National Tax Consolidation regime, where this group has at least one legal entity meeting one of the conditions above (i.e. a, b or c).

The requirement applies to financial years commencing on or after January 1, 2010.

The legislation draws on the recommendations of the European Union's Joint Transfer Pricing Forum.

The legal text lists the following elements that need to be included in a taxpayer's transfer pricing documentation:

- General business information

  This part needs to include information on the multinational group of which the French taxpayer is part. Article L13AA lists the following elements that are required to be included:

  - A general business overview, including any major changes that occurred during the financial year;
  - A general description of the legal and operational group structure, and the entities involved in the intra-group transactions with the French taxpayer need to be identified;

- A general description of the functions performed and risks assumed by group entities that transact with the audited company;
- A list of the main intangible assets (brands, patents, know-how, etc.) owned and/or used by the French entity; and
- A general description of the Group's transfer pricing policy.

- Specific information concerning the French taxpayer

  This part of the documentation needs to focus on the French taxpayer itself and needs to include:

  - A description of the activities undertaken by the French entity, including any changes that occurred during the year under audit;
  - A description of all intra-group transactions by type of transaction (products, services, royalties, etc.). In addition, the amount of each type of transaction needs to be mentioned;
  - A list of cost sharing agreements, Advanced Pricing Agreements and any Tax Rulings dealing with transfer pricing determinations;
  - A presentation of the method(s) considered with an analysis of the functions performed, the assets used and the risks assumed, as well as an explanation concerning the selection and the application of the method(s) retained; and
  - Where relevant, an analysis of comparable transactions and/or companies.

The transfer pricing documentation should be made available to the French Tax Authorities ("FTA") at the beginning of a tax audit. If the taxpayer is not able to provide transfer pricing documentation at that time, or can only provide partial information, the FTA may require in writing)that the taxpayer provide,or complete, its documentation within 30 days.

II. PENALTIES

If the taxpayer does not respond, or only partially responds, to the request for documentation, they may face a penalty of either 5% of the gross amount reassessed (i.e. the penalty would not be tax geared); 0.5% of the value of the transaction(s) subject to reassessment, or a minimum of €10,000 per audited financial year, whichever amount is highest. The precise penalty percentage applied is discretionary and is based on the gravity of the failure to comply with the documentation obligation.

III. ABRIDGED TRANSFER PRICING DOCUMENTATION FILING

Taxpayers falling within the scope of the transfer pricing documentation requirements are also obliged to make an annual filing six months after the filing of the tax return of the abridged transfer pricing documentation. The form 2257 that is filed electronically discloses certain information about the company, as well as the amounts of the related party transactions over €100,000 per type of transaction, and the methods applied in setting their transfer prices.

With effect for accounting periods closing on or after December 31, 2016, this abridged transfer pricing documentation filing obligation applies where the thresolds decribed above exceed €50 million.

Penalties can be charged for non-compliance with the obligation, or for errors on the form, but these are very small.

IV. COUNTRY BY COUNTRY REPORTING

The CbCR requirements of BEPS Action 13 were enacted in France for companies meeting the group revenue reporting threshold of €750 million for accounting periods beginning on or after January 1, 2016.

The penalties for not making the filing are a maximum of €100,000.

The filing (form 2258) follows that set out in BEPS Action 13. It has to be completed in English and filed with the French Tax Authority electronically within one year of the end of the accounting period to which it relates.

For French companies there is a requirement to disclose on the French tax return whether the French company is subject to the filing, and the country in the group making the CbCR.

CHAPTER 4

MISCELLANEOUS TAXES

MISCELLANEOUS TAXES ARE LEVIED BY THE STATE AND THE VARIOUS DISTRICTS

I. STATE TAXES

Such taxes are numerous and include:

A. Payroll tax

Payroll tax is due from companies or branches established in France that are not subject to French value-added tax (VAT) or that were not subject to VAT on at least 90% of their revenue for the previous year. This tax applies primarily to banks, insurance companies and foreign companies' French representative offices. The tax is assessed on both the salaries and benefits-in-kind granted to employees, adjusted according to specific rules. The rates are 4.25%, 8.5%, 13.6% and 20% depending on the salary level. The 13.6% rate applies to the portion of yearly individual salaries between €15,417 and €152,279 for salaries paid in 2017and the 20% rate applies to the portion that exceeds €152,279 for salaries paid in 2017.

Companies must generally pay the tax monthly, within the first 15 days of the month following payment of the salary.

B. Apprenticeship tax

Apprenticeship tax is due from all companies, partnerships and individuals whose activities fall within the scope of industrial or commercial activities. It may be paid (i) through the expenses incurred for initial and technical occupational training, (ii) to a collection agency or (iii) to the French Treasury. It is assessed on the same basis as payroll tax, at a rate of 0.68%.

C. Continuous vocational training tax

The rate of the continuous vocational training tax for employers with fewer than 11 employees amounts to 0.55% of total salaries paid, and 1% for employers with more than 11 employees. However, companies with at least 11 employees can conclude a three-year company-level agreement in which the company commits to allocate at least 0.2% of the gross wages to the financing of the "*compte personnel de formation*" or personal vocational training account, in which case the rate would be reduced to 0.8%.

Companies that reach the 11-employees threshold remain subject to the 0.55% tax rate for that year and the following two years except when the increase results from a merger with a company that was employing at least 11 employees during the past three years.

D. Compulsory investment in housing

Employers that have at least 20 employees must invest in certain approved housing programs. The amount invested should represent at least 0.45% of the salaries paid during the previous fiscal year, plus any applicable benefits-in-kind.

It has been confirmed by case law that salaries paid to expatriates fall within the scope of the compulsory housing investment as well as salaries paid to non-residents in France.

Employers can either (i) pay to a collection agency or (ii) make a direct investment. If an employer fails to fulfill this obligation, it must then pay the French Treasury a tax equal to 2% of the same salaries and benefits-in-kind.

Under certain conditions, a three-year exemption from the compulsory housing investment may apply when a company first reaches the 20-employee threshold. This three-year exemption is then followed by a transitional three-year period over which the company benefits from a 75% reduction of the normal tax in the first year, 50% in the second year, and 25% in the third year, after which the company will, in principle, become taxable at the full rate.

E. Tax on polluting activities

The *Taxe Générale sur les Activités Polluantes* (TGAP) is levied on polluting activities, including the distribution of fuels, the storage of household and similar waste, and the emission of polluting substances into the atmosphere.

The tax may be assessed on the quantity of polluting substances produced, received or used by the company depending on the respective polluting activities. The applicable rates also vary depending on polluting activities. Regarding TGAP on the distribution of fuels, the rate may be reduced to the extent that bio-fuel is blended into fossil fuels.

An annual TGAP return should be filed electronically before by no later than May 31 of the year following the year during which TGAP are considered as due. The annual TGAP payments generally consist of three installments on May, July and October and one final regularization at the time the TGAP return is filed (i.e. May 31 of the following year). Exceptions may apply e.g. TGAP on fuels should be declared and paid at the same time.

Entities not established in France must appoint a representative in France to fulfill their TGAP obligations.

It is worth noting that this is only a brief sample of general rules. As a consequence, further analysis should be made due to the complexity of French TGAP legislation.

II. DIRECT DISTRICT TAXES

Companies and individuals established in France may be liable for the following kinds of tax levied by local districts.

A. Tax on undeveloped property *(taxe foncière sur les propriétés non bâties)*

This tax is due from owners of undeveloped land. It is based on a "cadastral value" determined by the land registry office multiplied by a coefficient that is determined yearly by the local municipality. The tax is assessed on the net cadastral value, which is equal to 80% of the total cadastral value.

B. Tax on developed property *(taxe foncière sur les propriétés bâties)*

This tax is assessed in a manner similar to the tax on undeveloped land, i.e., on the net cadastral value, which for this purpose is one-half of the cadastral value stated in the local municipality's official records. This one-half base reduction is deemed to take into account the expenses of depreciation, insurance, maintenance, etc.

Some temporary or permanent exemptions may apply under certain conditions.

C. Local economic contribution *(Contribution Économique Territoriale - CET)*

The CET is applicable to all companies and branches. In addition, individuals and legal entities engaged in the leasing and subleasing of buildings (other than unfurnished residential buildings) are also subject to the CET.

The CET is composed of the following two parts:

- *Cotisation Foncière des Entreprises*, assessed on the rental value of assets subject to property tax (please refer to taxes on developed and undeveloped properties above). The rental value of industrial facilities as determined for accounting purposes may benefit from a 30% rebate; and
- *Cotisation sur la Valeur Ajoutée*, assessed on the value-added generated by the business

This contribution is assessed on the value-added at rates that vary according to the annual revenue, from a minimum of 0.5% of the added value for revenue of up to €500,000 to a maximum of 1.5% of the value-added for revenue levels of more than €50,000,000. For companies that are part of a tax-consolidated group whose total annual revenue exceeds €7,600,000, the rate is determined based on the revenue of the tax consolidated group (and not at the level of each entity).

The CET is capped at 3% of the added value as assessed for the Cotisation sur la Valeur Ajoutée.

D. Special additional regulations applicable in Ile-de-France

Special provisions have been set up to discourage and prevent the creation or expansion of corporate head offices and research activities in the Paris area.

Surcharge to the tax on developed property and Cotisation Foncière des Entreprises

In addition to the application of tax on developed properties or *Cotisation Foncière des Entreprises* in the districts of Ile-de-France, a special additional tax is levied at a rate decided by each district.

Additional regulations for creation or development of offices in Ile-de-France

The creation or development of activities in this area is subject to prior approval, except for the creation of (i) office premises of less than 1,000 m2 and (ii) warehousing premises of less than 5,000 m2.

Moreover, a tax is assessed on the number of square meters "created" (in case of building, re-building, increase of surface or transformation). The rate varies from €0 to €403,20 per m2, depending on the location and value of the premises, with the highest rates being for Paris and Hauts-de-Seine areas. As the regime has been recently modified, some temporary adjustments may apply until 2018, under certain conditions.

In addition, a special annual tax is due each year from parties that own office space and parking areas in Ile-de-France. The additional amount ranges from approximately €1.24 to €4.28 per m2, depending on the location of the premises.

E. Occupancy tax *(taxe d'habitation)*

Individuals who have residences, whether as owners, tenants or otherwise, are liable for an occupancy tax in each commune in which they have a residence. The tax is assessed on the rental value, minus deductions for dependents, and is computed by multiplying the said value by a coefficient that is determined each year by the local municipal council. In certain areas, a surcharge may apply on secondary residences.

III. VEHICLE TAXES

Any vehicle owned by a company is subject to the annual tax on company cars. This tax is also due from companies that, while not legally owning the vehicle, rent one for more than 30 consecutive days or bear the major part of the maintenance costs.

One of two types of annual vehicle tax will apply, depending on the vehicle:

- If the vehicle fulfills the EU technical requirements and was not used by the company before January 1, 2006, the tax is linked to the vehicle's carbon dioxide emissions per kilometer. For instance, for vehicles that emit between 140 and 160 grams per kilometer, a tax of €11.50 per gram will apply.
- If the vehicle does not fulfill the above requirements, a fiscal horsepower system is applied. For example, for vehicles with a fiscal horsepower between four and six, a tax of €1,400 will apply.

The tax on polluting cars can be significant although some exemptions may apply (i.e. for vehicles of rental companies, hybrid cars, or public transportation systems).

IV. ANNUAL TAX ON REAL ESTATE OWNED BY FRENCH AND FOREIGN COMPANIES

An annual 3% tax is applicable to all French and foreign legal entities of any type (i.e. organisms, trusts or fiduciary arrangements included for example) that directly or indirectly own one or more real estate properties located in France (stock held in real estate included).

This tax is assessed on the fair market value of the properties and is not deductible from income or company taxes, unless if the entity benefits from an available exemption under the French general tax code.

Under the French general tax code, the following entities are automatically exempt:

- Sovereign States and international organizations as well as their political, local divisions and the legal entities, fiduciaries and comparable institutions that are mainly controlled by them;
- entities that are not predominantly involved in real estate assets, i.e. entities whose French real estate represents less than 50% of their overall French assets;
- companies listed on French or foreign regulated markets provided that their shares are effectively traded on a regular basis and for a significant amount, as well as companies whose share capital is directly or indirectly held at 100% by such listed companies.

In addition, the 3% tax does not apply to legal entities, organizations, fiduciaries or comparable entities established (i) in France, (ii) in an EU Member State or (iii) in a country that has concluded a tax treaty with France that includes an administrative assistance clause or a non-discrimination clause, and which meet at least one of the following conditions:

- own, directly or indirectly, less than a 5% interest in a given French real estate asset or whose interest in such an asset represents a value of less than €100,000;
- have been set up for the purpose of managing pension or retirement plans or which are non-profit entities;
- are set up in the form of either a French (SPPICAV or FPI) or foreign fund (subject to certain conditions);
- take a commitment to provide certain information mainly related to their shareholders and the French real estate owned;
- comply with certain filing formalities, i.e., file an annual tax return n°2746 before May 16th of each year. Shareholders holding no more than 1% in the entity concerned would no longer have to be disclosed.

All the exemptions should be carefully checked in cases of ownership by a chain of entities. In such a case, each entity of the chain is jointly and severally liable to the possible payment of the 3% tax.

CHAPTER 5

INDIRECT TAXES

Indirect taxes play a significant role in French economic life, representing approximately 50% of the overall tax revenues. The most important of them is the *Taxe sur la Valeur Ajoutée* (TVA), i.e., value added tax (VAT). The following other types of indirect tax should also be mentioned:

- Customs duties,
- Registration taxes,
- Miscellaneous excise taxes.

I. VALUE ADDED TAX (VAT)

The main feature of the VAT system is the VAT identification number, which is in force in all EU countries and enables taxpayers to benefit from a specific VAT regime for intra-EU trade. In recent years, the formalities that the taxpayer must carry out to facilitate the control of EU trade and prevent fraud have been reinforced. The indication or omission of the VAT identification number on sales documents (invoices) can change the place where VAT is due, depending on the nature of transactions involved.

Before attributing a VAT identification number, the French Tax Authorities may request additional information from taxable persons in order to decide whether their French VAT registration number can be granted or maintained, and may also require taxable persons to demonstrate the performance of economic activities or their intention to carry out such activities.

A. Scope of VAT

The scope of VAT is extremely large. Any supply of goods or services performed for valuable consideration by a taxable person falls within the scope of VAT. Those liable for the tax include any individual or entity that acts independently and that carries on an economic activity. This includes persons and entities engaged in industrial and commercial transactions, consulting activities, agriculture, leasing and, to a large extent, the real estate business. Imports and several kinds of so-termed "self-deliveries" (such as a taxpayer's creation of a fixed asset) also fall within the scope of VAT. Public bodies may also fall within the scope of VAT, depending on the nature of the activity performed, if they distort competition with private operators.

Exemptions apply for certain activities such as real estate leasing or sales, insurance, medical care, certain banking, financial, philanthropic and non-profit activities.

Nonetheless, for certain financial and real estate activities that are specifically exempted from VAT, it is possible, in certain cases, for the individual or the entity in question to elect to be subject to VAT.

Entities for which less than 90% of their total revenues are subject to VAT fall within the scope of a specific tax called the payroll tax. The payroll tax is an annual tax determined by applying a progressive scale to the amount of wages paid to each employee. The highest rate of 20% is applicable to the portion of annual individual wages exceeding €152,279,000.

B. Territoriality rules

The place of taxation depends on whether the taxpayer in question supplies goods or services.

- Supply of goods:
  - Sales and deliveries of goods to customers outside the EU are exempt from VAT in France. Deliveries outside France are substantiated by an electronic certificate of exportation of the goods issued by the Customs Authorities (under the Export Control System, "ECS"). If goods are imported into France from outside the EU, French VAT is applied to the imports. Import VAT may be paid to the Customs administration or upon specific authorization, reverse-charged via the VAT return.
  - Sales and deliveries of goods to customers that are registered for VAT in another EU member state are exempt from VAT in France (the EU customer reverse-charges local VAT in his or her own country). It is necessary to prove that the goods actually left France (transport documents, delivery slips, etc.) and that the EU customer has an effective activity (VAT fraud avoidance provisions). Such operations (as well as intra-EU acquisitions performed in France) trigger an obligation to file a specific statistical return called the Intrastat return and an EC sales list (merged in France into one single return called Déclaration d'échange de biens-DEB).
  - Sales and deliveries of goods to non-taxable persons in the EU are subject to French VAT. If the total amount of sales to said persons exceeds a certain threshold in a member state (€35,000 annually in France from January 1, 2016), however, the supplier may need to register in that member state in order to be able to apply local VAT (the "distance sale" regime).
- Supply of services:

Generally speaking, a distinction must be made between services rendered by a taxable person to a taxable person (B2B relationships) on the one hand, and services rendered by a taxable person to a non-taxable person (B2C relationships), on the other.

If the beneficiary is a taxable person (B2B relationship) the services will generally be taxable under the reverse-charge mechanism at the place where the beneficiary is established.

If the beneficiary is a non-taxable person (B2C relationship), the services will be taxable at the place where the supplier is established.

There are special territoriality rules for certain specific services and depending on whether the relationship is B2B or B2C (services relating to real estate transactions, transport of passengers, work performed on movable goods for B2C relationships, electronic services for B2C relationships).

Amongst the several exceptions to the main place of supply rule, one is applicable since January 1, 2011 and concerns B2B supplies of services that provide access to cultural, artistic, sporting, scientific, educational, entertainment or similar events. In this respect, the access fees will be subject to VAT in the state where the event physically takes place.

French-based companies supplying services that are VAT-taxable in another EU country, and for which the EU customer has to reverse-charge local VAT, will have to file a summary statement called the European Declaration of Services (déclaration européenne de services - DES).

Since January 1, 2015, electronic services in B2C relationships are taxable in the EU Member State where the customer is deemed to consume the service. The principal consequence of this reform is that suppliers may have to register and collect VAT in the 28 EU Member States. To simplify the administrative burden of this reform, the EU has set up a one-stop-shop scheme for carrying out cross-border VAT formalities, fully applicable in France.

C. VAT rates

There are three main VAT rates in France:

- A standard rate of 20% applies in the absence of any specific provisions,
- Two reduced rates:
  - a general 10% rate applies to take-away and on-site catering, passenger transport, housing, books, certain real estate work, etc.;
  - a specific 5.5% rate applies to certain goods and services of basic necessity enumerated exhaustively by law (water, food products…)

Other rates apply to specific fields and areas, for instance:

- Daily newspapers, online news services and medicine: 2.1%,
- Special VAT rates apply in the French overseas departments (Martinique, Guadeloupe, Reunion Island), as well as in Corsica. VAT is temporarily not applicable in French Guiana and in Mayotte.

D. Party liable for the payment of French VAT

- In principle, it is the seller who is liable for the payment of VAT in France,
- For B2B suppliers of goods and other services that are taxable in France, pursuant to an exceptional VAT territoriality rule, France has implemented a general and compulsory reverse-charge mechanism for transactions carried out in France by foreign suppliers who are not established in France. Therefore, when the transaction is subject to VAT in France, the French

customer must self-assess French VAT on transactions if the foreign supplier is not established in France for VAT purposes (or, even if so established, its local French VAT establishment is not involved in the supply of goods or services) and if the customer, whether established in France or abroad, is a taxpayer with a VAT identification number in France,

- For B2B services taxable in France, pursuant to the general VAT territoriality rule, French VAT is due by the France-based recipient except when the supplier is established in France and the French establishment is involved in the supply of services,
- For certain B2B supplies of goods and services that are taxable in France, France has also implemented a reverse-charge mechanism, where the customer must self-assess the French VAT. This domestic reverse-charge mechanism notably concerns fresh industrial waste, recoverable material and services related to immovable properties carried out by a subcontractor.

E. Tax representative system

Non-EU companies that carry on transactions subject to VAT in France, but for which the above-mentioned reverse-charge mechanism does not apply, and that do not have a fixed place of business in France, must appoint a Tax Representative to fulfill their VAT obligations on their behalf. As provided for by French legislation, this Tax Representative will apply for refunds of the input VAT borne on goods or services. The Tax Representative is fully liable for the VAT owed by the foreign company.

Persons established in a country that is not a member of the European Union, with which France has a legal mutual assistance clause of similar scope to that provided for by community law, are not required to appoint a tax representative.

A list of these countries has been laid down in an order issued by the secretary of state for the budget dated May 15, 2013. At that time, the following countries were included: Argentina, Australia, Azerbaijan, Georgia, India, Iceland, Mexico, Moldova, Norway, Republic of Korea and Saint- Barthélemy.

EU companies carrying on activities in France may not appoint a VAT Representative in France but may use an agent to perform all the formalities.

F. VAT recovery

In principle, the VAT paid by a VAT-liable entity may be recovered as long as it was paid for the purpose of performing a VAT-taxable activity. However, the recoverability of VAT is restricted for certain types of products and services, cars, passenger transport, certain kinds of oil, etc.

Under specific conditions and procedures, foreign companies that do not carry out transactions subject to VAT in France and that are not established in France may apply for refunds of any French VAT assessed on their VAT-taxable business. The French Tax Authorities must receive the refund claim application by no later than June 30th of the calendar year following that referred to in the claim.

The refund process (applicable for EU VAT-liable taxpayers) has been simplified and modernized in recent years. The refund claim is filed through an electronic portal in the EU country where the taxpayer is established and can be submitted until September 30th of the calendar year following the one referred to in the reimbursement claim.

G. VAT computation and payment

VAT is normally payable monthly or quarterly, depending on the volume of the taxpayer's transactions when filing the corresponding return (around the 20th of the month following the period to which the VAT return refers).

Any VAT paid in excess of the VAT due will be refunded by the Tax Authorities if the taxpayer files a special claim to that effect. This claim can be filed on a monthly basis.

Groups of companies may elect, under certain conditions, to set up a consolidated VAT-payment group. Under this regime, the group's head company files a summary VAT return and pays the net VAT due by all the members of the group as a whole. The purpose of this mechanism is to limit the negative impact of VAT on a group's cash position by centralizing in one single entity the VAT payments and refunds for all the companies having elected for this regime. This regime cannot be likened to a VAT grouping, as exists in Ireland for instance, since it simply aggregates the VAT positions of the various group members.

H. Special systems

- Delivery to exporters: Deliveries of goods and services to private exporters (outside the EU) may be exempt from VAT under certain conditions.
- Imports and exports: Goods may be imported into France free of VAT if they are subsequently re- exported. However, this exemption is subject to (i) the Customs Authorities' prior approval and (ii) the storage of the goods under conditions that enable the Customs Authorities to exercise control over them (bonded warehouses).
- VAT suspension regime applicable to the transfer of a going concern (TOGC): In France, TOGCs are VAT-suspended provided that, amongst other conditions, the transferred assets qualify as a full business unit, the activity transferred is carried on by the beneficiary of the TOGC and that the transfer takes place between two entities that are liable for VAT in France or in the EU.
- Reverse charge mechanism applicable on importations of goods in France : As from January 1, 2017, operators asking for a specific authorization may be authorized by the Customs administration to reverse-charge VAT due on import by reporting the payable amounts on the monthly declaration of revenue (CA3) and pay this tax directly to the tax administration at the same time as the VAT due on the basis of domestic transactions. This authorization is renewable by tacit agreement for a period of three years, unless terminated two months before the end of the period. The authorization is granted to the legal entity (on the basis of the national commercial registration number), and is applicable to all establishments in France.

II. OTHER INDIRECT TAXES

A. Customs duties

Goods imported into France from outside the EU are subject to import duties as determined by EU tariffs. Import duties, together with VAT, are to be paid at the time when the legal owner of the goods, or its representative, clears them through customs.

B. Excise duties

There are also excise duties on some goods such as gas, fuel, tobacco, wine, liquor, etc.

C. *Octroi de mer* ("Dock dues")

A specific customs tax called "*octroi de mer*" is due on the importation of goods and on local production of goods in the French overseas regions (Martinique, Guadeloupe, La Réunion, French Guiana and Mayotte).

CHAPTER 6

REGISTRATION TAXES

I. DEEDS

Certain deeds must be registered with the Tax Authorities. Depending on the situations, the tax levied is only nominal or proportional tax (in that case, the amount may be significant).

The tax on transfers of buildings is currently up to 5.80665% (versus 5.09% until 2015) as local councils have been given the right to raise the local tax rate on the transfers of real estate up to 4.5% (instead of the previous3.8% limit).

A 0.6% additional tax on certain office sales may apply raising the maximum registration tax rate applicable to office sales to 6.40665%.

Business transfers consisting of goodwill, trademarks, commercial leasehold rights and related assets (except inventories, receivables and cash) are subject to a transfer tax assessed on the total price of the fixed tangible or intangible assets transferred (not inventories) at the following progressive rates:

- portion of price from €0 to €23,000 ..... 0% (but a fixed duty of €25 is applicable)
- portion of price from €23,000 to €200,000 ..... 3%
- portion of price over €200,000 ..... 5%

It is worth noting that the French Tax Administration may assess registration taxes on the value of business, should that value be higher than the price agreed between the parties.

Such registration taxes are deductible for corporate income tax purposes. In limited situations, reduced registration tax rates may apply.

II. CORPORATE TRANSACTIONS

Cash contributions and contributions-in-kind upon the creation of a company are exempt from registration taxes. However, if such a contribution, consisting of goodwill, leasehold rights, real estate and/or trademarks, is made by an individual or entity that is not subject to corporate income tax to an entity that is subject to corporate income tax, the contribution is exempt from registration taxes only if a commitment is made to keep the shares for at least three years. If such a commitment is not taken or fulfilled, registration taxes will apply depending on the nature of the contributed assets.

Capital increases, capital decreases involving distributions to shareholders, decisions to extend the life of the company, and dissolutions without any transfer of assets, are all subject to a nominal tax which amounts to €375 if the company's share capital is lower than €225,000 and to €500 if higher.

Capital decreases without any distribution to shareholders are subject to a nominal tax of €125.

Regarding transfers of shares, the registration tax regime depends on the nature of the shares that are transferred:

- Transfers of shares in companies whose capital is not divided into shares (e.g. SARLs, SNCs and SCs and interests in a French partnership, etc.) are subject to a registration tax at a rate of 3% of the total price or value if higher, whether or not a written instrument is drawn up. Furthermore, the tax base is lowered by a deduction equal to the following ratio: €23,000/the total number of shares.
- Transfers of unlisted stocks (e.g. in SAs and SASs, etc.) are subject to a registration tax at a single rate of 0.1% (uncapped) whether or not a written instrument is drawn up.
- On the contrary, transfers of listed stocks are subject to a registration tax at a 0.1% rate only if a written instrument is drawn up. In addition, if transfers of listed stocks are subject to the financial transaction tax, no registration tax is applicable.
- Transfers of shares between two companies that belong to the same tax-consolidated group or to the same group, as defined in Article L233-3 of the Commercial Code or 223 A or 223 A bis of the FTC are exempt from registration tax. For example, this exemption applies when a company transfers its shares to a subsidiary in which it holds more than 50% of the shares.
- Moreover, transfers of unlisted equity securities in real estate companies are subject to a 5% tax of the total price or value if higher.

CHAPTER 7

PERSONAL TAXATION

I. INTRODUCTION

Persons that are tax-resident in France are taxed at progressive rates on their worldwide income, subject to tax treaty provisions. For the time being, employers are not required to withhold income tax from the salaries of their French-resident employees (but the authorities are working on implementing a pay-as-you-earn system as of January 2018). Instead, income tax is generally paid the year following the year in which the income is received. Tax laws, including tax rates for income received in a year, are normally not enacted until late in that same year.

There is a specific regime for impatriates that was made more generous for assignees arriving from 2008 onward.

Non-residents are subject to income tax in France on their French-source income only. Employer income tax withholding is generally required when the non-resident receives French-source compensation that is taxable in France.

Income tax in France is levied only at the national government level. Several other taxes are levied by the government such as wealth tax and inheritance taxes.

II. PERSONAL INCOME TAX

A. Residence

The criteria for determining domicile are very broad. An individual will be considered domiciled in France for tax purposes if any one of the following circumstances, subject to tax treaty provisions, is fulfilled:

- Individuals who have their home in France or main place of abode in France. A home is defined as being where individuals and their family ordinarily reside. Taxpayers may still be considered to have their home in France, even if they are not physically present in France for all or most of the year. The French Authorities will determine that France is the main place of abode if individuals spend more time in France than in any other country.
- Individuals who perform professional activities in France (whether salaried or not) unless the activities in France are of an auxiliary or secondary nature. The principal activity is that on which individuals spend most of their time or which generates the largest part of their income.

- Individuals who have their center of economic interests in France. This occurs when most of their assets are situated in France, are effectively managed in France, or the majority of his/her investment income arises from France.

B. Taxable income

Various rules apply to each category of income.

1. NATURE OF INCOME

Remuneration

Taxable remuneration includes salary, wages, bonuses, allowances, benefits-in-kind, stock option income etc... Under certain conditions, assignment-related allowances may be tax exempted in France (see below – Section C Impatriates).

Employee social security contributions are generally deductible from gross employment income. Compulsory pension contributions and a portion of the CSG surtax are also deductible from taxable employment income, within certain limits. Mandatory employee social security contributions and in some cases pension contributions paid to the home country scheme are generally deductible for income tax purposes.

A standard 10% deduction to account for professional expenses (limited to €12,183 for 2016 income) is applied to the employment income of each member of the household. Actual professional expenses may be claimed instead, without limitation, as long as they can be justified.

The rules relating to the tax treatment of French stock option plans and restricted stock units are particularly complex. If the plan qualifies, the gains are generally deferred until sale and subject to specific rates of tax and surtaxes.

Industrial and commercial profits

Industrial and commercial profits earned by individual entrepreneurs are computed on an accrued basis in almost the same way as for companies subject to corporate income tax. Special provisions apply to individuals whose yearly revenues do not exceed certain limits (€82,800 exclusive of tax for the supply or sales of goods and €33,100 exclusive of tax for the supply of services in 2016).

Noncommercial income

This consists mostly of income from professional services. It is computed on a cash basis.

Agricultural income

A number of specific rules apply to agricultural income; they are often found to be favorable for the taxpayer.

Rental income

The tax treatment for rental income depends on whether the property is rented furnished or not. Rental income is computed on a cash basis.

Interest

A compulsory withholding tax of 24% is applicable on interest and similar income, in addition to the French social surtaxes of 15.5%. Interest income must also be declared on the income tax return and will be taxed at the applicable progressive tax rates (the 24% withholding tax is off-settable against the final income tax liability).

Members of a household whose income level for the penultimate year (2015 for income earned in 2017) is less than €50,000 (couples filing jointly) or €25,000 (single, divorced or widowed) must request to be exempt from the application of the 24% levy. The exemption request must be submitted to the institution where the account is held before 30 November of the previous year (e.g. 30 November 2016 for interest earned in 2017).

Finally, if the amount of taxable interest is less than €2,000 per year, the option for the former withholding can be maintained, regardless of the taxpayer's tax bracket.

Dividends

Distributions (dividends, and distributions of reserves and directors' fees in particular), paid to individuals that are fiscally domiciled in France, are subject to a 21% withholding tax. The tax is no longer paid in full discharge of the final liability on an optional basis as was the case previously. Instead it will represent a credit against the final tax liability that will be calculated via the tax return.

When the paying agent is established in France, the compulsory withholding tax of 21% (together with social surtaxes of 15.5%), is withheld by the financial institution and remitted to the French Tax Authorities no later than the 15th of the month following the payment of income.

When the paying agent is established outside France, the tax should be declared and paid on Form 2778-DIV. It is the taxpayer's responsibility to file the form within 15 days in the month following the month in which the income was distributed.

Members of a household whose income level for the penultimate year (2015 for income earned in 2017) is less than €75,000 (couples filing jointly) or €50,000 (single, divorced or widowed) must request to be exempt from the application of the 21% levy. The exemption request must be submitted to the institution where the account is held before 30 November of the previous year (e.g. 30 November 2015 for dividends earned in 2017)However, when the paying agent is established in a member state of the European Union (EU), Iceland, Norway, or Liechtenstein, the compulsory levy is paid either by the paying agent appointed by the taxpayer to the nonresidents tax center or by the taxpayer himself to his local tax center.

When calculating the final French liability, eligible dividends received by individuals are subject to tax, after a deduction of 40% on the gross amount. Hence, depending on a taxpayer's income and family situation, a reimbursement of the tax withheld at source may be possible. However, social surtaxes of 15.5% are due on the gross dividend payout.

Compensation of company directors

The remuneration paid to "*Présidents-Directeurs Généraux*" (PDG) and members of the Executive Committee of an SA ("*Société Anonyme*") or an SAS ("*Société par Actions Simplifiée*") is normally treated as salary. This is also the case of remuneration paid to SARL managers ("*Gérants*").

Gains from investments in venture capital funds (carried-interest)

Specific rules apply to gains made by fund managers who hold an interest in venture capital funds. Generally, those gains are taxable as salary.

However, where certain conditions are met, such gains will be taxable as capital gains (taxed at the applicable progressive tax rates) and subject to social surtaxes (15.5 %).

Capital gains on the sale of property

The capital gain on the disposal of a taxpayer's main residence is exempt from taxation. An exemption is also available, under certain conditions, for a French property that was occupied by a non-resident.

Other properties than a taxpayer's main residence held for more than 22 years are exempt from capital gains tax. The income tax rate applicable on the taxable capital gain is 19%.

Social surtaxes of 15.5% are normally also due on the capital gain from the sale of property (however these social surtaxes may be challenged for individuals not affiliated to the mandatory French social security regime). Social surtaxes are calculated on the net capital gains.

An additional tax is due on taxable capital gains of more than €50,000. Non-French tax residents who sell a French property can benefit from an exemption of up to €150,000 on the capital gain if certain conditions are met.

Capital gains on the sale of securities

Capital gains on securities are subject to tax at the taxpayer's progressive tax rate and social surtaxes at 15.5%.

However, specific deductions are provided depending on the length of the holding period and the situation. According to the general regime, the specific deduction applied to the gain only depends on the number of years of holding:

- From 2 to 8 years: 50% deduction,
- More than 8 years: 65% deduction.

Trust income

The French 2011 Amended Finance Bill provided a tax definition of trusts for the first time. In principle, only distributed income is taxable in the hands of the beneficiaries.

2. LOSSES

Losses can first be offset against income of the same kind. Usually, losses can be deducted from the net overall income of the same year. In some cases they can only be carried forward to be deducted from future profits in the same category.

3. DEDUCTIONS FROM TAXABLE INCOME

Deductions are allowed for alimony paid according to a court decision, and child support payments for minor children that are not part of the taxpayer's fiscal household.

Deductions of child support payments are allowed for children over 18 if the children need parental support (such as a student) provided the children are not part of the taxpayer's fiscal household. However, this deduction is limited to €5,738 per child for the 2016 tax year (. Support paid to, or on behalf of, parents is also deductible provided the payments are not disproportionate to the taxpayer's earnings and that the recipient is in need. Such payments would generally constitute taxable income in the hands of the recipients.

C. Impatriates

The impatriate regime covers employees sent to France by a non-French employer to perform professional duties for a limited period of time, provided that the impatriate takes up French tax residence and has not been a French tax resident during the five-year period preceding the start of the assignment.

This regime was extended in 2008 to include employees hired directly from abroad to work in France. Favorable tax treatment is available until the end of the eighth year following arrival if the individual becomes French tax resident and has not at any time during the previous five calendar years been a French tax resident.

If certain conditions are met, the taxpayer can benefit from tax-exemption of the assignment premiums, reimbursements and benefits-in-kind relating to the assignment. If the employee has been hired directly from abroad, the exemption may equal up to 30% of the taxable income. The exempt amount should not lead to a lower amount being taxed than the taxable salary paid for a similar job within the same company or in similar companies in France.

In addition, the compensation paid in relation to days worked abroad is exempt up to certain limits:

- Either: an exemption of the whole of the assignment premium, with a cap on the overseas workdays deduction of 20% of the amount taxable in France,
- Or: an exemption for both the overseas workdays and for the non-taxable "assignment premium", capped at 50% of the total amount of compensation.

Qualifying impatriates receiving passive investment income (such as interest and dividends, capital gains from the sale of securities, copyrights and royalties) from a country with which France has entered into a double tax agreement including a mutual assistance clause are only liable to income tax on half of the amount.

Surtaxes at 15.5 % are due on the total amount of income including the exempt portion. The law also provides for exemption of compensation paid in relation to days worked abroad.

D. Computation, filing & paymentComputation

In France, married couples and couples who have signed a civil partnership recognized in France (equivalent to a "*Pacte Civil de Solidarité*") are required to file a tax return jointly (very limited exceptions to this rule exist). Single, divorced and widowed taxpayers are also required to file a single tax return.

The income tax liability is computed on the basis of the total income of all family members (spouses plus any dependents). Children under the age of 21 (or 25, if students) can be claimed as dependents. The number of dependents in a family is taken into account to compute the final tax liability by dividing the total income into a number of parts. Thus the larger the family size, the lower the income tax. The progressive tax rate scale is applied separately to the individual amounts of the "parts":

- A single person is entitled to one part
- A married couple or a couple who have signed a PACS to two parts,
- Each dependent child gives entitlement to one-half of a part. Families with three children are attributed an additional one-half of a part for the third child, and one part for each child thereafter

Tax rate applicable to 2016 income (2017 income tax) - taxable income by "part"	
0€ To €9,710	0%
From €9,710 to €26,818	14%
From €26,818 to €71,898	30%
From €71,898 to €152,260	41%
More than €152,260	45%

This scale is normally modified every year.

1. THIS SCALE IS NORMALLY MODIFIED EVERY YEAR. EXCEPTIONAL CONTRIBUTION ON "HIGH EARNERS"

A surtax applies on individuals who earn more than a certain global income each year in the following way:

Global income	Rate of taxation	
	Single taxpayer	Married (or PACSed) taxpayers
Less than €250,000	0%	0%
From €250,001 to €500,000	3%	
From €500,001 to €1,000,000	4%	3%
More than €1,000,000		4%

The contribution is calculated on a "reference" income. Reference income is defined as all income received by taxpayers that is otherwise tax-exempt (such as the nontaxable premium paid to eligible impatriates), income subject to withholding tax, or flat rate tax (such as capital gains on the sale of securities and real estate). Income averaging measures may apply to alleviate the impact if the taxpayer receives exceptionally high income.

The contribution, presented as a temporary measure, will apply until the tax year during which the public deficit will be lower than 3% of gross domestic product (GDP).

2. TAX CREDITS

Certain expenses and investments give right to a tax deduction or credit. Below are the main tax credits existing in France:

Subscription to the capital of small companies

Cash contributions made by individuals to the share capital of small companies may give rise to a tax credit if individuals hold their shares for at least five years. Maximum contributions are €50,000 for a single person and €100,000 for a married couple. Surplus contributions made to eligible midsize companies can be carried forward up to four years.

The tax credit is limited to 18% of the cash contribution.

Investments in FCPIs and FIPs

Investments made in (i) FCPIs (funds that invest in small innovative companies of which the majority of the shareholders are individual investors, which have a high growth potential, and which are engaged in activities that entail significant investments in research and development units) or (ii) FIPs (venture capital funds that invest mainly in small and midsize undertakings that perform their activities in a given geographical area) can benefit from a tax credit equal to 18% of the subscription price under certain conditions, notably that the investor undertakes to keep the shares for at least five years.

Eligible investments are limited to €12,000 for a single person and €24,000 for a married couple.

Investments in SOFICAs

Cash contributions made in SOFICAs (companies that invest in qualifying film production or audiovisual works) until December 31, 2017 give rise to a tax credit which is generally limited to 30% (36% in specific cases) of the cash contribution (calculated on a basis limited to 25% of the global income and up to €18,000).

Household equipment

There is a tax credit for qualifying energy-saving and energy-producing heating systems or thermal insulation, installed in the taxpayer's main residence under certain conditions.

The tax credit depends on the nature of the expenses and is limited to €8,000 for a single person and €16,000 for a married couple, plus €400 for each dependent.

Household employees

The employment of domestic help (duly declared to the Authorities) entitles the taxpayer to a tax credit equal to 50% of the expenses (the eligible payments are capped at €12,000 plus €1,500 per dependent with a global limit of €15,000).

Childcare expenses (children taken care of outside home)

Expenses for children under 6 year that are taken care of in an external institution (such as "*crèche*") give right to a tax credit equal to 50% of the total amount paid in 2015 capped at €2,300 per child.

Gifts to charities

Gifts of money made to certain approved institutions, public interest institutions, political parties and charitable organizations may give rise to a limited tax credit.

4. GENERAL LIMITATION ON TAX SAVINGS (*NICHES FISCALES*)

There is a general limitation of tax saving linked to certain investment schemes that are eligible for a tax credit. The total of such credits is limited to €10,000. Nonetheless, the ceiling of €18,000 is applicable to certain tax advantages.

5. FILING REQUIREMENTS

Residents and non-residents are required to file a yearly income tax return with their local Tax office, generally by Mid-May of the year N+1. Failure to comply with the official deadlines may result in a penalty for late filing (10% of the tax liability).

6. PAYMENT OF INCOME TAX

Income taxes for residents are generally payable in the year after the income is earned. The taxpayer may choose between the following two systems:

Standard system

This system consists of two advance payments: 1st on February 15th and 2nd on May 15th. These advance payments are equal to one-third of the previous year's income tax liability. The remaining balance is usually payable in September. The installments must be paid on a spontaneous basis even in the absence of a payment notice.

Monthly payments

Taxpayers may elect to pay their income tax liability in monthly installments. That choice is valid for one year and renewed automatically, unless expressly terminated. Each monthly advance payment equals 10% of the previous year's income tax liability and is automatically withdrawn from the taxpayer's bank account from January through October. Any balance due is payable when assessed.

7. FRENCH TAX AUTHORITIES AUDITS

In general cases, the French Tax Authorities have three years following the year in which the income was earned to audit an income tax return. However, Article 168 of the French Tax Code authorizes the Tax Authorities to tax individuals on the basis of their deemed income, which is based on their external signs of wealth. Income is deemed to correspond to the ownership of or the right to use certain assets. For instance, an individual's taxable income is deemed to be at least three times the rental value of his/her main residence. The use of a private car, boat, large motorcycle, or airplane is also deemed to correspond to a certain amount of income. In certain cases, French Tax Authorities have 10 years (instead of three) to audit taxpayers where they have not satisfied their tax obligations.

8. MEASURES AGAINST TAX FRAUD

French resident taxpayers must declare any bank accounts held outside France and provide details of foreign life insurance policies on their tax returns. They also must fill a specific form (form n°3916).

Specific tax and criminal penalties were created by the government in June 2013. Trustees must also provide information on trusts where the settlor or any of the beneficiaries is a French tax resident or where the trust holds French assets.

E. Taxation of non-residents

Non-residents are subject to French income tax on their French-source income only. This includes but is not limited to rental income from property situated in France, compensation for work performed in France or dividends paid by French companies.

Certain types of French-source income are subject to withholding tax such as:

- Compensation for work performed in France by non-French residents. The withholding tax must be calculated, withheld and paid by the employer at tax rates of 0%, 12% and 20%. When the compensation reaches the 20% bracket, an annual individual non-resident income tax return must also be filed even though tax has been withheld at source.
- The acquisition gain derived from the exercise of equity compensation such as Stock Options and Restricted Stock Units when the beneficiary is a non-resident at the taxable event.
- Dividends are subject to a withholding tax. The rate of withholding depends on the country of residence of the recipient.

The withholding tax may not always constitute the final liability. Where the withholding is not final, the income is generally taxed at normal progressive rates of French income tax, and the withholding tax paid is offset against the income tax due. In principle, a non-resident's French income tax liability cannot be lower than 20% of the net income taxable in France. However, if the taxpayer can prove that the French income tax on his/her worldwide income would have been lower than 20%, the lower rate will be applicable to his/her French-source income and a refund of the withholding tax may be applied for.

III. WEALTH TAX

Wealth tax applies only to individuals and is assessed on the overall net value of taxpayers' assets exceeding €1,300,000 on January 1 of the year of taxation. Residents are assessed on their worldwide assets. Non-resident individuals are liable for wealth tax on their French assets only.

2017 Tax Brackets	
Up to €800,000	0%
Less than €800,000	0%
€800,001 to €1,300,000	0.50%
€1,300,001 to €2,570,000	0.70%
€2,570,001 o €5,000,000	1%
€5,000,001 to €5,000,000	1.25%
Over €10,000,000	1.50%

To determine the wealth tax base, assets are valued at their fair market value at January 1 of the year of taxation. Debts may be deducted. There are exemptions for certain assets (business assets, antiques, works of art, woods, agricultural land, etc.), provided that specific conditions are met. The wealth tax return must be filed by June 15 for French tax resident individuals and by July 15 for French tax non-residents.

The tax due must be paid on the same date.

French resident individuals may benefit from a tax credit for wealth tax paid abroad. Simplified reporting rules have been introduced where net assets are less than €2,750,000.

Individuals may be exempt from French wealth tax on their assets held outside France for the first five years provided they have been outside of France for at least five calendar years. Similar rules exist under some tax treaties.

Under certain conditions, investments in small and midsize European companies or gifts to qualifying institutions may lead to a wealth tax reduction that can reach €45,000 per year.

IV. INHERITANCE AND GIFT TAXES

Heirs are taxed only on the share of the estate attributable to each of them. The rate of tax does not exceed 45% in cases of transfers from parents to children. The rate of tax, however, can very quickly reach 60% in cases of transfers to unrelated persons.Inheritance between spouses is exempt from inheritance tax.

V. LOCAL TAXES

Local taxes are collected by the State on behalf of local Authorities (regions, departments, communes). There are two main local taxes – property tax *(taxe foncière*) and a property occupancy tax (*taxe d'habitation*). Local taxes are mainly assessed on a property's notional rental value (*valeur locative cadastrale*) which is the property's theoretical yield as determined by the Authorities.

The *taxe foncière* is payable around October 15 by the owner of the property at January 1 of the year of taxation.

The *taxe d'habitation* is payable around November 15 by any person who, on January 1 of the year of taxation, occupies a taxable premise, whatever their status is (owner, tenant, occupier).

VI. EXIT TAX

Leaving France may trigger a tax charge on latent (i.e. unrealized) gains. The taxable gain is deemed to arise on the day before the day of departure.

The tax is due by individuals who have been tax-resident in France for at least six years in the preceding10 years at the time of the transfer.

An exit tax is due if the taxpayer household holds:

- At least a 50% shareholding interest in a company;
- Investments exceeding €800,000 in different entities.

For individuals moving to a European Union (EU) member state, the tax is automatically deferred.

If taxpayers transfer their domicile to a non-EU country, the tax is due immediately unless a guarantee covering the tax on the latent gain is given to the French Treasury. If certain conditions are met, the guarantee will not have to be provided if the departure from France is motivated by professional reasons. If the shares are kept for a period of 15 years (or 8 years for departures from France before January 1st, 2014) following the transfer, the income tax is cancelled or reimbursed (but not the additional social contributions).

CHAPTER 8

FINANCE AND BANKING

The main sources of external financing in France are:

- The stock exchange, and
- The banking system.

I. THE STOCK EXCHANGE SYSTEM

Euronext Paris SA operates two main markets in France:

- a regulated market: Euronext Paris,
- a MTF market: Alternext Paris.

On Euronext, three segments have been created based on the amount of the listed company's market capitalization:

- Segment A: market capitalizations of over €1 billion
- Segment B: market capitalizations from €150,000,000 to €1 billion
- Segment C: market capitalizations of less than €150,000,000

In 2008, a fourth segment was created for qualified investors only. Financial instruments may, under this compartment, be admitted to non-public trading on Euronext if the issuer's securities have not already been admitted to trading on a regulated French market.

Euronext created Alternext, under the form of a Multilateral Trading Facility (MTF), specifically dedicated to small and medium sized companies. Unlike Euronext, this market is not regulated by the EU Directives (except the Market Abuse Directive). Alternext is an organized market, arranged by Euronext, with its own rules and requirements for the companies traded on it. There are three ways to list on Alternext: through a public offering, a private placement (a placement of shares with institutional or qualified investors only, during the two years prior to listing) or a direct listing (admission to trading for issuers coming from another market, with no raising of capital).

Since 2009, it is possible for companies whose market capitalization is less than €1 billion to leave Euronext in order to be admitted on Alternext and thus benefit from its less burdensome rules.

A third market, the Marché Libre (an over-the-counter stock market), is an MTF that is unregulated but organized by Euronext Paris SA and dedicated to small French and foreign companies. The requirements for the companies listed on this market are less strict than for listing on the other markets. Nevertheless, issuers are subject to relevant ongoing disclosure provisions put in place by

the Autorité des Marchés Financiers (AMF), the French supervisory body equivalent to the SEC, as they market their securities to the public.

The AMF is an independent administrative body with a legal personality and financial autonomy. Its purpose is to:

- Safeguard investments in financial instruments and in all other savings and investment vehicles,
- Ensure that investors receive material information,
- Maintain orderly financial markets, with the power to impose penalties.

In May 2013, the Euronext Group created EnterNext, designed to develop and promote its stock markets specifically for small and medium-size companies (SMEs). EnterNext plays an active role in facilitating SMEs' access to financial markets, helping them generate the funds they need to grow at regional, national and pan-European level.

A. Conditions required to be listed on a regulated market (Euronext)

The listing of a company on the stock exchange is subject to certain conditions. For instance, to be listed on Euronext, a company must (i) be an SA, an SCA or an SE, (ii) prove that its last three fiscal years' financial statements have been audited by independent accountants recognized by the AMF and (iii) have offered at least 25% of its share capital to the public (or at least 5% if its share capital is worth €5,000,000 or more). Stock exchange listings are subject to approval by AMF and by Euronext Paris SA.

When soliciting funds from the public, the company must draw up a prospectus providing detailed information about the public offering and submit the prospectus to the AMF for validation, after which the prospectus will be made available to any interested party.

Subject to a specific procedure under the control of Euronext SA and the AMF, foreign companies may have their securities listed on a French stock exchange.

Companies can also issue bonds on a French stock exchange even if their securities are not listed on the French stock exchange.

B. Stock exchange transactions

All transactions in listed securities must be carried out through authorized investment service providers (ISPs). Such transactions can be carried out either on regulated markets, on multilateral trading facilities (MTFs) or through ISPs acting as "internalizers" (ISPs dealing on their own accounts by executing client orders outside regulated markets or multilateral trading facilities).

Transactions on the Paris stock exchange are performed on either the cash market or the deferred settlement market (Service à Règlement Différé - SRD).

Certain transactions, tender offers, takeover bids or acquisitions of controlling blocks of shares, require prior notification to the AMF and must be carried out in accordance with special regulations.

II. THE BANKING SYSTEM

The *Banque de France*, France's central bank, was set up by Napoleon Bonaparte in 1800.

The *Banque de France* is an integral part of the European System of Central Banks (ESCB) defined by the Maastricht Treaty, and participates in the performance of tasks and the achievement of objectives assigned to the ESCB.

The allocation of responsibilities between the European Central Bank (ECB) and the Banque de France was recently reorganized by French Act no. 2013-672 of July 26th, 2013 "concerning the separation and regulation of banking activities". In addition to implementing the single monetary policy within the framework of the ESCB, the Banque de France is active in:

- the implementation of foreign exchange policy and international relations, and
- the supervision of banking rules and banking costs.

Furthermore, the Banque de France plays a prominent role in refinancing and clearing operations. It also provides services to credit institutions through centralized files comprising information relating (notably) to material outstanding loans to companies and dishonored checks.

Since the enactment of Ordinance no. 2010-76 of January 21, 2010, the supervision of banking operations in France has been placed under the responsibility of a new authority called the "Autorité de Contrôle Prudentiel et de Resolution" (i.e., the Prudential Control and Resolution Authority, hereinafter the "ACPR").

The ACPR is an independent administrative authority (with no legal personality) created by the merger of the Commission Bancaire (previously in charge of controlling and supervising credit institutions and investment firms), the *Comité des Etablissements de Crédit et des Entreprises d'Investissement* (previously in charge of granting, extending and revoking licenses of credit institutions and investment firms) and the former supervisory Authorities in charge of the insurance sector (CEA and ACAM.)

The Act of 2013, which was presented as a major piece of French legislation designed to reform the French banking and financial sectors after the 2008 financial crisis, has increased and extended the ACPR's powers, notably to include banking resolution and governance oversight, consistent with international standards.

The ACPR is composed of a supervisory college *(Collège de Supervision)* which examines general issues, a resolution college *(Collège de Résolution)* which supervises the preparation and implementation of measures (including "living wills") to prevent and resolve banking crises, the general secretariat *(Secrétariat Général)* which oversees the operating departments and the sanctions committee *(Commission des Sanctions)* which is an independent committee entrusted by law with disciplinary powers.

Subject to the competence of the ECB (see below), the ACPR's functions include:

- the licensing and supervision of banks and credit institutions, financial institutions, insurance, payment and electronic money institutions,
- the reception and issuance of notifications under the EU passport procedure (freedom of establishment and freedom to provide services);

- conducting ongoing supervision of the institutions subject to its supervision, including in particular their compliance with prudential and operating requirements;
- ensuring that reporting entities comply with the rules governing the procedures for doing business whether they are operating by themselves or through subsidiaries, and with the rules governing acquisitions and equity investments;
- conducting the implementation of banking crisis prevention and resolution measures; and
- controlling commercial practices and ensuring due compliance with customer-protection rules.

Such functions (except for the supervision of commercial practices and ensuring due compliance with customer-protection rules) are now essentially exercised by the ACPR by delegation from (or within its mission role of assistance to) the ECB.

In this respect, the EU Regulation 1024/2013 on the "single supervisory mechanism" (the "SSM") provides specific powers and duties to the ECB which is entrusted with the direct and indirect supervision, respectively, of "significant" and "non-significant" banks and credit institutions within the SSM.

In practice, though the ECB is now exclusively in charge, for instance, of issuing and withdrawing bank licenses, and of authorizing acquisitions and disposals of shareholdings, the supervision (especially the prudential supervision) of major French banking groups is carried out by joint supervisory teams coordinated by the ECB and involving the ACPR.

Pursuant to EU Regulation 1024/2013, France has adopted Ordinance no 2014-1332 dated November 6, 2014 whose purpose is to adapt French legislation in order to allow the implementation of the SSM in France. This Ordinance provides in particular for:

- cooperation between the ACPR and the ECB, including the assistance of the ACPR, as national supervising authority for France, in the ECB is performance, of its duties with respect to the prudential supervision of French banks and credit institutions, and
- the adaptation of the disciplinary powers of the ACPR, including the setting up of a specific procedure allowing the ACPR, pursuant to a request from the ECB, to initiate disciplinary proceedings against a credit institution and/or its managers.

The Law of 2013 also established the *Haut-Conseil de Stabilité Financière* (HCSF), the high council for financial stability, a collegiate body chaired by the Minister of the Economy, which is in charge of the conduct of macro-prudential policy to safeguard financial stability and prevent and contain systemic risk.

Since the Act of 2013, the Banque de France has been entrusted, together with the HCSF, with ensuring the "stability of the financial system".

The entities subject to French banking regulations mainly consist of:

- Credit institutions (e.g., retail banks, mutual or cooperative banks, municipal credit banks, specialized credit institutions),
- Financing companies *(sociétés de financement),*

- Electronic money institutions (e.g., institutions licensed solely to issue, make publicly available and administer electronic money),
- Investment firms (e.g., institutions licensed solely to provide one or several investment services),
- Asset management companies (e.g., institutions licensed solely to provide asset management services),
- Payment institutions (e.g., institutions licensed solely to provide payment services pursuant to France's implementation of EU Directive 2007/64 of November 13, 2007 on payment services in the internal market).

In terms of size, the three predominant retail banks are: *BNP Paribas*, *LCL* (part of the *Crédit Agricole* Group) and *Société Générale*.

The total number of French retail banks has gradually decreased over the years, as mergers and acquisitions of smaller banks have taken place so that all retail banks are now more or less under the control of the major French banking groups. These groups offer a full range of banking services. Foreign banks are also well represented in France.

Cooperative institutions such as *Crédit Agricole*, *Crédit Mutuel* and *Banques Populaires/Caisses d'Epargne* (BPCE) play a very significant role and, in many respects, are similar to the large commercial banks. They are constantly expanding their range of services and now hold a substantial percentage of the total public deposits in France.

La Banque Postale, a bank of the French postal service *(La Poste)*, was created and licensed in 2005. Since 2009, it has been authorized to provide all types of banking operations, including loans to consumers.

Other credit institutions are specialized in supplying loans for special activities, in refinancing medium-term loans or supplying guarantees.

The *Banque Publique d'Investissement - "bpifrance"* (Public Investment Bank) is a financial company (*"compagnie financière"*) established in 2013. Its purpose is to finance small and medium entreprises in accordance with European regulations.

The Regional Development Institutions *(Sociétés de Développement Régional)* help companies invest in their specific regions. The Local Financing Institution *(Société de Financement Local)* was established in 2013 to finance regional and local authorities as well as public health establishments.

CHAPTER 9

FOREIGN INVESTMENTS

I. GENERAL

The current legislation governing foreign investments in France is based on several Articles of the Monetary and Financial Code (MFC) *(Code Monétaire et Financier)*. The MFC lays down the principle of the freedom of financial relations between France and foreign countries, however, it also authorizes the French Government to control certain exchange operations and financial relations between France and foreign countries.

Under this legislation, a distinction must be made between four different regimes that cover different types of operations:

- operations subject to the Finance Minister's prior approval,
- operations to be declared to the Public Treasury (Finance Minister),
- operations to be declared to Customs,
- operations to be declared to the Banque de France.

II. TRANSACTIONS SUBJECT TO THE FINANCE MINISTER'S PRIOR APPROVAL

Foreign investments in any activity in France which, even if only occasional, involves the exercise of public authority or pertains to one of the following domains, are subject to the Finance Minister's prior approval:

- activities likely to jeopardize public order, public safety or national defense interests;
- research, production or marketing of weapons, munitions, or explosive powders or substances.

The above activities are enumerated by the MFC, which refers in particular to weapon-selling companies, private security companies, casinos, etc. The following cases are considered as foreign investments: (i) the acquisition of control of a company whose registered office is located in France by a foreign investor, (ii) the direct or indirect acquisition of a whole or partial line of business of a company whose registered office is located in France by a foreign investor or (iii) the direct or indirect purchase of 33⅓% of the share capital or voting rights of a company whose registered office is located in France by a non-EU investor.

The MFC provides for exemptions regarding, in particular, investments made between companies that are members of the same group. Any investor may submit a written request to the Finance Minister to inquire into whether or not the proposed investment in France is subject to prior approval.

The approval given may be subject to special conditions designed to ensure that the planned investment does not jeopardize national interests.

If a foreign investment is, or has been, made in violation of the provisions of the MFC, the following sanctions may apply:

- invalidity of the agreement concluded without the required authorization;
- financial penalty up to twice the amount of the investment if the investor fails to comply with the Finance Minister's orders either to desist from the transaction, to modify the nature thereof or to restore the status quo ante at its own expense;
- criminal penalties and up to five years of imprisonment.

III. TRANSACTIONS TO BE DECLARED TO THE PUBLIC TREASURY

The following foreign investments in France must be declared to the Public Treasury:

- the incorporation of a new company in France by a foreign company or a non-resident;
- the acquisition of a whole or partial line of business of a company whose registered office is located in France by a foreign company or non-resident;
- any transaction, made by a foreign company or a non-resident in a French company, leading to the acquisition of more than 33% of said French company's share capital or voting rights;
- the same transactions as described above made by a French company where more than 33% of its share capital or voting rights are owned by a foreign company or a non-resident;
- loans or substantial guarantees, purchases of licenses or patents, acquisitions of commercial contracts, or any technical assistance that leads to the takeover of a French company by a foreign company or a non-resident;
- any transaction made abroad modifying the control of a foreign company that owns more than 33% of the share capital or voting rights of a French company when the latter is owned by a foreign company or a non-resident;

Certain operations are, however, exempt from this declaration requirement. These operations are:

- the creation or the development of an existing French company's activity that is directly or indirectly owned by foreign companies or non residents;
- any increase in the shareholding held in a foreign-owned French company (i.e. one that is directly or indirectly owned by foreign companies or non residents) by an investor owning more than 50% of that company's share capital or voting rights;
- subscriptions to any share capital increase in a French company directly or indirectly owned by foreign companies or non residents, provided that such companies and non residents do not increase their stakes;
- any direct investment carried out between companies of the same group;

- any loan, guarantee or waiver of debt granted to a French company that is directly or indirectly owned by foreign companies or non residents,
- any direct investment made in French companies operating a real estate business, other than constructing buildings to sell or rent them,
- any direct investment, up to €1,500,000, made in certain French companies (i.e., craft industry, hotel or catering business),
- the acquisition of agricultural lands.

IV. TRANSACTIONS TO BE DECLARED TO CUSTOMS

The MFC provides that individuals transferring money, securities, assets, electronic money or gold to or from an EU Member State, without using a credit, payment, or electronic money institution, or one of the institutions mentioned in the MFC (amongst others the *Trésor Public*, the *Banque de France* and the *Caisse des Dépôts et Consignations)* must declare such actions to Customs in writing when the transaction occurs. A declaration must be made for each transfer if the amount is higher than €10,000.

Any failure to comply with this requirement may lead to a fine amounting to one-quarter of the sum to which the offense or attempted offense relates. Moreover, the sums in question may be confiscated.

V. TRANSACTIONS TO BE DECLARED TO THE BANQUE DE FRANCE

Certain declarations must be made to the Banque de France in order to establish France's payments balance.

For example, banks, financing companies *(sociétés de financement)*, investment companies, and UCITS (Undertakings for Collective Investment in Transferable Securities) must, each month, file declarations with respect to payments of more than €12,500 that are made in France between residents and non-residents.

Companies and residents must also prepare other declarations relating to direct investments in France or to transactions with foreign contractors that exceed a certain amount set by Decree.

CHAPTER 10

LABOR LAW

I. INTRODUCTION

The rules that apply to relationships between employers and employees are provided for by the French Labor Code (Code du Travail), however, an increasing portion of the mandatory French labor law provisions derive from regulations adopted at European level.

Employment contracts governed by French law must also comply with the applicable collective bargaining agreement provisions. Collective bargaining agreements (CBA) are entered into between employers' and employees' unions and contain provisions that are, in principle, more favorable to employees than those required by law in matters such as dismissal indemnities, retirement indemnities, additional vacation time, etc. With respect to specific matters such as work time, collective bargaining agreements can also be entered into at the company level.

II. EMPLOYMENT LEGISLATION

A. Hiring employees

Companies are generally free to choose which job applicant to hire for any given position and are not obliged to hire those applicants proposed by the State employment agency (Pôle Emploi).

Discrimination based upon nationality, race, sex, age, health or disability, personal, political or religious views, sexual preferences, or any other personal choice is considered a criminal offense.

Prior to the effective date of hire, a declaration must be made to the social security collection office (URSSAF).

B. Collective agreements

Since the Act of August 8, 2016, the primacy of company-wide agreements over the applicable collective bargaining agreement becomes the principle for many points as regards working time and paid vacation; consequently, companies may enter into company-wide agreements providing for different provisions to those offset forth in the applicable collective bargaining agreement. Furthermore, group-wide agreements may be entered into that may set out provisions prevailing over existing and future company agreements. Further to this new Act, the negotiation of amendments to existing company agreements is significantly easier.

C. Work time

Since 2000, the legal work week is 35 hours for most businesses; however, employees may work overtime and receive additional compensation, within certain limits that vary according to the type of work.

The applicable legislation provides for various methods of organizing work time, which may be adapted to the particular needs of a company's business and thereby may significantly decrease overtime costs; since the Act of August 8, 2016, a significantly higher number of exceptions may be provided to the collective bargaining agreement. Executive employees are often subject to a working time arrangement providing for a fixed number of work days each year. Such arrangements must be based on a collective agreement that may be concluded at the industry level (CBA) or at the company level and must provide for sufficient measures to guarantee a reasonable workload for the employees and protect their health and safety. Employees are entitled to five weeks of vacation after having worked one year for the same employer and, often, to additional days off resulting from the reduction to a 35-hour work week, the application of a fixed number of annual work days arrangement or collective bargaining agreements.

D. Special categories of employees

The employment of special categories of workers (apprentices, young people, trainees, union representatives, pregnant employees, etc.) is subject to certain specific regulations.

E. Employment contracts

Subject to certain conditions, French law enables the employer to enter into various types of employment contracts with employees, such as indefinite-term employment contracts, fixed-term employment contracts, and full-time or part-time employment contracts.

As a general principle, employment contracts are entered into for an indefinite term. Indefinite-term contracts may take any form that the parties wish, provided that the employee is informed of certain terms of his/her contract in writing. An employment contract may be entered into for a fixed period provided that it is for the performance of a specific and temporary task or for the replacement of an absent employee. Fixed-term contracts must be in writing and must contain certain specific provisions. The Act of June 14, 2013 provides that part-time contracts cannot be concluded for less than 24 hours a week, unless allowed by the applicable CBA or expressly requested by the employee.

Employment contracts for employees in France must be drawn up in French, except when concluding the contract with a foreign employee. In this case the contract can be drafted in the employee's language.

F. Minimum salary

A minimum salary corresponding to the 35-hour work week has to be paid to all employees on a monthly basis. As from January 1, 2017, the gross minimum monthly wage provided for by law is €1,480.27 for 35-hour work week (151.67 hours per month).

G. Vocational training

Throughout their employment, employees can benefit from vocational training. Each year, in the framework of one of the three annual consultations, i.e.; on either employment policy, working conditions and employment, the works council is informed and consulted on the company's multiannual training program and the actions of training plans envisaged by the employer. From January 1, 2015 onwards, the system of DIF whereby all employees with at least one year's seniority benefited from an individual right to 20 hours of training per year with a maximum of 120 hours, has been replaced by the individual training account (CPF) which is valid for all employees during their entire career. In this account, it is possible to accumulate a maximum of 150 hours over seven and a half years. Every full-time employee will receive 24 hours per year worked during the first five years of employment and 12 hours a year for the following two and a half years.

H. Termination of employment contracts

Employment contracts may be terminated by the employee who resigns or by the employer for either economic reasons (redundancy) or personal reasons (dismissal), which can, in particular, arise from an employee's unsatisfactory job performance or a serious fault. In any case, the termination of an employment contract by the employer must have a real and serious cause and be supported by written documents and evidence. Depending upon the motive of the termination and the number of employees involved, specific procedures must be followed.

In the event of dismissal for personal reasons, the employee is convened to a preliminary meeting where the employer explains the reasons for his/her planned dismissal but does not formally announce it. If, after the meeting, the employer decides to dismiss the employee, the employer must then, no earlier than two working days after the meeting, send the employee a written dismissal notice by registered letter. In the event of dismissal for a disciplinary reason, such a notice can be sent no later than one month after the meeting.

In cases of redundancy, different procedures apply depending on the number of employees to be made redundant and the size of the company's workforce. The company's works council must be informed and consulted. The French labor administration has to be informed and may monitor the implementation of the redundancy procedure. Special measures may need to be proposed to the employees involved in order to help them find new jobs, particularly in the framework of an employment protection plan. The Act of June 14, 2013 provides that the employment protection plan can be implemented either in application of a company collective agreement validated by the French labor administration or in application of a unilateral plan drafted by the company and approved by the French labor administration. This law also provides for a maximum length of the information and consultation process, depending on the number of employees to be made redundant: two to four months between the first meeting with the works council and the end of the information and consultation process. The Act of August 8, 2016 clarifies and redefines the notion of economic difficulties which may lead to redundancies: economic difficulties may, in particular, be characterized by a significant reduction in sales orders, operating losses or a deterioration in cash, etc.

The direct costs linked to the termination of an employment contract include the notice-period salary, any outstanding accrued vacation and the severance indemnity provided for by the applicable collective bargaining agreement or the Labor Code.

Employees may contest their dismissal or redundancy by petitioning a Labor Court (Conseil de Prud'hommes), which is composed of an equal number of employers and employees, all of whom are elected to serve on the Court.

Should the Court find that the dismissal or redundancy was not based upon real and serious grounds, it can then, pursuant to the Labor Code, award the employee damages that may amount to at least six months of salary if the employee has at least two years' seniority in a company with at least 11 employees. Otherwise, the damages are computed according to the actual damages suffered.

Alternatively, the employer and the employee may enter into a settlement agreement in which they waive their rights to make any further claims relating to the conclusion, performance and/or termination of the employment contract, thus avoiding court litigation.

The Act of June 25, 2008 introduced the termination of an employment contract by mutual consent, which must then be validated by the French labor administration. In this case, the employee will be eligible for unemployment benefits and a specific indemnity, which cannot be less than the dismissal indemnity defined by the collective bargaining agreement applicable to the company or, if more favorable, the legal dismissal indemnity which amounts to 1/5 of a month's salary for each year of seniority. For someone with more than 10 years' seniority, it is necessary to add 2/15 of a month's salary per year of service.

III. EMPLOYEE REPRESENTATION

French law provides for several systems of representation for company employees.

- Any establishment with at least 50 employees must have a works council in which the employees' elected representatives take part; their number varies according to the size of the company's workforce. Works councils keep employees informed about the company's management policy, legal and economic changes in the company (such as company development and changes in work organization), especially with respect to labor issues. The opinion of the works council must be obtained before making final decisions regarding certain matters and a breach of this obligation constitutes a criminal offense. The Act of June 14, 2013 provides for delays in which the works council must give its opinion. The general rule is the following: if the works council refuses to give an opinion within a month, it is considered to have given a negative opinion (two months if an expert steps in, or three months if the occupational health and safety committee is consulted, or four months if a coordination body for occupational health and safety committees is put in place). Since the enactment of a new law in August 2015, all the annual consultations have been aggregated into three overall consultations on: i) the company's strategic orientations and their consequences on the activity, employment, the evolution of skills, the organization of work, etc., ii) the economic and financial situation of the company, and iii) employment policy, working conditions and employment.
- In principle, the employees of any establishment with more than 10 employees must elect staff delegates for a four-year period whose duty it is to present the employees' individual and collective grievances.

- Labor unions may be represented in any company that has staff delegates or in which the workforce is at least 50 employees. Union representatives have the power to negotiate and enter into company-wide agreements.
- Establishments with at least 50 employees must also have an occupational health and safety committee.

Since the law in August 2015, companies with less than 300 employees may choose to establish a joint committee of staff delegates, a works council and an occupational health and safety committee. Such joint committees give their opinion within the delays provided for the works council. For companies with more than 300 employees, a majority agreement may provide for the establishment of a joint committee of staff delegates, a works council and an occupational health and safety committee, or a joint committee of any two of these three institutions.

The law enacted in August 2015 also made the organization of staff representation more flexible within all companies by: reducing the number of required yearly works council consultations, simplifying of the process for consulting the works council, creating the possibility of joint meetings between the different institutions, the possibility of videoconferencing, simplifying the yearly negotiation process with the union delegates, etc.

European works councils are competent to deal with all issues involving: a Community-scale undertaking, a group of companies that has 1,000 or more employees and has at least two establishments, or undertakings of a group with at least 150 employees located in different Member States.

Under specific conditions, a group works council should be put in place and receive financial and economic information at the group level.

Any dismissals of representatives are subject to special regulations as well as the prior authorization of the Labor Administration.

When separate companies are jointly engaged in a similar economic activity, have the same management, similar collective and individual statuses for their employees, and a combined total of at least 50 employees, they can be considered as forming a single Business and Labor Unit. They are then required to (i) appoint joint representative institutions and (ii) implement a collective statutory profit-sharing plan (see below).

IV. FOREIGN EMPLOYEES

Any foreigner who intends to stay in France for more than three months must apply for a residence permit before entering France. The permit may be a temporary permit (valid for one year) or a residence permit (valid for 10 years). All such permits may be renewed. Citizens of EU countries may automatically obtain a residence permit that is valid for 10 years.

Any foreigner other than an EU national must apply for a work permit whose length of validity will depend on the applicant's nationality. The Government has enacted strict rules to limit the number of work permits granted to foreigners. French companies may, however, still hire non-EU executives

if they can prove that no other executive available on the French market meets the requirements of the position.

An executive who is not an EU citizen and who acts as a company's legal representative must obtain a residence or temporary permit and file a declaration with the relevant Prefecture.

V. EMPLOYEE PROFIT SHARING

A. Statutory profit sharing

Profit sharing plans may be instituted by any company, but are mandatory in companies that have at least 50 employees. If a company that already has a company incentive plan comes to have more than 50 employees, the obligation to apply a profit sharing plan is postponed to the third closed financial year after the company comes to have more than 50 employees if the incentive plan is applied consecutively during this period.

When a Business and Labor Unit is recognized among companies with an overall workforce of at least 50, a statutory profit sharing agreement must be implemented either at the level of said Unit or at the level of each of its member companies.

The profit sharing system set up may be either the statutory system or a more favorable one resulting from negotiations with the staff representatives.

The legal formula for determining the annual profit sharing reserve is:

$$1/2 (P - 5\% \text{ of } C) \times S/AV$$

Where:

P = net taxable profit minus the tax, C = company capital, reserves and retained earnings, S = salaries, and VA = value added.

The employer has the option of making additional payments to the profit sharing plan after each fiscal year.

The profit sharing sums thus determined are allocated to a tax-free reserve, which may be used in various prescribed ways. To be entitled to a share of the reserve, a minimum of 3 months' seniority may be required for employees. Moreover, such shares are blocked for five years.

When certain conditions are met, the profit sharing system offers tax and social security advantages (exemptions from income tax and social security contributions, except social surcharges CSG and CSRDSG, totaling 8% which are owed by employees and social contributions of 8% or 16% or 20% owed by the employer depending on the situation of the company and on the use of the share of the reserve) to both the company and the employees.

In certain cases the beneficiary may be able to receive immediate payment of the profit sharing sums; however, while these amounts are still exempt from social security contributions, they are subject to income tax.

B. Collective incentive plans

A collective incentive plan can be implemented on a voluntary basis. Such plans must be based on a formula whose result is inherently uncertain, as it must depend on the variable elements of the company's economic performance. Under certain conditions, the amounts paid to the employees may be exempt from social security contributions, however, they are subject to income tax unless allocated to the company savings plan.

The employer has the option of making additional payments to the incentive plan after each fiscal year.

C. Company savings plans

Company savings plans are collective savings systems that provide employees the opportunity to acquire company stock with a financial contribution from the company. They can be implemented at the level of either (i) a company or group of companies, i.e., via a PEE (company savings plan), or (ii) among various companies that do not constitute a group, i.e., via a PEI (inter-company savings plan).

Although, generally speaking, setting up a company savings plan is optional, profit sharing agreements entered into since December 31, 2006, must implement a company savings plan to manage the profit sharing rights.

Employers also have the possibility of implementing a long-term collective retirement savings plan, called a PERCO.

All the above types of savings plans can, in particular, be set up to receive payments from a statutory profit sharing or collective incentive plan. The employer also has the possibility of contributing to all these plans, subject to certain limits.

VI. EMPLOYEE SHARE OWNERSHIP

A. Stock option plans

A company may offer some or all of its employees the benefit of a stock option plan. The social security and tax treatment applicable to qualified plans was substantially modified in 2012, including, in particular, an increase of the employer contribution due on the grant date from 14% to 30% (for plans put in place after July 11, 2012). For grants made on or after September 28, 2012, qualified acquisition gains are subjected to (i) individual income tax at the standard progressive rates, as compensation income (up to 45%) and (ii) employee contributions (10%). A foreign company's subsidiary may also offer stock options for shares in its parent company.

Provided that a certain period has elapsed and that the difference between the price of the option and the value of the share at the date on which the option is granted is below a certain level, the profit shall not be considered as salary.

The employee may, however, be subject to a tax on his/her gains, depending on the amount of the gains and the length of time during which the employee has held the stock.

Both the employer and the employee must inform the Tax Authorities of the terms of the stock option plan, as well as of the exercise of the options.

B. Free share plans

A company may offer some or all of its employees a free share plan. The social security and tax treatment applicable to free share plans was also substantially modified in 2012, with, in particular, the application of the employer contribution at the grant date amounting to 30% and of the employee contribution of 10% applicable on the acquisition gain. New legislation enacted on August 6, 2015 (i.e. applicable to all free shares for which attribution has been authorized by an extraordinary general shareholders meeting after August 7, 2015) the employer contribution due at the date of effective acquisition of shares by the beneficiaries amounts to 20%, and the employee contribution of 10% is deleted. Under new legislation enacted at the end of 2016 (i.e. applicable to all free shares for which a grant was authorized by an extraordinary general shareholders' meeting after December 12, 2016), the employer contribution amounts to 30%; the acquisition gain is subject to social security contributions as a salary with a different treatment depending on whether the acquisition gain is lower or higher than €300,000.The employee contribution of 10% is reactivated for the fraction of the capital gain > to €300,000. A foreign company's subsidiary may also offer free shares in its parent company.

These shares are granted to their beneficiaries subject to certain conditions which, if fulfilled at the end of a minimum two-year "vesting period," will allow the beneficiaries to become owners of the shares. These shares will then have to be held for another minimum two-year "holding period". According to the new legislation of August 6, 2015, the minimum vesting period is 1 year. Moreover, the minimum two-year holding period is no longer required. The duration of the holding period is freely chosen by the extraordinary shareholders' meeting. However, the cumulative duration of the vesting period and holding period must be a minimum of two years.

When the shares are ultimately sold, the resulting capital gains will be taxed as compensation income (up to 45%) for shares sold after 2012 with some deductions depending on the duration of the "holding period". As for free shares for which attribution has been authorized by an extraordinary general shareholders meeting after August 7, 2015, the resulting capital gains will be taxed as capital gains (up to 45%) and be subject to social security contributions (15.5%).

CHAPTER 11

SOCIAL SECURITY SYSTEM

I. INTRODUCTION

France's current social security legislation is primarily based on the Acts of October 4, 1945 and August 21, 1967. The scope of the social security system has been progressively broadened, and all workers in France are now required to be covered for health care, maternity, retirement, unemployment and family allowances. The social security plans are compulsory, not optional. While there are several special social security systems that cover self-employed workers, agricultural workers and other specific professions, the summary below covers only the system applicable to company employees.

II. EMPLOYMENT LEGISLATION

Every employer must be registered for social security purposes. When a company, branch or office is set up in France and hires employees, it must apply for registration with the appropriate social security agency within eight days after either being set up or hiring its first employee. If a business has several locations in France, the registration formalities relating to the employees working in the various locations are to be carried out separately for each location.

All French employees who receive salaries and who work in a professional, commercial or industrial field must be enrolled in the social security system, regardless of the length of time they are employed.

Foreign employees who work and receive compensation in France are also normally liable for social security contributions and entitled to the resulting benefits. EU citizens whose employers have assigned them to France for less than two years, however, will normally remain liable only for the social security contributions in their home country, but are entitled to benefit from the French system. Under the France/US Social Security Treaty, compensation paid to employees temporarily seconded to France by their US employers may be exempt from French social charges and the employees will remain in the US social security system for up to five years, but are not entitled to French social benefits.

Since 2010, new EC social security regulations have entered into force, coordinating the regulations of the Member States. However, several EC regulations concerning non Member State nationals and integration with the European economic area and Switzerland remain in effect.

III. SOCIAL SECURITY CONTRIBUTIONS

Contributions are borne partly by the employer and partly by the employee. They are paid by the employer, who withholds its employees' monthly contributions from their salaries. Employers with

more than nine employees must pay the contributions applicable to the previous month within the first 15 days of the following month. Employers with nine or fewer employees pay the contributions applicable to the previous quarter within the first 15 days of the following quarter.

Contributions are assessed on the total salary paid either in cash or in kind. The value of benefits-in-kind (meals, housing, cars, etc.) granted to employees is normally included in the base of their contributions, although the value of some benefits-in-kind is determined on a notional basis. The Social Security Authorities reserve the right to make their own assessments if they consider the declared values to be understated.

The rate of contribution differs according to the risks covered (health, retirement, unemployment, occupational accidents) and some contributions are assessed on only a certain portion of the salary. Therefore, social security contributions represent a substantial proportion of lower salaries, but that proportion tends to decrease as the salary increases.

The employee's share of these contributions (including social security contributions such as the CSG and CRDS) represents between 20% and 25% of the total salary, while the employer's share represents between 35% and 45%. The above figures do not include the contributions that cover occupational injuries, which are exclusively borne by the employer and have different rates according to the experience and kind of activity carried on by the company.

As a consequence of the 35-hour Workweek Act, the employer may, for certain categories of employees and under certain conditions, benefit from reductions in social security contributions, especially for lower salaries.

As from January 1st, 2018, for the first time in France, employees' income tax will be withheld by their companies based on the rate applicable to each employee; this rate will be communicated by the tax administration to each employer.

IV. BENEFITS

A. Health

Employees and their dependents are covered by French social security. Medical expenses are largely covered when prescribed by a doctor, and a larger portion of the expenses are reimbursed when the doctor charges the standard rates set by the social security system. The balance is borne by the insured person unless he or she has subscribed to a supplementary health insurance (mutuelle) that may cover some or all of the remaining balance. From January 1, 2016 onwards, it is compulsory for all companies to provide a supplementary health insurance scheme for their employees that is financed up to 50% by the employer.

An employee who falls ill is entitled to receive, from the fourth day of sickness, a daily indemnity equal to 1/91.25 of the daily salary over the preceding three months, subject to the limit of 1.8 times the monthly minimum wage in force the last day of the month preceding cessation of work, for a maximum of 360 days over three consecutive years.

Depending on the provisions of the applicable collective bargaining agreement, this indemnity may be increased to 100% of an employee's salary, with the additional amounts being paid by the employer.

B. Maternity leaves and allowances

Provided that special formalities relating to medical examinations have been completed, insured women are entitled to claim a refund of all medical maternity and delivery costs (up to certain limits set by the social security system) and daily allowances. Such allowances are paid during the six weeks prior to the expected date of delivery and throughout the following 10 weeks for the first two children, with increased benefits for the third child and any children thereafter. The daily allowance amounts to 1/91.25 of the employee's daily salary over the last three months, subject to the limit of 1.8 times the monthly minimum wage in force the last day of the month preceding cessation of work, for a maximum of 360 days over three consecutive years.

This allowance may be increased to 100% of the last salary based on the provisions of the applicable collective bargaining agreement, with the additional amounts being paid by the employer.

C. Family allowances

Family allowances are granted to individuals who are domiciled and work in France. Many of these allowances are granted only when the insured person's income does not exceed a certain limit which varies according to the type of allowance.

D. Permanent disability pensions

Permanent disability pensions range from 30% to 50% of the annual average base salary, subject to limits that depend on the degree of disability.

E. Occupational injuries

For injuries suffered at work, employees may receive daily allowances equal to 60% of the daily base pay during the first 28 days of disability and 80% thereafter, subject to a maximum amount.

F. Retirement pensions

Retirement pensions were, in the past, fully payable at the age of 60 in the event of voluntary retirement, provided that the employee had contributed for a minimum of 164 quarters. However, further to the Act of November 9, 2010, the age and number of quarters required to benefit from a full pension has increased to the age of 62 for beneficiaries born from January 1, 1955. Under certain conditions, employees may "buy" quarters for years of study or incomplete years of work.

The employer can take the initiative of retiring the employee once he or she reaches the age of 70. Below this age, the employer can only propose retirement according to a specific procedure, if the employee is entitled to a full pension.

The pension amount takes into account the length of time during which the insured employee paid social security contributions and the average salary during the years during which his or her compensation was the highest.

The insured worker may have other retirement pensions if he or she has contributed to special systems. In particular, the August 21, 2003 Act created two retirement savings products: the PERP (retirement savings plan) and the PERCO (collective retirement savings plan).

Executives and corporate officers are required to contribute to specific additional retirement funds.

In the event of an insured employee's death, a portion of his or her pension is transferred to the spouse.

G. Unemployment benefits

Employees are entitled to claim benefits when their employment contracts have been involuntarily terminated (dismissal or redundancy, resignation due to a spouse's transfer, termination by mutual consent, etc.). Such benefits are paid by the unemployment insurance fund (*Pôle Emploi*).

H. Other benefits

Other benefits may be granted to insured employees or their dependents, such as death allowances, housing allowances, etc.

CHAPTER 12

INCENTIVES FOR REGIONAL DEVELOPMENT AND EXPORTATION

Some incentive schemes are noteworthy in the context of regional development policy and assistance to exporters.

I. FINANCIAL INCENTIVES FOR REGIONAL DEVELOPMENT

The government has singled out certain regions as being eligible for governmental aid and incentives. On the other hand, the government has, and has at the same time set up financial deterrents for companies wishing to locate to the Paris area.

A. Cash subsidies

1. REGIONAL PLANNING GRANT (PRIME À L'AMÉNAGEMENT DU TERRITOIRE)

The right to and amount of this subsidy depends on:

- the location of the proposed investment,
- its size, and
- the number of jobs it creates, which should reach a minimum of twenty to fifty depending on the local conditions.

The maximum amount of the regional development subsidy is €15,000 per job created subject to conditions, notably the availability of funds and compliance with the threshold for investment aids as determined by the European Commission with respect to regional aids legislation.

2. OTHER CASH OPPORTUNITIES

Major subsidies include the following:

- a regional subsidy for recreating industrial companies may be obtained from the local Chamber of Commerce or Prefecture,
- a regional employment subsidy may be obtained for creating jobs in certain activities defined by the regional Authorities. The amount is based on a certain percentage of the cost of the created job, and there is no limit to the number of eligible new jobs. This subsidy may not be granted at the same time as the regional development subsidy.

In addition, special subsidies can be granted to certain start-up and innovative companies.

B. Tax incentives

Industrial or service companies that locate their investments in certain regions may benefit from tax advantages including:

- total or partial exemption from corporate and/or local taxes,
- social charges exemptions,
- reduced transfer tax rates.

II. EXPORT FINANCING

The French foreign trade insurance company, Coface, is specialized in insuring against any risks related to foreign sales.

The risks covered are primarily:

- Economic risks: an increase in import costs in the foreign country after the contract has been signed.
- Credit risks: a foreign customer's insolvency or nonpayment, as well as any risks connected with political events and natural disasters.
- Currency risks.
- Political risks: infringements of the foreign investor's property rights.

CHAPTER 13

COMPETITION LAW AND CONSUMER PROTECTION

I. CONSUMER PROTECTION

French legislation has numerous laws designed to protect consumers, most of which are included in the Consumer Protection Code. They can be divided into two broad categories: those governing business and commercial practices, and those pertaining to product regulations.

Consumer protection involves regulating certain commercial practices. For example, practices such as discount sales, distance sales, misleading or aggressive practices, and comparative advertising are strictly regulated. The competitors of a business that wrongfully engages in such practices can generally take action against the business on the grounds of unfair competition.

The Consumer Protection Code also deals with the contractual relationships between businesses and consumers. The law on the Modernization of the Economy which was enacted on August 4, 2008 (called "LME"), provides, in particular, that certain contractual clauses are considered as irrefutably null and void (for instance, the possibility for the professional to modify the agreement unilaterally, limitation of the right to be indemnified in the event of breach by the professional, etc.). Other clauses are also deemed null and void (the right of the professional to terminate without notice, etc.).

Following decisions by the Court of Justice of the European Union (CJEU) and French Courts that had called into question rules banning bundled sales, on the grounds that they constituted an improper transposition of the EU Directive concerning unfair business-to-consumer commercial practices, Article L.121-11 of the French Consumer Code was modified in 2011 and in 2014 to do away with the general prohibition of bundled sales, which are now prohibited only to the extent that this bundling constitutes a real unfair commercial practice.

Consumer product regulations, on the other hand, are aimed at ensuring that the products placed on the market comply with applicable standards, including consumer safety standards.

The General Competition, Consumer and Antifraud Department ("*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* – DGCCRF") is responsible for overseeing compliance with these rules.

The "Hamon" Act, dated March 17, 2014, has added some modifications in the area: clarification on pre-contractual obligation to inform the consumer for both sellers and service providers; especially an administrative fine up to €15,000 for legal entities; an extension for the legal product warranty (applicable for any default arising in the 24 months following the delivery) and the obligation to receive concrete consent from the consumer for any additional payment.

However, the main contribution of this Act is the French class action. Indeed, any certified consumers' association can claim in court the allocation of damages, on behalf of injured consumers. This action is based on the "opt-in" which means consumers must agree to be part of this action. This action is limited to material damage suffered by consumers.

France's consumer protection rules were recently modified by the Ordinance of August 20, 2015, implementing European law, which provides that companies must organize a special mediation procedure for their B-to-C disputes.

In addition, by Ordinance of March 14, 2016, effective July 1, 2016, the Consumer Protection Code was reorganized in order to be more intelligible and accessible for its various users. Some of the Code's provisions now apply not only to consumers but also to "non-professionals," i.e. any legal person acting for purposes which are not within the scope of its professional activity.

II. ANTITRUST REGULATIONS

A. Cartels and abuses of dominant positions

French and EU law provide safeguards against cartels and abuses of dominant positions (art. 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), art. L 420-1 and L 420-2 of the French Commercial Code).

Cartels are defined as agreements or concerted practices among companies whose purpose or effect is to distort free competition on the market. Accordingly, vertical agreements (between companies operating at different levels of the supply chain) such as the establishment of a distribution network, or horizontal agreements (between competitors), such as a joint venture or any other type of agreement among companies (including, in certain cases, mere parallel behavior) must not have an anti-competitive purpose or effect.

Parties to such agreements must carry out a conformity self-assessment of their behaviors on the market, taking into account the fact that such behaviors cannot be submitted directly to Competition Authorities to guarantee their compliance with competition law.

Some agreements may benefit from an exemption:

- in the event of a regulation exempting a whole category of agreements (such as vertical restrictions; transfers of technology, specialization, research and development or car supply),
- in the event that an agreement may affect competition rules, a positive economic assessment can justify an individual exemption, in particular, if it contributes to economic progress and benefits consumers.

Under certain conditions, such practices can either be remedied through corrective adjustments or be permitted by virtue of the so-termed de minimis rule. To secure application of the de minimis rule, it must be proven that the practice or agreement in question has not had a significant impact on competition. In particular, the market shares held by the parties engaged in such practices must be below certain thresholds (in horizontal agreements: parties' total market share must be below 10%; in vertical agreements: parties' individual market shares must be below 15%), and the behavior in

question must not constitute a serious restraint on competition (resale price fixing, territory or client restrictions, restriction of resale to consumers, etc.).

Abuse of a dominant position occurs when a company engages in behavior whose purpose or effect is to distort free market competition in cases where the company is in a position to act without taking its competitors', clients' and/or suppliers' behavior into account (such a dominant position is not likely when the company holds a market share below 40%).

At the EU level, the European Commission's Competition Directorate is responsible for overseeing compliance with relevant provisions while, at the national level, this responsibility rests mainly with the Autorité de la Concurrence, the French Competition Authority and, incidentally, the Finance Minister (for control and sanction of anti-competitive behaviors of companies with limited revenue and whose impact on the market remains local).

In November 2011 and in February 2012, respectively the EU Commission and the Autorité de la Concurrence, the French Competition Authority, published a new framework document on Antitrust Compliance Programs. This document provides guidance to companies on creating compliance programs aimed at decreasing the risk of infringing competition rules, through different measures such as the enhancement of employees' awareness, the implementation of internal procedures and the conducting of regular evaluations.

B. Procedure and penalties

Actions based on competition law violations at the European level may be brought before the European Commission by either companies or consumer associations. The Commission can also assert jurisdiction over a matter on its own initiative.

Similarly, at the national level, the Autorité de la Concurrence can hear cases brought by companies, the Finance Minister, or other bodies such as consumer associations. It too can assert jurisdiction on its own. The Commission and the Autorité de la Concurrence have their own investigation agents and thus can conduct dawn raids in order to collect evidence or seek to uncover new Competition Law infringements. The European Commission and the French *Autorité de la Concurrence* can impose penalties of up to 10% of the amount of a company's annual worldwide revenue. When the company in question belongs to a group the revenue taken into account is the group's revenue.

Individuals who have fraudulently taken a personal and decisive part in the design, organization or implementation of such anti-competitive practices may be subject to a penalty of up to four years' imprisonment and a €75,000 fine, and may be exposed to civil liability.

The method used to determine the amount of the penalty is provided by the French Commercial Code and has been explained in depth in a communication from the French Autorité de la Concurrence (May 2011). According to this communication the amount of the penalty may be higher than in the past but still limited to the 10% of the company's revenue.

Furthermore, in 2016, a new law known as "Loi Macron" has provided for a new settlement procedure replacing a negotiated procedure whereby companies that do not contest the anti-competition charges, and that take concrete commitments for the future, may have their penalty reduced by up to 25%. In this new settlement procedure, the company that decides not to contest the charges may

ask the French Authority to enter into the negotiated procedure, propose commitments to restore competition and negotiate a fine comprised between a floor and ceiling amount. This new procedure offers a better legal certainty compared to the previous one. The final amount of the fine will normally remain between these floor and ceiling amount. Previously, the negotiation with the Authority focused on the rate of reduction without discussing the value on which the reduction will apply.

An appeal can be filed against any *Autorité de la Concurrence*'s decision before the Paris Court of Appeal.

III. MERGER CONTROL AMONG UNDERTAKINGS

EU and/or French law requires that projected concentration transactions be notified for authorization to the proper Authorities in cases where the revenue of the companies involved exceeds certain thresholds (a worldwide threshold and a national or EU threshold). French law applies only where the EU's threshold is not met.

The concentrations in question are mergers, acquisitions of controlling interests or parts of businesses (where the acquiring company will be able to exert a decisive influence over the activity of another business or a part thereof) and the creation of long-term joint ventures acting independently from their parent companies.

Depending on the revenue of the entities involved, the concentration must be notified either to the European Commission or the *Autorité de la Concurrence*. At the national level, the Finance Minister can exercise its power to review the case for reasons of general interest other than competition (employment, industrial development, companies' international competitiveness). The processing time for reviewing such notifications ranges from 25 working days to a maximum of 140 working days (approximately six months) as from the submission of the complete notification file. This maximum period is meant to apply only to transactions that are considered to have the most significant impact on competition.

After a concentration's notification to the relevant competition Authority, such Authority can approve it, authorize it under certain conditions or ban it. An appeal can be filed against any such decision: before the General Court of the European Union (former "Court of First Instance") for a Commission ruling and before the *Conseil d'Etat* for a ruling from the *Autorité de la Concurrence*.

In the event of failure to notify the proper Authorities of a relevant transaction, the company in question may be subject to a fine of up to 5%.

IV. RESTRICTIVE PRACTICES AND OPENNESS

Restrictive practices consist of behavior that is prohibited per se, even though it does not have any adverse effect on competition. For instance, the practice of reselling products below their purchase price or of imposing minimum resale prices may constitute a per se violation and give rise to criminal liability.

Other types of behavior can give rise to both civil liability and the risk of civil fine up to €5,000,000 including but not limited to: significant imbalance between parties' rights and obligations, sudden termination of an established commercial relationship, and other abuses. The "Macron" Act, dated August 8, 2015, has increased the amount of the penalties to a maximum of 5% of the gross revenue made in France, calculated in proportion of the advantages gained by the violation of the law.

Please also note that some practices could also be punished by administrative fines of up to €2,000,000, including but not limited to: compliance with maximum payment terms required by French law, signature before March 1st of each year of annual commercial agreements between suppliers and retailers / distributors.

So that such behavior can be monitored, companies must fulfill certain "openness" requirements, failing which they run a risk of criminal penalties, administrative or civil fines. These requirements primarily consist of the obligations to (i) draw up invoices containing certain information (art. L. 441-3 of the French Commercial Code, penal sanctions) and (ii) communicate price schedules and sales conditions (art. L. 441-6 of the French Commercial Code, civil sanctions).

Most litigation concerns:

- the abrupt termination of a business relationship,
- the existence of a significant imbalance between the rights and obligations of the parties,
- the statements required on invoices.

The "Sapin 2" Act, dated December 9, 2016, provides for the systematic publication of penalty decisions in case of abuses and eliminates the cap on the amount of administrative penalties that can be imposed on the same offender for repeated breaches. The Act also provides for new price information obligations for agricultural products and creates new "restrictive practice" prohibitions, such as prohibitions against (i) subjecting a trading partner to penalties for delayed delivery in case of force majeure and (ii) imposing a price revision clause referring to public indexes that do not directly relate to the goods or services covered by the agreement.

The General Competition, Consumer and Antifraud Department, (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* - DGCCRF), is responsible for inspections in this area. The Macron Act dated August 8, 2015, has increased the power of the French competent authorities to control and punish the practices and behaviors of companies which are not in compliance with French law. Lawsuits regarding such issues are brought before the general courts of law and may, in certain cases, be brought by the Finance Minister.

The "Duty of Vigilance" Act, dated March 27, 2017, requires companies registered in France which, together with their subsidiaries, employ at least 5,000 employees, as well as companies registered in France or abroad which employ at least 10,000 employees, to publish a "vigilance plan" to prevent environmental and human risks within the company itself or within its subcontracted activities. In the event of an accident, the victims, associations and/or trade unions can apply to the courts to enforce this new obligation.

Please also note that a major reform of the French Civil Code has been enacted by Ordinance dated February 11, 2016 which aims at modernizing, simplifying, improving the comprehension, and ensuring legal certainty for operators. The new rules deriving from this reform apply to contracts entered into or renewed on or after October 1, 2016.

V. INTELLECTUAL PROPERTY / INFORMATION TECHNOLOGY

A. Intellectual property

Intellectual property rights ensure the protection of creations of the mind and grant to their creators an exclusive right of use for a certain period of time. Intellectual property rights are subject to limitations and exceptions in order to preserve a fair balance between the rights of the creators and those of the users.

French legislation on intellectual property arises largely from international treaties and EU law, since the development of intellectual property rights takes place in the framework of globalization and is increasingly harmonized.

Under French law, intellectual property is classically divided into two main categories:

- Industrial Property which includes patents for inventions, trademarks, industrial designs and geographical indications, and
- Author's rights which covers literary works, films, music, artistic works, architectural design, software and databases.

In order to encourage innovation and investment, French law also covers other specific kinds of intellectual property such as know-how, plant variety certificates, domain names, etc.

The systems of protection provided by the French Intellectual Property Code differ according to the type of right concerned. Thus, unlike copyright which is protected "by the mere fact of its creation" according to the French Intellectual Property Code, industrial property rights are subject to prior registration before the French Office of Intellectual Property.

The provisions of the French Intellectual Property Code regulate the use of intellectual property rights and, in particular, the conditions of the grant of a license or of the assignment of such rights.

The French Intellectual Property Code sets from conditions which ensure the protection of intellectual property rights against third parties and the rules governing related litigation. In case of a violation of intellectual property rights, legal actions can be undertaken under civil, criminal or administrative laws depending on what rights are breached. Third parties can be held liable for infringement of intellectual property rights or, under specific conditions, for unfair competition and/or parasitism.

Directive (EU) 2015/2436, which aims to approximate the laws of the European Member States relating to trademarks, was adopted by the European Parliament on December 16, 2015. Most of its provisions have to be transposed within three years, which implies that French Law will soon implement important changes regarding the regulation of trademarks.

B. Personal data

Except in certain special cases, the processing and collection of personal data is subject to the notification or authorization of the *Commission Nationale de l'Informatique et des Libertés* (CNIL), the French National Data Protection Commission pursuant to Act No. 78-17 of January 6, 1978 on information technology, data files and freedoms (the Act).

In particular, the Act lays down specific rules applicable to all personal data processing within the French territories depending on, for example, the purpose of the processing or the storage period, and grants data subjects various rights to access, object to and rectify their data.

Data controllers must ensure that citizens are in a position to exercise such rights. Furthermore, they must ensure data security and confidentiality in order to protect the data from distortion or disclosure to unauthorized third parties.

Non-compliance with the Act is subject to fines of up to €300,000. The CNIL has the power to carry out on-site inspections.

In order to simplify formalities with the CNIL, companies may appoint a specific data protection officer ("DPO").

Personal data collected in France can generally be exported without restriction within the European Union (EU) countries. Personal data can be exported to other countries only where the CNIL deems that the level of protection provided by said countries is adequate or by using standard contractual clauses.

Following the Court of Justice's invalidation of the Safe Harbor in a decision of October 6, 2015, a new agreement, the "EU-US Privacy Shield", will replace it and impose stronger obligations on US companies importing personal data from Europe.

Lastly, the regulatory framework for the protection of personal data is to be significantly modified by the EU General Data Protection Regulation due to be adopted mid-2016 and coming into force in 2018.

CHAPTER 14

ENVIRONMENT

This chapter provides a brief overview of the different environmental issues covered by French environmental law. In recent years, an increasing number of EU regulations, as well as French laws and decrees, have been enacted with respect to environmental protection.

At the European level, the EU has modernized its legislation on chemicals and has established the REACH regulation (Regulation EC No. 1907 / 2006, dated December 18, 2006), an integrated system for the registration, evaluation, authorization and restriction of chemicals, based on the rule "no data – no market." The registration requirements imposed by the REACH regulation apply to manufacturers and importers of all chemical substances in any form. The objective is to improve the protection of human health and the environment while maintaining competitiveness and strengthening the spirit of innovation in Europe's chemicals industry. A European Chemicals Agency ("ECHA") has also been established to deal with the day-to-day management of REACH requirements.

The importation of products in breach of the REACH regulation can expose the entire supply chain to liability. Moreover, the regulation can give rise to competition law risks, as it requires manufacturers and importers to share data for purposes of registering the same substances. La réglementation REACH entre dans une troisième phase à compter du 31 mai 2018. A compter de cette date, les entreprises fabricantes ou importatrices de 1 à 100 tonnes d'une substance chimique devront l'enregistrer auprès de l'ECHA.

Au niveau national, plusieurs nouvelles grandes lois environnementales ont été adoptées récemment. On peut citer la loi « ALUR », qui vient étoffer et clarifier le droit des sites et sols pollués, notamment en introduisant une disposition reconnaissant la responsabilité subsidiaire du propriétaire d'un terrain en cas de pollution de son terrain par une activité polluante ou des déchets, s'il est démontré qu'il a fait preuve de négligence ou qu'il n'est pas étranger à cette pollution. Par ailleurs, cette loi a introduit la possibilité pour l'exploitant d'un site industriel de transférer la responsabilité administrative de la remise en état du site en fin d'activité à un tiers « intéressé », sous conditions de capacité technique et de garanties financières.

La loi relative à la transition énergétique, adoptée en 2015, propose de nombreux outils afin de lutter contre le dérèglement climatique, préserver l'environnement et renforcer l'indépendance énergétique de la France. Elle introduit par exemple une obligation d' « exemplarité » pesant sur les personnes publiques qui sont tenues de faire construire prioritairement des bâtiments à énergie positive ou à haute performance environnementale. Concernant les producteurs d'électricité, la loi a mis en place un nouveau mode de calcul des tarifs réglementés de vente d'électricité.

Enfin, on peut citer la loi Biodiversité de 2016, qui crée l'Agence française pour la Biodiversité (AFB), chargée notamment de préserver, gérer et restaurer la biodiversité et les eaux. Cette loi précise également le contenu et la forme des obligations de compensation pesant sur les maîtres d'ouvrage dans le cadre de la réalisation d'un projet, d'un plan ou d'un programme portant atteinte à l'environnement.

Many sectors whose activities impact the environment are subject to demands for environmental protection that are defined at the national level. For this reason, the codification of French environmental laws gave rise to the French Environmental Code, which brings together a number of laws that had previously been scattered amongst various legal sources.

Beyond the Environmental Code, other areas of French law also take into account environmental considerations, such as the new corporate law obligations regarding Social and Environmental Responsibility, which have been introduced and expanded at both the national and international levels over the past few years.

Since 2001 France requires listed companies to detail the social and environmental consequences of their activity in their annual report. Investors therefore have access to more precise information on these companies' involvement in sustainable development. Cette obligation ne concernait à l'origine que les entreprises cotées en bourse, mais a été étendue, à compter de 2012, à toutes les entreprises de plus de 500 salariés.

Another significant piece of French environmental legislation relates to "classified facilities" (classified as likely to generate risks or dangers for the environment), which includes the transposition of the EU Directive SEVESO III. Under this body of law, the entire environment (surroundings, health, safety, public cleanliness, agriculture, etc.) is to be protected against any type of damage, particularly by putting in place controls of pollution-generating activities. The law incorporates environmental protection objectives in the areas of waste, water, air, noise pollution, etc.

This law applies to all facilities that may cause pollution, regardless of the type, size or purpose of the facility in question.

In France, several requirements must be fulfilled in order to operate a business that is considered as a "classified facility":

- An administrative certificate of operation must be obtained prior to any commissioning of the facility,
- Environmental measures must be complied with throughout the life of the company,
- A specific procedure must be followed to return the site to its original state upon termination of the activity (the last operator must return the site to an acceptable state that presents no danger to the environment or the neighboring inhabitants, failing which it may be held liable even if the site is sold).

All of these regulations are applicable throughout the entire lifespan of a business, from the start to the end of operations. It is therefore essential for management to ensure compliance with all such provisions, most of which entail substantial criminal and administrative penalties in the event of infringement.

FIDAL

4-6, avenue d'Alsace
92 982 Paris La Défense Cedex

Tel.: +33 (0) 1 46 24 30 30
Fax: +33 (0) 1 46 24 30 32
www.fidal.com
www.fidal-avocats-leblog.fr

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Registered office :
4-6, avenue d'Alsace
92400 Courbevoie, France
Tel: +33 1 46 24 30 30 - www.fidal.com
Member of the Hauts-de-Seine Bar