Country Guide
France

Prepared by

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GIDE LOYRETTE NOUEL

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GIDE LOYRETTE NOUEL

Guide to doing business in France

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Overview

The Country At A Glance

GENERAL CONSIDERATIONS

Located in Western Europe, France has a land surface of 643,801 square kilometers and a population of over 67 million people. It is bordered by Spain, Italy, Switzerland, Germany, Luxembourg and Belgium.

French is the only official language. Some older generations also speak dialects that are specific to their region. These languages are Breton, Alsatian, Basque, Catalan, Flemish, Provençal and Corsican. Yet, France's political history makes it certainly more aware of the social aspect of doing business.

Although France is deeply rooted in its regional culture and traditions, there are no cultural influences or prohibitions on the way business is conducted.

France has always been a center for international trade and commerce. It is also a leader in services and high technology, with a long tradition of innovation. Its cutting-edge technology, allied with a strong industrial structure, made France the seventh-largest industrialized economy with a GDP of approximately $2.71 trillion in 2019 down to $2.60 trillion in 2020.

Along with most members of the European Union, France adopted the Euro as its official currency. The average exchange rate in January 2021 was equal to USD 1,21 for EUR 1.

France is a highly centralized country in which Paris plays a leading role in government and business. However, there are several other large cities including Lyon, Marseille, Bordeaux and Lille. Using its modern railroads, high speed trains (TGV-*Trains à Grande Vitesse*) and a highly organized road and highway network, France has been able to connect even its smallest cities.

Dunkerque, Le Havre, Brest, Saint-Nazaire, Bordeaux and Marseille are the most important French harbours. Brest and Toulon are the two naval bases of significant importance. Currently, there are over 140 airports operating in France, including a number of international and regional airports. Paris has some of Europe's most important international airports (Roissy-Charles de Gaulle and Orly) and five mainline railway stations (Gare Montparnasse, Gare de Lyon, Gare d'Austerlitz, Gare de l'Est, Gare du Nord). The other major international airports are Lyon Saint-Exupery, Marseille Provence, Nice Côte d'Azur and Strasbourg.

A dynamic services sector accounts for an increasingly large share of economic activity and is responsible for nearly all job creation in recent years.

The presence of the government in the country's economic activity is rather important, as it continues to own shares in corporations in a wide range of sectors including banking, energy production and distribution, automobiles, transportation and telecommunications. However, its presence has significantly decreased over the past 30 years further to various reforms and privatizations. The national electricy provider (Electricité de France – EDF) and the national gas provider (ENGIE) were partially privatized respectively in 2005 and 2008. Today, the government still owns 83,68 % of EDF and 23,64% of ENGIE (figures as at December 31, 2020). In addition, the French national lottery operator (FDJ) was also partially privatized in 2019.

INTRODUCTION

Government

According to the Constitution of the Fifth Republic which became applicable on October 4, 1958, France is led by an executive branch and by a bi-cameral legislative branch.

The executive branch is governed by the President and The Prime Minister. The President ensures the regular functioning of the Administration and the continuity of the State. The President appoints the Prime Minister, presides over the cabinet, commands the armed forces and concludes treaties. He/she may also submit questions to a national referendum and can dissolve the National Assembly. He/she is elected by direct vote every five years. The current President is Emmanuel Macron.

The Prime Minister is the head of the cabinet, and the nominal head of the government. The cabinet is composed of a varying number of ministers, delegate-ministers and secretaries of State. Even though the Prime Minister is named by the President, he/she usually comes from the ruling party in the National Assembly (*Assemblée Nationale*), *i.e.* the party with the majority of seats.

The legislative branch is composed of the National Assembly (*Assemblée Nationale*) and the Senate (*Sénat*). The National Assembly is the principal legislative body, and its 577 members have the final word on all legislative issues. The members of this Assembly are directly elected for a five-year term (renewable), the same year as the President, and all seats are voted on in each election. The next presidential and parliamentary elections will take place in spring 2022.

The Senate is composed of 348 senators elected by indirect election for a six-year term (renewable) and is renewed by half every three years. The Senate's legislative power is more limited since the National Assembly has the final word in the event of a disagreement between the two houses.

The government has a strong influence on Parliament, since it chooses the agenda and is at the origin of almost all legislative texts.

Besides occasional changes of Prime Minister and of the members of the government, the institutions are rather stable. The main factors of stability are the President, who does not change until the end of his five-year office and the parliament, which is composed of a stable political majority.

Judicial system

The judicial system in France is independent and generally perceived as impartial. It is equally applicable on the whole French territory.

There are two sets of parallel jurisdictions: administrative courts, headed by the State Council (*Conseil d'Etat*), and judicial courts headed by the French Supreme Court (*Cour de Cassation*). Another judicial body, the Constitutional Council, provides official interpretation of French constitution.

The Constitutional Council examines legislation and decides whether it is in conformity with the Constitution.

Administrative courts have jurisdiction over matters concerning administrative law and litigations between private persons and public administration.

Judicial courts handle civil, commercial, family-related and other disputes arising between private parties, as well as criminal litigations.

The French judicial system is such that French decisions can generally be enforced outside the country. Reciprocally, foreign decisions can also be enforced in France. France is a party to several international conventions that organize recognition and enforcement of foreign decision, such as:

- the European Regulation n°1215/2012 of January 2015 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and
- the New York Convention on the Recognition and Enforcement of Foreign Arbitrage Awards of June 10, 1958.

DIPLOMATIC RELATIONS

As a founding member of the United Nations, France holds one of the permanent seats on the Security Council and is a member of most of its specialized and related agencies. It is also a founding member of the European Union, the Council of Europe and the North Atlantic Treaty Organization (NATO).

France has established diplomatic relations and conducts business with nearly every country in the world. It has the widest consulate network abroad in the world. Almost every country is represented in Paris by an embassy or a consulate.

Full list (in French) is available at: http://www.diplomatie.gouv.fr/fr/le-ministere-et-son-reseau/annuaires-et-adresses-du-maedi/ambassades-et-consulats-etrangers-en-france/

There are no restrictions on business dealings with France, as it is not subject to any sanctions.

There are no travel restrictions to or within the country, except on a case-by-case basis, where visas may be required depending on your country of origin. The European Union citizens enjoy the free movement of persons and can freely travel in France. France is also part of the Schengen Area, therefore a visa delivered by one of the Schengen Area countries allows its owner to travel within the Schengen Area. French citizens benefit form visa exemptions for a large number of countries.

FOREIGN INVESTMENTS

Export incentives and Guarantees

In 2019, France was the 5th biggest recipient of foreign direct investments in the world and the 3rd in Europe. It is also party to numerous multilateral and bilateral investment agreements.

Business France is the national agency responsible for fostering export growth by French businesses, as well as promoting and facilitating foreign investment in France. France has been named most attractive country in Europe for foreign investment in 2021.

Investment in France is free. However, investments in certain “strategic” sectors, such as gambling, private security, cryptology, dual use goods and technologies, etc., are subject to prior authorization of the French government. France strengthened this regime in 2020.

Foreign as well as French investors may benefit from incentive programs, the purpose of which is to encourage investment and which are beneficial to the French economy by creating new jobs, increasing the sale of French goods and promoting ailing regions. The program will be determined by the characteristics of the project at stake (productive investment, new position openings, innovation, training, etc.), its location (priority development areas, etc.), and the type of company that runs it (large corporation, small or medium-sized company).

Incentive programs are organized both at the European level and by the State and the different local authorities. Subsidies granted by the State or local authorities must comply with European regulations in terms of maximum intensity, eligible expenditures, etc.

Most of the time, an investor must file an application with the competent authority, giving various information relating to him/her/itself, the contemplated investment, the modalities of implementation and financing of the project and, if needed, the beneficiary of the investment. The application process may require several months.

Usually, incentives take the form of either :

- subsidies, such as cash grants for regional development, regional employment subsidies (*primes régionales à l’emploi*) and regional subsidies for the creation of businesses (*primes régionales à la création d’entreprises*);
- loans and financing guarantees, such as subsidized long-term loans granted by lending institutions supplementing the action of the Treasury, or equipment credit for small and medium-size enterprises; and
- special tax treatment.

As a rule, any kind of incentive is negotiated on a case-by-case basis with the different governmental authorities.

Grants, Subsidies and Funds Offered to Foreign Investors

Information related to available incentive programs can be obtained from the National Agency for Territorial Cohesion (Agence Nationale de la Cohesion des Territoires – ANCT).

In accordance with European law, investment and job creation aid measures to large corporations are legal as long as they promote the settling up and development of companies in priority development areas, where more assistance schemes are offered and allowable assistance rates are more attractive.

Aside from hiring subsidies, which are automatically allocated to companies and employee training aid measures, subsidies for productive investment and job creation are limited according to the geographic location of the project and the size of the beneficiary company.

The major aid measures available are:

- the Prime d’aménagement du territoire (PAT), a development grant for which the ANCT is responsible throughout France;
- subsidies for business premises granted by local authorities and designed to reduce leasing installments;

- the European Regional Development Fund (ERDF);
- temporary tax exemptions (see below);
- the small and medium-sized industry development fund;
- regional aid (aides à finalité régionale);
- aid for reindustrialization.

Besides, companies may benefit from direct subsidies or exemptions from social security charges to hire certain categories of staff, including unemployed young people and long-term jobseekers.

Tax Incentives

Below is a non-limited list of French tax incentives:

❖ A wide nexus of DTT

France has concluded more than 120 Double Tax Treaty (DTT). This large nexus of DTT allows French resident to avoid double taxation and to benefit from reduced WHT tax rates.

❖ R&D tax credit

A tax credit for research and development (R&D) expenditure is available. The credit, which takes into account the annual volume of expenditure, amounts to 30% of the expenses related to operations of research and development up to EUR 100 million, and 5% for the excess.

In addition, eligible R&D expenses incurred by the company can be included in the basis for computation of the tax credit at up to 100% of that amount.

❖ Innovative new enterprises

A special regime for innovative new companies applies to SMEs the capital of which is owned for at least 50% by individuals or by other innovative new enterprises. To qualify for the regime, a company must have existed for less than 8 years and must carry out research and development activities with a value of at least 15% of its total deductible expenditure. This regime grants a full exemption from corporate income tax for the first profitable 12-month period, and a 50% exemption for the next profitable 12 months. This regime also grants exemptions from various other taxes, e.g. local business tax and social security contributions.

All these exemptions apply only to companies created until December 31, 2022.

1. BUSINESS VEHICLES

France has always encouraged investments from abroad. Traditionally, companies that want to set-up in France decide to do so by the creation of a subsidiary or a local branch.

In France, the term *société* or company includes all profit-making entities, *i.e.* partnership-type companies (*société de personnes*) and corporations (*sociétés de capitaux*).

The most popular companies are the public limited company (*société anonyme*, or “SA”) and the joint stock company (*société par actions simplifée*, or “SAS”). However, there are many other business vehicles that allow a foreign entity to set up a company in France. One of the most important components concerns the choice between limited or unlimited liability.

France has a tradition of highly centralized oversight of its essentially market-based economy. The government maintains a presence in industries such as aeronautics, defense, automobiles, and telecommunications, and can still exercise control over privatized firms through the "golden share".

The "golden share" allows the French government to retain some control of the fate of privatized companies even in case it holds less than 50% of the stock. However, the European Court of Justice may declare some "golden shares" illegal.

Limited Liability Companies

Limited liability companies are permitted in France and are incorporated under the form of either a SA, a SAS or a limited liability company (*société à responsabilité limitée* or SARL). These different types of corporations are all legal entities and are governed by the law on commercial companies of July 24, 1966, codified in the French Commercial Code.

Companies are formed from the date of signature of their by-laws. However, they do not become a legal entity until they complied with all procedural requirements of law and are duly recorded at the Trade Registry (*Registre du Commerce et des Sociétés*). This registration procedure can be completed online or directly with the registry of the competent Commercial Court.

Public Limited Company - Société Anonyme

The *société anonyme* (SA) is the French equivalent of the American limited corporation or the British limited company. It is the most common form of business enterprise in France. Incorporation as well as management of such corporations are under strict guidelines.

Capital & shares

A minimum of two shareholders, either individuals or legal entities, is needed to form an SA. This minimum of two shareholders must be complied with during the life of the corporation.

The minimum legal share capital of an SA is EUR 37,000. Only one half of the share capital must be paid upon subscription of the shares, provided that the balance is paid within 5 years.

Management

Two alternative systems of management are possible:

- The SA can have a board of directors (conseil d'administration), the structure most currently used in France, led by a chairman of the board and a general manager. The chairman has, for all practical purposes, the duties of both the chairman of the board and the chief executive officer of a US corporation. He may request the appointment of at least one general manager to assist him. It is also possible to differentiate the duties of chairman of the board and the managing director,

- Another management alternative is creating a directorate (directoire), which is an executive committee overseen by a supervisory council (conseil de surveillance).

General Meetings

Shareholders exercise their control over the corporation through two types of meetings:

- Ordinary meetings: held at least once a year to approve the financial statements, decide upon the allocation of profits, appoint statutory auditors or authorize agreements between the company and its directors or corporate executives when the said agreements do not concern those normally entered into by the company,

- Extraordinary meetings: held to amend the by-laws, increase or reduce the share capital, decide major corporate reorganization.

French law also provides for compulsory quorum and majority conditions.

Joint Stock Company - Société Par Actions Simplifiee

The *société par actions simplifiée* (SAS) is a flexible form of corporation created by the law of January 3, 1994, which was amended in 1999.

Capital & shares

There is no minimum share capital required upon the incorporation of the SAS and no minimum number of shareholders.

There is no obligation for the shareholders to be legal entities and the capital can also be held by individuals. A SAS held by only one shareholder is called *société par actions simplifiée unipersonnelle* (SASU).

Management and general meetings

Designed to meet the needs of large corporations with a special form of joint venture vehicle, the SAS can be governed by tailor-made provisions of the by-laws as far as management and shareholders meetings are concerned.

The sole obligation is to provide for a president, who is entitled to represent the SAS *vis-à-vis* third parties.

The SAS' regime is similar to the regime of an SA, although more flexible. Due to this flexibility, the SAS cannot make public offerings.

Limited Liability company – Société à Responsabilité Limitée (SARL)

A *société à responsabilité limitée* (SARL) is commonly used by small-to-medium sized companies because it offers limited liability for shareholders while also allowing for a rather simple governance structure.

Capital & shares

There is no minimum share capital required upon the incorporation of the SARL.

There is no minimum but a maximum number of 100 shareholders in an SARL. They can be individuals as well as legal entities.

An SARL that only has one shareholder is called an *Entreprise Unipersonnelle à Responsabilité Limitée* (EURL).

It should be noted that in France, a single shareholder is only possible in an EURL or a SASU.

Management

The SARL is managed by one or more managing directors *(gérant*), who must be individuals but need not be shareholders. The managing director(s) has full authority to bind the SARL in its dealings with third parties, whatever may be the limitations provided in the by-laws.

General meetings

As in the SA, decisions made by the shareholder meetings are submitted to legal quorum and majority conditions.

Unlimited Liability Companies

Below is a list of the primary types of companies with unlimited liability. Apart from the *société en participation* (undisclosed partnership), they all are legal entities.

General Partnership – Société en Nom Collectif (SNC)

The *société en nom collectif* (SNC) is an unlimited liability company in which all the partners are jointly and severally liable for all the debts of the company.

The entity's profits are taxed at the partner's level, except if the company chooses to be subject to corporate income tax.

Capital & shares

No minimum share capital is required. There must be at least two partners, but there is no maximum number of partners.

Management

The SNC is operated by one or more managing directors who are entitled to represent and bind the company *vis-à-vis* third parties.

A legal entity may be appointed as managing director

Limited Partnership - Société en Commandite par actions (SCA) or Société en Commandité Simple (SCS)

The *Société en commandite* is a hybrid form of a commercial partnership where capital and power are separated between:

- the general partners, who have joint, several and unlimited liability and almost complete control over management; and
- the limited partners who receive shares for their contributions and whose liability is limited to the said contributions.

Capital & shares

The minimum legal share capital of an SCA is EUR 37,000 (even if the SCA wishes to offer shares to the public).

There is no required minimum for the SCS.

Management

The SCA is managed by one or several managers who operate under the control of a supervisory board (Conseil de Surveillance), composed of at least three limited partners.

The SCS requires at least two partners (one general partner and one limited partner).

Civil Partnership – Société Civile (Sc)

A *société civile* (SC) is a partnership that may not engage in commercial activities. As such, it is generally chosen as the vehicle for real estate activities.

Capital & shares

No minimum capital is required. There must be at least two partners but there is no maximum number.

Partners may be individuals as well as legal entities.

Management

The managers of the SC do not necessarily need to be partners.

Decisions that exceed the powers granted to the manager(s) shall be taken by the partners, who decide unanimously unless otherwise provided for in the by-laws.

Undisclosed Partnerships – Société en participation (Sep)

The *société en participation* (SEP) is a typical structure for joint ventures and is the simplest form of partnership in France.

It is the appropriate vehicle when the partners wish to cooperate in limited sectors and share profits and losses resulting from their cooperation, with the intent that this cooperation remains confidential (except for the tax authorities).

The SEP is essentially a structure which does not require registration. Therefore, it is not a legal entity *per se*.

The by-laws must be sent to the tax authorities and specify the amount contributed by each partner, the method adopted for sharing profits and losses, and the duration of the partnership. Each partner contracts in his own name and is personally liable *vis-à-vis* third parties.

The partners are jointly and severally liable for the SEP's debts, unless the SEP is disclosed to third parties.

Economic Interest Grouping – Groupement d'intérêt économique (GIE)

The French *Groupement d'intérêt économique* (GIE) is a type of joint-venture partnership permitting two or more individuals or legal entities to pool their efforts in order to facilitate or develop their respective activities or to improve the result thereof. While the purpose of a GIE is not to seek profit for its own account, if profits are realized, they are taxed in the hands of the GIE's members.

A GIE must register with the Trade Registry. It is not required to have a capital and must not have commercial purposes. The members of a GIE are each jointly and severally liable for the GIE's debts.

Other Vehicles

Joint Ventures

A contractual joint venture is often only a first step and a vehicle for future expansion.

In France, co- operation within the framework of a joint venture can be organized in three different ways. A joint venture can either be a simple contractual relationship that does not give rise to a common entity or it can be a common entity having either the form of a partnership (*société de personnes*) or a corporation (*société de capitaux*).

The choice in this regard depends on several factors, among which are the length of the contemplated operation as well as the extent to which parties require the independence and autonomy of the common entity.

Subsidiaries / Branches / Representative Offices

A liaison office is not a legal entity distinct from the parent company. It does not conduct commercial business but merely serves as a postal address, a presence and an information center for both the parent company and third parties.

Except for offices of banks and insurance companies, a liaison office does not need to be listed with the Trade Registry but to be registered with the *Centre de Formalités des Entreprises* (CFE).

The branch, just as the liaison office, is not a legal entity distinct from the parent company. Several formalities must be accomplished for the registration of a branch.

2. EMPLOYMENT

Employer/Employee Relations

Under French law, there are two main types of employment contracts: the indefinite-term employment contract (*contrat à durée indéterminée* or *CDI*), which has no set time limit, and the fixed-term employment contract (*contrat à durée déterminée* or *CDD*), which is only valid for a fixed term.

A fixed-term contract may only be used to hire an employee to perform a precise and temporary task, in factual circumstances strictly defined by law as follows:

- to replace an employee who is temporarily absent or whose contract is temporarily suspended;
- to temporarily fill a vacant job position while awaiting the arrival of a new employee;
- to deal with a temporary increase in business activity;
- to facilitate the hiring of certain categories of unemployed person;
- to provide specific training to the employee; or
- to hire for seasonal work in business sectors in which fixed-term contracts are standard practice.

Usually, the maximum duration of a fixed-term contract is 18 months and may be extended up to 24 months. There is no specific duration when the fixed-term contract is used to replace an employee who is temporarily absent.

Under international private law, the employment contract of a foreign employee seconded in France (temporarily) is an international contract for which the parties are free to choose the applicable law, subject to compliance with internal public order provisions.

Under internal law, foreign employees, whether or not they are EU nationals, benefit from the same rights in the company as French employees. In some cases, they can even benefit from additional rights due to their foreign status (contract translation, support for their relocations in their country of origin, etc.).

Employment Regulations

Labor relations are governed by the French Labor Code and collective bargaining agreements (*conventions collectives*) that reflect the practices of each economic or industrial sector.

Working Time

As a general rule, the legal working time in France is 35 hours per week, or 1,607 hours per year. Beyond that, any extra time worked is considered overtime and involves an overtime premium. A limit on overtime work can be set in a collective agreement.

An employee cannot work more than 6 days per week. Therefore, a full day (24 hours) of rest has to be given, usually on Sunday. However, certain companies can be authorized to exercise their activities on Sunday, on a case-by-case basis.

The maximum working time is 10 hours a day and 48 hours a week, with a maximum of 44 hours per week on average, over a period of 12 weeks.

In specific cases, employees can be allowed to work (i) more than 48 hours per week over a determined period of time, while not exceeding a maximum of 60 hours per week, or (ii) more than 44 hours per week over a 12-month period of time, up to a maximum of 46 hours per week (or above if authorized by the competent administrative authority). A prior administrative authorization is then required in both cases. In the latter case (ii), however, specific provisions of a collective industry agreement can also authorize employees to work 46 hours per week.

Provided that the collective agreement contains specific provisions, a company and employees as defined therein (such as employees with considerable autonomy in their work) can enter into :

- an agreement on the number of hours worked per year and set a fixed annual working time in hours (*forfait annuel en heures*). In such a case, the 10-hour day and 48-hour week (or the 44-hour week over a period of 12 weeks) apply to the employees in question, as well as certain provisions regarding overtime.

- an agreement on the number of days worked per year (fixed annual working time in days - *forfait annuel en jours*). In such a case, the 35-hour work week and provisions concerning overtime, or the 10-hour day and the 48-hour week do not apply to employees whose work does not directly relate to production for instance. Their maximum working time is set at 13 hours per day and 218 days per year. Such employees can thus work up to 78 hours a week (6 x 13 hours).

However, the French Labor Code's provisions do not apply to employed management-level executives who have significant responsibilities, organize their work on an independent basis, are entitled to make significant decisions and whose pay is among the highest in the company.

Paid Vacation

Unless otherwise and more favourably agreed upon, employees are entitled to 5 weeks of paid vacations over a year (2.5 days of paid vacation per month). There are at least 11 public holidays each year, but only May 1st is compulsory.

Additional so-called long-service paid leave is also provided under certain collective bargaining agreements, as well as leave for personal or family reasons (wedding, birth, death of a close relative) under the French Labor Code.

Vacation is taken at the request of the employee, subject to the consent of the employer. For example, an employer may refuse to let an employee go on vacation if the firm is too busy at the time. Employees are nevertheless entitled to take between 12 days and 4 weeks (24 days) off during the period between May 1st and October 31.

Wage

The minimum wage, "SMIC" (*salaire minimum interprofessionnel de croissance*) in France is determined by the government and revised at least every year in order to adjust it to the cost of living.

For 2021, the minimum wage is EUR 10,25 an hour or EUR 1,554.58 per month on a 151.67-hour basis (35-hour week). However, the collective agreement can set its own minimum wage, but only if it is more favourable to the employee than the SMIC.

Sick Leave

An employee may be absent due to illness, provided that he or she has informed the employer and produces a medical certificate usually within 48 hours following the absence. The employment contract is suspended.

The applicable Collective Bargaining Agreement or the Labor Code ensures that the employee's salary is maintained during the absence. The employee receives a social security allowance after a waiting period of three days. Moreover, the employer has to pay an allowance from the first day of absence when the absence results from illness or a work-related accident, and after eight days of absence in other cases, in addition to the security social allowance, to maintain the employee's salary.

Hiring and Firing Requirements

Hiring

A company may hire staff as soon as it is registered with the Trade Registry (*Registre du Commerce et des Sociétés*). There are no specific positions that must be held by nationals.

Hiring a new employee involves, before he/she may actually take on his/her task, filing a hiring statement (*Déclaration préalable à l'embauche* or *DPAE*), which is to be sent to the URSSAF branch nearest to the company's location. The declaration should preferably be drawn up electronically, but it can also be drawn up on paper. Based on the DPAE, URSSAF completes all the formalities required, such as registering the employee for social security, unemployment insurance, etc. New employees are subject to a medical check-up.

The National Unemployment Office (*Pôle Emploi*) may assist companies in recruiting their staff, by providing information about the positions offered by the company, helping it select applicants, and offering and organizing preliminary training sessions. Based on requirements, the government and the regions in charge of continuous professional training can organize specific training schemes for certain categories of future employees.

For indefinite-term employment contracts, mandatory probationary periods permitted by law are:

- 2 months for workers and employees;
- 3 months for technicians and supervisors; and
- 4 months for executives.

Longer probationary periods are authorised when they are provided by a collective bargaining agreement entered into before June 27, 2008. Shorter probationary periods are authorised when they are provided by a collective bargaining agreement or employment contracts signed on or after June 27, 2008.

Such probationary periods may be extended once for the same duration, but only if provided for in an extended industry-wide agreement and in the employment contract. Such a renewal, which is subject to the employee's express consent, must be agreed before the end of the initial probationary period.

During the probationary period, the contract can be terminated without a need for the employer to characterize a real and serious cause. Nevertheless, the employer's decision must be based on the assessment of the professional skills of the person concerned and in no case on a discriminatory or foreign ground. It must also be a ground inherent to the person of the employee.

Dismissal

A fixed-term employment contract (*CDD*) cannot be interrupted by anticipation, except for serious breach of contract or in case of force majeure. It can, however, be interrupted if both parties agree to it. There is no specific procedure.

Under French law, indefinite-term employment contracts (*CDI*) may only be terminated by the employer for a "real and serious cause" (*cause réelle et sérieuse*), *i.e*., based on facts sufficiently serious to justify a dismissal. Cause can result from personal grounds or economic grounds if the company is faced with difficulties.

Employers must always state the grounds for dismissal in writing and follow a procedure set down by law:

- the employer must ask the employee to attend a preliminary meeting in order to discuss his or her potential dismissal;

- after this meeting, the employer must send a letter by registered mail to the employee to be dismissed explaining the reasons for the dismissal and indicating the duration of the notice period.

The employer has certain obligations towards the dismissed employee. For example, an employer must give the dismissed employee the documents necessary to claim unemployment benefits. The employer must provide a termination notice and various indemnities (including a termination indemnity set out by the Labor Code or the Collective Bargaining Agreement), the nature of which vary depending on the grounds for dismissal, the employee's status (*i.e.* executive or non-executive) and his/her length of service.

Serious misconduct and gross negligence are legal bases for terminating an employment contract without allowing the employee to serve his or her notice period and without having to pay him or her an indemnity.

Special regulations apply to layoffs on economic grounds, such as a job preservation plan (*plan de sauvegarde de l'emploi* or *PSE*) if over 10 employees are affected in a company with more than 50 employees. Such regulations notably provide for redeployment or outplacement support, consultation with the works council, information and reports to the Regional Directorate for Companies, Fair Trading, Consumer Affairs, Labor and Employment (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi - DIRECCTE*), and payment of severance benefits.

Employee representatives are covered by a specific protection. A special procedure (including a prior authorisation of the labor inspector) must be followed if the employer wishes to terminate an employee representative's employment contract.

Common Consent Termination

The Labor code provides for a procedure of common-consent termination. Following this procedure, the parties to an employment contract agree to terminate amicably their relationship and permit the employee to be eligible to the state unemployment benefits. The steps are as follows:

- provide at least one (or more) preliminary meetings during which both the employer and the employee may receive assistance to discuss the terms and conditions of the termination;

- the employer and the employee must sign an administrative form ("the CERFA form") which provides for the terms and conditions of the termination;

- after the signature of the agreement, each of the parties has a right to retract his consent during a 15 calendar day period;

- following this 15 calendar day period, the agreement must be sent to the labor administration who has 15 working days to ratify the agreement. The absence of a reply within the 15 day-period is an implied ratification by the Labor Administration.

Therefore from the first contact between the parties until the formal termination of the employment contract, the procedure usually takes around 45 calendar days.

The employee is entitled to the payment of a specific common consent termination indemnity (*indemnité spécifique de rupture conventionnelle*) at least equal to the severance pay provided by law or by the CBA.

Foreign Employees

Except for EU or EEA nationals, foreigners must have been authorized to stay and work in France. The work authorization may consist in one of the following documents:

- the "*carte de resident*" (resident's permit) is valid 10 years and is almost always automatically renewed. It is the most difficult to obtain;

- the "*carte de séjour mention salarié*" (temporary residence card marked *employee*): temporary residence card marked *employee* allows employees under an indefinite term employment contract to stay in France to work. The application for work authorization must be done by the employer before the employee enters France. If agreed, the employee can request a long-stay visa valid as a residence permit (*visa de long séjour valant titre de séjour* - VLS-TS). This card is valid 1 year and renewable. If the renewal application is accepted, the employee will receive a valid multi-year residence card 4 years.

- the "*carte de séjour mention travailleur temporaire*" (temporary residence card marked *temporary worker*): temporary residence card marked *temporary worker* allows employees under a fixed-term employment contract (*CDD*) to stay in France to work. The application for work authorization must be done by the employer before the employee enters France. If agreed, the employee can request a VLS-TS. This card is valid 1 year and renewable for a period equal to that of the contract, or the secondment to be completed, or the new CDD, or the extension of secondment.

- the "*carte de séjour pluriannuelle passeport talent*" (multi-year residence card *talent passport*): when the intended length of stay is at least 1 year, this card is delivered notably for a "qualified employee", for a "recruiting in an innovative company", to fill a "highly skilled job", in case of intra corporate transfer or for holding a legal representative position in a company established in France. The card is valid for the same duration as the contract of employment, up to a maximum of 4 years. The employee must hold a VLS-TS mention *talent passport*.

- the "*carte de séjour pluriannuelle salarié détaché ICT*" (multi-annual residence card - ICT seconded employee): this card allows employees to stay in France for a mission of more than 1 year during an intercompany temporary transfer. If the length of stay is more than 3 months and 1 year maximum, a VLS-TS mention *ICT seconded employee* shall suffice. The card shall be issued for a period equal to that of the mission (3 years maximum), to which the duration of the stay carried out with a long-stay visa or a VLS-TS is removed. For example, 2 years maximum after 1 year of VLS-TS.

Employee Representatives within the Company

Where the company has at least 11 employees for 12 consecutive months, a works council (*Comité Social et Economique - CSE*) must be set up.

The works council is composed of the employer, members elected by the staff and possibly one or more union delegates. The number of members elected by the works council depends on the

company's headcount. They are elected for a period of 4 years, unless a shorter term was agreed upon with the trade unions.

The number of time-off hours for the members of the works council to fulfil their staff representation duties is set by the French Labor Code, depending on the size of the Company. An agreement with the trade unions can provide otherwise.

As previously indicated, elected members of the works council (as well as candidates for election) benefit from the protective status legally conferred on staff representatives, which notably requires that the employer follows a special procedure before terminating their employment contracts.

The powers of the works council vary according to the size of the company. The works council in a company with at least 50 employees has a more extensive powers than the works council in a smaller company.

The employer should take the initiative to organise compulsory meetings with the works council. In companies with fewer than 50 employees, one meeting must take place at least once a month. In companies with more than 50 employees and fewer than 300 employees, the number of meetings must be at least six, including 4 where issues related to health, safety and working conditions must be addressed.

Unless a different timing is agreed with the trade unions, the works council of a company with more than 50 employees must be consulted each year on certain topics. Beyond these recurring information and consultations, the works council must also be informed and consulted on any important project impacting the organization, management or general administration of the company.

In companies with more than 50 employees, the works council has two budgets: (i) an operating budget (*budget de fonctionnement*), which is provided by the employer and equivalent to at least 0.20% of the gross payroll and (ii) a budget for social and cultural activities (*budget des activités sociales et culturelles*).

Unions

In France, unions must be the employees' representatives in order to sign collective agreements. In order for a union to represent employees, a trade union organization must prove its compliance with legal criteria (e.g. independence, financial transparency, a minimum 2-year seniority). In particular, the union must receive at least 10% of the votes cast in works council elections to be representative.

A recognised representative trade union organisation will be able to appoint a union delegate (*délégué syndical*) in the company if it has at least 50 employees.

If they have at least two union members in the company, other unions may be entitled to be in contact employees of the company, provided they have been legally established for two years at least. These unions will be entitled to carry out their activities within the company.

Health and Safety Standards

There are very strict health and safety regulations that must be followed by the employer. The labor inspectors (*inspecteurs du travail*) and social security inspectors enforce regulations concerning labor law and health and safety standards through inspections and injunctions.

Enforcement of the said rules is also controlled by the works council. For example, in companies with at least 50 employees, the works council must be convened following any accident that has had or may have had serious consequences or at the motivated request of two of its members on subjects relating to health, safety or working conditions.

In addition, in companies with at least 300 employees or upon the decision of the labor inspector, a health, safety and working conditions committee (*commission santé, sécurité et conditions de travail - CSSCT*) must be set up within the works council.

Employment Tribunals

Employment Tribunals (*Conseils de Prud'hommes*) are comprised of equal numbers of employee and employer representatives.

Any dismissed employee is entitled to go to Court after this dismissal to challenge the reality and the seriousness of the grounds put forward by the employer to justify his / her dismissal. Where the employee prevails, the employer is ordered to pay damages. The French Labor code provides for a mandatory scale of damages, depending on the employee's length of service. Damages for harassment, discrimination or violation of a fundamental freedom are however excluded from this scale.

The employee has one year from the termination of his or her employment contract to contest his or her dismissal. The action relating to the execution of the employment contract is time-barred after 2 years from the knowledge of the disputed facts. All claims regarding salary are subject to a three-year statute of limitations.

3. TAX

The aim of this Tax section is to provide an overview of certain French tax considerations in relation to investments carried out in France. It does not intend to cover all aspects of French taxation and each reader contemplating an investment in France should consult its tax advisor.

Tax On Corporations

(a) Corporate tax

Territoriality rules

The corporate income tax system is based on the principle of territoriality, which means that tax liability requires a nexus between the income and the French territory. Consequently, profits made by companies operating abroad are in principle not subject to corporate tax, while foreign companies pay corporate tax on the profits derived from their business ventures conducted in France.

In the case of a branch or a permanent establishment with no separate legal status, the proceeds of the business conducted in France are derived from the accounts of the foreign company.

In accordance with the principle of territoriality, companies taxable in France cannot, in principle, report losses incurred by enterprises operating abroad. This rule applies regardless of the form under which this foreign business is carried out (subsidiary, branch or permanent establishment).

Corporate tax rates

❖ **Standard rates**

In 2021, the standard corporate income tax rate is 26.5%. However, companies with an annual turnover exceeding EUR 250 million are subject to a 27.5% rate. The standard rate will be progressively reduced to 25% by 2022.

In addition, companies with an annual turnover of at least EUR 7,630,000 and whose corporate income tax liability (standard rate and reduced rate) exceeds EUR 763,000 are subject to a social surcharge of 3.3% levied on the fraction of corporate tax which exceeds EUR 763,000. Thus, the resulting effective rate on that fraction is c. 27.4% in 2021.

❖ **Reduced rates**

Small and medium-sized businesses (SMEs) (owned at least for 75% by individuals or by other SMEs and with a turnover of EUR 10 million or less) are taxed at a reduced corporate tax rate of 15% on the first EUR 38,120 and at the standard rate on any excess.

In line with the OECD's modified nexus approach, **income from industrial property** is taxed upon election at a favorable 10% tax rate.

This regime applies under certain conditions to the income derived from the licensing, sublicensing or sale of patents, industrial manufacturing processes, copyrighted software or (for SMEs only) patentable but not patented inventions ("qualifying income"). Expenses relating to these assets ("qualifying expenses") must be deducted from the qualifying income to determine a net result, to which a nexus ratio must be applied to determine the effective result that may benefit from the 10% rate.

Companies that wish to benefit from the specific regime must elect for this regime each year and in respect of each asset or family of assets and prepare the corresponding documentation. Failure to provide such documentation upon request from the tax authorities will give rise to a fine amounting to 5% of the income subject to the reduced 10% rate.

Non-profit organizations are exempt from corporate income tax (unless they carry on profit-making activities), but are subject to tax at special rates on certain passive income:

- 24% on rental, forestry or agricultural income;
- 15% on dividends, regardless of their source; and
- 10% on specified investment income.

Taxable income

Taxable profit is calculated on income minus deductible expenses. Income encompasses all proceeds from business, sales, or services. Only expenses incurred as part of the business conducted can be deducted.

Deductible expenses notably include depreciation of tangible and intangible assets (excluding goodwill), reserves, building and equipment rents paid, salaries, social security charges, advertising costs, and financial expenses. Commercial debt waivers may also be deducted if the company's interest is clearly demonstrated.

The deductibility of certain categories of expenditures is limited in order to prevent abuse. In particular, this concerns so-called "extravagant expenditures" or "sumptuary expenses", such as entertainment expenses (*e.g.* hunting and fishing) and the use of private vehicles.

Corporate income tax itself and the abovementioned surcharges are not deductible. Other taxes and contributions related to the activities of the company are deductible. Indirect taxes, other than VAT, related to goods and services supplied to the company within the framework of its business activities are deductible as part of the acquisition cost. Input Value Added Tax ("**VAT**") related to business transactions which is not creditable against output VAT is also deductible.

Financial deductible expenses

In principle, interest borne by a French company is deductible from its taxable income provided that (i) it is incurred in the direct interest of the company, (ii) it corresponds to actual and justified expenses, (iii) the interest rate is set at arm's length conditions, (iv) the company can demonstrate that it can service the corresponding debt and (v) its deduction is not prevented by a specific provision of French tax law.

Under French law, the tax deductibility of interest expenses may be subject to several limitations:

– Interest paid to persons located or established in Non Cooperative Jurisdictions ("tax havens") or to accounts opened in such Jurisdictions - interest is not deductible.

– Interest paid to shareholders and related-party loans:

  - **The anti-hybrid-mismatch provisions (ATAD II directive)** – broadly speaking, these provisions aim to neutralize the effects of hybrid mismatch arrangements used to obtain two types of tax incentives: either a deduction without inclusion, or a double deduction, each of which results from asymmetries in the characterization of financial instruments, payments or entities between the tax laws of different countries. These provisions are generally limited to mismatches involving associated enterprises.

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  - **Interest paid to direct shareholders** – the deduction is limited to interest paid at a rate that does not exceed the annual average rate of interest charged by financial institutions on floating rate loans extended by financial establishments for a duration exceeding 2 years.

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  - **Interest on related-party loans –** deduction of interest paid to "related entities" (within the meaning of Article 39-12 of the FTC) is limited to the annual average rate (see above), or, if higher, to the rate that the company would have obtained from a non-related party under similar circumstances (*i.e.*, taking into account the characteristics of the loan and the financial situation of the borrowing company such as its credit rating). The borrower has to be able to demonstrate that the interest rate is an arm's length rate.

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– **The 30% adjusted EBITDA limitation (ATAD I directive)** – the deduction of net financial expenses is generally limited to EUR 3 million or 30% of the company's adjusted EBITDA. Where a company is thin-capitalized (*i.e.*, the company has a debt-to-equity ratio exceeding 1.5:1), these limits are reduced to EUR 1 million or 10% of the company's adjusted EBITDA. In the case of a tax consolidation group, these limits apply at group level and not at the level of each member of the tax consolidation group. These rules apply to both related-party and third-party financings.

– **"*Amendement Charasse*" rule** - the deduction of interest on loans contracted to acquire a participation in another company is disallowed where the acquisition is made between jointly controlled companies and the acquired company enters into a group consolidation with the acquiring company.

Capital gains

Capital gains are generally deemed to be ordinary income and are therefore taxed at the standard corporate income tax rate.

Gains on qualifying participation shares (as defined below) that have been held for at least 2 years at the time of their disposal are exempt from corporate income tax except for a 12% recapture of the gross gain deemed to represent non-deductible expenses.

In order to qualify as participation shares from a tax perspective, the shares must:

(i) be booked in a dedicated sub-section of the shareholder's balance sheet;
(ii) be eligible for the participation exemption regime set out in section 1.6.2 below; and
(iii) represent at least 5% of the subsidiary's share capital and voting rights.

Transactions between resident companies

❖ **Group treatment**

The taxable income of a group of companies may be consolidated. Under the tax group regime (*intégration fiscale* or "tax consolidation"), the income and losses of resident companies within a 95% group may be aggregated and taxed in the hands of the parent company of the group.

Two or more resident "sister" companies owned by a European Economic Area (EEA) resident company may also form a ("horizontal") tax group. In such case, the head of the group is not the non-resident parent company, but one of the eligible resident companies upon election.

The tax is levied on the aggregated income of the tax group after certain adjustments for intra-group provisions, dividend distributions, etc., have been made.

❖ **Intercompany dividends**

Dividends derived by corporate shareholders are included in the taxable income subject to the standard rate of corporate income tax.

However, the participation exemption is available to resident parent companies and permanent establishments of non-resident parent companies in respect of dividends received from their resident and non-resident subsidiaries. The participation exemption regime meets the requirements of the EU Parent-Subsidiary Directive (2011/96) in respect of inbound dividends.

To qualify for the regime, the parent company must:

– hold directly at least 5% of the subsidiary's capital;
– have held this 5% participation for at least 2 years (or commit to hold the shares for at least 2 years).

The participation exemption does not lead to a full exemption, but only to a 95% exemption. Indeed, 5% of the gross dividends, deemed to represent non-deductible expenses, is added back to the company's taxable income subject to the standard rate of corporate income tax.

A general anti-abuse rule introduced in the amended parent-subsidiary EU directive and implemented into French law denies the participation exemption regime to dividends payed as a result of an arrangement put in place with the main purpose of obtaining a tax advantage that is contrary to the object or purpose of the directive and which is not genuine.

The add-back is 1% for dividends distributed within a tax-consolidated group and for dividends received from an EEA subsidiary that meets the conditions required for a resident company to be included in the tax-consolidated group. As a result, intra-group dividends benefit from a 99% participation exemption.

Losses

Tax losses may be carried forward indefinitely. However, the losses may only be set off against the taxable profit of a given year up to EUR 1 million plus 50% of the current year's profit exceeding EUR 1 million.
Corporate taxpayers also have the option, with certain restrictions, to carry losses back for 1 year in order to set them off against the previous year's profits up to EUR 1 million, in which case they are entitled to a tax credit. The tax credit may be used during the following 5 years. If it is not used within 5 years, the tax credit may be refunded in the sixth year.
In the context of the COVID-19 pandemic, companies may claim the immediate refund of existing carry-back tax credits or those that will result from the carry-back of losses realized in 2020.

Anti-avoidance regimes

Under French tax law, there are several measures to prevent tax avoidance (the following is not exhaustive).

❖ General anti abuse rule with respect to corporate income tax

Pursuant to article 205 A of the French Tax Code (which introduces into French law the provisions of Council Directive ATAD 1), the French tax authorities may ignore, for corporate income tax purposes, an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine in light of all relevant facts and circumstances.

In this respect, an arrangement or a series thereof shall be regarded as non-genuine to the extent they are not put into place for valid commercial reasons which reflect economic reality.

❖ Non-Cooperative States or Territories (NCSTs) or Non Cooperative Jurisdictions

Specific measures have been enacted in order to enhance the application of the domestic anti-abuse provisions and to increase the tax burden on payments to NCSTs.

A state or territory is deemed to be an NCST if it meets the following criteria:

- it is not a member of the European Union;
- it is reviewed and monitored by the OECD Global Forum on Transparency and Exchange of Information;
- it had not concluded at least 12 tax information and exchange agreements (TIEAs) before January 1, 2010; and
- it has not signed a TIEA with France.

The NCSTs list is updated every year by the Ministry of Finance. From December 1, 2018, the list of NCSTs also includes jurisdictions that are mentioned on the EU list of non-cooperative jurisdictions in taxation matters for certain reasons.

The list of NCSTs, last updated on January 7, 2020, includes the thirteen following States: American Samoa, American Virgin Islands, Anguilla, Bahamas, British Virgin Islands, Fiji, Guam, Oman, Panama, Samoa, Seychelles, Trinidad and Tobago, and Vanuatu.

❖ Controlled Foreign Company (CFC) rules

The CFC regime applies to resident companies that directly or indirectly hold a participation of more than 50% in a non-resident entity or permanent establishment that is established or constituted in a low-tax jurisdiction (effective taxation at least 40% lower than that of France). Companies subject to these rules are subject to tax in France on *a prorata* amount of the income received, or deemed received, from such company or permanent establishment.

As a safe harbor clause, the CFC rules do not apply if the non-resident company is engaged in real industrial or commercial activities in the low-tax jurisdiction. Within the European Union, only artificial structures are affected by the CFC rules.

❖ Transfer pricing rules

The arm's length principle applies to transactions between associated companies. Failure to apply this principle results in readjustment of profits under specific transfer pricing legislation, unless the company making the transfer is able to prove that it did so for sound commercial reasons, such as protecting its market position.

In order to avoid transfer pricing adjustments, companies may apply for an advance pricing agreement with the tax authorities in relation to the compatibility of the applied transfer pricing methods with the relevant legislation.

Withholding Taxes

❖ Double Tax Treaty

Certain types of French-source income received by persons that are not tax residents in France are subject to withholding tax. However, where the beneficial owner is resident in a country with which France has entered into a double tax treaty ("**DTT**" or "**Double Tax Treaty**"), the beneficiary may claim the benefit of the reduced withholding tax rate under the applicable DTT and avoid double taxation.

France has entered into more than 120 DTTs. Some DTTs concern specific taxes, such as registration taxes, income tax, corporate tax and wealth tax (DTTs that expressly cover wealth tax are intended to also cover the real estate wealth tax when it is specified that DTTs apply to any similar tax instituted after its signature).

In order to benefit from reduced rates of withholding tax provided for by the relevant Double Tax Treaty, it is necessary to complete special forms for the French tax authorities, which must be certified by the tax authorities of the country in which the taxpayer resides to prove that company / individual is a tax resident in a contracting state. Usually, withholding tax is initially levied at the appropriate domestic rate at the time of payment, and the tax paid in excess of the rate provided in the applicable DTT is subsequently reimbursed upon filing of the forms.

Subject to applicable Double Tax Treaties which may provide for lower rates or exemption, the final withholding taxes are set out below.

❖ Dividends

Final withholding taxes are in principle levied on dividends paid to non-resident companies by French companies at a rate of 26.5% in 2021. An increased 75% rate applies where the dividend is paid to a company established in an NCST, unless the taxpayer proves that the payments are not motivated by tax avoidance.

No withholding tax is levied on dividends paid by a French company to a parent company resident in the EEA if the parent holds at least 10% (5% in certain cases) of the shares of the French distributing company and has held that participation for at least two years (or intends to do so), provided other formal conditions are met.

A general anti-abuse clause provides that the withholding tax exemption does not apply if the dividend payment results from an arrangement put in place with the main purpose of obtaining a tax advantage that is contrary to the object or purpose of the directive and which is not genuine.

❖ Interest

No withholding tax is due on interest paid to non-resident companies. However, a 75% withholding tax is due on interest paid to an NCST, unless the taxpayer proves that the payments are not motivated by tax avoidance.

❖ Royalties

A withholding tax is levied at the rate of 26.5% in 2021 on royalties paid by a person which carries out a business in France and the recipient has no fixed place of business in France. A 75% withholding tax is due on royalties paid to companies located in NCSTs, unless the paying company proves that the payments are not motivated by tax avoidance.

No tax is payable if the recipient is an EU shareholder who owns at least 25% of the paying company, provided certain conditions are met.

❖ Capital gains

Capital gains derived by non-residents on the sale of shares in French resident companies (other than predominant real-estate companies) are generally exempt from tax in France.

However, pursuant to article 244 *bis* B of the FTC, capital gains derived by a non-resident corporate shareholder on the sale of shares in a substantially owned resident company (*i.e.*, where the shareholder directly or indirectly holds or has held at any time during the preceding 5-year period 25% or more of the rights in the company's profit) are subject to a levy of 26.5%, unless otherwise provided for by the applicable DTT[1].

If the taxpayer is resident in an NCST, the gains are taxed at a rate of 75%.

(b) Registration duties

General principle

Traditionally, the registration formality consists in the analysis of a deed by a civil servant who assesses and collects the duties provided for by law. Accordingly, the registration formality mainly has a tax purpose, but this formality also entails civil consequences: it gives the deed a legal date and, in certain cases, it determines the validity of legal deeds. For real property transfers, it allows the updating of real estate records.

Normally, registration formalities for deeds are subject to the payment of duties. However, in certain cases, payment may be made in installments or deferred.

Such duties are normally collected for appropriation by the State. However, duties on sales of real property are collected for appropriation by towns, departments and regions.

The assessment basis normally consists of the market value of the property at the date of the deed or transfer, as mentioned in the deed or the estimated return filed by the parties, and then audited by the tax authorities. The market value of a property corresponds to its sale value, *i.e.*, the price at which the property may be sold or bought under market conditions.

Registration duties are fixed, proportional or progressive, depending on the type of deed or legal transaction subject to the formality:

- fixed duties generally apply to deeds that are not liable to proportional or progressive duties and that are not exempt from registration duties;
- proportional duties represent a percentage of the value of assets covered by legal deeds or transactions. This mainly applies to sales, insurance contracts and certain corporate transactions;
- progressive duties are duties, the rates of which increase as the value increases. This applies in particular to transfers of going concerns (*fonds de commerce*), inheritance and gifts.

Immovable property

Sale of property is subject to a registration duty the effective rate of which is currently 5.80% in most French departments.

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[1] The French Supreme Administrative Court (*Conseil d'État*) recently ruled that the withholding tax applicable to non-resident companies on the sale of a substantial participation in a French company is contrary to EU law (CE, 14 October 2020, n°421524, *Sté AVM International Holding*).

Shares, and other securities

The duty for the transfer of shares in an unlisted SA, SCA or SAS is subject to a single rate of 0.1%.

The transfer of shares in a company in which the share capital is not divided into shares of stock (SARL, *sociétés civiles* (civil law companies), SNC) is subject to a 3% registration duty whether or not the sale is evidenced by a deed. In this case, an allowance equal to the ratio between the sum of EUR 23,000 and the total number of shares of the company is applied to the value of each share.

Transfers of shares in companies whose assets consist principally of immovable property or rights thereon are subject to a registration duty of 5%.

(c) Sales tax or other turnover taxes - Value Added Tax (VAT)

The French VAT system is in line with the VAT systems applied in the other EU Member States.

VAT is a territorial tax - The place of taxation rules determine whether or not a transaction is subject to VAT in France. French VAT is charged on all goods delivered and all services provided in France.

VAT is a real tax - Unless expressly exempt (e.g. teaching, medical and paramedical activities, charities etc.), liability to VAT is determined by the type of transactions or products delivered, regardless of the personal situation of the tax-liable person or his client. All in all, it is levied on deliveries of goods and supply of services arising under an economic activity (regardless of the type of activity); provided for valuable consideration; carried on by tax-liable persons, i.e., persons independently carrying on transactions falling within the scope of VAT.

For certain exempt activities, VAT may be applicable upon election (e.g. lessors of unfurnished premises for professional purposes etc.).

VAT is an indirect tax - Since it is included in the sales price of products or services, VAT is finally borne by the end-user. Each intermediary bills its customer for the tax provided for by law and pays it back to its local tax collecting office, less input VAT paid upstream to its own suppliers.

VAT is a proportional tax - VAT is calculated by applying a proportional VAT rate to the basis of the transaction without VAT.

Generally, the assessment basis corresponds to the total sums, values, goods or services received or to be received by the seller or service provider including insurance, interest and similar charges as well as indirect taxes but excluding discounts or reimbursement of expenses.

Tax-liable persons are exempt from VAT when their ex-VAT turnover during the previous calendar year does not exceed a certain amount depending on the profession carried out. However, they may elect to waive this exemption and opt for payment of VAT instead.

To determine how much should be paid to the tax authorities, the person deducts from the chargeable VAT on his receipts the VAT paid in respect of the purchase of goods and services used to carry out the transactions subject to VAT.

If the difference between gross VAT and VAT paid to the supplier is negative, the tax-liable person normally sets off the surplus against its future tax payments or may, under certain conditions, request its refund.

The main applicable rates are the following:

- The standard VAT rate is 20%.
- A reduced rate of 10% applies to certain supplies, *e.g.* transport, transfer of copyrights by authors and artists, domestic care services provided to individuals, works on dwellings, and restaurant services.
- A reduced rate of 5.5% applies only to certain supplies related to basic necessities (*e.g.* water, food and services to disabled persons), social housing construction and renovation.
- A 0% rate (exemption with the right to deduct input VAT) applies to exports, intra-Community supplies of goods, and to aircraft and seagoing vessels.

VAT is subject to several formal requirements - reporting the existence of a business, invoicing containing all the required statements, filing turnover returns on a monthly or quarterly basis etc.

VAT Group Scheme – The 2021 Finance Act introduces a VAT group scheme regime as from January 1, 2023.

(d) Tax incentives

Please note that tax incentives also exist for individuals. Below is a non-limited list of French tax incentives:

A wide nexus of Double Tax treaties

Please see comments above relating to Double Tax treaties.

Research and development tax credits

A tax credit for research and development (R&D) expenditures is available subject to certain conditions being met. The tax credit, which takes into account the annual volume of expenditures, amounts to 30% of the expenses related to research and development up to EUR 100 million, and 5% for the excess.

Gifts to non-profit organizations

Gifts to non-profit organizations may benefit from a tax reduction of up to 60% of their amount capped at the higher of EUR 20,000 or 0.05% of the French-source turnover.

Foreign organizations similar to French non-profit organizations located within the EEA are entitled to such gifts.

Innovative new enterprises

A special regime for innovative new companies (*jeunes entreprises innovantes*) applies to certain entities. For companies in a profitable tax position, this regime grants a complete corporate income tax exemption for the first 12 months and a 50% allowance for the next 12 months. This regime also grants exemptions from various other taxes.

Tax On Individuals

(a) Territoriality rules

Subject to applicable Double Tax Treaties (see above), income tax is payable by individuals who are resident in France in respect of their worldwide income, and by individuals not resident in France on their French-source income only.

People who are not resident in France may avoid taxation in France when they are resident in a State or territory that has entered into a DTT with France for the avoidance of double taxation.

Taxpayers domiciled outside France who receive French-source income, or have one or more homes at their disposal in France, must normally file a tax return.

(b) Income tax rate

The flat tax rate

Certain categories of income are subject to a flat-rate taxation (*prélèvement forfaitaire unique* or flat tax*)* in complete satisfaction of any tax liability on such income (e.g. certain types of interest, capital gain, certain types of royalties, dividends etc.).

The flat rate taxation is set at 12.8%. In addition to income tax, all revenues subject to the flat tax are subject to social taxes (i.e., *contribution sociale généralisée, contribution au remboursement de la dette sociale* and *le prélèvement de solidarité*) at a total rate of 17.2%. Thus the overall taxation is 30%.

The progressive rate

Other items of income, such as employment income, pensions, annuities etc. are not subject to flat-rate taxation and are added together to form gross taxable income (*revenu brut global*).

For these other items of income, the income tax is based on the household's net revenues. The rate of taxation is also proportional to the size of the household - the more people in the household, the lower the rate.

Once the net taxable income has been determined, the progressive income tax is computed according to the family coefficient system and the tax rate schedule for the relevant year.

For 2020 (i.e., assessment year 2021) the income tax rate is the following:

0%	for incomes of less than EUR 10,084
11%	for incomes between EUR 10,084 and EUR 25,710
30%	for incomes between EUR 25,710 and EUR 73,516
41%	for incomes between EUR 73,516 and EUR 158,122
45%	for incomes over EUR 158,122

In addition to income tax, revenues subject to the progressive rate are subject to social taxes, the rates of which may vary depending on the nature of the income.

Exceptional contribution on high income

An exceptional contribution on high income applies where the income exceeds EUR 250,000 for a single taxpayer or EUR 500,000 for a married or cohabiting couple at a rate ranging from 3% to 4%.

(c) Capital gains

Capital gains are taxable depending on the nature of the goods and on how long they have been held prior to the sale. Capital gains on immovable property or rights thereon

Capital gains on immovable property are subject to a flat tax at a rate of:

- 26.5% (including 7.5% social taxes) for non-resident taxpayers that are not affiliated to French social security but are affiliated to social security in an EU member state, an EEA member state or Switzerland; and
- 36.2% (including 17.2% social taxes) for other non-resident taxpayers and French-resident taxpayers.

An additional tax applies where the amount of the capital-gain exceeds EUR 50,000. Gains on immovable property are exempt if the sale price does not exceed EUR 15,000.

For gains made from September 1, 2013 on the sale of immovable property, a tax allowance is equal to 6% per annum for the ownership period between 6 and 21 years and 4% for the 22nd year of ownership. The gain is exempt after 22 years of ownership.

As for social taxes, the taxpayer is entitled to an allowance corresponding to 1.65% per annum for the ownership period between 6 and 21 years, 1.60% for the 22nd year and 9% per annum thereafter. The gain is exempt after 30 years of ownership.

The taxable gain is the difference between:

- the purchase price, increased by acquisition expenses (which may be either notionally estimated at 7.5% of the price of acquisition or their actual amount if it is justified by supporting evidence), together with the costs of improvements made to the property (which may be taken for their actual amount if supported by evidence or which may be notionally estimated at 15% of the acquisition price if the property has been held for more than 5 years); and

- the sale price.

Capital gains on the sale of shares in corporations

With effect from January 1, 2018, capital gains on the sale of shares in corporations are taxed at a flat rate of 30% (*prélèvement forfaitaire unique*) including income tax at a rate of 12.8% and social taxes at a rate of 17.2%.

The taxpayer may however elect to be taxed under the progressive rate system, in which case the taxpayer may enjoy some of the allowances provided for by French tax law (SMEs, family group holding, general or specific deduction etc.). The election to the progressive rate is global *i.e.*, applies for all income.

The taxable gain is equal to the excess of the sale proceeds over the cost of acquisition, after deduction of the expenses incurred both for the acquisition and the sale of the shares.

(d) Dividends and interest

Dividends and interest paid by resident companies to resident individuals are subject to the 30% flat tax mentioned above.

(e) Withholding Tax

Subject to applicable Double Tax Treaties (see above) which may provide for lower rates or exemption, the final rates of withholding taxes are set out below.

Dividends

The applicable withholding tax rate is 12.8% in general. The withholding tax is increased to 75% if the taxpayer is resident in an NCST, unless the taxpayer proves that the payments are not motivated by tax avoidance.

Interest

No withholding tax is levied on French-source interest paid to non-resident individuals, unless the recipient is resident in an NCST. In such case, a final withholding tax at a rate of 75% is applicable unless it is proved that the payments are not motivated by tax avoidance.

Wages, annuities, pensions

When paid to persons not domiciled in France, wages, pensions and annuities are subject to a withholding tax calculated at the following rate for income received in 2021:

- 0% for annual income under EUR 15,018;
- 12% for annual income between EUR 15,018 and EUR 43,563;
- 20% for annual income above EUR 43,563.

(f) Capital gains

Immovable property

Capital gains realized by non-residents from the sale of immovable property located in France or rights thereon are subject to income tax and social taxes at rates set out in section "*Capital gains on immovable property or rights thereon*" above.

If the taxpayer is resident in an NCST, the gains are subject to income tax at a rate of 75%.

Shares

Capital gains derived by non-residents on the sale of shares in French resident companies (other than predominant real-estate companies) are generally exempt from tax in France.

However, pursuant to article 244 *bis* B of the FTC, capital gains derived by a non-resident individual on the sale of shares in a substantially owned resident company (i.e., where the shareholder directly or indirectly holds or has held at any time during the preceding 5-year period 25% or more of the rights in the company's profit) are subject to a levy of 12.8%, unless otherwise provided for by the applicable DTT.

If the taxpayer is resident in an NCST, the gains are taxed at a rate of 75%.

(g) Filing and payment requirements

Resident individuals subject to income tax must file a tax return annually in May in respect of income realized the year before.

With effect from January 1, 2019, a pay-as-you-earn (PAYE) system has been introduced, and income tax is now levied at source on a monthly basis on salary/ wages by the employer or by the taxpayer himself. For income not subject to the PAYE system, such as business income, self-employment income and rental income, monthly or quarterly income tax installments are directly withheld from the French bank accounts of individuals.

(h) Real estate wealth Tax

Net wealth tax was abolished by the Finance Law for 2018 and replaced by a wealth tax assessed on real property and real property rights only, referred to as "real estate wealth tax" (*impôt sur la fortune immobilière, IFI*).

Subject to applicable Double Tax Treaties, French tax residents are subject to real estate wealth tax on their worldwide real estate assets. However, taxpayers who become French tax residents and who have not been French tax residents on a continuous basis during the previous 5 years are subject to real estate wealth tax during the initial 5-year period but only on their assets located in France.

Non-residents individuals are subject to real estate wealth tax on their French real estate assets owned directly or indirectly through property companies or property investment funds.

Real estate wealth tax applies to real estate assets (owned directly or indirectly) exceeding a certain threshold which is currently EUR 1.3 million. The real estate wealth tax is assessed according to a progressive scale, the rates of which vary up to 1.5%.

4. INTELLECTUAL PROPERTY

Focus On Gathering Of Evidence For IP Disputes: the *Saisie-Contrefaçon*

In France, intellectual property rights (copyrights, trademarks, patents and registered designs, collectively hereinafter "**IP rights**") are protected against unauthorized use in a similar fashion as in many countries.

But, when it comes to gathering evidence of infringing acts, French law provides for a very specific and efficient tool which has been enforced for over two centuries: ***saisie-contrefaçon***.

It can be described as a raid by surprise in one's premises to collect evidence of the infringement of an IP right before commencing proceedings on the merits.

What is saisie-contrefaçon?

In France, the burden of proof of infringement of an IP right lies on the claimant. By "proof of infringement", we mean not only evidence that the claimant's intellectual property right is reproduced but also evidence of the type of infringement that has been committed (sale, import, manufacture, distribution, etc.) and the scope of this infringement.

Such evidence can be difficult to obtain, especially in a legal system that contains no equivalent of US discovery or UK disclosure and where obtaining that a judge summon the other party to produce evidence in the course of proceedings, albeit possible, is far from being automatic.

This is why IP right owners massively use *saisie-contrefaçon* as a way to gather evidence of infringement prior to commencing a legal action.

Indeed, *saisie-contrefaçon* enables anyone having standing to file for an infringement claim in France (IP right owners and, under certain conditions, exclusive licensees) to seek an authorization from a court to commission a bailiff to go, **by surprise**, at the future defendant's premises or at any other relevant place (even if this place does not belongs to a third party) in order to collect evidence of the infringement.

Before the saisie-contrefaçon: the preparation phase

The conditions and steps to obtain such authorization are the following:

- The claimant must file with the court:
  - an *ex parte* motion, giving the reasons why it thinks that the *saisie-contrefaçon* is necessary, and attaching relevant documents showing the existence of the patent and its ownership. It is not necessary to adduce full evidence of infringement but the claimant must sufficiently establish that it has a good reason to seek an authorization to perform the *saisie-contrefaçon*, and
  - a draft judgment authorizing the *saisie-contrefaçon*
- The court then accepts, rejects or edits directly the draft court authorization, usually within 24/48 hrs. A quick hearing (*ex parte*) can take place if need be;

- The future defendant / the owner of the place where the *saisie-contrefaçon* will take place are not informed of this process.

From a practical perspective, surprise is a central element in order to ensure that a maximum amount of information will still be on the location when the *saisie-contrefaçon* operations will be performed.

This means that maybe the most important part of the *saisie-contrefaçon* is actually the preparation phase:

- Selecting the place(s) where the *saisie-contrefaçon* will be performed (headquarters, warehouses, factories, etc.);
- Selecting and training the team: the *saisie-contrefaçon* must be performed by a bailiff (huissier) but the bailiff can be accompanied by other persons (patent attorney, IT expert, locksmith, etc.) if envisaged in the court authorization;
- Assessing the type of documents / goods to be seized and the operations to be performed by the bailiff (i.e. sampling and/or dismantling the products in question, key-word search on computers, taking photos, filming, seizing copies of brochures, plans, invoices, delivery orders, etc.).

The an *ex parte* motion and the draft judgment accompanying it must be carefully tailored in light of the foregoing.

On the defendant's side, it is also possible, when a *saisie-contrefaçon* can be expected, to get prepared to it. This usually supposes a training of the relevant teams by lawyers having a profound experience in such matters, which can be very helpful to avoid reactions that may have a detrimental impact on the outcome of the *saisie-contrefaçon* for the defendant.

During the *saisie-contrefaçon*: what to expect?

The performance of a *saisie-contrefaçon* is subject to rules that must be strictly followed by the bailiff in charge of the operations and the persons assisting him/her.

When arriving on the premises and before the *saisie-contrefaçon* begins, the bailiff must reveal his name, his quality, set out the terms of his mission and introduce the persons accompanying him. He must then serve an original copy of the judgment authorizing the *saisie-contrefaçon*.

Sufficient time must be given to the seized party to become acquainted with the terms of the judgment. They may use this time to call their lawyer, who may come to the premises or remain on line during the entire *saisie-contrefaçon*.

It is very important to note that the scope of the bailiff's mission is strictly limited to the terms of the judgment. During the *saisie-contrefaçon*, the bailiff has no power of investigation or interpellation and must at all times remain impartial and without bias.

Accordingly the seized party may refuse any request that does not fall within the scope of the bailiff's mission or ask the bailiff to blue print information that is not relevant for the case.

When the bailiff wishes to seize confidential documents be placed in a sealed envelope.

Usually, the bailiff would decide on what information is really confidential (manufacturing process, margin, names of clients), in which case it is generally put under a sealed envelope and kept by the bailiff until a court decides whether this can be released to the seizing party, and what information can be immediately disclosed to the seizing party (proof of the reproduction of the claimed features, quantities sold, turnover).

When the parties decide to bring the debate on confidentiality before the judge, the latter carries a case by case analysis for each document during which he or she applies a proportionality test. The goal is to balance of interest between the right of the seized parties to have their trade secrets protected and the right of the IP right holders to have access to all the documents, even confidential, which are necessary for proving the infringement.

After the *saisie-contrefaçon* is completed, the bailiff must leave to the seized party a copy of the his/her report and a copy of the seized documents attached to the said report.

The end of the saisie : the aftermath

At the end of the *saisie-contrefaçon*, the IP right owner **must initiate proceedings on the merits within 31 calendar days** (or 20 working days if longer). Otherwise, the *saisie-contrefaçon* will be deemed null and void, save with respect to copyrights for which slightly different rules apply.

Evidence collected during *saisie-contrefaçon* can be used to demonstrate the existence of infringement and substantiate its scope but may also, help to determine its origin or reveal about other alleged infringers.

It can also be used **in proceedings outside France**, which also makes it an interesting tool to gather evidence in the course of multijurisdictional disputes.

The seized party has various ways to dispute the *saisie-contrefaçon*:

- It can dispute the validity of the judgment having authorized the *saisie-contrefaçon*, e.g. if the claimant had no standing for that (for instance it is not the owner of the IP right at hand) or if the claimant concealed important information about the case to the judge, thereby breaching its duty of loyalty and transparency. This challenge is brought by way of separate summary proceedings;
- It can also dispute the way the *saisie-contrefaçon* was performed, e.g. if the bailiff did things that were not authorized in the judgment having authorized the *saisie-contrefaçon*. This challenge is brought in the course of the case on the merits;
- It can finally try to preserve the confidentiality of documents that were seized by the bailiff without confidentiality measures.

5. DATA PROTECTION

The legal requirements related to personal data protection are largely harmonized at the EU level, in particular since the entry into force of the General Data Protection Regulation (EU) 2016/679 (hereinafter the "GDPR") on May 25th 2018.

The GDPR sets forward the key principles applicable to personal data processing such as:

- **Lawfulness, fairness and transparency**, which implies the existence of a valid legal basis for the data processing, a clear information of the data subjects, as well as use of their personal data that is fair and transparent,
- **Purpose limitation**, *i.e*., the personal data may only be processed for limited and clearly specified purposes,
- **Data minimization**, which means that the personal data processed shall be adequate, relevant and strictly limited to what is necessary to achieve the purpose of processing,
- **Accuracy**, *i.e*., the personal data shall be adequate and, where necessary, kept up-to-date,
- **Storage limitation**, which means that the personal data shall not be stored longer than necessary for the purposes of processing,
- **Integrity and confidentiality**, *i.e*., appropriate measures shall be implemented to guarantee the appropriate security of the personal data processing.

Under the GDPR, the data controllers are directly accountable for compliance with their obligations, and such compliance is to be demonstrated at any time, in line with the documentation requirements set out in the GDPR. A set of obligations provided under the GDPR is also directly applicable to data processors that have to implement a specific data processing agreement with the data controller.

However, despite the high level of harmonization, the EU Member States have certain flexibility to implement some of the GDPR provisions and consequently the national data protection laws continue to apply.

In France, the GDPR is complemented by the Law No. 78-17 on Information Technology, Data Files and Civil Liberties of January 6, 1978 as amended by the Ordinance n°2018-1125 of 12 December 2018 (the "**French Data Protection Act**").

In accordance with the French Data Protection Act, data processing conducted in the context of the activities of an establishment in France or relating to data subjects residing in France is subject to the said Act.

The main specificities provided by the French Data Protection Act are the following:

- The legal age of consent is set at the age of 15 years instead of 16 years under the GDPR;
- The data controller's obligation to inform the data subjects of their right to provide instructions as to the processing of their personal data *post-mortem*;

- There are special requirements related to the processing of the social security number (only specific data controllers are entitled to process them for limited purposes), and

- There are specific rules to process health data in the public interest.

Additionally, on September 17, 2020, the French Data Protection Authority (the CNIL) has published guidelines on cookies and tracking technologies.

6. E-COMMERCE

The French legal framework governing the provision of e-commerce services results mainly from EU directives transpositions. Such framework is composed of, amongst others:

- **The Law on Confidence in the Digital Economy dated June 21, 2004 (hereinafter the "LCEN") which transposes the EU e-commerce Directive 2000/31/EC.**

The LCEN applies to information society service providers[2] established in France or established in countries outside the EU that target the French audience.

The LCEN sets forth the obligations of website editors and hosting service providers, and in line with the e-commerce Directive, it specifies the conditions of liability of the latter.

The LCEN has also introduced in the French Civil Code specific provisions on the conclusion of electronic contracts. A "double-click" mechanism (*i.e.*, allowing the customer to verity its order and the final price before confirming it) is necessary for the online contract to be valid.

- **The provisions of the French Consumer Code which transpose the Consumer Rights Directive 2011/83/EU and the Unfair Commercial Practices Directive 2005/29/EC.**

The French Consumer Code rules apply as from the moment the French consumers are targeted.

With respect to e-commerce activities, the French Consumer Code specifies additional requirements, for instance related to pre-contractual information and the right of withdrawal.

The Consumer Code rules related to the prohibition of deceptive marketing and aggressive commercial practices apply also to e-commerce activities.

[2] In accordance to article 1 of the e-commerce Directive, "*any natural or legal persons providing an information society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*".

- The provisions of the French Consumer Code related to online platforms

The French Digital Republic Bill no. 2016-1321 dated October 7, 2016 has introduced in the French Consumer Code specific obligations applicable to online platform operators. The latter are in particular required to provide the consumers with fair, clear and transparent information on:

i. the terms and modalities of their referencing services, classification and dereferencing of the contents, goods or services to which their service provides access[3]; and

ii. the existence of any contractual relationship, capital link or compensation to its benefit, as long as they influence the classification/referencing of the contents, goods or services offered or posted online via their services.

Online platform operators whose traffic exceeds five million unique visitors per month shall define good practices which tend to strengthen the above-mentioned clarity, transparency and loyalty obligations and communicate them to the consumers.

- The provisions of "*Loi Toubon*" related to French language requirements

The Law relating to the use of French language dated 4 August 1994, known as "*Loi Toubon*", provides that the French language shall be used for the designation of the products, offers, presentations, instructions for use, description of the scope and conditions of guarantee of a good, product or service, as well as for invoices and receipts. This requirement applies as soon as French consumers are targeted.

[3] In accordance to the Decree No. 2017-1434 of 29 September 2017, such information shall be contained in an easily accessible and specific section of the website.

7. COMPETITION

As France is a member of the European Union, the full effect of the competition rules contained in the European Treaties apply, in conjunction with national provisions contained in the French Commercial Code. While the French Competition Authority is in charge of all activities of competition regulation (inquiries, antitrust activities, merger control, publication of opinions and recommendations), some peculiarities exist concerning what is referred in the French Commercial Code as "unilateral restrictive practices". Inquiries and repressive actions relating to such practices are mostly undertaken by the Directorate-General for Competition, Consumer Affairs and Fraud Control (DGCCRF) of the French Ministry for the Economy.

Restrictive agreements and practices

Concerted practices that have the aim or may have the effect of preventing, restricting or distorting free competition in a given market are prohibited by Article 101 of the TFEU as well as Article L.420-1 of the French Commercial Code.

Abuse of dominance

Unilateral, single firm conduct is regulated both by Article 102 of the TFEU and Article L.420-2 of the French Commercial Code. Those Articles prohibit any conduct which constitutes an abuse of a dominant position on the relevant market. Article L.420-2 of the French Commercial Code goes further and also prohibits the abuse, by a company or group of companies, of a supplier or customer's economic dependence on the commercial relationship with said company or group of companies.

Unilateral restrictive practices

Title IV of Book IV of the French Commercial Code establishes a corpus of rules that are specific to French commercial law. French law thus forbids the sudden break of established business relationships, the submission or attempted submission of the other party to some obligations resulting in a significant imbalance in the respective rights and obligations of the parties, or obtaining or trying to obtain from the other party an advantage for which there is no consideration or which is grossly disproportionate compared to the value of the consideration given. Transparency rules whose objective is to control the aforementioned prevention are further provided for in the Code.

French law strictly limits contractual payment terms, which cannot exceed 60 days from the date of the invoice or 45 days from the end of the month, with other specific periods provided for certain products or services. The DGCCRF closely monitors payment terms and imposes heavy fines on offending businesses.

Merger control

Mergers and acquisitions are subject to merger control if they qualify as a concentration under French law (article L.430-1 of the French Commercial Code). Notification to, and approval from the French Competition Authority, are required where the transaction does not fall within the competence of the European Commission and where the combined worldwide turnover of the parties to the concentration exceed EUR 150 million and at least two of the parties have achieved a turnover in France in excess of EUR 50 million during the same period.

Please note that various specific lower thresholds also need to be checked on a case-by-case basis as they may apply to the transaction (retail sector, operations in the overseas territories etc.) as well as a risk to have some control for non-referable transactions.

8. DISTRIBUTION AGREEMENTS, AGENCY AGREEMENTS AND FRANCHISING

Distribution agreements in general

At the moment, there are no rules in French law that are specific to distribution agreements. Therefore, the field is mostly subject to general contract law as well as a few provisions from the French Commercial Code that may apply to specific types of distribution schemes. Many contracts that are very common in business life are in fact *sui generis*, *i.e*., they do not correspond to a specific statutory category of contracts.

The relationship between suppliers and distributors is subject to competition law. Particularly, the validity of selective and exclusive distribution agreements is conditioned by the compliance with extensive restrictions, as they necessarily constitute agreements in restraint of trade.

Agency agreements

While traditional distributors buy and resell goods on their own behalf, commercial agents act as intermediaries who negotiate and enter into agreements in the name and on behalf of their suppliers. Commercial agency agreements are governed by Directive 86/653/EEC on self-employed commercial agents (Self-Employed Agents Directive), which has been implemented in French law under Articles L.134-1 to L.134-17 of the French Commercial Code.

French law is very protective of commercial agents, and the mere termination of a commercial agency relationship necessarily entails the payment of a termination fee to which the agent is entitled to and whose purpose is to compensate the loss incurred by the agent as a result of the termination of the relationship. Any agreement to the contrary is deemed unenforceable by French courts.

Franchising

There is no specific law governing franchising. However, franchise agreements must comply with the provisions of the Commercial Code, competition law, contract law and intellectual property law. In addition, Article L.330-3 of the French Commercial Code contains rules on pre-contract disclosure affecting franchising. While French law does not impose any formality *per se* for the validity of distribution agreements in general, franchising agreements are required to be in writing where they establish an exclusive or quasi-exclusive relationship.

9. ADVERTISING AND PRODUCT LIABILITY

Advertising

Like any commercial practice that can be undertaken by a company, advertising campaigns are subject to the legislation on misleading commercial practices. A commercial practice is misleading if a trader or service provider either gives false information about goods or services to consumers or presents correct information in a way which is likely to deceive them - for instance, if the information is unclear, unintelligible or ambiguous, or if they fail to give consumers the important information they need when making a transactional decision. Such practices are subject to heavy sanctions, ranging from administrative fines to criminal prosecution.

French law also regulates comparative advertising, which is defined as any form of communication made for commercial promotion purposes that compares goods or services by implicitly or explicitly identifying either a competitor or goods or services offered by a competitor. Such advertising must comply with several conditions.

Some varying restrictions apply to certain types of products such as alcohol, tobacco or medicinal products. They may concern the advertising medium, the content of the advert, etc.

Product Liability

Both manufacturers and distributors are under French and European law bound by a general obligation to ensure the safety of the products they place on the market. To comply with such an obligation, they have to provide the consumer with any relevant information necessary to allow him to assess the risks that are inherent to the use of a product during its normal or reasonably foreseeable period of use. They also have to be informed of the risks that may be raised by the products they market, and take any action necessary to control these risks, which include the adequate and effective warning of consumers and, where necessary, recall and/or withdrawal measures. The control of product safety and the oversight of any recall or withdrawal measure is vested by the Consumer Code in the Directorate-General for Competition, Consumer Affairs and Fraud Control (DGCCRF) of the French Ministry of the Economy.

Please note that there are many specific safety and after-sales requirements applying to certain categories of products, such as medical devices, pet food, electrical and electric goods etc.

10. COMPLIANCE AND ANTI-CORRUPTION

The French Anti-Corruption Legal Landscape

The French Criminal Code criminalizes both active and passive corruption. Under French law, the corruptor and the corrupted person are subject to the same sanctions.

Corruption of French, EU and foreign public officials and trading in influence of both French and foreign Public Officials are sanctioned by ten years' imprisonment, and a fine of up to EUR 1 million, or twice the amount of the proceeds of the offense for individuals. The maximum amount of the fine incurred by the legal entities is five times the maximum incurred by individuals.

The offense of private bribery (*i.e.* of a person who is not a Public Official) is sanctioned by five years' imprisonment, and a fine of up to EUR 500,000 or twice the amount of the proceeds of the offense for individuals. The maximum amount of the fine incurred by the legal entities is five times the maximum incurred by individuals.

Other sanctions may also apply, such as the prohibition to perform any public or professional functions related to the offense, the publication of the judgment, the closure of the businesses involved in the offense, the judicial control of the company, the prohibition of the company going public.

The Sapin II Law dated December 9, 2016 has completed this framework by giving enforcement authorities new tools to prevent corruption. Companies falling within the scope of Article 17 of the Sapin II Law must implement eight anticorruption measures: a code of conduct, a formal internal whistle-blowing procedure, a risk-mapping document, due diligence processes on third parties, internal or external accounting control procedures, anticorruption trainings, a disciplinary system, and an internal control and audit process of the anticorruption compliance procedure implemented.

The Sapin II Law created a new authority called the French Anticorruption Agency (the "**AFA"**). The AFA is granted with supervising powers to control and sanction failure by companies to comply with the obligations provided by the Sapin II law. This authority has the power to conduct investigations and inspections on companies' premises.

The AFA has the obligation to report to the Prosecutor any criminal behaviour it has been aware of.

Shall the AFA consider that the controlled entity has failed to comply with its compliance obligations provided by the Sapin II law, it can either notify a warning to the inspected entity to order it to comply with specific obligations, or issue a statement of complaint and refer the matter to the AFA's Sanctions Committee, which has the power to impose administrative sanctions of EUR 200,000 for private individuals and EUR 1,000,000 for legal entities.

The AFA also publishes Guidelines, which constitute a very stringent framework of provisions.

Furthermore, the Sapin II Law reinforced whistle-blowers' protection, introduced a new criminal penalty for legal entities ("*mandatory compliance measures*"), and introduced an option for settlement ("*Convention judiciaire d'intérêt public*" or "CJIP") imposing a fine of up to 30% of a company's average annual turnover.

The Duty Of Vigilance Law

The Duty of Vigilance Law dated March 27, 2017 imposes some obligations to limited companies ("*société anonyme*"), simplified joint-stock companies ("*société par action simplifiée*"), limited partnerships registered in France ("*société en commandite*"), which have more than 5,000 employees in France, or more than 10,000 employees worldwide.

Companies subject to this law must implement a vigilance plan including vigilance measures to identify risks and prevent violations of human rights and fundamental freedoms, human health and safety, and the environment, namely a risk mapping, procedures for the regular assessment of the situation, appropriate actions to mitigate risks and prevent serious harm, a mechanism for alerting and collecting reports of serious violations, and a mechanism for monitoring and evaluating the measures implemented.

The vigilance plan must cover the company and the subsidiaries it controls, as well as the activities of subcontractors or suppliers with whom it has an established business relationship, and has to be established in association with the company's stakeholders.

If a company has not fulfilled its vigilance obligations within three months after formal notice, the Commercial Court may order under penalty the company to implement such vigilance measures. Under French tort law, a company may also be ordered to pay damages for any harm suffered that could have been avoided if the company had complied with its obligations.

11. INSOLVENCY

French insolvency law provides for different types of procedures enabling a company to face its financial difficulties. The choice between these different procedures is made based on (i) the financial situation (whether or not the company is cash shortfall, *i.e*. in "cessation of payments") and (i) the nature of the difficulties faced by the company.

Under French law, a company is considered to be insolvent on the date on which it is unable to pay its due debts with its immediately available assets (including potential debt deferrals agreement or moratorium with creditors).

Management has 45 days from insolvency to file for an insolvency proceeding (reorganization or judicial liquidation, unless a conciliation proceeding was opened).

You will find below a summary of the different available proceedings as well as key topics.

Please note that:

- COVID19 specific provisions have modified some French insolvency law provisions to the benefit of debtor company;
- French insolvency law is of public order;
- France being part of EU complies with EU insolvency related directives and regulations[4].

Proceedings available to a debtor company

(a) Out of court pre-insolvency proceeding

A debtor who faces temporary difficulties (financial, economic, or structural) may decide to initiate (i) an **ad hoc mandate proceeding** or a (ii) **conciliation proceeding** (being specified that a conciliation proceeding may be opened if a debtor is insolvent since less than 45 days).

Both proceedings are confidential and can only be opened at the request of an insolvent debtor and have the following consequences:

- Management remains in place;
- No prohibition of payment of prepetition claims;
- No consequence on the due date of claims;
- No automatic stay of individual legal actions and enforcement proceedings.

Mandat ad hoc proceeding is not limited in time whereas, pursuant to COVID19 specific related provisions, a conciliation proceeding may last up to 10 years.

[4] *Such as regulation 848/2015 and directive 2019/1023*

Please kindly note in conciliation proceeding a debtor company may obtain targeted against a specific creditor an automatic stay or a debt deferral by request to the President of the Court (some of these provisions are applicable pursuant to COVID 19 specific provisions).

Court proceedings

(b) Solvent company

A Safeguard proceeding may only be opened at the initiative of the debtor, who is not insolvent and is facing important difficulties which may jeopardize the viability of the business.

Safeguard is a public procedure (opening judgement is published in the BODACC), which aims to draw up a safeguard plan, which may provide for (i) debt write-off (subject to the prior agreement of the creditors concerned) or (ii) debt deferral (up to 10 years), which may be imposed by the Court on the creditors.

Creditors are consulted within creditors' committee (committee of credit institutions and similar institutions and committee of the main suppliers) or individually.

The opening judgement of a safeguard proceeding has the following effects :

- Business continues and the management remains in place;
- opening of an observation period of 6 to 18 months ;
- appointment of a judicial administrator with the task of overseeing or assisting the debtor;
- appointment of a creditors' representative in charge of representing the interests of creditors;
- appointment of a bankruptcy judge to follow the judicial proceedings;
- prohibition of payment of pre-petition claims (obligation to file a proof of claim to creditors' representative for claims which the operating event is prior to the opening judgement);
- prohibition of prosecution and enforcement actions against the debtor for pre-petition claims ;
- stay on interests accrual with the exception of loan agreement with a duration of more than one year, the interest rate is maintained;
- absence of consequence on the due date of the claims;
- principle of continuation of ongoing contracts.

(c) Insolvent companies

- **Reorganization proceeding** may be opened at the initiative of the debtor by declaration of cessation of payments (the declaration shall be made within 45 days from the date of cessation of payments, failing which the debtor will be sanctioned), or at the request of a creditor or of the Public Prosecutor.

Reorganization proceeding is a public procedure (opening judgement is published in the BODACC), which aims to draw up a reorganization plan to continue as a going concern and to pay off claims, which may provide for (i) debt write-off (subject to the prior agreement of the creditors concerned) or (ii) debt deferral (up to 10 years), which may be imposed by the Court on the creditors.

Creditors are consulted within creditors' committee (committee of credit institutions and similar institutions and committee of the main suppliers) or individually.

In the event that a viable reorganization plan cannot be agreed, the court may decide on a plan to sell the debtor's business and assets (*see last part "purchase business at the court"*).

The opening judgement of a reorganization proceeding has the same effects as in safeguard proceedings, with the exception of the power of the insolvency administrator, which is a power of assistance or representation of the debtor (in case of representation, the management will be divested).

- **Judicial liquidation** may be opened at the initiative of the debtor by declaration of cessation of payments (the declaration shall be made within 45 days from the date of cessation of payments, failing which the debtor will be sanctioned), or at the request of a creditor or of the Public Prosecutor.

  Judicial liquidation is opened when it is manifestly impossible to recover the viability of the company.

  Judicial liquidation is a public procedure (opening judgement is published in the BODACC), which aims to sell the debtor's business and assets to repay as many of the claims as possible.

  Creditors are reimbursed according to their rank (preferred, secured or unsecured creditors).

  The opening of a judicial liquidation has the following effects :

  - appointment of a judicial liquidator in charge of representing the company and the interests of the creditors;
  - no automatic termination of ongoing contracts;
  - acceleration of all undue claims (except in the event of ongoing business activity decided by the Court - usually for a short period of time);
  - prohibition of payment of pre-petition claims (obligation to file a proof of claim to judicial liquidator for claims which the operating event is prior to the opening judgement);
  - automatic stay on all actions against the debtor for pre-petition claims;

- no accrual of interest with the exception of loan agreement for a duration of more than one year.

Judicial liquidation is closed when all claims are paid or for assets shortfall.

Monitoring the situation of a company

In order to find out whether a company is subject to an insolvency proceedings, one shall check (i) such company certificate of incorporation on www.infogreffe.fr and consult the BODACC (French legal gazette - https://www.bodacc.fr/) to see if there is any publication of an insolvency proceeding opening judgement.

Please kindly note that out of court pre-insolvency proceeding (mandate ad hoc and conciliation) are confidential and will not be publically evidenced.

Business partners of a company shall always ensure they have visibility on a debtor cash position and monitor any potential insolvency proceeding.

The hardening period

The hardening period is the period running from the date of insolvency and the date of the insolvency proceeding opening judgement.

Some agreement or act entered into during the hardening period are void by law or voidable (depending on the type of agreement or act entered into) in order to protect the debtor company's assets.

One may be aware of this risk when entering into new agreement with a company facing difficulties.

File of a proof of claims / Claim of ownership

- The opening judgement of an insolvency proceeding has the effect to "freeze" the payment of all **prepetition claims** (claims which operative events occurs prior to the insolvency opening judgement).

  As consequence, all creditors must file a proof of claims for all their prepetition claims in order to ensure their claims will be enforceable against the insolvency proceeding and could be repaid within such insolvency proceeding.

  Such proof of claims must be file before the Court appointed creditors representative within (i) 2 months for French resident creditors and (ii) within 4 months for non-French resident creditors, from the publication of the insolvency opening judgement to the BODACC (French legal gazette).

- All owner of assets which are in possession of a the debtor subject of an insolvency proceeding on the date of the judgement opening the insolvency proceeding shall **claim the ownership** of such assets within 3 months from the publication of the insolvency opening judgement to the BODACC.

Such claim of ownership shall be filed with the judicial administrator, or with the judicial liquidator in the case of judicial liquidation.

Purchase of a debtor company's business

When a reorganization plan is not achievable in a reorganization proceeding, the judicial administrator may decide to organize the sale of the activities and assets of the debtor company. As the reorganization proceeding is public, any third party interested in purchasing all or part of the business is entitled to file (i) directly a purchase offer of assets and activities to the administrator as soon as the proceeding is opened or (ii) in the event of a call for tenders published by the administrator.

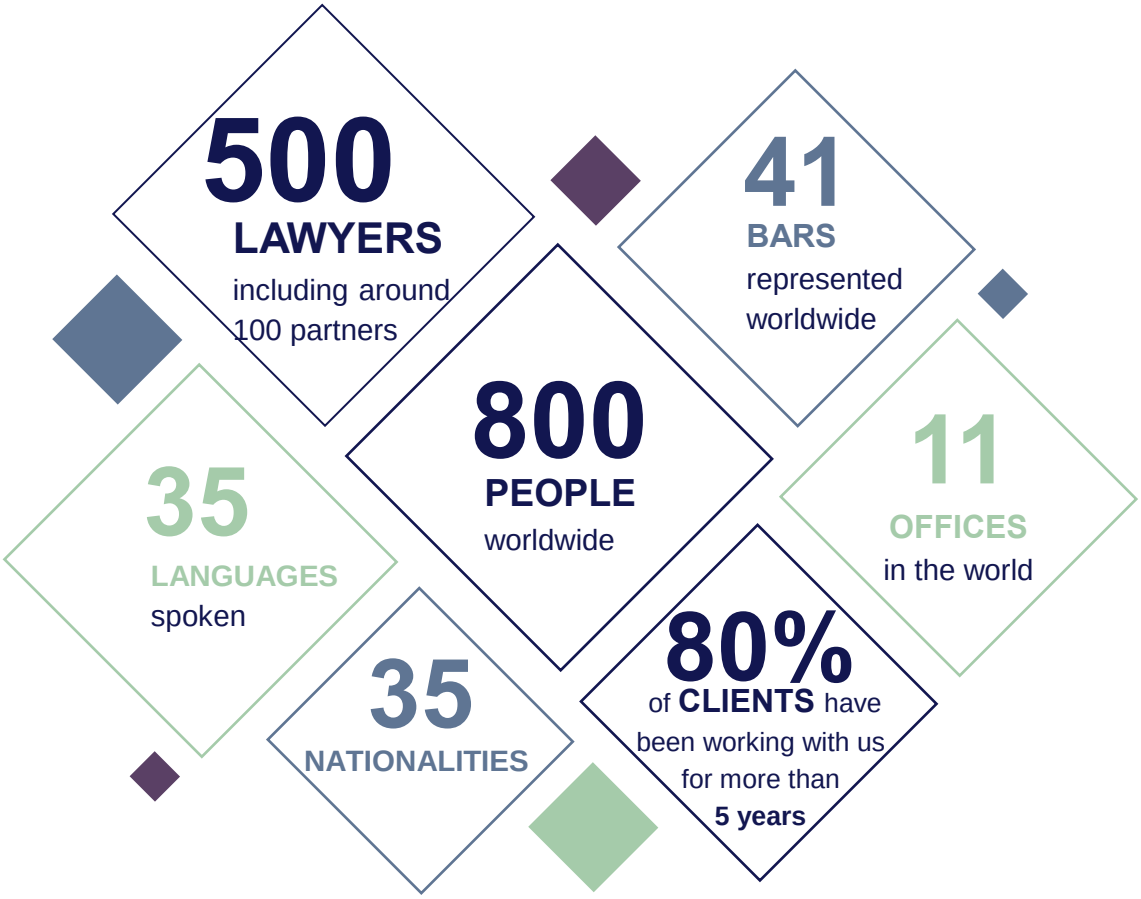
It should be noted that liabilities of the debtor company are not transferred in a sale plan.

The court will choose the best offer based on (i) the continuation of the business, (ii) the upholding of employment and (iii) the price offered.

ABOUT GIDE

Our Firm

Gide was founded in Paris in 1920. It has grown over the years to become a truly international law firm, with 11 offices in the world.



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Chambers Europe Awards 2017

GIDE

CONTACT PARTNERS

Nadège Nguyen
Partner - Gide Paris
M&A / Corporate
☎ +33 (0)1 40 75 36 26
✉ nguyen@gide.com

Bertrand Jouanneau
Partner - Gide Paris
Tax
☎ +33 (0)1 40 75 94 39
✉ jouanneau@gide.com

Foulques de Rostolan
Partner - Gide Paris
Employment
☎ +33 (0)1 40 75 22 25
✉ rostolan@gide.com

Thierry Dor
Partner - Gide Paris
IP-TMT
☎ +33 (0)1 40 75 29 46
✉ dor@gide.com

Jean-Hyacinthe de Mitry
Partner - Gide Paris
IP-TMT | Dispute Resolution
☎ +33 (0)1 40 75 29 86
✉ mitry@gide.com

Sophie Scemla
Partner - Gide Paris
Dispute Resolution
☎ +33 (0)1 40 75 61 95
✉ sophie.scemla@gide.com

Dimitri Dimitrov
Partner - Gide Paris
Competition/International Trade
☎ +33 (0)1 40 75 22 47
✉ dimitrov@gide.com

Jean-Gabriel Flandrois
Partner - Gide Paris
M&A / Corporate
☎ +33 (0)1 40 75 29 79
✉ flandrois@gide.com

OFFICES

PARIS

15 rue de Laborde - 75008 Paris
Tél. +33 (0)1 40 75 60 00

ALGIERS

6-8 rue Laroussi Amroune, Les Glycines
16046 Alger
Tél. +213 (0)21 29 94 94 / 96 96

BEIJING

Unit B01, Floor 15, Tower B, Parkview
Green Tower, No. 9
Dong Da Qiao Road Chaoyang District
Beijing 100020

BRUSSELS

View Building – Rue de l'Industrie, 26-38
1040 Bruxelles
Tél. +32 (0)2 231 11 40

CASABLANCA

Tour Crystal – 1, Boulevard Sidi Mohammed
Ben Abdellah, Quartier Casablanca Marina
20030 Casablanca
Tél. +212 (0)5 22 48 90 00

ISTANBUL

Levent Mahallesi Cömert Sokak No: 1C
Yapı Kredi Plaza C Blok Kat: 334330
Beşiktaş - İstanbul
Tél. +90 (212) 385 04 00

LONDON

125 Old Broad Street - London EC2N 1AR
Tel. +44 (0)20 7382 5500

NEW YORK

One Rockefeller Plaza, Suite 3040
New York, New York 10020
Tel. +1 (212) 403 6700

SHANGHAI

Suite 2008, Shui On Plaza
333 Huai HaiZhong Road
200021 Shanghai
Tél. +86 (21) 5306 8899

TUNIS

Société professionnelle d'avocats en
partenariat avec Gide Loyrette Nouel
22 rue Félicien Challaye – Mutuelleville
1082 Tunis – Le Belvédère
Tél. +216 71 233 150

WARSAW

Metropolitan
Pl. Piłsudskiego 1
00-078 Warszawa
Tél. +48 22 344 00 00