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- General Commercial and Civil Litigation
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- Compliance
- Environment
- Privacy and personal data protection
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- Criminal Law (white collar crimes)
- Intellectual Property
- Public and Administrative Law
- Torts and Personal Injury
- Health Care & Cosmetics
- Labor & Employment Law
- Town Planning and Zoning

We are currently twenty-plus attorneys, including eight partners, speaking, in addition to French, English, Spanish, German, and Italian. Our clients are mainly businesses of all sizes, as well as public entities.

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## → Criminal Law

In France, a criminal prosecution may be commenced in two different manners:

- Either by a Public Prosecutor (*"Procureur de la République"*);
- Or by a victim through the filing of a complaint which seeks both the initiation of criminal charges and the award of civil damages in the criminal proceedings (known as a *"plainte avec constitution de partie civile"*).

### Prosecution

**THE ROLE OF THE PUBLIC PROSECUTOR:** Public Prosecutors are magistrates (i.e., they have the same training as judges), who work for the Office of the Public Prosecutor (Ministry of Justice), akin to the Attorney General's Office in the USA. A Public Prosecutor's mission is to prosecute criminals on behalf of the general public.

In cases where the investigation by a *"juge d'instruction"* is not mandatory, a Public Prosecutor may carry out a preliminary investigation on his own, with the assistance of the police. The goal of such a preliminary investigation is to ascertain whether violations of criminal statutes have been committed, to collect evidence of such violations and to identify the offender(s). In addition, it gives a basis for the Public Prosecutor in deciding in whether or not to prosecute the case.

Investigations made by the police generally involve fact finding reports drawn up describing the facts and the identification of the various persons involved. In particular, police services may question any witness whose testimony they consider useful to further their investigation. If there are one or more plausible reasons for suspecting that a person has participated in the commission of an offence, such person can be interviewed by the police and kept in police custody (*"garde à vue"*) for a one-time renewable 24-hour period. The person kept in custody

is allowed to speak with a lawyer at the beginning of the custody period and at the beginning of the renewed custody period; the lawyer may also be present during the interviews with police officers and agents.

If the person has been kept in custody and the evidence gathered seems sufficient to bring proceedings, the Public Prosecutor may refer the persons before the Criminal Court (*"Tribunal Correctionnel"*) by means of a simple citation (summons) or request the start of an investigation.

In order to strengthen criminal enforcement for economic and financial matters, the law of December 6th, 2013 created a special Prosecutor for financial matters with national jurisdiction over those matters.

**INVESTIGATION BY A JUGE D'INSTRUCTION:** The juge d'instruction is a specialized judge, member of the Court of First Instance (Tribunal de Grande Instance) who conducts his investigations under the control and supervision of the *"Chambre de l'Instruction,"* an appellate court.

The juge d'instruction's role is to determine whether there exists against any person sufficient information warranting that the person or entity be brought to trial before a criminal court. The investigation phase, referred to in French as the *"instruction"* or *"information"* is thus the stage where the case is developed and put in a state that will allow the matter to proceed to trial (known as the *"mise en état de l'affaire"*). This *"mise en état"* concerns not only questions of fact and guilt, but also issues of the defendant's background and history (when individuals are concerned).

The juge d'instruction is independent from the Prosecutor's office. It is the judge's responsibility to carry out his investigation, not only with a view to finding incriminating evidence, but also exculpatory evidence. In this manner, French criminal proceedings are truly inquisitory in nature rather than accusatory.

The juge d'instruction may carry out investigations personally or may, as is generally the case, designate investigators (police officers) to carry out these measures, which consist generally in searches to seize the necessary documents or items connected with the matter, and the questioning of the persons involved in the case. It should be noted that the *"instruction"* of a criminal case can be quite a lengthy process.

## Experts

Depending on the complexity of the matter, the *juge d'instruction* may also appoint experts. In addition, the parties have the right to retain their own experts, in order to help them prepare their defense and better understand the conclusions reached by the court-appointed expert.

## Convocation

In the context of the judicial inquiry, the *juge d'instruction* may summon, or request that the police question any person connected with the case. The summons to appear before the judge is called a "*convocation*".

Depending on the evidence, if any, existing against the person to be questioned, that person can be heard under various positions (witness, assisted witness, or accused) and entitled to greater or lesser protections.

## Outcome of the *juge d'instruction*'s investigation

At the close of the investigation, the *juge d'instruction* can either enter (i) an order dismissing the charges ("*ordonnance de non-lieu*") or (ii) an order remanding the matter to the court having jurisdiction to conduct a trial in the matter ("*ordonnance de renvoi*"). The decision to remand a case for trial does not constitute a decision on the merits.

## Trial

The matter may be brought for trial before the criminal court having jurisdiction by the *juge d'instruction* or by the Public Prosecutor. The trial is likely to be commenced anywhere from 6 months and up to one year following the closing of the instruction.

Please note that the victims may also directly apply the Court (i) through the filing of a summons if the Public prosecutor did not bring the case to a court ("*citation directe*") or (ii) through a complaint ("*constitution de partie civile*") if the Public Prosecutor or an investigating magistrate decided to have the case brought to trial.

## Summons to Appear and Assistance of Counsel

The parties prosecuted will be summoned to a hearing. They are in principle required to appear personally, unless they can show cause (health or serious professional obligations).

If they cannot personally attend the hearing, they may be represented by their lawyers if they inform the Court President and provide their lawyers with a special power to represent them before the Court.

However, the Court may consider that the presence of these persons is necessary and postpone the hearing to a day in the future when they will be able to be present. In the event the offence is punishable by imprisonment of two or more years, the Court may require their presence by an arrest warrant ("*mandat d'amener*").

### **Intervention by the Parties**

**THE CIVIL PARTIES:** The civil parties are permitted to file written briefs supporting their positions and / or requesting a decision on a specific question. They may also question the accused, witnesses and experts during the trial.

**THE PUBLIC PROSECUTOR:** During the trial, the Public Prosecutor may question the parties, witnesses and experts. Before the attorneys for the accused speak, the Public Prosecutor makes a closing statement as to the penalties requested against each of the accused.

**THE ACCUSED:** Just like civil parties, the accused are permitted to file written briefs supporting their position and/or requesting a ruling on a specific point. They may be questioned during the trial by the presiding judge, acting either on his own or at the request of the Public Prosecutor or the civil parties. The accused can likewise question the civil parties, the experts and the witnesses, and they are always afforded the last word on closing arguments.

### **Rendering of the Judgment - Appeal**

At the end of the hearing, if the court, given the complexity of the matter, cannot enter its ruling that very day, it will set the date on which it will be in a position to enter its decision. The accused may request that the decision be translated into a language he can understand. Criminal appeals must be filed within 10 days from the date the judgment is rendered.

### **Access of the Public and of the Press**

Note that the criminal trial is necessarily open to the public, except in very limited circumstances where the conditions for “*in chambers*” hearings are met (cases involving minors or rape). Media presence is possible, but filming or photographing in the courtroom is prohibited.

## **→ Foreign Investment**

Foreign investment in France is by principle free of any administrative constraint. However, in certain instances, foreign investment in France is subject to either (1) declaration to the administration, (2) prior authorization or (3) filing for statistical purposes.

## Operations Subject to Declaration

■ The following operations are subject to declaration to the administration when made by foreign investors or by French entities whose capital or voting rights are held at more than 33.33% by foreigners:

- Incorporation of a business
- Acquisition of all or part of an ongoing business
- Any equity investment resulting in a stake exceeding 33.33% of the capital or the voting rights of a French entity
- Any operation organized abroad resulting in a change of control of a foreign entity, itself holding capital or voting rights in an entity whose capital or voting rights are held by foreigners at more than 33.33%

■ The declaration must be made with the “*Direction Générale du Trésor*” of the French Ministry of the Economy, of Finances and of the Industry. There is no required format.

■ A general waiver is granted for the following operations: (i) creation or extension of the business of a French entity, increase in the stake in French entity under foreign control when made by an investor already owning over 50% of the capital or the voting rights, (ii) subscription to a capital increase of a French entity under foreign control, subject to the absence of increase of his/her stake, (iii) intra-group operations, (iv) operations relating to guarantees or donations to a French entity already owned by foreign investors, (v) the takeover up to 1.5 million Euros of merchant businesses, restaurants, hotels, (i) acquisition of arable land.

## Operation Subject to Prior Authorization from the French Administration

A prior application must be made to the Minister of the Economy; the Minister has up to 2 months to respond, failing which the Minister is deemed to have acquiesced to the operation.

### ■ INVESTMENT MADE BY NON-EUROPEAN UNION (OR EEE) INVESTORS; INCLUDING:

- Individuals citizen of countries that do not belong to the EU
- French citizens not residing in France.
- Investment in certain industries considered to be sensitive (off-casino gambling, private security business, communication interceptions, encryption, national defense certified contractors, R&D businesses, manufacturing or trading weapons, ammunition, powder or explosives, military contractors, ....). A 2014 law added to the list the following sectors when the public order is concerned: energy supply, water supply, transportation, IT-industry and public health.

■ INVESTMENT BY EU (OR EEE) INVESTORS. Investment in regulated sectors mentioned at article R.153-4 of the French Monetary and Financial Code, such as research, production and

trading of weapons, business conducted by companies that receive national defense secrets, or other related national security organizations, or other business subject to security clearances (*secret défense*), in addition to the sectors added by the 2014 law mentioned above.

■ **INVESTMENT BY FRENCH ENTITIES (SUBJECT TO FOREIGN CONTROL).** Investment in businesses (i) relating to encryption, (ii) holding or using national defense secrets (iii) conducting R&D, or producing or trading in weapons, ammunition, powder and explosives, for military use, (iv) that procure services or goods to the Ministry of Defense, or (v) that deal in gambling, private security, biotechnology, and some activities tied to IT systems in addition to the sectors added by the 2014 law mentioned above.

### Operations Subject to Filing for Statistical Purposes

■ Operations involving amounts in excess of 15 million Euros require a filing with the *Banque de France*, when the operation relates to (i) the acquisition of at least 10% of the capital or voting rights, (ii) acquisition of real estate, (iii) operation between related parties such as loans, deposits.

■ Operations involving amounts in excess of 1.5 million Euros require a filing with the French Ministry of the Economy, when the operation relates to (i) real estate acquisition, (ii) acquisition of land for wine production, (iii) liquidation of direct investments in France, (iv) operation subject to authorization by the French Ministry of the Economy, or (v) disinvestment in a French entity (termination of business, liquidation, etc.).

## → Corporate Law

### Legislative Trends in French Corporations Law

Generally speaking, corporate law in France saw a more consumer- and citizen- oriented trend in the past years while still trying to improve the country's attractiveness to businesses in order to maintain employment levels. Among such recent legislation:

■ The Law on consumers dated February 14, 2014 has instituted a **class action**. This class action is limited in scope to consumers and competition law issues, under which plaintiffs may solely seek financial compensation for material damage: personal injury or moral prejudice is therefore excluded from the scope of the action. In practice, the action could also be used in health and environment matters.

■ In order to render it more business-friendly, French corporation law has been through an ongoing simplification process in the past years. A Simplification Office for businesses has been



created in January 2014 with a goal to suggest legislative improvements every six months. A proposed law planned for January 2015 includes for example the following changes: the prior authorizations in certain regulated business sectors will be replaced by simple administrative filings and *ex-post facto* review; urban and environment laws are to be simplified.

■ A July 2014 Law on Social Economy requires that specific information given to the employees in the case of their company is being disposed of.

■ Bankruptcy rules have also been amended in March 2014 to facilitate the economic recovery of companies and make the bankruptcy process more efficient.

■ A June 2014 law on small businesses amended the rules for commercial leases aligning them with residential leases: rent control, inventory of the premises, preemption rights of the tenant... The same law harmonized the amount of the fine for late payment among professionals (75,000 € for individuals, and 375,000 € for entities).

■ The French government indicated it will toughen the criminal response in face of economic and financial offenses that are also called « integrity offenses » [corruption, traffic of influence, unlawful taking of interest, embezzlement of public funds, tax fraud, or corruption of foreign public officials].

## Structures for Doing Business

Traditionally, French corporate structures are divided between on one hand (i) limited liability companies, where the liability of their partners or shareholders are limited to their capital contributions and on the other hand (ii) unlimited companies.

Type of Company	Nature of Entity	Legal Requirements	Tax status	Notes
Sole Proprietorship ( <i>Entreprise personnelle, Commerçant</i> )	Not a legal entity, but the registration of an individual undertaking a commercial activity	None except individual capacity to do business (majority, no prior bankruptcy-related prohibition)	Independent merchant (BNC) or Independent Industrial (BIC), with a specific tax return for professional income and expenses	Unlimited liability to creditors and third parties.  Common among small businesses.
Undisclosed Partnership ( <i>société en participation</i> )	Not a legal entity, but a loose commercial undertaking organized around a common understanding or written agreement	None, but a written agreement organizing certain details (decision-making process, for example) is not uncommon	Either each member is taxed independently as a sole proprietorship, or a flow-through tax entity is created.	Unlimited liability to creditors and third parties.

Type of Company	Nature of Entity	Legal Requirements	Tax status	Notes
Limited Liability Companies ( <i>société à responsabilité limitée</i> , or SARL)	Limited liability entity, governed by the French Commercial Code.	No capital minimum, maximum of 100 shareholders.	<p>Personal taxation of profits at the shareholder level:</p> <p>tax is assessed at the company level, but paid directly by each member according to share ownership</p> <p>With possibility to opt for corporate income tax for family businesses</p>	<p>Very common for small and family businesses.</p> <p>Turnkey type of company, with well-developed case law.</p> <p>Limited formalism, except when the SARL meets certain criteria in size.</p> <p>Some governance requirements.</p>
Corporations ( <i>Société anonyme</i> , or SA)	Limited Liability, governed by the French Commerce Code	Minimum Capital of 37,000 Euros, minimum 3 shareholders, mandatory Statutory Auditors	Corporate Income Tax	<p>Listed companies, or joint venture companies requiring specific corporate governance, or regulated sectors (banking and insurance, for example)</p> <p>Able to issue complex securities and to raise capital among the public</p> <p>Heavy formalism, with either a Board of Directors, or a Supervisory Board and a Management Board.</p>
Simplified Corporations ( <i>Société par actions simplifiée</i> , or SAS)	Limited Liability, governed by the Commerce Code	<p>No minimum capital</p> <p>Statutory Auditor required solely if the SAS reaches a certain size</p>	Corporate Income Tax	<p>Very Common</p> <p>Governance, voting rights, dividend rights are determined by agreement between the shareholders</p> <p>Capacity to raise capital with the public</p> <p>Limited mandatory formalism, with a possibility to adopt more formalistic rules</p>
Commercial Partnerships ( <i>Société en Nom Collectif</i> , or SNC)	Joint & Several Unlimited Liability among Members	<p>No Capital Minimum</p> <p>Statutory Auditors required if the SNC reaches a certain size</p>	<p>Personal Income Tax (flow-through)</p> <p>With possibility to opt for corporate income tax.</p>	<p>Quite rare, except in certain businesses (restaurants, tobacco outlets)</p> <p>Limited governance (all members are directors by default)</p> <p>Limited formalism</p> <p>Required for certain businesses (tobacco outlets,</p>

## Rules Governing All Corporations and Partnerships

**INCORPORATION:** The incorporation process in France requires several mandatory steps, failing which the registration will not be recorded by the clerk of the Commerce court (*Greffier du Tribunal de Commerce*), which in effect denies the entity any legal existence.

Such steps usually include the filing of the organizational documents (*statuts*), documentation about the directors and officers, a certificate of deposit for the initial capital the justification of the right to use the designated headquarters, the identity of the statutory auditors if applicable, the entity's year end. Incorporation also requires certain publicity in a legal gazette in the jurisdiction of incorporation.

All these are requisites for the registration on the Register of Commerce and Companies ("RCS"), which is now freely accessible from publicly available databases (*Infogreffe, Société.com*). Evidence of registration is given through an excerpt of the Register for a given entity; such document is called a "K-bis". Obviously, supplying false information to the RCS is a criminal offense.

**CORPORATE DISCLOSURE:** Under French law, third parties rely on the information provided by the K-bis for any given entity, in particular in determining which officers are legally empowered to bind the company.

Therefore, the law requires that any change affecting the information mentioned in the RCS, and therefore in the K-bis, must be notified to the Commerce Court for an update. Any change that is not reflected in the K-bis is deemed to be not binding on third parties; This is crucial for certain changes such as changes in headquarters, since notifications sent to the previous headquarters still showing on the K-bis will be deemed valid, even if the company has moved to other headquarters.

In addition, all commercial entities are required to file their annual financial statements with the RCS, which offers third parties a wealth of information on any entity's financial health and situation.

Mergers, spin-offs, and other specific operations affecting the assets or liabilities of an entity, such as the disposition of a business as a going concern (*fonds de commerce*) require the filing of draft documents and a waiting period to inform interested parties of the potential risk to their interests and an opportunity judicially obtain guarantees.

**DIRECTORS AND OFFICERS:** Directors and officers can be removed at any time, subject to minimum due process; however, removing general managers in SARLs and SNCs, and members of the directorate in SAs, without showing good cause may constitute a cause of action for damages.

Entities can be of an SA or an SAS, and are represented by their own legal representatives. Foreign individuals who are not citizens of the EU or of the EEE and who are not residents in France must make a specific filing with the local authorities. Those who wish to reside in France may be required to apply for a resident visa.

Directors and officers of a company are personally liable to the company or to its shareholders for any negligence in the management; individual directors may escape such liability if they opposed the action during a vote of the board. Directors and officers are liable to third parties if they act in a manner that is incompatible with their duties, willful misconduct, breach of any applicable law or regulation, or a breach of the organizational documents of the company.

Directors and officers of all companies are ultimately criminally liable for breaches of safety and labor laws and regulations committed by the company (such as criminal negligence in a work accident or involuntary manslaughter in the workplace), unless they have validly delegated their responsibilities under delegations of authorities, with the proper means for the delegates to apply the relevant regulations.

Directors and officers that have been negligent in the management of the company's affairs and that subsequently filed for bankruptcy may be liable for part or all of the company's liabilities.

**CORPORATE ASSETS:** French law severely punishes the divestment by directors and officers of company assets for personal gain and/or for a use that is contrary to the entity's interest, as such behavior is deemed to be a breach of duty to the entity involved. Such divestments, called "*abus de biens sociaux*" or "*abus de confiance*" within the purview of these statutes, typically include unjustified discounted sales or transfers of company assets to directors, benefit of corporate assets for personal use of directors, directors and officers compensation beyond the company's means, assumption by the corporation of the personal expense of a director by the company, corporate guarantee given to comfort the director's personal loans or liabilities, etc.

An aggravating circumstance for the « *abus de biens sociaux* » offense has been recently created when it has been committed (i) through accounts or contracts undertaken with foreign entities or (ii) through the help of physical or entities, or any foreign entity. The police have now been given broader powers to establish the offense, and may resort to wiretapping, interceptions, undercover agents.

## → Labor and Employment Law

French labor and employment rules, both individual and collective employment relationships between employers and their employees, are governed by the traditional hierarchy of rules, from (i) the French Constitution, including the Declaration of the Rights of Man and the Citizen

(a fundamental document from the time of the French Revolution), (ii) European Union legislation and case law, (iii) the French Labor Code, together with the applicable regulations, (iv) industry-wide collective bargaining agreements and (v) case law.

Individual relationships are also governed by the individual employment contract, customs, unilateral undertakings from employers, and the internal rules and policies applicable within the companies.

### **Employment Contracts**

Under French law, the employer and the employee may enter into a fixed term contract (CDD), an open-ended term contract (CDI) or a temporary work contract (*"interim"*).

A contract can be written, oral, or result from an exchange of correspondence. Fixed-term employment contracts and temporary work contracts must be written and have to comply with restrictive regulation, in particular with regard to their purpose and their duration. In case of breach of these rules, the employment relationship can be judicially converted in an open-ended employment contract.

### **Employment Formalities**

The employer must file social security returns for new hires. Moreover, under French law, specific rules exist with regard to the employment of foreign employees, under which the employer must satisfy specific formalities before employing a foreign employee. Employing a foreign employee who has no authorization to work, or without checking the validity of the authorization of a foreign employee is a criminal offence.

### **Criminal Sanctions in Employment Law**

**DISCRIMINATION:** During the employment process, French law prohibits employment discrimination, in particular discrimination based on the origin, race, religion, age, sexual orientation, political opinions, or union status. Any breach of this rule may be criminally sanctioned and lead to damages. Unreported work (*« travail dissimulé »*) is the offence constituted by:

- Paid employment (production, business, services, etc.) without being registered with the French authorities (employment, tax, or the social security organisms), or
- Failure to (i) declare the hiring of an employee, (ii) provide a pay slip, (iii) mention on the pay slip the accurate number of hours worked, or (iv) report the full salary (including benefits) paid to social security organizations.

Penalties for concealed work are severe. It is thus imperative for employers to be up to date with their declarations.

**ILLEGAL LOAN OF WORKERS:** Under French law, exclusive and for-profit loan of workers is reserved to the temporary work and work-share agencies.

Therefore, employers are forbidden to receive a financial gain from loaning their employees for the benefit of other employers, even to affiliates in a same group. A company may loan one or several workers to another company, as long as it generates no financial gain from this operation. There is no financial gain when the cost charged to the beneficiary of the loan is limited to the costs of the actual salaries, social security contributions and professional expenses.

**ILLEGAL TRADING OF WORKERS (« *marchandage* »):** Illegal trading of workers is the loan of workers for profit which negatively affects the interests of the employee concerned or which distorts the application of legal rules, a labor convention or collective agreement. This offence is constituted when the employees loaned do not enjoy the same benefits as the employees of the company to which they are seconded.

**SUBCONTRACTING:** Companies often employ subcontractors to execute part of the works entrusted to them by their clients. Those operations are legal, but particular attention is needed on two particular points:

■ When a worker's gross salary exceeds 3,000 Euros per month, the contractor must ensure that the subcontractor does report all workers (see above), and specifically, that it is up to date with the mandatory declarations to the social security organisms. Failing to do so may result in the contractor being held jointly and severally liable for the social obligations and contributions of the subcontractor.

■ Moreover, subcontracting may amount to a temporary loan of an employee of the subcontractor to the contractor's company. In this instance, the contractor should ensure that the loan of this employee is only an accessory to the services provided by the subcontractor and not the main goal (or benefit) of the subcontract. Otherwise, there is a risk that the services supplied by the subcontractor may be qualified as "illegal trading of workers" or "*marchandage*", a criminal offence.

A company located in France using foreign labor must tighten its control after a July 11, 2014 Law aimed at preventing "social dumping".

## Compensation

**MINIMUM WAGE:** In France, employers are free to determine the compensation to be paid to its employee, provided it is above the "*salaire minimum de croissance*" (acronym "SMIC"),

which is a minimum wage, increased by the French Government on the basis of the national cost of living index. The current rate for 2014 of the SMIC is 9,53 €/ per hour, or a gross monthly salary of 1,445 €.

Each employee's compensation must also meet the minimum requirements of the collective bargaining agreement applicable to the company's industry, if applicable.

**THE "EQUAL WORK, EQUAL PAY" PRINCIPLE:** A consistent line of case law has determined that the employer must ensure the equality of compensation between all employees placed in identical situations. In a nutshell, the employer may only use his managing power (*"pouvoir de direction"*) to treat employees differently provided he/she can justify such differences by criteria that are "unbiased, relevant, physically verifiable and not linked with any discriminatory motive". Subject to certain conditions and context, the employer is entitled to justify differences of compensation based on the experience and seniority, professional skills or education.

**SOCIAL SECURITY CONTRIBUTIONS / PAYROLL TAX:** They amount to 60-70 % of the employee's gross salary (40 to 50% paid by the employer, and 20 to 25% by the employee), depending on the industry and collective bargaining agreements.

### **Working Time Duration**

In France, the working time duration is by default set at 35 hours per week (i.e. 151,67 hours per month). Time worked above that limit constitutes overtime and is subject to an additional payment, and, in some cases, to rest days. The law also provides for the following absolute working time duration limits:

- a maximum of 10 hours a day;
- an average of 44 hours in a 12 consecutive weeks period;
- no more than 48 hours in a single work week.

Each employee must in any case benefit from a daily 11-hour rest. Any employee, even classified as an executive (*"cadre"*), is submitted to these rules.

### **Specific Regimes for Executives**

Nevertheless, the law provides specific rules for executives only which allow more flexibility. These regimes vary according to the cadre's category and upon the applicable collective bargaining agreement provisions, if any. Three categories may be distinguished:

- **INTEGRATED EXECUTIVES (*"cadres intégrés"*):** Those are subject to the company's collective working time and who are integrated in a working team. They are subject to the mandatory provisions on working time.

■ **SENIOR EXECUTIVES** (*"cadres dirigeants"*): Executives who have significant responsibilities and are the decision-makers in the company; their work hours cannot be quantified due to a high degree of independence in the organization of their work; they are granted the highest compensations of the company. The senior executives are excluded from the working hours legislative framework.

■ **AUTONOMOUS EXECUTIVES** (*"cadres autonomes"*): They are leading executives with significant freedom to organize their own work time. Their working time may be defined by an amount of hours or a number of days per year if the collective bargaining agreement or a company bargaining agreement (negotiated at the level of the company with the unions, if any) provides for this option. To define the working time by a number of days also requires the express consent of the employee. To that purpose, an agreement must be signed with the employee (either in the employment contract itself or in a rider).

### **Part-Time Contract**

A part-time work contract providing for fewer than 35 hours a week can be concluded with the employee. It must contain mandatory provisions to be valid. Since June 2013, the weekly working time cannot be fewer than 24 hours (limited exceptions apply).

### **Paid Vacation**

Employees are entitled to five weeks of paid vacation per year. The collective bargaining agreement applicable to the company may provide for additional paid vacations.

### **Specific Rules**

French law provides specific provisions concerning night work, bank holidays, and Sunday work.

### **Grounds of Dismissal**

The employer may only terminate an employment contract and dismiss an employee if he/she justifies:

■ An "actual" cause: termination must be based on objective facts which can be substantiated, constituting the real cause of the dismissal, i.e. an accurate and exact cause;

■ A "serious" cause: the grounds for termination must be of some significance, making it impossible for the employer to continue the employment relationship.

The grounds for dismissal must be fully and exhaustively detailed in the letter notifying the dismissal to the employee. There are three basic types of actual and serious reasons for dismissal:



**DISMISSAL FOR PERSONAL REASONS:** The reason for dismissal is directly related to the employee, for instance in case of lack of performance, or if the employee has had an accident or is ill and therefore unfit for work.

In such circumstances, the employee must be convened to a preliminary meeting during which the reasons for his potential dismissal are explained to him by the employer. After this meeting, the employer may decide to dismiss the employee and notify him the dismissal by a registered letter with return receipt requested.

This procedure is quite formal and the employer must comply with specific delays. In case of non-compliance with of those delays, the employer may be ordered to pay compensatory damages to the employee for breach of the dismissal procedure.

The physical inaptitude of the employee may constitute an actual and serious cause of dismissal, but only if such inaptitude has been noted by the occupational health doctor after two separate medical examinations, and if there are no possibilities redeploying of the employee within the company or the group of the employer.

**DISCIPLINARY DISMISSAL:** The employee may be dismissed for negligence with respect to his/her contractual obligations (breach of internal procedures, unjustified absences...), for breach of her duty of loyalty towards the employer (unfair competition, denigration...), or when the employee's behavior towards his colleagues is inappropriate (insults, assault, workplace or sexual harassment...).

However, a disciplinary procedure may solely be engaged within a period of two months starting from the day the underlying facts became known to the employer. Any previous wrongdoings are time-barred.

Finally, the dismissal letter has to be sent within a one month from the day the preliminary meeting took place. Failing this, the dismissal is deemed unjustified.

**DISMISSAL FOR ECONOMIC REASONS:** Such a dismissal is based on reasons unrelated to the employee and relating to the necessity of modifying or reducing the headcount in order to face economic difficulties or to safeguard the competitiveness of the company.

Specific rules govern such a dismissal and vary when the dismissal applies to i) a single employee (individual dismissal), ii) from two to nine employees (small collective economic dismissal), and iii) ten or more employees (large collective economic dismissal).

In any case, an economic dismissal may only be brought if there possibility to redeploy the employee or alternative job opportunity within both the company and the group.

Moreover, in case of a small economic dismissal and a large economic dismissal, the Works Council (*"comité d'entreprise"*) has to be consulted before the dismissal letters are sent to the employees.

In case of a large economic dismissal in a company of 50 or more employees, the Works Council may be assisted by a certified accountant who is paid by the company. A June 2013 Law set up a time limit during under which the Works Council must render its opinion.

In these cases, the company has to put in place an employment safeguard plan providing for internal and external redeployment measures and the support of the dismissed employees (assistance for geographical mobility, increase of the severance payments...).

Such a plan has to provide for sufficient support measures considering the capacities of the company and the group to which it belongs. If such a plan is considered insufficient, the notified dismissals are deemed void and the employees may petition the courts to request their reinstatement with the company, with compensatory damages and back pay.

Since the June 2013 Law, the labor administration must approve the economic dismissal plan before its implementation.

### Severance Payments

In most cases, a dismissed employee is entitled to:

- A notice period, in general 1 to 2 gross monthly salary for workers (*"ouvriers"*), 2 months for technicians and supervisors (*"agents de maîtrise"*), 3 months for the executives and engineers (*"cadres et ingénieurs"*);

- A severance payment based on current compensation and seniority, provided by law or by the applicable collective bargaining agreement, whichever is more favorable to the employee.

The severance payment is paid to the employee who has at least one year of seniority. This payment amounts to 1/5 of a monthly gross salary per year of seniority until the 10th year of seniority, plus 1/3rd of a monthly gross salary from the 11th year of seniority.

If the dismissal is not justified, the employee may also obtain before the labor court additional damages, which amount depends on the damage actually incurred by the employee. The amount of such damages cannot be lower than 6 months of gross salary when the employee has at least two years of seniority with a company of at least 11 employees.

## Employees' Representatives

**ELECTIONS OF THE STAFF REPRESENTATIVES:** The employees periodically elect their representatives. When the company has over 11 employees, the employees elect staff delegates that represent them and present their requests at monthly meetings with the employer. Their term can be from 2 to 4 years. They are elected under a two-round election process, the first round being reserved for the union representatives.

**ELECTIONS OF THE WORKS COUNCIL:** When the company employs 50 employees or more, it must organize the election of a Works Council. The term of its members ranges from 2 to 4 years. It is also a two-round election which takes place under the same specific list system, on the election date time as the staff representatives. The first round is reserved for the candidates presented by trade unions. The Works Council has two types of missions:

■ **Economic missions:** the employer has the obligation to provide members with periodic information regarding the financial results of the company, the level of workforce... In addition, the employer must seek the position of the Works Council before any important decision is considered and which could have an impact on the operations of the company. It is however a consultative process which does not bind the employer. However, failing to obtain the works council opinion before making the decision is a criminal offense.

■ **Social and cultural missions:** the Works Council organizes activities (end of the year party, trips, etc.) and manages certain fringe benefits to employees (cinema tickets, discount prices for shows, etc.).

The Works Council has two separate budgets: one for his economic mission and one for its social and cultural activities, both of which are financed essentially by a subsidy from the company, as determined by the provisions of the French Labor Code.

**ELECTIONS OF THE CENTRAL WORKS COUNCIL:** When the company includes several branches, each branch which employs 50 employees or more must establish a branch works council, which is represented in the Central Works Council. Branch Works Councils have jurisdiction over issues within the power of the branch manager. When such issues exceed the branch's framework, such issues are brought before the Central Works Council.

**ELECTIONS OF THE HYGIENE AND SAFETY COMMITTEES:** Within companies and branches of 50 employees or more, the staff representatives and members of the Works Council may appoint a Committee for Hygiene, Safety and Conditions of work ("CHSCT").

The CHSCT deals with risks for the mental and physical health of the employees, in connection with their working conditions. Its members are appointed for a two-year term.

The CHSCT must give its opinion before any important decision affecting the working conditions of employees is made. The CHCST may investigate, sometimes be assisted by an external expert, when it considers that the health and/or the safety of employees is being put at risk.

**UNION REPRESENTATIVES:** Within companies of more than 50 employees, trade unions may appoint union representatives to represent them. They are not employees elected by the staff but appointed by representative union organizations within the company.

When the trade-union is deemed to be “representative”, it may appoint one or more union representatives, depending on the number of employees of the company.

Their main mission is to present the demands of the employees in order to obtain new benefits for the employees and enter into collective agreements binding on the employer and on the employees.

When the trade union is not deemed “representative”, it may still appoint a representative of the union section which is granted the same prerogatives as the union representative, but such representative does not have the power to negotiate and enter into collective agreements.

The representatives elected or appointed, according to the Labor Code, benefit from “delegation hours” under the Labor Code or collective agreements, to be used during their work time in order to discharge their duties as union representatives. Delegation hours are paid as working hours.

Moreover, the employer who intends to dismiss a union representative first must obtain the prior authorization of the administration, irrespective of the grounds for dismissal.

## Hygiene and Security

**OBLIGATION OF RESULTS OF SECURITY:** The employer has a duty to provide a safe workplace and ensure that the working conditions comply with the legal requirements of safety and hygiene. This is an obligation “of results”, which entails strict liability of the employer in the case of breach. Any employer also must to implement the necessary measures to protect the mental and physical health of his employees and to ensure their safety under pain of civil and criminal liability.

**PSYCHOLOGICAL RISKS:** The employer has in particular the obligation to combat psychological risks: stress at work, internal violence (conflicts, hazing, sexual harassment...), external violence, professional exhaustion (burn-out), which often have common interacting factors (workload, lack of organization within the division of the work among the employees, intensification of work, management of the employees).

To prevent such risks, the employer has to evaluate them set up indicators of psychological risks that have to be reviewed each year and set up a plan of action in order to reduce those risks.

**MORAL HARASSMENT:** Tensions, insults and deterioration of work relationships, unfriendly comments, insinuations, humiliations or behavior with sexual connotations, acts of violence, unjustified criticism: moral harassment constitutes one of the main risks which the employer has a duty to prevent or suppress.

Under French law, employees may not be subject to repeated actions of moral harassment resulting in or purporting to damage or degrade the workplace environment, or undermine the employee's rights or dignity, distort its physical moral or mental health, or compromise the employee's professional future.

The victim of such harassment may bring an action before civil courts and petition for damages in compensation of the moral damages or injuries suffered.

The victim may also apply for the judicial termination of her employment contract, with dire financial consequences for the employer.

**WORK ACCIDENTS AND PROFESSIONAL ILLNESS / WORKERS' COMPENSATION:** Employees who incur work accidents and professional illnesses benefit from a specific protection under French law. Victims of such accidents or illnesses have their employment contract indefinitely suspended during their medical leave until found fit for duty.

Moreover, during this suspension, sick employees subject to workplace accident or professional illness are protected against dismissals, unless they commit gross negligence, or the employer proves that he/she cannot maintain the employment contract for a reason other than the accident or professional illness.

A dismissal in breach of this rule is void and the employee may demand his/her reinstatement within the company and .... for the period between the termination of the contract and the reinstatement, up to the amount of actual loss in salary (after deduction of the social security indemnities, if paid).

The employee may also decide not to request reinstatement and demand to be fully compensated depending on the damages incurred.

After such a suspension, once the medical visit finds the employee fit for duty, the employee must be reinstated at the same position, or may be declared unable to return to work by the labor inspection physician. Such a report of unfitness (*"inaptitude"*) consecutive to a work accident or professional illness must be followed by the redeployment of the employee and a specific procedure governed by the Labor Code.

With regard to work-related accidents or illnesses, the employee may also apply for the costs incurred for his/her accident or illness be assumed by the social security organizations.

After review of such application by the social security organizations, the decision is then notified to the employer, who may challenge it before a specific court.

The employee or its successors may also ask for additional compensation when the accident or the illness is due to the inexcusable negligence (*"faute inexcusable"*) from the employer, which is characterized when the employer had or should have known of the dangers and failed to take the necessary measures to protect his/her employees (e.g. asbestos).

## → Real Estate Law

### Buying Real Estate in France

The purchase of real estate in France typically follows three steps:

**NEGOTIATIONS:** The discussion phase occurs prior to signing an undertaking. In theory, the parties are free to give or withhold consent to the proposed transaction. However, there is an obligation to negotiate in good faith, and failure to comply with this obligation may result in damages for losses proven. Once there is agreement on the price and the exact property, a binding contract may be deemed to be formed. It is important, therefore, that parties are cautious to not exchange documents that might give rise to a binding agreement prior to the preliminary contracts intended for this purpose.

**PRELIMINARY CONTRACTS:** There are two types of preliminary contracts: the *"promesse unilatérale de vente"* (purchase option), and the *"promesse synallagmatique de vente"* (bilateral undertaking to sell and purchase). Both types are subject to conditions precedent such as the exercise (or waiver) by the local authorities of a right of preemption within a two-month period, the buyer being granted a loan to finance the acquisition, obtaining building permit, or other conditions required by the specific operation. The preliminary contract must provide the agreed sale price or the precise calculation method. A description of the land and building must also be included. In addition, the conditions precedents are determined, and a guarantee payment is usually provided in the amount from 5 to 10% of the purchase price, in order to protect the seller from frivolous purchasers.

**DEED OF SALE:** The deed of sale is the document whereby ownership is transferred from the seller to the buyer. The deed of sale contains the terms and conditions provided in the preliminary contract.

The transfer in title is only enforceable against third parties as from its registration at the office of the land registrar, although it may be enforceable between the parties as of the date of signature.

In order to be registered with the land registrar, the legal instrument must be drafted by and signed before and with a French notary (*"notaire"*). In France, the notary is the holder of an office conferred by a public authority.

The notary has a duty to advise and warn both parties of their respective obligations, and a duty to the French government for collecting all taxes arising out of the sale of the real estate property.

## Commercial Leases

Leases for buildings used for commercial and industrial purposes are covered by the French Commercial Code.

Commercial leases offer significant protection to tenants. A June 2014 law reinforced the protection of commercial tenants by aligning the rules of commercial leases with rules applicable to residential leases: rent control indexation, inventory of the premises, and preemption right of the tenant in the case of sale of the premises.

In addition to those commercial leases, parties are allowed to enter into short-term leases under special circumstances (*convention d'occupation précaire*) or for a duration up to three years (*bail dérogatoire*) avoiding commercial lease rules.

**TERM OF THE LEASE:** Commercial leases must be at least 9 years in duration. The tenant may terminate the lease at the end of any three year period, by giving six months prior notice. The individual tenant may also terminate when officially taking retirement under the French social security system.

**RENT AMOUNT:** The parties have complete discretion in determining the rent, which reflects market conditions and may for example, be determined in part or in whole by reference to a percentage of the turnover generated by the tenant in the leased premises.

The lessee typically will pay a guarantee deposit and may be required to provide a bank guarantee to secure payment of rent. The lease may provide for an indexation clause for the rent. Other formulas are possible, such as a review with specific parameters every three years.

If the parties cannot agree on the rent value at renewal or rent review (in the absence of a contractual clause), the law refers to certain elements, such as the characteristics of the premises, its permitted use, the respective obligations of the parties, and prices commonly used in the geographic area.

**TERMINATION OF THE LEASE:** The landlord's ability to terminate the lease is restricted. The tenant has, in principle, the right to obtain either the renewal of the lease at the end of the term, or just compensation corresponding to the loss suffered as a result of not being able to renew must be paid, except where the tenant has committed a material breach of contract. Such indemnity is in theory the value of the ongoing business (*"fonds de commerce"*) conducted on the premises plus moving and other relevant costs.

The notices of termination followed a very formal process which requires the intervention of a bailiff (*huissier*). Recent legislation added the possibility of giving notice with a registered letter with return receipt.

**RENEWAL OF THE LEASE:** If notice has not been duly served at the end of a lease term, the lease is deemed to be tacitly renewed for the same term and under the same conditions.

However, if the tenant serves a request for renewal (at least six months prior to the end of the term) the landlord has three months within which to decide to accept the offer to renew.

If the landlord does not reply within this three months period, the lease is renewed. In such case, or if the landlord accepts the request, the lease is renewed according to the terms and conditions of the expired lease, with only the amount of rent subject to modification.

### **Zoning and Building Permits**

Any new construction, from private residences to urban development projects, requires a prior permit issued by the local administration, which is subject to zoning rules and regulations, building codes and local ordinances. The permit is delivered by the city where the land concerned by the construction is located.

In addition, changes to existing buildings that increase habitable surface, alter the outside appearance or the structure of a building require a building permit.

However, light work that does not affect the outside appearance of the building may not require a building permit but rather a notification to the city hall. Moreover, if the purpose for which the building is intended to change (for ex: housing, business, handcraft business, industry, industry, storehouse...), a notification of such change of purpose must be given to the city administration.

After construction, the builder or promoter must officially confirm that the construction is consistent with the building permit application and the permit as issued, and request from the city administration a certificate of compliance that confirms the lack of objections to the construction from the town administration

Land is classified as urban, developable land or protected land.



## → Tax Law

### **Income Taxes** *(It does not constitute legal advice)*

France has four categories of income tax: corporation income tax, individual income tax, social contributions and payroll taxes. This section mainly focuses on corporation tax.

#### **Corporation Income Tax (CIT)**

CIT is an annual tax on the total profits made in France (not worldwide revenues) by companies and other corporate entities.

Certain entities are liable to CIT due to their corporate status (i.e. notably the société anonyme, the société par actions simplifiée and the société à responsabilité limitée depending on their shareholding). CIT also applies to other corporate entities according to the nature of their business. Civil companies for instance (société civile), which are non-commercial companies by status, and even not for profit organizations, which carry out notably an industrial or a commercial activity are liable to pay CIT.

Partnerships, whose profits and losses are included in the income of the partners in proportion of their shares in the profits, may in certain cases elect to be liable to CIT.

Corporate bodies may be subject to CIT at the standard rate for all their activities, or for some of the corporate bodies at reduced rates.

The standard rate of CIT is 33.33 %. However, specific rates are applicable depending on the size of business, from a 15% rate for small businesses to 37.7% for large businesses which turnover or annual CIT exceeds specific thresholds.

CIT is not deductible.

Tax losses may be carried forward with no time limit, subject however to the absence of change of the core activity of the company.

Interest incurred by a company for the purchase of the shares of a subsidiary are fully deductible from the CIT basis, subject however to specific rules in relation with thin capitalization and deductible rate limitations applicable within groups of companies.

A French participation exemption regime is available when the holding company has held at least 10% of the share capital of the subsidiary which shares are transferred for a minimum period of two years. The capital gain realized is taxable at an effective CIT rate of 4%.

Dividend distributions are taxable at an effective CIT rate of 1.67% provided the shares of the distributing entity are held or will be held for more than two years, and the receiving company holds at least 5% of the share capital of the distributing entity.

Tax grouping ("intégration fiscale") is available when 95% or more of the share capital of the subsidiaries is held directly or indirectly by the head of the tax group. The tax grouping election notably allows the matching of profits and losses derived by the companies which are members of the same tax group, and allows avoiding CIT taxation, notably for intra-group distributions and subsidies.

CIT neutral regimes are available for corporate reorganizations such as mergers, business or shares contributions, spin-offs and most cross-border EU reorganizations. Pre-operations tax rulings can be sought for non-EU cross-border reorganizations. As far as CIT incentives are concerned, France is well known for some its attractive CIT credits such as:

- The CIT credit for research expenses (where up to 40% of the eligible research expenses incurred can give way to a CIT credit which can even be reimbursed after a certain period);
- The CIT credits applicable in the gaming, movie and music industries.

### Individual Income Taxation

For French tax residents, income tax is levied on the total worldwide income (subject to tax treaty provisions). The tax is computed on a civil year period.

Personal income tax is a scheduler tax. The main schedules are: business profits (i.e. business activity directly performed by individuals), non-commercial activities (i.e. deemed intellectual civil activities derived by doctors and lawyers for instance, together with income which does not fall within the scope of another schedule), agricultural income, real property income, salaries and pensions, fixed and non-fixed income from financial instruments (mostly dividends and interest) and capital gains. Each schedule has its own income determination and computation rules. For a single person, the tax brackets and rates for 2015 are the followings:

Amount of income (€):	Tax rates (%):
below 6,011	0
between 6,011 and 11,991	5.5
between 11,991 and 26,631	14
between 26,631 and 71,397	30
Between 71,397 and 151,200	41
Above 151,200	45

Specific expatriates and “impatriates” (i.e. individuals transferring their tax residence to France) regimes offer notably attractive income tax exemption regimes.

### **Social Contributions**

In most cases, non-French tax residents are not liable for social contributions. When applicable (to residents or non-residents), their rate vary from 8% to 15.5%, depending on the nature of the income derived (activity or capital).

### **Value Added Tax (VAT)**

As an active UE Member State, France has almost fully implemented the VAT Directive. The current ordinary VAT rate is set at 20%.

Reduced rates of 5.5% and 10% are applicable to specific services and products. Some areas in France (Corsica and the French Indies) benefit from lower VAT rates due to their specific isolated situation. There are several exemptions available, concerning in particular:

- Certain financial transactions (granting and negotiating credits and shares, credit management by credit grantors, negotiating and taking charge of commitments, guarantees and other securities as well as credit management by credit grantors, etc.);
- Certain real estate leasing activities;
- Insurance and reinsurance as well as service supplies pertaining thereto;
- Medical and paramedical activities and hospital care costs;
- Charities;
- Education.

An election for VAT taxation of exempt activities is available for some exempt activities such as bare buildings lessors, rural property lessors and certain banking and financial transactions.

### **Registration Taxes**

The purchaser is liable for registration taxes when acquiring certain assets. The taxes are based on the sale price (or fair market value if higher, as appraised by the tax authority). No cap is applicable.

**SHARES:** Registration duties applicable for the transfer of corporation shares such as the “actions” of non-real estate companies (shares of corporations such as SA, SAS, SCA) are computed at the rate of 0.1%. The tax does not apply to the sale of shares on listed securities markets. Registration duties applicable for the transfer of equity interest (“parts sociales”) of close corporations and companies (SARLs, SNCs, SCs) non-real estate companies are computed at the maximum rate of 3%.

Registration duties applicable for the transfer of shares of “(predominantly) real estate companies” are computed at the rate of 5%. The transfer of shares between companies which are members of the same tax group, or which are deemed to be controlled by the same entity, is exempt from registration tax.

**DIRECT ASSETS DEALS:** Registration duties applicable for the transfer of an ongoing business (*“fonds de commerce”*) are computed at progressive rates based on the purchase price (or fair market value). The highest tax rate applicable for a transfer value above 200,000 € is 5%.

Registration duties applicable for the transfer of real estate assets are computed at progressive rates with certain local exemptions. However, in most cases, a global rate of 7%, including notary fees, is applicable.

Transfers of patents are liable to a limited flat registration tax. Transfers of trademarks exploited in France are liable to the same regime as for the transfer of an ongoing business. A limited flat registration tax is eventually applicable in other cases.

### **Wealth Tax (*“Impôt de Solidarité sur la Fortune” or “ISF”*)**

French tax residents whose net taxable worldwide assets (i.e. minus debt and other liabilities) are worth at least 1.3 M€ are liable for the wealth tax. Non-French tax residents are liable to the wealth tax only upon their French based assets which value is at least 1.3 M€; French based financial assets are largely exempt.

<b>Net Assets (€):</b>	<b>Tax rate (%):</b>
below 800,000	0
between 800,000 and 1,3 M	0,5 (for the part exceeding 800,000 €)
between 1,3M and 2,57 M	7
between 2,57 and 5 M	1
Between 5M and 10M	12,5
Above 10M	15

### **Local Taxes**

**ADDED VALUE:** Businesses are liable to a local tax based on the added value generated computed at the rate of 1.5%. Multiple specific exemptions are available for small and mid-size businesses.

**REAL ESTATE:** Real estate property which is:

■ Owned - whether by companies or individuals - as of January 1st, trigger an annual ownership tax ("*taxe foncière*") based on a specific rental value of the asset;

■ Owned, leased or used by a company or a business trigger an annual business tax ("*contribution foncière des entreprises*") based on a specific rental value of the asset;

■ Used by individuals as their inhabitation as of January 1st, trigger an annual residency tax ("*taxe d'habitation*") based on the specific rental value of the asset.

## International Taxation

The French withholding tax (WHT) on most interest paid to non-residents is no longer in effect, except for payments made within tax heavens related schemes.

The WHT on dividends is computed at rates which vary between 15% (dividends paid to non-profit organizations) and 30%, except payments made to tax heavens or related schemes.

Most distributions to EU-based companies are exempt of WHT. The above mentioned domestic rates are subject to tax treaty provisions, which are likely to reduce the WHT liability or simply waive it.

France is among the very few OECD countries to have entered into more than 100 tax treaties with other countries, therefore offering tax efficiency for cross-border transactions.

## Intellectual Property

Intellectual property protection is critical for businesses to maintaining success and development. It is important to define a strategy to protect, develop and monitor your IP rights.

Without protection of literary and artistic property (copyright) (1) and industrial property (2), businesses would not reap the full benefits of their inventions and research.

### Copyright

Under French law, copyright is protected without any formal proceeding. The sole creation of original works of authorship (i.e. reflecting the personality of its creator) is protected by the French Intellectual Property Code. Copyright Law includes protection of two types of creation:

- The original creation : copyright
- The performance of copyright called "*droits voisins*" (related rights)

**COPYRIGHT:** French law is very protective of authors' creations and provides for a wide protection towards any type of creation as long as it fulfills the "originality" requirement. The author legally obtains patrimonial and moral rights.

On the patrimonial level, two rights are protected for a period of 70 years after the author's death : reproduction rights (right to make and keep copies, such as the downloading of a file, music, video game, software, etc.) and representation rights (right to show to the public, such as a concert, a streaming process, etc.).

The author's patrimonial rights are subject to exceptions (art. L.122-5 of the French Intellectual Property Code), which are restrictively applied by the judge and not as wide as U.S. law's "Fair Use". With his moral rights, the author can obtain legal protection of his name, any use of his creation and his work. The moral rights are inalienable and imprescriptible, which means that the author's heirs can bring an action to protect it indefinitely.

**"DROITS VOISINS":** The so-called "*droits voisins*" related to the performance of the original creation and phonogram producers rights are specific to the French legal system and are protected in a quite similar way as copyright.

## **Industrial Property**

Industrial property is divided into two main categories: trademarks and patents. Registration of these rights must be filed with the French Patent and Trademark Office (INPI).

**TRADEMARKS:** In France, trademarks, are governed by national, European and international law. To be registered with the INPI, a trademark must not infringe a so-called "prior right" (such as previously registered trademark, a copyright, etc.). Trademarks are protected within the national territory for the designated products and services for a period of 20 years, indefinitely renewable.

**PATENTS:** Patents grant an inventor the right to exclusive use of the invention. It is the most valuable and costly protection. To be patentable, inventions must be new and involve an inventive step (art. L.611-10 of the Intellectual Property Code). A patent is valid for 10 years non-renewable, and annual fees are to be paid to the INPI to maintain the patent.

**OTHER INDUSTRIAL PROPERTY RIGHTS:** Designs and Models to be protected must be new and have individual character. Registration must be filed and protection last for five years from the application, renewable up to twenty-five years.

The "Controlled Designation of Origin" is a certification granted to indicate the geographical area of origin of specific products. The recently created "Protected Geographical Indications" are granted to indicate the geographical origin of a product made from a special local knowledge or know-how.

**The Protection of Personal Data — Data Privacy** *(It does not constitute legal advice)*

The processing of personal data in France is subject to the provisions of the Law of January 6, 1978 on Data Processing, Data Files and Individual Liberties (the “Law”).

The Law provides for obligations upon those who decide to process personal data (“data controllers”) and rights in favor of individuals about whom personal data is processed. It also created a very influential data protection Authority, called the CNIL (“*Commission Nationale de l’Information et des Libertés*”), which provides guidance, interprets the rules, ensures that they are properly implemented through investigations (on site and online) and has the ability to impose penalties on infringers.

**WHEN DOES THE LAW APPLY?** The law applies to the processing of personal data (i.e. any information relating to an individual who is identified or identifiable directly or indirectly) carried out by computerized or non-computerized means if the data is intended to be stored in an organized filing system.

Strictly private activities are outside of the scope of the law. The data protection law applies to data processing operations which are implemented by data controllers who are established on the French territory. It also applies to data controllers who are located outside of the EU if they use data processing means on the French territory, such as a supplier to collect or store personal data (except for mere transit) or cookies in case of a website.

**CONDITIONS TO THE PROCESSING OF PERSONAL DATA:** The data must be processed for legitimate purposes and the consent of the relevant individuals to the processing must be obtained unless the processing is justified by a ground listed under the Law (e.g. compliance with a legal obligation, performance of a contract with the individual, the legitimate interest of the data controller, where not incompatible with the interests and fundamental rights and liberties of the individual).

The data controller must process only relevant data in light of the purposes announced to the individual (proportionality test).

The processing of sensitive data (racial and ethnic origins, political, philosophical, religious opinions, trade union membership, health, sexual life, criminal offenses, social security numbers) is either prohibited or subject to stringent restrictions.

**OBLIGATIONS OF DATA CONTROLLERS:** Data controllers must provide a data protection notice to individuals informing them about the specificities of data processing activity, data transfers outside the EU, and how they can exercise their rights (set content requirements).

Formalities with the CNIL must be carried out prior to the launch of the data processing (criminal offense). In most instances, a mere notification can be filed online at [www.cnil.fr](http://www.cnil.fr). However, for more sensitive activities, prior authorization is required (e.g. biometrics, processing which may lead to the exclusion of the individual from the benefit of a contract).

In many instances, employee representatives must be informed or consulted before the employer decides to select a tool processing employee data.

The security of personal data must be preserved, in particular to prevent unauthorized access. If the data controller entrusts the processing of data to a supplier who processes data on its behalf ("data processor"), the data controller must verify the security measures of the supplier and enter into a written agreement meeting specific legal requirements.

**RIGHTS OF INDIVIDUALS:** Individuals have the right to object to the processing on legitimate grounds, to direct marketing by post mail or by phone (opt out), except when they gave prior consent (opt in). The consent of individuals is required to use certain types of cookies which are not technically useful for the operation of the website.

An individual can request access to the personal data about him/her, obtain a copy in a clear format, require that the data be rectified and deleted if the data is inaccurate, incomplete, equivocal, or out of data.

**INTERNATIONAL DATA TRANSFERS:** While data can be transferred freely within the EU, transfers outside the EU are prohibited unless they are made to a country providing a sufficient level of protection for personal data (cf. list of the EU Commission or the Safe Harbor list). These transfers should be notified to the CNIL.

In other instances, the CNIL encourages the use of BCR (Binding Corporate Rules), and of the EU Commission's standard contractual clauses. These transfers are subject to the CNIL's prior authorization.

**ENFORCEMENT:** The CNIL is a very active data protection authority. It carries out around 400 on site investigations each year and since 2014, can conduct online investigations. The CNIL may impose civil fines ranging from warnings, cease and desist injunctive orders, fines (up to 150,000 Euros) and withdrawals of authorization, and sanctions can be made public. Most breaches of the Law also are criminal offenses which trigger sanctions with a maximum of five years of imprisonment and 300,000 Euros of fine (multiplied by 5 if committed by a legal entity).