



→ International Law Firm Alliance  
**COMPENDIUM 2013**



PECH DE LACLAUDE, BATHMANABANE & PARTNERS is a Paris-based business law firm composed of a team of attorneys trained at major international law firms, law departments at significant multinational groups as well as law professors. Our philosophy is to bring quality legal services by expert business-friendly attorneys with a focus on synergy, team cooperation, and cost efficiency.

Practice areas in which we provide dedicated and focused legal services include:

- Corporate law and M&A
- General Commercial and Civil Litigation
- Insurance
- General Commercial Law
- Compliance
- Environment
- Privacy and personal data protection
- Real Estate- Construction
- Criminal Law (white collar)
- Intellectual Property
- Public and Administrative Law
- Torts and Personal Injury
- Health Care and Cosmetics
- Labor & Employment law
- Town planning and Zoning

We are currently twenty-plus attorneys, including five partners, speaking, in addition to French, English, Spanish, German, and Italian.

Our clients are principally composed of businesses of all sizes, as well as public entities, and we assist primarily in the areas of private business law and public/ administrative law.

*Nicolas Blanchenay* - PARTNER

Corporate

nblanchenay@pechdelaclause.com

*Pascal Bathmanabane* - PARTNER

Labour Law

pbathmanabane@pechdelaclause.com

Emmanuel GOUESSE - PARTNER  
Criminal Law - Litigation  
egouessel@pechdelaclause.com

Jean-Marc FEVRIER - PARTNER  
Public and Administrative Law  
jmfevrier@pechdelaclause.com

Philippe PECH de LACLAUSE - PARTNER  
Criminal Law - Litigation  
philippe@pechdelaclause.com

William SNYDER - SENIOR COUNSEL  
Business law  
wsnyder@pechdelaclause.com

## → 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 on behalf of society.

In cases where it is not mandatory that the investigation / fact-finding be conducted by an investigating magistrate (juge d'instruction) (i.e., when the maximum sentence incurred is less than ten years of prison), 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 breaches of criminal statutes have been committed, to collect evidence of such breaches and to identify the offenders. 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 concern 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 then sends instructions so that at the end of the period of custody, the persons concerned are either released or referred to the Public Prosecutor.

The Public Prosecutor may refer the persons against whom he believes there is sufficient evidence of the charges before the Criminal Court ("Tribunal Correctionnel") by means of a simple citation (summons) or request the start of an investigation.

**PRETRIAL INQUIRIES BY A JUGE D'INSTRUCTION:** The responsibility for the investigation may be conferred upon an investigating magistrate ("juge d'instruction"). The juge d'instruction is a specialized judge who is a member of the Court of First Instance (Tribunal de Grande Instance) having subject matter jurisdiction over the case (a judge of the "Tribunal de Grande Instance") and who conducts his investigations under the control and supervision of the "Chambre de l'Instruction," an appellate court.

A juge d'instruction is not permitted to open an inquiry on his own initiative but only if requested by the Public Prosecutor or if he is requested by a victim through the filing of a complaint ("plainte avec constitution de partie civile").

The juge d'instruction's role is to determine whether there exists against any person (physical person or corporate entity) sufficient information warranting that that 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 not in any way linked to 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. Note also that the juge d'instruction plays no role in the trial on the merits, which is conducted by another judge (or panel of judges). Thus in the French criminal system, the prosecuting, investigating and judging functions are maintained separate from each other.

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 an expert. In addition, the parties have the right to retain their own experts, in order to help them prepare their defence 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 as an ordinary witness ("témoin simple"), as an assisted witness ("témoin assisté") or, finally, as a person formally under investigation and the object of criminal proceedings ("personne mise en examen").

Persons identified by a witness or against whom there exist indications suggesting a likelihood that they participated as author or accomplice in the crimes being investigated by the juge d'instruction are categorized as témoin assisté (literally: "aided witness"). The category of persons "mise en examen" (essentially, formally "placed under investigation") corresponds to persons against whom there exists serious or corroborating indications as to their participation as author or accomplice in the crime being investigated.

Depending on the classification, the person being questioned is entitled to greater or lesser protections (presence of one's lawyer at questioning, right to have one's lawyer examine the file, right to require the presence of the persons who have made him a suspect in the proceeding, etc.), as described below.

The expression "témoin assisté" refers to persons who are identified by name either in a complaint filed by a civil party ("plainte avec constitution de partie civile") or in the document filed by the public prosecutor (known as the "réquisitoire introductif") requesting the designation of a juge d'instruction, and who has not been placed under the "mise en examen" status, i.e. designated as a suspect.

## Assistance by Counsel and access to the file

A témoin assisté is entitled to be assisted by a lawyer when being questioned, and the right to be notified in advance of any hearings before the juge d'instruction. He does not take the oath during questioning and hearings.

A person “mise en examen” also has the right to be assisted by a lawyer during questioning. A person may not be “mise en examen” unless he or she first appears at a hearing before the juge d’instruction. Only those persons who do not satisfy the definition of aided witness can be formally declared “mise en examen”.

Both an aided witness and a person formally placed under investigation have the right through their lawyer to access the juge d’instruction’s file. In addition, they have the right throughout the “instruction” to file written requests for experts to be appointed, for witnesses to be called for examination, and to confront witnesses.

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

At the close of the investigation, the juge d’instruction can enter an order dismissing the charges, if he/she finds the evidence insufficient to proceed: the order is called an “ordonnance de non-lieu”. On the other hand, he/she can enter an order referring the matter to the court having jurisdiction to conduct a trial in the matter, if he/she finds that the charges against the accused are sufficient for the case to proceed to trial on the merits: the order is known as an “ordonnance de renvoi”. Note that the decision to send a case for trial on the merits in no way constitutes a decision on the merits.

### **Trial on the Merits**

After the closing of the “instruction” phase, the matter may be brought for trial before the court having jurisdiction. The trial is likely to be commenced anywhere from 6 months to one year following the closing of the instruction.

The case may also be brought before the Court by the Public Prosecutor at the end of the Preliminary Investigation if he considers that an “instruction” is not necessary.

Please note that the victims may also directly apply to the Court whether (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 a Court.

### **Summons to Appear and Assistance of Counsel**

Those parties against whom the juge d’instruction (in case of an instruction) or the Public Prosecutor (in case of a sole Preliminary Investigation) have found there exist sufficient grounds for proceeding to trial will be brought to trial before the Criminal Court. They are summoned to appear for a hearing at which they are in principle required to appear personally, unless they can prove some impediment (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 (as mentioned above) 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 enforceable order through arrest ("mandate 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, the witnesses and the experts during the trial. The civil parties have the floor first.

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

**THE ACCUSED:** Just like the 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.

### **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. Criminal appeals must be filed within 10 days from the date the judgement is rendered.

### **Access of the public and of the press**

Finally, please note that the trial is necessarily open to the public, except in very limited circumstances where the conditions for closed-door or "in chambers" hearings are met (cases involving minors). 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 (i) declaration to the administration, (ii) prior authorization or (iii) 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 of a French entity
- Any equity investment resulting in a stake of over 33.33% of the capital or the voting rights
- 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 of a 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 under foreign investors., the takeover up to 1.5 million Euros of handcraft businesses, restaurants, hotels, (v) acquisition of arable land.

### Operation subject to prior authorization from the French Administration

A prior authorization request 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 acquiesce to the operation.

■ Investment made by non-European Union (or EEE) investors:

- Individuals citizen of countries that do not belong to the EU
- French citizens not residing in France.
- Investment in certain industries (off-casino gambling, private security business, communication interceptions, encryption, etc.



■ Investment by EU (or EEE) investors. Investment in regulated sectors mentioned at article R.153-4 of the French commerce 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).

■ Investment by French entities (subject to foreign control). Investment businesses (i) relating to encryption, (ii) using national defense secrets (iii) conducting R&D, production or trading 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.

### **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 various trends in the past decade:

■ New technologies have made their way into the corporate life: since 2001 board meetings and shareholders meetings may legally be held by video or even telephone conference.

■ Recent legislation has started to decriminalize certain prohibitions of French corporations' law, and for certain infractions replaced the criminal sanction (fines but also jail time) by civil sanctions (damages but more often the possibility for any interested third party to seek and obtain an injunction).

■ In order to render it more business-friendly, French corporations' law has been through a regulatory simplification process. For example, certain forms of corporations are no longer

required to accumulate a minimum amount of capital to be incorporated; the rules for issuing securities (even for non-public entities) have been completely revamped in 2004 and synthesized in one unique set of rules for all issuance of security, regardless of form (equity or debt).

■ Bankruptcy rules have been amended in 2005 to allow a court-supervised pre-insolvency reorganization ("sauvegarde") whereby a distressed but not insolvent corporation may seek protection from creditors and a rescheduling of its debt; used effectively, the sauvegarde is a powerful tool against financial creditors to force a debt restructuring while replenishing the company's cash reserves.

After five years of resolutely pro-business President Sarkozy administration, the election of the Socialist François Hollande in May 2012 is expected to initiate a new trend toward a more consumer- and citizen- oriented legislative policy. For example, there are renewed talks of instating a French-type of class action process in order to maximize the efficiency of consumer actions against major corporations.

Nevertheless, corporation law is unlikely to be significantly affected by a change of government, as all French governments have been keen to improve the country's attractiveness to businesses in order to maintain employment levels.

### **Structures for doing business**

Traditionally, French corporate structures are divided between limited liability companies, such as the société anonyme (SA), the société à responsabilité limitée (SARL), the société à commandite par actions (SCA), and the société par actions simplifiée (SAS) on one hand, and on the other hand unlimited companies such as société en nom collectif (SNC) and the société en commandite simple (SCS).

In addition, French corporations law knows several types of partnerships, such as the civil partnership (the société civile) and its many sub-forms. French law also distinguishes between corporate structures that are commercial by nature and those that do not have a commercial, but rather a civil purpose (societies civiles).

French law also instituted the groupement d'intérêt économique as a specific-purpose unlimited partnership.

Business can also be conducted in France as a sole proprietorship (entreprise personnelle) or under an undisclosed partnership (société en participation) but these are not legal entities, and the law regards them as a unique or several individuals doing business without a corporate structure.

## Limited Liability Companies

THE SOCIÉTÉ ANONYME ("SA"): The SA is by far the oldest and by far the most regulated type of corporation. Its starting capital must amount at least to 37,000 Euros, and it must have at least seven distinct shareholders. Its shares are freely transferable, barring any clause to the contrary in its article of organization (statuts).

The SA is managed either by a board of directors (conseil d'administration) and represented by its CEO (directeur général), or by a directorate (directoire) represented by its Chairman (Président du Directoire) under the supervision of an oversight committee (conseil de surveillance). The SA is required to have its accounts certified by a statutory auditor (commissaire aux comptes) from the date of its incorporation.

Agreements between significant shareholders, directors and officers and the company ("related-party agreements") must be pre-approved by either the board of directors or the oversight committee, and ratified by the shareholders at the next general meeting. Failure to do so may lead to personal liability for the persons concerned by the agreement.

The SA form is generally used for public corporations, corporations subject to specific oversight requirements (such as the "four eyes" rules applicable to investment companies), or in entities with one or several investment funds have taken a stake, therefore benefiting from the shareholder-friendly regulatory environment.

THE SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE (SAS): The SAS, created as a joint-venture vehicle in 1994, is currently by far the preferred corporate vehicle for non-regulated, closed capital corporations. The rules governing SAS are mainly derived from the SA, but the law allows an almost complete freedom in its internal organization, including the decision-making process, the oversight process, and the general workings of corporate life, subject to a minimum of mandatory rules.

The mandatory rules are those governing limited liability corporations, but also include (i) the designation of at least one legal representative, called the President, who speaks for the SAS, (ii) the obligation to appoint a statutory auditor once the SAS reaches a certain size, (iii) a related-party agreement process (albeit simplified compared to the process implemented in the SA).

The SAS is unique in allowing the use of a squeeze-out clause in its articles of organization, subject to certain guidelines. The SAS requires therefore a specific expertise in drafting its organizational documents, as those will effectively govern the relationship between its directors, officers and shareholders.

The SAS can function with a symbolic capital (of at least one Euro), and with a sole shareholder. Wholly-owned SAS are designated as SASU (Société par actions simplifiée unipersonnelle).

The SAS can include non-equity partners, whose contribution (under the form of serviced rendered) must be included for voting rights and dividend rights, but not for sale or liquidation proceeds.

**THE SOCIÉTÉ À RESPONSABILITÉ LIMITÉE (SARL):** The SARL is the workhorse of small businesses. It is a somewhat heavily regulated environment, which trades freedom in its organization for predictability. Initially designed for small businesses, it is the most used form of corporate structure for closed capital corporations.

SARLs can also include non-equity partners under the same constraints as the SAS. Their shares are not freely transferable to outsiders, being subject to a pre-approval of sales to non-shareholders by the other shareholders, and any transfer in breach of such pre-approval is void as a matter of law.

SARLs do not require statutory auditors unless they reach a significant size. SARLs are governed by general managers (gérants) who can be removed solely for cause. Any removal without cause is still valid but gives rise to damages to the general manager wrongly removed.

**THE « SOCIÉTÉ EN COMMANDITE PAR ACTIONS » (SCA):** The SCA is a hybrid type of structure, with general partners (commandités) and limited partners (commanditaires). General partners act as general managers and legal representatives of the SCA, and they are jointly and severally liable for the liabilities of the SCA. Limited partners own shares and limit their liability to the capital invested through such shares, with a minimum capital of 37,000 Euros.

The SCA is now fairly uncommon, and is mostly used when a family or a small nucleus of shareholders seeks to retain control of a company by acting as general partners, while attracting capital through investors as limited partners.

## Partnerships

**THE SOCIÉTÉ EN NOM COLLECTIF (SNC):** The SNC is the quintessential commercial partnership, in which all the partners are deemed to be merchants (commerçant) and are jointly and severally liable for the liabilities of the SNC. All its members are therefore, barring any clause to the contrary, legal representatives of the SNC.

This type of partnership is now seldom encountered, as the joint and unlimited liability of its members often deters potential investors. It is still used mainly for tax purposes, as it can opt for a see-through entity for corporate income tax.

**THE SOCIÉTÉ CIVILE (SC):** This is the noncommercial partnership structure, most widely used structure for real estate holding partnerships (SCI), professional partnerships (SCP), and the like.

The rules governing SC are identical to those governing the SNC, except that the shareholders are jointly but not severally liable for the liabilities of the entity, and that none of the partners are deemed to be merchants.

**THE GROUPEMENT D'INTÉRÊT ECONOMIQUE (GIE):** The GIE is really a non-commercial partnership whose purpose is to generate savings or provide certain services to its members; it is not intended to generate distributable income as dividends, although it may do so occasionally. Members of a GIE are jointly but not severally liable for the GIE's liabilities. The GIE form, after a timid start in the 1960's, is now very seldom used as a corporate structure, except for certain known networks such as McDonald's France.

### **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, the justification of the right to use the designated headquarters, the identity of the statutory auditors if any, 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". It is of course a criminal offense to supply false information to the RCS.

**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, for example.

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 the update. Any change that is not reflected in the K-bis is deemed to be not binding on third parties; for example, changes in capital, form of entity, changes in directors and officers, and the like. 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. Filing false financial statements is of course a criminal offence.

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 during to inform interest parties of the potential risk to their interest.

**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 will create a cause of action for damages. Entities can be directors 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 safety 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 actions, called "abus de biens sociaux" or "abus de confiance" within the purview of these statutes, typically include discount sale or transfer of company assets to directors, use of corporate assets for personal use of directors, compensation beyond the company's means, assumption of personal liabilities of director by the company, corporate guarantee given to comfort the director's personal loan, etc.

## → Labor and Employment Law

French labor and employment rules, both individual and collective employment relationships between employers and their employees, are governed by:

- The Declaration of the Rights of Man and the Citizen (a fundamental document from the time of the French Revolution),
- The French Constitution,
- Community regulations and case law,
- French Labor Code (applicable legislative dispositions and regulations: laws, decrees, orders...),
- Collective bargaining agreements (result of negotiations between employers and groups of employees to regulate working conditions,
- Case law,

Individual relationships are also governed by the individual employment contract, customs, commitments made by employers and the internal rules 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"). With regard to temporary work, two contracts are simultaneously entered into: a contract between the temporary work agency and the company, and a contract between the temporary work agency and the temporary worker.

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

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 criminally sanctioned.

**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, it is forbidden to receive a financial gain from loaning 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.

**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 is higher than 3,000 Euros per month, the contractor must ensure that the subcontractor is not committing unreported work (see above), and specifically, that it is up to date with its declarations to the social security organizations. By failing to do so, the contractor can be held jointly and severally liable for the social obligations 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 accessory to the services provided by the subcontractor and not its main purpose 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”.

## Compensation

**MINIMUM WAGE:** In France, employers are free to determine the remuneration to be paid to the employee, provided it is above the “salaire minimum de croissance” (acronym “SMIC”), which is a minimum wage, increases set by the French Government on the basis of comparison to the national cost of living index. The employee’s remuneration must also meet the compensation requirements of the collective bargaining agreement applicable to the company’s industry.

**THE “EQUAL WORK, EQUAL PAY” PRINCIPLE:** A consistent line of case law has ruled that the employer must ensure 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 diplomas.

**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 legally fixed 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.

The employee must in any case, also benefit from an 11 hours rest period per day. Any employee, even classified as an executive (“cadre”), is in principle submitted to these rules.

## Specific regimes for executives

Nevertheless, the law provides specific regimes 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:

■ 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 hour 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).

■ "Integrated executives": ("cadres intégrés"): are those who are subject to the company's collective working time and who are integrated in a working team. They are subject to the legal provisions on working time.

## Part-time contract

Part-time contract (fewer than 35 hours a week) can be concluded with the employee. It must contain mandatory provisions to be valid.

## Paid vacation

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

## Specific rules

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

## Grounds of Dismissal

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

■ A “real” cause: based on objective elements which can be substantiated, constituting the real cause of the dismissal, i.e. an accurate and exact cause;

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

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

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

In such circumstances, the employee has to 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 his dismissal by a registered letter with acknowledgement of receipt.

This procedure is quite formal and the employer has to respect specific delays. Otherwise, in case of breach of those delays, the employer may have to pay compensatory damages to the employee for breach of the dismissal procedure.

Moreover, the physical inaptitude of the employee may constitute a real 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 of redeploying of the employee within the company or the group of the employer.

**DISCIPLINARY DISMISSAL:** The employee may be dismissed for grossly negligent conduct with regards to contractual obligations (breach of the internal procedures, unjustified absences...), for breach of a duty of loyalty towards the employer (unfair competition, denigration...), or in case the employee’s behavior towards his colleagues is inappropriate (insults, violence, moral or sexual harassment...).

However, a disciplinary procedure may only be engaged within a period of two months starting from the day the conduct in cause became known to the employer. Any previous wrongdoings not acted upon within this period are time-barred. Moreover, the letter of dismissal has to be sent within a one month delay starting from the day the preliminary meeting took place. Otherwise, the dismissal is considered as being unjustified.

**DISMISSAL FOR ECONOMIC REASONS:** Such a dismissal is based on a reason unrelated to the employee and is due to the necessity to modify or reduce the headcount in order to face economic difficulties or to safeguard the competitiveness of the company.

Specific rules govern such a dismissal and differ then 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 does not exist any other possibility or alternative job opportunity for the employees concerned 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.

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 dismissal indemnities...).

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

### **Severance payments**

In most cases, a dismissed employee is entitled to:

- A notice period indemnity (in general 1 to 2 months 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 legal dismissal indemnity is paid to the employee who has at least one year of seniority. This indemnity amounts to 1/5 of a monthly gross salary per year of seniority until the 10th year of seniority, plus 1/3 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 staff representatives. When the company employs 11 employees and more, the employees elect staff delegates that represent the staff and present their complaints during the monthly meetings with the employer. Their term can be from 2 to 4 years. They are elected under a two-round election, the first round being reserved for the unionized representatives.

**ELECTIONS OF THE WORKS COUNCIL:** When the company employs 50 employees or more, it must organize the election of a Works Council. The duration of the office of its members lasts from 2 to 4 years. It is also a two-round election which takes place under the same specific system list, at the same time as the elections of 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 being taken, which could have an impact on the operations of the company. It is however a consultative process which does not bind the employer.

- **Social and cultural mission:** the Works Council organizes activities (end of the year party, trips, etc.) and gives some advantages 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, fixed by the provisions of the French Labor Code.

**ELECTIONS OF THE CENTRAL WORKS COUNCIL:** When the company is divided in 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 establishments of 50 employees or more, the staff representatives and members of the Works Council appoint a Committee for Hygiene, Safety and Conditions of work ("CHSCT"). The CHSCT deals with matters of risks for the mental and physical health of the employees, in connection with their work conditions. Its members are appointed for a two year term.

The CHSCT must give its opinion before any important decision affecting the conditions of work of the employees is made. The CHCST may lead an investigation, sometimes be assisted by an external expert, when it considers that the health and/or the security of the employees is being put in danger.

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

When the trade-union is “representative”, according to the legal conditions and criteria, it may appoint one or more union representatives, depending on the number of employees of the company. Their main mission is to present the complaints of the employees in order to obtain new benefits for the employees and enter into new collective agreements binding the employer and the employees.

When the trade union is not “representative”, according to the legal conditions, 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” provided by the Labor Code or collective agreements taken from their working time in order to be able to exercise their duties as union representatives. Delegation hours are paid as if they were working hours. Moreover, the employer who intends to dismiss a staff representative first has to obtain the authorization of the administration, regardless of the grounds for dismissal.

## **Hygiene and security**

**OBLIGATION OF RESULTS OF SECURITY:** With regard to hygiene and security, the employer has an obligation to maintain security, ensuring conditions of security and hygiene in conformity with the legal requirements. It is an obligation “of results”, which entails strict liability for the employer. Any employer has to undertake the necessary measures to protect the mental and physical health of his employees and to assure their safety under pain of civil and criminal liability. The employer has thus the obligation to prevent any risk from arising and putting in danger one of his employees.

**PSYCHOLOGICAL RISKS:** The employer has in particular the obligation to prevent psychological risks from arising: stress at work, internal violence (conflicts, hazing, moral harassment...), external violence, professional exhaustion (burn-out), who often have common factors that

interact (amount of work, lack of clarity within the division of the work among the employees, intensification of the work, organization of the work, management of the employees).

To prevent such risks, the employer has to evaluate them, within the context of the “document unique”, set up indicators of psychological risks that have to be revised each year and set up a plan of action in order to reduce those risks.

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

Under French law, employees must not be subject to repeated actions of moral harassment having the effect of, or the purpose of, damaging or degrading the conditions of work, undermining the employee’s rights or dignity, distorting its physical moral or mental health or compromising its professional future.

The victim of such harassment may bring an action before the civil courts and ask for damages in reparation of the moral damages or injuries suffered. The victim may also apply for the judicial termination of her employment contract.

**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 suspended during their sick leave until found fit for duty.

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

Otherwise, the dismissal is void and the employee may demand his/her reinstatement within the company and compensation of damages incurred during the period between the termination of the contract and the reinstatement, up to the actual loss of salaries (after deduction of the social security indemnities). 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 him/her 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 demand that the costs incurred for his/her accident or illness be assumed by the social security organizations.

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

The victim or its successors may also ask for an additional compensation when the accident or the illness is due to the gross negligence (“faute inexcusable”) of the employer, which is characterized when the employer had or should have known of the danger 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 the following 3 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. Also, 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” (call 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, the buyer being granted a loan to finance the acquisition, or obtaining building permit. 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 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 for life 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. For instance, they provide the tenant, in principle, the right at the end of the term the right to renewal, or compensation corresponding to the loss suffered as a result of not being able to renew.

Such indemnity is in theory the value of the ongoing business ("fonds de commerce") plus moving and other relevant costs.

**TERM OF THE LEASE:** Commercial leases must be at least 9 years in duration.

**RENT AMOUNT:** The parties have discretion to negotiate the rent, which normally reflects market conditions and may be determined in part or in whole according 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. 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 tenant may terminate the lease at the end of any three year period, by giving six months prior notice. The tenant may also terminate when officially taking retirement under the social security system. The landlord's ability to terminate is much more restrictive, and many involve payment of an eviction indemnity in the case of non-renewal, except where the tenant has committed a material breach of contract. The notices of termination follow a very formal process which requires the intervention of a bailiff (huissier).

**RENEWAL OF THE LEASE:** In the event notice has not been 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 (generally 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 add habitable surface, change 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 avoid the building permit process and merely requires a notification to the city hall.

After construction, the builder is required to request verification from the city hall that will issue a certificate of compliance, i.e. a certificate that confirms that the construction is consistent with the building application and the building permit as issued. Land is classified as urban, developable land or protected land.

## **→ Tax Law**

### **Income Taxes**

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. Some 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*), non-trading 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 in principle 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 on their property income. The standard rate is 33.33 %. However, specific rates are applicable depending on the size of business, from a 15% rate

for small businesses to 36.1% 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 3.33%.

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 ("integration fiscale") election 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 video games, 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. It 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, the tax brackets and rates are the followings:

AMOUNT OF INCOME (€):	TAX RATES (%):
Below 5,963	0
Between 5,963 and 11,896	5.5
Between 11,896 € and 26,420	14
Between 26,420 € à 70,830	30
Above 70,830	41

It should be noted that an additional specific income tax was recently introduced. Its rate varies from 3% to 4%, depending on the marital status of the taxpayer, for the fraction of the income above 250,000 € (for single individuals) or 500,000 € (for married couples). 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 to the social contributions. When liable to it (whether 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 19.6%. It should be noted that the first amending finance law for 2012 which set an increase of the ordinary rate to 21.2% as from October 1st 2012 should be neutralized by the second amending finance law for 2012 to be voted this summer, thus leaving the ordinary rate to 19.6%. Reduced rates of 5.5% and 7% are applicable to specific services and products.

There are several exemptions available, concerning in particular:

- some 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);
- some real estate leasing activities;
- insurance and reinsurance as well as service supplies pertaining thereto ;
- medical and paramedical activities and hospital care costs ;
- charities ;
- teaching.

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

### **Registration taxes**

The purchaser is liable to the registration taxes for 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 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%. Registration duties applicable for the transfer of shares such as the “parts sociales” of (shares of SARLs, SNCs, SCs) non-real estate companies are computed at the rate of 3%.

Registration duties applicable for the transfer of shares of “predominantly real estate companies” are computed at the rate of 5%. Main exemptions: transfer of shares taking place between companies which are member of the same tax group or which are deemed controlled by the same entity, are exempt of 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 a real estate asset are computed at progressive rates with eventual local exemptions available. 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 »)**

French tax residents whose net taxable worldwide assets (i.e. minus debt and other liabilities) are worth at least 1.3 M€ are liable to 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€, being said that French based financial assets are largely exempt.

The tax rate is progressive, from 0.25% below 3M€ of net assets to 0.5% for net assets worth at least 3 M€. It should be noted that in the framework of the second amending finance law for 2012 currently in discussion before the French Parliament, an increase of the above the tax rates is likely to take place.

## 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 inhabitation 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 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.