

# france



VATIER & ASSOCIÉS

## Vatier & Associés

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VATIER & ASSOCIÉS was founded in 2002 by seven partners wishing to jointly develop their legal practice serving individual and corporate clients for their corporate affairs and litigation in France and abroad.

This combination of partners provides the firm with years of experience and confirmed expertise in assisting businesses from their inception (or arrival in France), through their mergers and acquisitions, disposals and reorganizations, helping them to integrate their business environment into the French legal framework for contracts, distribution, employment and administrative compliance.

The Firm's strong litigation expertise extends to high level arbitration, bankruptcy, banking and enforcement of awards, as well as white collar crime,

and all types of civil and commercial disputes. Unusual amongst the major litigation firms in Paris, VATIER & ASSOCIÉS' activity extends beyond that of the traditional French firm, advising also with respect to a broad range of non-litigious matters arising for a French and international corporate clientele.

Bernard Vatier, former head of the Paris Bar (1997/98) is extremely active in France and abroad in promoting the legal profession, and is currently President of the European Bar (CCBE).

Specializing in advice to the business world, VATIER & ASSOCIÉS has strong practice groups in employment law, company and commercial law, assisting in transactions dealing in a variety of areas from property to governmental tender offers, with particular expertise in liability (under both civil law and criminal law), insolvency, insurance, and pharmaceutical distribution.

VATIER & ASSOCIÉS' approach to international teamwork is based on independence and quality, dealing with a large number of correspondents, on a non exclusive basis. French and international correspondents are chosen on a case by case basis in response to the specific requirements of each case. Medium sized firms, with general or specialized practices, they share VATIER & ASSOCIÉS's principles of independence and quality, and provide the firm with broad based expertise allowing it to handle even the most complex and technical cases for its international and French clients.

Each partner is a specialized in his or her area of practice and partners work together closely in teams in order that each case be handled by the most qualified partner, in liaison with the client partner.

Several partners may be involved in cases which draw on a variety of areas of expertise.

### Technical Skills

Technical skill is a fundamental for Vatier & Associés : the former head of the Paris Bar (with a lifelong right to the title "Bâtonnier"), Bernard Vatier, has

attracted a group of partners chosen for their high level of technical qualification, as well as their corporate and litigation experience. The type of cases and the fidelity of the clients bear witness to the quality of the work done.

### Humanity

Each case has a human side. Clients deal directly with partners, from the opening to the close of the case. A reasonable number of associates (approximately 15) assist, but the firm makes it a point of honor that clients work as much with the partner as with the associates.

### Ethics

The attachment of the partners to their ethical duties, and their experience in dealing with ethical issues are essential to the firm, as both the Courts and clients well know.

Ethics are not only revealed in the strict respect of rules of conflict of interest and client/attorney privilege, but also in the quality of the work performed for clients, a transparent approach to billing, a respect for specific client needs, continued legal education for all lawyers in the firm, particularly in rapidly changing areas of the law.

### The Principal Areas of the Firm's Practice Are:

#### LITIGATION

Batonnier Bernard Vatier	Arbitration
Daniel Paquet	General litigation
Marie-Sylvie Vatier	Enforcement of judgements
Olivier Saumon	Civil and criminal liability
Arnaud Moquin	White collar crime
	Employment

#### CORPORATE

Bâtonnier Bernard Vatier	Corporate and Commercial
Marie-Sylvie Vatier	Company law (public, private, mixed)

Ann V. Creelman  
Olivier Saumon  
Arnaud Moquin  
Frederick Gourdon

Mergers & Acquisitions  
Foreign investment in France  
French investment abroad  
Corporate reorganization  
Employment law (individual and collective)  
Distribution  
Intellectual Property (copyright, trademarks)

#### PROPERTY

Daniel Paquet  
Florence Ritz

Zoning  
Financing  
Mortgages and liens  
Co-ownership  
Commercial and private leases  
Enforcement of judgements

#### HEALTH

Olivier Saumon

Medical  
Pharmaceutical  
Regulation of the Health industry

#### PUBLIC SERVICE

Florence Ritz

Constitutional law  
Administrative law (zoning & urban  
development - environmental - property  
- contracts - antitrust)  
Litigation before the administrative courts

## france | corporate law

### Regulations and Rules

France's corporate law was first codified by Napoleon in 1815. The next major codification was the law of July 24, 1966 and the implementing decree of March 23, 1967. Today, most, but not all rules of company law are integrated into the Commercial Code (Code de commerce).

The Civil Code (Code civil) deals with company law in its articles 1832 to 1844-17, and these rules are supplemented by the Law of January 4, 1978. Securities regulations are to be found in the Code monétaire et financier. The Registry of commerce and companies (register du commerce et des sociétés) is organized under the decree 84-406 of May 30, 1984 and the arrêté of February 9, 1988. Decree 69-810 of August 12, 1969 deals with the profession of Statutory Auditor (Commissaire aux comptes).

Special regimes apply in certain of the overseas territories (départements d'outremer), which we will not address here.

Last but not least, many European Directives have effect in France, too numerous to deal with in this short summary.

### Types of Companies

The most frequently used types (and the only ones which will be addressed here) are the Société anonyme or SA, the Société à responsabilité limitée or SARL, and the Société par actions simplifiée or SAS, all of which are limited liability commercial companies. For lack of space, we will not examine here the sociétés civiles, sociétés en nom collectif, sociétés en Commandite, or the groupement d'intérêt économique. These are closer to partnerships, with unlimited liability, and in most cases, fiscal transparency (profit and loss being accrued directly in

the hands of the owners, not the company itself). The Société en Commandite is similar to a limited partnership.

### The Liability of Shareholders

In all of the SA, SARL, and SAS shareholders liability is limited to the capital contribution. However, a shareholder who participates actively in the management of the company may be deemed a de facto director, and become liable for corporate mismanagement in the event of bankruptcy, as would any director or corporate officer.

### Share Capital

The SA and the SAS issue negotiable shares, which may be preferred or ordinary. All shares must be registered. French corporate law no longer allows bearer shares. Minimum share capital is 37,000.

Shares in an SARL are not negotiable by share transfer form. The owner's interest in the company is transferable only by contract, registered with the tax administration, and filed with the registry of commerce and companies. The contract must be formally notified to the company by bailiff (huissier) and the new owner, if not already a shareholder, approved beforehand by the other shareholders. There is no minimum capital or minimum par value of shares.

### Corporate Governance

#### SHAREHOLDERS MEETINGS

French corporate law distinguishes between 'ordinary' and 'extraordinary' shareholder resolutions. Ordinary resolutions require a 50% majority, whilst extraordinary resolutions require a 2/3rds majority in an SA or an SAS, and a 3/4 majority in an SARL. Ordinary resolutions include approval of accounts, appointment of the statutory auditor, distribution of dividends, changes in Board membership. Extraordinary resolutions are those which require an amendment

of the Bylaws (e.g. increase or decrease in capital, merger, change in name, change in corporate purpose).

At least one shareholders meeting must be held each year, within six months of the close of the fiscal year, in order to approve the accounts of the previous year. These must be communicated to the Statutory Auditor at least 45 days prior to the shareholders meeting. Both SA's and SAS's must have a Statutory Auditor. An SARL is not required to appoint a Statutory Auditor unless it reaches a certain size.

#### QUORUM AND MAJORITIES AT SHAREHOLDERS MEETINGS

Quorum rules are not mandatory in an SAS and are set in the Bylaws. The following rules apply for the SA and SARL.

Ordinary Shareholders Meeting	Quorum		Majorité
	SA	1st call	1/4
2nd call		none	idem
SARL	1st call	no quorum, but all outstanding shares counted and thus presence or representation of 1/2 of outstanding capital required to take resolutions	over 50% of outstanding shares
	2nd call	no quorum	majority of votes cast

Extraordinary Shareholders Meeting	Quorum		Majorité
	SA (1)	1st call	
	2nd call	1/4	2/3 majority of votes attached to shares present or represented
SARL (1)			3/4 of outstanding shares

(1) certain decisions may require unanimous vote (e.g. increase in shareholder liability).

## MANAGEMENT

Only the SA is required to have a board of directors (and in the 'directorate' form, the board is replaced by a Supervisory Board on the one hand and a Directorate on the other hand). The board must meet at least once a year to approve the accounts before communication to the Statutory Auditor. Any two directors may call a meeting at any time if no meeting has been held in the last 2 months.

An SAS is managed by a President, who may be assisted by a board of directors, an executive committee or a supervisory board, but none of these are mandatory.

An SARL is managed by one or more managers (gérants or co-gérants).

The President of the Board of Directors (or President of the Directorate) in an SA, the President of an SAS and the manager of an SARL all have very broad authority to bind the company. Although restrictions may be contained in the Bylaws, these are not enforceable against third parties provided the actions of the President or manager are within the bounds of the corporate purpose.

In an SA, the President of the Board of Directors is appointed by the Directors. The Directors are appointed by the shareholders (in an ordinary decision), generally for a six year terms (but the Bylaws can provide for a shorter term). There are no requirements for independent directors, although the presence of a certain number of independent directors is considered 'best practice'.

## REMUNERATION OF MANAGEMENT/CONTRACTS BETWEEN THE COMPANY AND ITS DIRECTORS, MANAGERS AND SHAREHOLDERS

Directors in an SA may or may not be remunerated. Where they are, remuneration is by way of 'jetons de presence' allocated in aggregate to the Board as a whole, and divided amongst the members of the Board as they see fit. Directors may also receive special remuneration for specific tasks as set by resolution of the Board.

In an SAS, the President is appointed by the shareholders, according to the terms of the Bylaws. The President's remuneration is set by the shareholders.

In an SARL, the manager is appointed by the shareholders at a general meeting, unless designated in the Bylaws. The manager's remuneration is set by the shareholders.

Contracts of any kind between the company and its directors, managers and shareholders holding over 10% of the capital must have the prior approval of the Board followed by ratification by the next shareholders meeting (for an SA) or the shareholders (for an SAS or an SARL) unless at arms length and in the normal course of business. A report on such contracts is made every year to the shareholders by the Statutory Auditor, if there is one, and otherwise by the President or the manager.

## MINUTES/PUBLICATIONS IN LEGAL GAZETTES/FILING WITH THE REGISTRY OF COMMERCE AND COMPANIES

Minutes must be kept in a Minute Book, with pages stamped and numbered by the Commercial Court. They are signed by the Manager of an SARL, by the

President, the Secretary and two shareholders acting as assessors for the SA and the SAS.

In the event of amendment of the Bylaws, changes to the Board or Officers, and approval of accounts, Minutes, Board and Statutory Audit reports must be filed with the registry of commerce and companies within one month of the shareholders meeting, along with amended Bylaws, as the case may be. Changes in Management or the Bylaws must be published in a legal gazette and notified to the registry of commerce and companies with the relevant minutes.

## france | tax law

### General Notes

France is a jurisdiction in which revenues are subject to significant mandatory contributions and taxes, on assets, income and turnover, as well as social contributions to finance a national health system, retirement, disability and childcare. Many special exemptions and regimes exist, too numerous to set out here. The current government has pledged a reduction in taxes and the general level of mandatory contributions from 2006 onwards.

### Significant Developments

Avoir fiscal (a tax credit attaching to dividend distributions) ceased to apply on January 1, 2005. The precompte (equalization tax on certain distributions of dividends) also ceases to apply.

The treatment of long term capital gains under corporate tax rules was reformed by the Finance Act for 2005, eliminating the requirement to set aside a reserve equal to the amount of the capital gain after a taxation at 19%, allowing reallocation of the reserves on company books against payment of a 2.5% tax, and reducing the general long term capital gains tax rate from 19% to 15% with a tax exemption in 2007 when certain conditions are met (a fraction of 5% of the gain will however remain taxable). The new treatment of dividend distributions and participation exemption is very favorable to the formation of holding companies in France.

Compliance with International Financial Reporting Standards (IFRS) is required for quoted companies as from January 1, 2005, but not allowed for tax purposes.

## Taxes on Corporate Income

Corporate profits are taxed at a 33 1/3% rate. The surcharge of 3% will be reduced to 1,5% in 2005, and will cease to apply in 2006.

## Corporate Residence/Permanent Establishment

A company is generally deemed to be resident in its principal place of business or siège social. Income generated from activities outside of France, through foreign branches, for instance, is generally exempted from tax in France. Dividends received from foreign subsidiaries are taxed, subject to provisions of applicable double taxation treaties and group taxation rules (see below).

A foreign investor can open a liaison or representative office which is not a permanent establishment, either under the applicable bilateral double taxation treaty or French domestic tax law. Domestic law recognizes the presence of a permanent establishment where sales are made and/or contracts signed, but not where only preparatory acts are accomplished (such as a showroom where no sales are made, or a representative office where no contracts are signed and no chargeable services rendered).

## Other taxes: VAT – Transfer tax – Capital tax – Stamp Duty – Property Tax – Other taxes.

### VAT

Turnover is subject to value added tax (taxe sur la valeur ajoutée or TVA) at a rate of 19.6%. The reduced rate of 5.5% is applied essential commodities such as water, most food, medicine, books, etc. TVA paid by businesses is, with some exceptions, recoverable and deducted from the TVA charged to the end user on turnover and remitted to the tax administration.

### TRANSFER TAX

Transfers of shares and business assets are subject to an ad valorem tax. In an SA or an SAS this transfer tax is equal to 1.1% of the value of shares (capped

at 4000 €). In an SARL it is equal to 5% of the value of the shares, and in the case of a sale of a business 5% of the value of assets. Transfers of real property and long term leases as well as mortgages over real property are also subject to a transfer tax called the 'salaire du conservateur de l'hypothèque' as well as various local taxes.

### STAMP DUTIES

France still levies per page stamp duties on various documents, and requires others to be registered with the tax office in order to, inter alia, certify their date.

### PROPERTY TAX/BUSINESS TAX

Local authorities levy property tax on private real estate and business tax on commercial and professional property, at rates which vary from one geographic area to another, applied to a deemed income estimated by the tax authority for property tax, and a complex method of valuation for the business tax, taking into account fixed assets and means of production (included leased property).

## Branch Income

Branches of foreign companies which operate in France are subject to French tax on their French source income. Foreign branches of French companies are exempt from French tax on their foreign source income, subject to applicable double tax treaties.

## Income Determination

### INVENTORY VALUATION

Inventory is valued each year on the basis of cost, with an adjustment to market value where applicable (for finished products) or cost (for work in progress and semi-finished goods). Seconds, waste, and the like are valued at their potential resale value (if any). Inventory should not be written down applying an overall percentage mark down; adjustments must be made on a line by line basis. Cost

may be determined on FIFO basis, or using a weighted average. LIFO valuation is not allowed.

## CAPITAL GAINS

Short term capital gains are those arising out of investments other than the disposal of participations held more than two years (long term capital gains). A special regime (which will not be addressed here) is applicable to real estate and real estate companies.

Short term capital gains are treated as regular income (a special regime is available for small businesses) and long term capital gains are taxed, after deduction of long term capital losses, at a rate of 15% (reduced from 2004 rates of 19% and 15% for small businesses). Until 2004, the after-tax amount of the net long term capital gain was booked to a special reserve. This is no longer required (starting with fiscal 2004) and an exceptional 2.5% tax is payable on the amount of the special reserve, after deduction of 500,000 € and within the limit of 200,000 €, in lieu of payment on distribution of the reserve of tax (précompte) in the amount of the difference between the long term and short term rates (in 2004: 33 1/3% less the tax initially paid).

## INTERCOMPANY DOMESTIC DIVIDENDS

Dividends arising from an interest of at least 5% in a French company, accruing to a French or foreign parent, or the French permanent establishment of a foreign parent, enjoy a 95% exemption from corporate tax, and for parent companies established within the European Community, an exemption from withholding tax, provided the parent holds 10% of the capital in the subsidiary.

## FOREIGN INCOME

Income from foreign permanent establishments is either exempt from French corporate tax or taxable in France. If the latter, the foreign tax gives a right to a tax credit to be set off against French corporate tax, as long as it is not repatriated and distributed. A special exemption regime applies to holding companies investing principally in non French shares. France has an extensive

set of double taxation treaties, which reduce or eliminate withholding on dividend and interest income (table at the end of this chapter). Special anti-evasion rules apply to investments in tax haven jurisdictions, allowing a recapture of income earned abroad, or income earned by foreign entities for services rendered in France.

## DEDUCTIONS

Business expenses are generally deductible, with limitations on gifts, cars, entertainment, and 'sumptuous' expenses.

## DEPRECIATION AND DEPLETION

Depreciation can be straight-line or reducing, over a term based on the useful life of the asset. Unused depreciation allowances can be carried forward indefinitely.

Net operating tax losses can be carried forward without any time limitation.

## PAYMENTS TO FOREIGN AFFILIATES

Dealings with foreign affiliates must be at arms length.

## Group Taxation

Group taxation (intégration fiscale) is available where the interest held by the parent is at least 95% and all of the companies in the group are on the same fiscal year. Penalties can apply on termination of the Group taxation regime.

## Tax Incentives

Tax incentives, too numerous to deal with here, are available for new businesses, small business, businesses set up in economically troubled areas (as defined geographically by regulation). France provides special treatment to headquarters operations (quartiers généraux): personal income tax exemptions for certain



expatriate employees, a cost plus basis of recognition of income, reductions/exemptions from business tax, etc.

### Withholding Taxes on Dividends, Interest and Royalties

None on bonds issued after 1-1-87. Non treaty rate: 25%. Treaty rates:

Country	Dividends	Interest	Royalties
African states members of the SFA		15	
Algeria	15	10	0
Argentina	15	15	18
Armenia	15	10	5-10
Australia	15	10	10
Austria	15	0	0
Bahrein	0	0	0
Bangladesh	15	10	10
Belgium	15	15	0
Bolivia	15	15	15
Botswana	12	10	10
Brazil	15	15	10-15-25
Bulgaria	15	0	5
Burkina-Faso	25	15	0
Cameroon	15	15	15
Canada	15	10	10
China	10	10	10
Congo	20	0	15
Cyprus	15	10	0
Denmark	0	0	0
Egypt	15	15	15-25
Equator	15	15	15
Estnoia	15	10	5-10
Finland	0	10	0
Former Soviet Union	15	10	0
Former Tchecoslovakia	10	0	5
Former Yougoslavia	15	0	0

French overseas territories (TOM)		15	
French Polynesia		0	
Gabon	25	15	10
Germany	15	0	0
Ghana	15	10	10
Great Britain	15	0	0
Greece		0	5
Hungary	15	0	0
India	10	10	0
Indonesia	15	15-10	10
Iran	20	15	10
Ireland	15	0	0
Island	15	0	0
Israel	15	10	10
Italy		10	5
Ivory Coast	15	15	10
Jamaica	15	10	10
Japan	15	10	10
Jordan	15	15	5-15-25
Kazakhstan	15	10	10
Kuwait	0	0	0
Lebanon	0	0	33 1/3
Lettonia	15	10	5-10
Lithuania	15	10	5-10
Luxembourg	15	10	0
Madagascar	25	15	15-10
Malaisia	15	15	10
Mali	25	15	0
Malta	15	10	10
Mauritania		15	0
Mauritius	15	15	0
Mayotte	25	0	0
Mexico	15	5-10	0
Monaco	25	15	
Mongolia	15	10	0

Morocco	15	15-10	5-10
Namibia	15	10	10
New Caledonia	15	0	10
New Zealand	15	10	10
Niger	25	15	0
Nigeria	15	12,5	12,5
Norway	15	0	0
Oman	0	0	0
Ouzbekistan	10	5	0
Pakistan	15	10	10
Philippines	15	15	15
Poland	15	0	10
Portugal	15	12	5
Qatar	0	0	0
Roumania	10	10	10
Russia	15	0	0
Saudi Arabia	0	0	0
Senegal	15	15	0
Singapour	15	10	0
South Africa	15	0	0
South Korea	15	10	10
Spain	15	10	5
St Pierre et Miquelon	15	0	10
Sweden	15	0	0
Switzerland	15	0	0
Thailand	25	10-3	0
The Netherlands	15	10	0
Togo		15	0
Trinité et Tobago	15	10	10
Tunisia		12	10
Turkey	20	10	10
Ukraine	15	10	10
United Arab Emirates	0	0	0
USA	15	0	5
Venezuela	15	5	5

Vietnam	15	0	10
Zambia		15	0
Zimbabwe	15	10	10

Note: exemptions and 0% rates may also exist, but are not mentioned here.

## Tax Administration

### RETURNS

Corporate income tax returns are filed in the three months following the closing date of the financial year. The filing can be done until April when the closing date is December 31<sup>st</sup>.

### PAYMENT OF TAX

Corporate tax is paid in four equal estimated instalments, and a final fifth payment of any balance remaining due. For a company closing its fiscal year on December 31, these instalments will be paid on March 15, June 15, September 15, December 15 and the balance on April 15.

## INDIVIDUAL TAXES

### General Note

The maximum individual tax rate is 48.09%.

### Territoriality and Residence

Individuals who are French residents for tax purposes are taxed on their worldwide income. Tax residence is determined under domestic rules and in many cases a bilateral tax treaty, through various factors, including the family home and center of vital interests. Non residents of France are taxed on their French source income, through a withholding at the source. Director's fees are always deemed to be French source income.

## Gross Income

### EMPLOYEE GROSS INCOME

Contributions to social security, retirement, unemployment, and the like are deducted from salary by the employer and paid over directly to the relevant administrations. All of these are deductible from gross income for tax purposes.

### CAPITAL GAINS AND INVESTMENT INCOME

Capital gains on the disposal of shares over a fixed threshold (15,000€ in 2004) are taxed at a rate of 16%, plus CRDS and CGS (see below) and a 2% tax, for a total of 26,70%. Interest is treated as regular income. An option is available to have interest income taxed at a flat withholding rate of 16%, plus CRDS and CGS and the 2% tax for a total of 26,70%.

### CAPITAL LOSSES

Capital losses are deductible against capital gains of a same category in the same year or in the ten following years.

## Deductions

### BUSINESS DEDUCTIONS

Employees can opt for a flat 'business expense' 10% allowance against income (capped to 12.862 €), or itemize their actual expenses.

### NON BUSINESS EXPENSES

Deductions are available for certain expenses of renovation of the main residence, alimony payments, personal services such as childcare and tutoring.

## LEGAL REDUCTIONS

Various professions are allowed to take a flat 'business expenses' deduction at a rate higher than 10% (e.g. journalists 30%). Employees have the right to an additional 20% abatement on salaries (with a ceiling of 117.900 € of the salary)

## PERSONAL ALLOWANCES

Allowances are available for minor children, students, aged parents, and other dependents, as well as blindness, infirmities, and handicaps.

## Tax Credits

Tax credits are available in most cases for taxes withheld on foreign source income, but also as a percentage of certain expenses (lump sum alimony payments, childcare and schooling expenses, etc.)

## Other Taxes

### SOCIAL SECURITY TAXES

Contributions for social security, national health, unemployment insurance, and the like constitute an approximately 20% withholding from the gross salary paid to employees, and the employer pays additional amounts based on the employee's gross salary. The total percentage of employee's net take home pay is over 60% in most cases, and for lower salaries can be close to 90%. In addition, two 'temporary' taxes, the CRDS and the CSG have been instituted to balance the national health budget. These are due with respect to all income: dividends, pensions, interest, salaries, professions, etc. and are in a total amount of 8%.

### LOCAL TAXES ON INCOME

There are no local taxes on income.

## WEALTH TAXES

Wealth tax (Impôt de Solidarité sur la Fortune or ISF) is due where assets are in excess of 732,000 (for 2004) at a progressive rate starting at 0.55% going up to 1.8% on assets valued on January 1. Liabilities are deducted from the taxable basis. Exemptions are available for business assets under certain conditions. Non tax residents are subject to wealth tax on real estate owned in France.

## france | foreign investment

Historically, France has not encouraged inward foreign investment, and until the 1980's applied strict exchange control for both inward and outward capital flows. Today, France welcomes and encourages inward foreign direct investment. The last major reform of direct investment regulations is embodied in a Law of February 14, 1996, amended on March 7, 2003. Under the influence of the European Community, France has liberalized flows of capital, persons and services. Major differences remain between European Community investors, who are placed essentially on the same footing as French investors, and others.

### Registration with Government, Authorities and Permits

The Decree of March 7, 2003 distinguishes between foreign inward investment which is unrestricted and that which is subject to either declaration or prior authorization.

Are exempted from any declaratory requirement (decree 2003-196 article 6, paragraph 2):

- creation or extension of activity in a French business already under foreign control
- increases in holding by a foreign investor which already holds in excess of 50% of the capital or voting rights
- participation by non-residents in an increase in capital which does not change their percentage ownership in the French company
- transactions between members of the same corporate group (50% or more being held by a common parent)
- loans, guarantees, advances, consolidation or write-offs of debt by non-residents to French businesses in which they have invested
- investments in real estate companies other than those which are involved in construction of buildings for sale or rental

- inward foreign investment of up to 1.5 million euros in a French business for retail sales, crafts, hotels, restaurants, small neighborhood service, quarries, and gravel pits, and
- acquisition of farm land.

Require declaration at the time of completion (decree 2003-196 article 1, 4°-II):

- creation or extension of a new business by a non-resident
- acquisition by a non resident acquisition of a branch of activity from a French business
- a capital transaction in a French business in which a non resident holds more than 33.3% of the share capital or voting rights.

Require prior authorization (article 151-3 of the code monétaire et financier)

- any foreign inward investment which could affect public order or security, including investment by persons whose activities over the last ten years or current activities lead to a serious presumption of criminal activity and investment in gambling activities, casinos, gaming clubs and similar regulated activities
- any foreign inward investment related to the national defense, arms or explosives
- any foreign inward investment which might seriously threaten public health.

Applications for prior authorization are subject to a two month review by the Ministry of Economy and Finance. If no action is taken at the end of such period, the authorization is deemed granted. The Ministry can of course request further information if the application is incomplete, and this extends the review period.

Contracts or undertakings entered into without the above authorization are null and void. Fines can be levied in amounts up to double the amount involved in any breach of the above duties, in addition to sanctions under the penal and customs codes.

Declarations are also required for statistical purposes:

#### TO THE CENTRAL BANK

For capital movements in excess of €15 million by non residents resulting in the acquisition of at least 10% of the shares or voting rights in a resident business (or a transaction by which the non resident attains this threshold), or between related entities or in real estate.

#### TO THE TREASURY

- direct or indirect creation or extension of the activity of an existing French business by a non French or non resident legal entity or person where the transaction is for an amount in excess of €15 million
- acquisition of real estate by a non resident where the transaction is for an amount in excess of €1.5 million
- acquisition by a non resident of vineyards
- liquidation of foreign investments, or decrease in holdings by non residents in a French business (e.g. in the event of dilution through issuance of new shares)
- significant changes in the activity of a foreign controlled business (e.g. change of name or activity or insolvency)
- indirect changes in control resulting from transactions which occur abroad (such as a change in ownership of the foreign holding company)
- a transaction requiring prior authorization.

Failure to comply with the above declaratory requirements carries a possible five year prison sentence and a fine of double the undeclared amount.

For the application of the above, a French company in which non residents hold more than 33.3% of the capital or voting rights is considered a non resident company.

Are deemed foreign direct investments subject to declaration in France transactions taking place outside of France which result in a change in the control of a non resident company which holds an interest in a French company

in which more than 33.3% capital or voting rights of which are held by non residents.

Are deemed direct investments, contracts or undertakings, such as loans, material guarantees, licenses and patents, commercial agreements or service agreements which result in the effective transfer of control of a French company to a non resident.

### **Transfer of Dividends, Interests and Royalties Abroad**

France does not restrict the transfer of dividends, interest and royalties abroad. Depending on the bilateral tax treaty in force, withholding tax may apply.

### **Repatriation Procedures and Restrictions**

France applies no repatriation procedures or restrictions other than the declarations required under foreign direct investment rules (see section 1 above).

### **Foreign Personnel (Permits, etc)**

All foreign personnel require residency and work permits. These are automatically granted to nationals of the European Community Member States (with transitional rules applying for new members).

Directors and Officers of a French company who are not French, nationals of a European Community Member State or a State which is a member of the OECD require a 'carte de commerçant'.

Application for permits should be made prior to leaving the home country, by the future employer. As an exception, applications for nationals of a European Community Member State may be made after arrival in France.

## france | labor law

As a preliminary comment, any new investor should be aware that French Labor law and its interpretation by the French Labor Courts is extremely protective of employees. Employment is highly regulated with a view to protection of the employee, who is seen as the weaker party in the relationship. Moreover, as the access to Labor Courts is free and no lawyer is required before the Labor Courts and Labor Courts of appeals, employees almost always tend to systematically challenge the legitimacy of their dismissal in order to obtain damages.

### **Employment Contracts**

#### CLASSES

There are two main classes of work contracts: fixed term or undetermined indefinite term, both of them which can be concluded for part time or full time positions. Fixed term contracts can only be concluded under very strict conditions.

Fixed terms and part time contracts are necessarily concluded in writing while full time undetermined indefinite term contracts can be verbally concluded except where the law or a collective bargaining agreement provides otherwise. However, it is highly recommended, even where not mandatory to conclude written employment contracts.

#### COST OF DISMISSAL AND WRONGFUL DISMISSAL

1. Under French law, employers cannot unilaterally terminate a work contract without a legitimate cause. Such cause would can be either, economic, disciplinary or personal (iee.g.: physical disability of an employee). If not based on one of these causes, the dismissal is deemed illegitimate and entitles the employee to claim for damages.

2. Except when the dismissal of an employee is pronounced during the trial period or is pronounced for gross or wilful misconduct, the employee is entitled to a prior notice period the terms of which varies according to the employee's seniority and qualification (usually one to three months).

An employer who exempts a dismissed employee from work during the notice period is nonetheless required to pay that employee an indemnity equal to the amount of the remuneration the employee would have been entitled to, had he/she worked his/her notice period.

3. Even where the dismissal is legitimate, the employer must pay to the dismissed employee a severance indemnity in an amount which depends on the seniority of the employee within the company.

The legal minimum is 1/10 of average gross monthly gross salary for each year of seniority + 1/15 of average monthly gross salary for each year of seniority over 10. However most collective bargaining agreements provide for more favorable severance indemnities.

Except where a collective bargaining agreement provides otherwise, employers are exempted to from paying a severance indemnity if (i) the employee is has less than two years seniority, or (ii) the dismissal is for gross misconduct.

4. In addition to the payment of a severance indemnity, an employer can be ordered to pay damages to a former employee if the dismissal is judged illegitimate. If the dismissed employee has more than two years seniority and the company employs more than 10 employees, the damages cannot be less than 6 months average gross salary, otherwise, the amount depends on the actual damages suffered and proven by the employee.

5. Dismissals and any changes in contract terms are subject to considerable formality in France and failure to follow procedures can also give rise to a damage claim by the employee or a suit for constructive illegitimate dismissal.

## EMPLOYMENT CONTRACTS FOR DIRECTORS; AN SPECIAL REGIME

Directors can also be employees of their companies provided that (i) their work contract is concluded prior to their appointment as Director (ii) their duties as defined in their work contract are independent of their duties as Director (iii) they really work under the supervision of an employer or an officer of the company (iv) they receive a specific remuneration for the carrying out of their specific duties as employees of the company.

Whenever one of these conditions is not fulfilled they are excluded from the benefit of Labor Law provisions and their employment contract is deemed suspended for the term of the directorship. Once their appointment as Director have comes to an end, however, their employment contract becomes effective again.

## Employees' Representatives and Union Representation

### BRIEF IDEA OF THE INFLUENCE OF THESE GROUPS IN LABOR CONTRACTS

On a national level, trade unions are the main representatives of both government and employers in the negotiation of new laws and of CBAs (Collective Bargaining Agreements).

At the company level, trade unions and employee representatives are a link between employers and employees. More specifically, employers have an obligation to provide employee representatives with regular information as to the economic situation of the company, state of employment within the company, implementation of new technologies, working conditions of employees. The employee representatives must be consulted prior to any dismissals for economic reasons or any change in the organization of the business (e.g: acquisitions, disposals, mergers which might affect the work force).

## WHEN DOES A LABOR UNION REPRESENTATION BECOMES BINDING?

Under French law, no labor union representative can be appointed as long as the employee representation has not become binding.

Employee representation becomes binding either: (i) When the number of full time employees within a company has reached a number of 11 for 12 months during the last 3 years, in such case, the employer must organize the elections of employee delegates (“délégués du personnel”).

(ii) When the number of full time employees within a company has reached a number of 50 for 12 months during the last 3 years, in such case the employer must organize the election of a Works Council in addition to the election of employees’ delegates.

When these conditions are met, the trade unions can appoint a union representative among the employees. For businesses employing more than 11 employees and less than 50 employees, the union representative has to be the same person as the employee delegate.

## RIGHTS AND PRIVILEGES OF A LABOR UNION REPRESENTATION INSIDE A COMPANY

Union representatives, employee delegates and the WC members are allotted a fixed number of their working hours to fulfill their duties as employee representatives. In the fulfillment of their duties, employee representatives are granted access to the entire work place.

Moreover, French law grants the employee representatives and union representatives specific protection against dismissals, for no dismissal can be pronounced without the prior authorization of the Labor Authorities. Finally, no modification of an employees representatives’ working conditions can unilaterally decided by the employer. French law also provides that as opposed to those of any other employees in the company, the working conditions of the employee representatives and of the union representatives cannot be modified without their prior agreement.

## Collective Bargaining Agreements (“CBAs”). Other Agreements (National, Regional, Provincial or Company Level...)

### CLASSES

In addition to the provisions of law and the individual employment agreements, the labor relations between employers and employees are governed within each branch of industry by the provisions of national, regional or local CBAs.

### ARE COLLECTIVE BARGAINING AGREEMENTS BINDING FOR THE LABOR CONTRACTS?

Where applicable, CBAs are binding for all labor contracts, provided that (i) the provisions of law are not more favorable to employees than the provisions of the applicable CBA and (ii) the provisions of individual work contracts are not more favorable to employees with whom they are concluded than the provisions of the applicable CBA.

## Wages and Other Types of Compensation (Wages, Social Security Contributions, Remuneration in Kind, Insurance Policies, Pension Plans...)

### CLASSES OF WAGES

Wages of employees can comprise of various elements such as:

- Fixed salary
- Incentives
- Bonuses
- Remuneration “in kind” (i.e: housing, car, cell phone, lap top...)

### MINIMUM SALARY IN 2005

Except where a CBA provides for a higher minimum salary, the statutory minimum salary to be paid to an employee is, as of from July 1<sup>st</sup> 2004 of 7,61 Euros / Hour (i.e. 1.154,18 Euros/month for a full time job).



## COST OF OVERTIME HOURS

Employers are given an annual credit of 220 overtime hours per employee which they can use at will. Every additional overtime hour an employer wishes to have one of his/her employees work is submitted must obtain to the prior authorization of the Labor authorities.

- For businesses employing less than 20 people, payment of the first 8 overtime hours is increased by 25% and payment of the following overtime hours is increased by 50%.
- For businesses employing less than 20 employees, payment of the first 4 overtime hours is increased by 10% only. Additional overtime hours are increased by 25 or 50%.

Overtime hours can also give rise to a right to compensatory rest time. The above mentioned rates are provided by law and some CBAs might may provide for different rates.

A new law is currently under discussion, which would allow employees, under specific conditions and on a voluntary basis only, to work overtime hours in excess to the annual credit allotted to the employer. Collective agreements would define the cost of such voluntary overtime hours, which could not be less than the above.

## Employment Regulations

In addition to CBAs, the major national employment regulations are codified within the Labor Code.

The Labor authorities (comprising of the Local Direction of Employment and of the Labor Inspectors) exert their control over the application of the employment regulations.

## Social Security

### CONTRIBUTION FORMS (TERMS AND PROCEDURES)

Social security contributions must be paid on a monthly or a quarterly basis to the Labor Tax authorities along with the declaration form sent with this respect to each employer. Social security contributions can also be paid on line.

On an annual basis, employers must also declare to the Labor Tax authorities the employment data of the company for the past year.

Such declarations. can be made by filing and returning a form to the Labor Tax authorities or on the internet.

### SOCIAL SECURITY COST FOR THE COMPANY/EMPLOYER

Approximately 50% of the Worker's gross salary

### SOCIAL SECURITY COST FOR THE WORKER

Approximately 20% of the Worker's gross salary.

### OVERTIME: CONTRIBUTION TO THE SOCIAL SECURITY FOR THIS AND OTHER DIFFERENT SORT OF WAGES, "IN KIND" ...)

Contribution to social Security for overtime work is the same as contribution to Social Security for usual working hours. As concerns "in kind" wages, their valuation varies according to their nature and, as regards certain items like company cars, the extent to which the employee does or does not use it for personal, rather than business, needs.

## Health and Safety

### ESSENTIAL DUTIES FOR OF THE COMPANY / EMPLOYER

Employers must provide their employees with a safe and healthy work place. They have an obligation to appoint a “Labor doctor” with whom the employees must meet at least once a year and under specific conditions, when they are back to work from a sick leave.

The labor doctor checks that employees are fit to work and, wherever the labor doctor and subsequently delivers “fit to work” or “unfit to work” opinions.

Where the labor doctor considers it necessary, he/she can suggest that modification be made to the working environment or working conditions of an employee.

Employers need to protect their employees against accidents in the work place by providing them with adequate tools, regular health and security trainings.

The Labor authorities and the Labor Doctor as well as where mandatory, the Health, Safety and Working conditions Committee (CHSCT) exert regular controls over these matters.

When accidents occur on the work place, the employer must declare the accident to the Labor Authorities within 48 hours of its happening and the company can be held responsible for the damages suffered by the employees.

### MAIN REGULATIONS

General regulations as to health and security are codified in the Labor Code but depending on the nature of their activities, companies can also be subject to specific regulations.

## Contracting and Outsourcing of Work or Services

Resort to temporary workers is strictly regulated under French law, in order to favor as much as possible, the conclusion of permanent work contracts.

However, when the conditions to resort to temporary workers are met, it is allowed to have external workers, employed by temporary work companies agencies sent within a company to carry out a specific task within a business.

Outsourcing to an independent contractor is another possibility. The independent contractor should use its own employees and tools/machinery but may work on the premises of the contracting business.

The contractual terms of the contract must be carefully drafted to avoid specific criminal violations of law.

## france | real estate

French law governing real property derives to a great extent from Roman law. It is also influenced by the well organized land register, managed by a Registrar, who is a public official. As registration of transactions dealing with real estate is only possible if the instrument is drafted by and signed before a notary, costs of real estate transactions (notary's fees, registration, stamp and other duties) are high (approximately 6-10% of the value for a sale, 1% for a mortgage).

### Types of Ownership

Title to real property can be either "entire" ("pleine propriété"), or divided into two separate rights: on the one hand a right to the use and proceeds of the property ("usufruit" from the latin "usus et fructus") and on the other a "stripped" ownership ("nue propriété" or in latin "abusus") corresponding to the ownership stripped of the right to the use and proceeds of the property.

"Entire" ownership can belong to a single person (natural or legal) or a collection of individuals such as a co-operative or co-ownership, where each individual owns a portion of the whole (e.g. 1/2, 1/4, 1/3) with no direct right over any specific part.

These aspects of ownership can be combined in various ways: for example a co-ownership can hold "stripped" rights in a building.

### The Land Register

All real property in France is registered, commune by commune, and numbered according to a geographic sector. Thus, each commune is divided into many sections (classified by letter, e.g. "section BN") and in each section the parcels are numbered in turn. Thus, in Paris, the lot registered "section BN n°32" is easily identifiable on the map at the land register, called "cadastre".

In addition, changes in the legal status of a parcel (transfers of title, liens, mortgages, etc.) or any lot within a parcel, are booked on the registers maintained by the Land Registrar (Conservateur des Hypothèques). There are approximately twenty offices (Bureaux des Hypothèques) for the Paris Land Registrar alone.

### Transfer Formalities

A transfer of title, mortgage or other change in the legal status is only enforceable against third parties as from its registration at the office of the land registrar, despite the fact that it may be enforceable between the parties as from the date of signature of the legal instrument enacting the transfer, mortgage or other change.

In order to be registered with the land registrar, the legal instrument must be drafted by and signed before a notary. In France, a notary is the holder of an office conferred for life by a public authority.

Exceptions to this rule exist: certain instruments issued by the administration, mortgages ordered by a court, court orders, etc.

### Mortgages

A mortgage (hypothèque) creates a security lien over real property for the purpose of guaranteeing performance of a financial obligation. The following rights arise out of a mortgage:

a) A "follow-up" right (droit de suite) is available to the holder of a mortgage (créancier hypothécaire), and allows, in the event he is not paid, the holder to seize his debtor's real property and have it sold at auction by Court order; if the debtor sells the real property without first paying his debt, the mortgage holder may seize the real property from the new owner and have it sold at auction; if this new owner sells the property without paying the mortgage holder, the holder of the mortgage can further seize the property in the hands of the purchaser ("sous-acquéreur"), and have it sold at auction, and so on. The droit

de suite allows the mortgage holder to follow the property despite multiple transfers and seize it in the hands of the owner, whoever that may be.

b) A right of preference (droit de préférence) gives its holder a right to be paid, by preference over other creditors, out of the sales price of the real property of his debtor. The preference overrides creditors whose rights are registered at a later date, as well as ordinary creditors (chirographaires).

There are three ways of establishing a mortgage :

- “hypothèque légale” : in certain specific cases, statute allows a mortgage to be registered even in the absence of a court award (e.g. the “hypothèque légale” of the co-ownership of a cooperative building for unpaid coop expenses, the “hypothèque légale” of the tax administration);
- “hypothèque judiciaire” : a court award for the payment of money carries an automatic right to register a mortgage guaranteeing the corresponding debt;
- “hypothèque conventionnelle” : a debtor may agree by contract to allow his creditor to register a mortgage over his property in an instrument which must be drafted and signed before a notary.

### Issues Arising in the Context of the Sale of Property: Pre-Emptive Rights/Protection of Buyer and Seller

a) Pre-emptive rights must be purged at the time of a sale of a building. These rights arise in various circumstances such as the tenant for the sale of his residence, the farmer for the sale of his farm, but also, often, the pre-emptive right accrues to the benefit of the Administration (municipality or commune in most cases) or agencies for the redistribution of farmlands (the SAFER).

b) Protection of buyer/seller:

i. the buyer may petition the Court to contest the validity of his purchase if he considers that his consent to the transaction has been tainted by:

- “erreur” : an error as to the fundamental characteristics of the property, e.g. the buyer thinks he is buying a commercial building, when in fact it is a residence;
- “dol” : misrepresentation: the seller tricks the buyer into purchasing;
- “lésion” : in the event of an error in the purchase price, only the seller is allowed to petition for avoidance of the sale, and only if the error is in excess of 7/12ths;
- “violence” : physical or mental violence can also void a sale.

ii. The buyer may also petition for avoidance of the sale, or for a reduction in the price, where a “hidden defect” (“vice cache”) results in the property being improper for the use for which it was meant or restricts its use to such an extent that the buyer would not have purchased the property or would have offered a lower price had he been aware of the defect. Examples are the discovery of termites, a prohibition to build on land which was sold as building land (in this latter example, the buyer can also invoke error as tainting his agreement).

### Leases

Real property can be rented under lease agreements. Leases are highly regulated by statute.

Residential leases are subject under law to minimum terms, maximum rent increases, a pre-emptive right accruing to the tenant giving a right to renewal of the lease, unless the owner wishes to sell or live in the building himself (or his close family).

Commercial leases are subject under law to extensive regulation as to term, automatic renewal rights (or payment in lieu of substantial eviction indemnification), limits to rent increases, etc. In France, these rights are so extensive that they are called “propriété commerciale”.

Rural leases are even more regulated: automatic renewal rights, pre-emptive rights, limits to rent increases, etc.

### **Zoning, Building Permits, etc.**

All building, from private residences to urban development projects, requires a prior permit issued by the local administration in the context of zoning rules and regulations, the building code and local ordinances. Land is classified as urban, developable land or protected land.