


compendium

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France

VATIER & ASSOCIÉS, FRANCE



VATIER & ASSOCIÉS

# France

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## Company Profile

**VATIER & ASSOCIÉS** is a 25-lawyer firm, including 12 partners, offering a broad range of legal services to French and international businesses, property companies, institutions, managers and the self-employed as well as private clients.

**VATIER & ASSOCIÉS** is an expanding firm, through the addition of lawyers chosen for their experience and acquisition of firms with strategic expertise, to build a multidisciplinary firm resolutely open to international affairs.

**VATIER & ASSOCIÉS** has an extensive network of international correspondents, selected for their competence, making it possible to construct high level transnational teams to respond to client needs.

**VATIER & ASSOCIÉS** acts in most areas of law affecting businesses and provides a broad spectrum of areas of practice in legal and tax matters.

The firm advises and accompanies businesses from their inception, through their development and expansion, as well as in the organisation of their legal, tax and employment environments.

**VATIER & ASSOCIÉS** has specialised teams dealing in bankruptcy, arbitration, corporate law and civil liability.

**VATIER & ASSOCIÉS** also deals in property, criminal law, commercial law and health services.

**VATIER & ASSOCIÉS** works with private businesses and institutions as well as public agencies and individuals in litigated and non-litigated matters and before all French jurisdictions.

**VATIER & ASSOCIÉS** offers a high level of competence in its various practice areas with a view to respond efficiently to the major needs of its clients. Its reputation is a guarantee of the quality of the work.

**VATIER & ASSOCIÉS** always lends an ear to the needs of its clients, proposing personal and relevant solutions, and assuring a transparency in the management of time and billing.

**VATIER & ASSOCIÉS** is particularly attached to the respect of the legal profession's ethical values by its teams, including a practice of strict professional secrecy and avoidance of conflicts of interest, necessary to ensure the legal security sought by its clients

### The principal areas of the firm's practice are

#### Arbitration

Acting as arbitrator, as counsel, implementation, preparation and follow-up of arbitration proceedings, working with experts.

Bâtonnier Bernard Vatier

#### Banking and stock markets

Banking and financing contracts, service agreements, banking regulations, regulation of credit facilities, stock market and banking litigation, debt collection, execution of judgments, bankruptcy claims.

Daniel Paquet

### Competition and consumer protection

Illicit competition, counterfeiting, copying, anti-trust, litigation before the Conseil de la Concurrence, advice as to marketing and advertising documents and strategy in connection with consumer protection laws and commercial practice, regulated sectors, comparative advertising, audits by the DGCCRF, CNIL compliance.

Bâtonnier Bernard Vatier

### Litigation

Before all courts and jurisdictions, in commercial and criminal cases, corporate and individual cases and in execution of judgments.

Bâtonnier Bernard Vatier

Daniel Paquet

Olivier Saumon

Marie Sylvie Vatier

Arnaud Moquin

Frederic Gourdon

François Hugonin

Montaine Guesdon Vennerie

Michel Gravé

Ludovic Gayral

Céline Roquelle Meyer

### Commercial Contracts

Negotiation and drafting of distribution, cooperation, agency, commercial agency, franchising, trademark and know-how licences, development, service, research contracts, general terms and conditions, industrial joint-ventures, litigation over commercial contracts.

Bâtonnier Bernard Vatier

Arnaud Moquin

Ann Creelman

M Frederic Gourdon

Michel Gravé

Olivier Saumon

Céline Roquelle Meyer

Montaine Guesdon Vennerie

Ludovic Gayral

### Corporate

Advice regarding company law, incorporation of companies, board and shareholder meetings, corporate secretarial, shareholder agreements and relations, joint ventures, special purpose vehicles, winding up, liquidations, disputes amongst shareholders, management packages and stock options.

Ann Creelman

Frederic Gourdon

Arnaud Moquin

Céline Roquelle Meyer

Montaine Guesdon Vennerie

## White Collar Crime

Criminal liability, financial misdemeanours, liability of managers, criminal procedures and defence of juridical persons, risk audit, employment law (entrave, harcèlement)

Bâtonnier Bernard Vatier

Olivier Saumon

Montaine Guesdon Vennerie

## Bankruptcy

Advising business in financial difficulty, preventive proceedings, bankruptcy proceedings, preparation of restructuring plans, relations with bankruptcy trustees, acquisition of bankrupt businesses, civil liability of managers and third parties, criminal liability of managers, auctions, arrangements with creditors.

Bâtonnier Bernard Vatier

Daniel Paquet

Frederic Gourdon

Ludovic Gayral

## Tax

Corporate tax, group taxation, taxation of property, optimisation of domestic and international tax strategies, taxation of individuals, tax planning, tax audits, tax litigation, tax rulings, transfer pricing, wealth tax.

François Hugonin

## Mergers & acquisitions

Negotiation of transactions, share sale and purchase agreements, representations and warranties, pre-acquisition due diligence, vendor's due diligence, financing agreements, mergers, hive-downs, joint ventures, acquisitions or spin-offs of branches of activity, acquisition or sale of business assets.

Ann Creelman

Arnaud Moquin

Frederic Gourdon

Céline Roquelle Meyer

## Institutions

Associations, foundations, organisation, use of resources, non profit organisations, institutional liability, donations and testamentary dispositions, patronage, medico-social regulations.

Bâtonnier Bernard Vatier

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Ann Creelman

Céline Roquelle Meyer

François Hugonin

## International investment and relations

Foreign investment in France, French investment abroad, relations with the Administration, international treaties, international taxation, transfer pricing.

Ann Creelman

François Hugonin

## Intellectual and industrial property

Trademarks, patents, designs and models, literary and artistic property, copyright, licence agreements, audiovisual production, musical production, counterfeiting.

Olivier Saumon

## Health sciences

Pharmaceutical, medical, medico-social, hygiene law, regulatory environment, social security, biotechnologies, medicines, cosmetics, medical equipment, creation and merger of professional structures, contracts, professional liability, distribution of health products and related liability.

Olivier Saumon

Céline Roquelle Meyer

## Property

Property transactions, construction contracts, property development, warranties and guarantees, commercial and residential leases, property leasebacks, management of rental property, mortgage-linked financing, judicial or voluntary auctions of property, rental disputes, construction disputes, taxation of property, urban development and planning, zoning, building permits.

Daniel Paquet

Bâtonnier Bernard Vatier

François Hugonin

Michel Gravé

## Employment

Employment contracts, management of individual employment relations, individual and collective dismissal procedures, restructuring plans, employment litigation before the Conseil des Prud'hommes, regulation of the workplace, employee representation, agreements as to work hours, management packages, company charters, profit sharing plans, social contributions, work-related accidents, URSSAF audits, collective employment relations, disputes with trade unions, litigation over elections for employee representatives.

Marie Sylvie Vatier

Montaine Guesdon Vennerie

Arnaud Moquin

Ann Creelman

## Public Service

Administrative contracts and litigation

Michel Gravé

## 1. Regulations and Rules

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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 organised under the decree 84-406 of May 30, 1984 and the arête 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.

## 2. Types of Companies

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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.

## 3. The Liability of Shareholders

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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.

## 4. Share Capital

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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.

## 5. 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	Majority of votes attached to shares present or represented
	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 the outstanding shares
	2nd call	no quorum	majority of votes cast
SA (1)	1st call	1/3	2/3 majority of votes attached to shares present or represented
	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).

## **6. Management**

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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'.

## **7. Remuneration of Management/Contracts between the company and its directors, managers and shareholders**

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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.

## **8. Minutes/Publications in legal gazettes/filing with the registry of commerce and companies**

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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.

## **9. Quoted Companies**

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France has not yet adopted formal rules of corporate governance, such as a requirement for independent directors, for quoted companies.

## 1. General notes

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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.

## 3. Significant developments

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The treatment of long term capital gains under corporate tax rules was reformed by the Finance Act for 2004, which has progressively reduced the long term capital gains taxation to a tax exemption since 2007. Such favourable tax treatment only addresses long term participations (held for more than two years). However, the disposal of shares in real estate companies is taxable at 33,33% for transactions occurring since 26 September 2007. The disposal of shares in quoted real estate companies is taxable at 16,5%.

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

Thin capitalisation rules have been amended with effect January 1st 2007. General rules remain unchanged. The share capital of the borrowing company must be entirely paid up. The deductible interest charge is capped every year on the basis of a rate published each quarter by the tax authorities. There are more stringent rules for thin-capitalised companies borrowing funds from affiliated companies. The deduction of the interest expense is capped for the fraction of the loan in excess (i) of 150% of the net equity and (ii) the fraction of the interest expense in excess of 25% of the operating profit.

## 4. Taxes on corporate income

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Corporate profits are taxed at a 33 1/3% rate. There is a reduced rate of 15% for companies the share capital of which is owned by individuals. The rate of 15% applies on the profit with a cap of 38.120 €. The ordinary rate is applicable on the profit in excess of 38.120 €.

## 5. Corporate residence/permanent establishment

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A company is generally deemed to be resident in its principal place of business or the registered offices. 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. Dividends covered by

the EU directive are paid or received without any withholding tax.

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 recognises 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).

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

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### **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. VAT paid by businesses is, with some exceptions, recoverable and deducted from the VAT charged to the end user on turnover and remitted to the tax administration. Starting January 1st 2008, there is an important modification in the calculation and the follow up of the quantum of deduction of VAT. This change mainly concerns banking institutions and insurance companies.

### **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 a SARL or a SCI (société civile immobilière) 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 in excess of 23.000 €. 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 (ranging from 0,715% to 5,09%).

### **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 assets).

For companies having a turnover in excess of 7.600.000 €, business tax is also calculated on the basis of the added value (sales minus cost of sales) generated by the company on a yearly basis. Such companies are subject to a minimum business tax liability equal to 1,5% of the added value.

## **7. Branch income**

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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. The profit after tax of a French branch of a foreign company is in theory subject to a domestic withholding tax. Such withholding tax is in general suppressed by applicable tax treaties. French branches of EU companies are not subject to any withholding tax on the profit after tax.

## 8. Income determination

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### 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.

Starting January 1st 2005, companies which are subject to IFRS regulations apply new accounting rules with respect to depreciation and amortisation of assets. Such rules provide for a depreciation method "per components" i.e. companies have to book and depreciate separately the principal components of tangible assets when such components (i) must be renewed frequently, (ii) have different uses or (iii) generate profits which have variations.

### Capital gains

Short term capital gains are those arising out of investments for which the holding period is less than two years. All other capital gains are long term. A special regime (see above in paragraph Significant developments) 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 subject, after deduction of long term capital losses, to a zero taxation since 2007.

The disposal of patents recorded as intangible assets and owned for more than two years is taxable at 15% (applicable since 26 September 2007. The previous rate of taxation was 33,33%. The lease of patents remains taxable at 15%.

### 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 of withholding tax.

### Foreign income

Income from foreign permanent establishments is exempt from French corporate tax. 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 are carried forward indefinitely.

Net operating losses can be carried forward without any time limitation, or can be carried back on the profit of the three preceding fiscal years.

### Payments to foreign affiliates

Dealings with foreign affiliates must be at arms length.

## 9. 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 subject to corporate income tax on the same fiscal year. Penalties can apply on termination of the Group taxation regime.

## 10. 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.

Starting January 1st, 2008, the tax relief for expenses devoted to research expenses (Crédit Impôt Recherche R&D tax relief) has been simplified and made more attractive. The following expenses are eligible to the tax relief: annual depreciation of tangible assets devoted to R&D, payroll expenses of personnel devoted to R&D, ancillary expenses, cost in relation to the registration and renewal of patents. The tax relief is equal to 30% of the R&D qualifying expenses capped to 100 Million €. The rate of the tax relief is 5% on R&D expenses in excess of 100 Million €. For instance, a company having incurred expenses for 120m € may claim for a tax relief of 31m €.

## 11. 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

Country	Dividends	Interest	Royalties
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.

## 12. Tax administration

### Returns

Corporate income tax returns are filed in April of each year, when the closing date of the fiscal year is December 31st. Otherwise, the corporate tax return has to be filed in the three months following the closing date of the fiscal year.

### Payment of tax

Corporate tax is paid in four equal estimated instalments, and a final fifth payment of any bal-

ance 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

## 13. Individual taxes

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### General note

Income tax regulations have been simplified by the finance bill for 2006. The maximum tax bracket is now capped to a taxation at the rate of 40% (presently 48,09%). In addition, for taxpayers who are subject to both personal income tax and wealth tax, a law dated August 1st 2007 offers a higher protection (tax shield). The tax burden (accumulation of personal income tax, local taxes and wealth tax) is capped to 50% of the income earned by the taxpayer during the previous year. The tax in excess of 50% is repaid to the taxpayer. As of 2006, personal income tax returns are to be filed on May 31st at the latest.

### 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, principally dealing with the permanent family home and the center of vital interests. Non residents of France are taxed at a minimum rate of 20% on their French source income, or 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 of 25,000 € are taxed at a rate of 18%, plus CRDS and CGS (see below) and a 2% tax, for a total of 29%. Interest is treated as regular income. Starting January 1st 2006, there is a new tax treatment on the capital gain deriving from the disposal of stocks. There is an abatement of one third on the taxable capital gain after six years of holding. Such treatment permits to have a full exemption after eight years of holding. The same tax treatment is applicable to entrepreneurs who sell their company. Such period of holding is to be computed as of January 1st, 2006. There is a partial taxation of the capital gain after five years of holding. Since 2006, there is a specific tax treatment for entrepreneurs who dispose of their shares in the company which they own and retire during the same period of twelve months. Such treatment permits a capital gain tax exemption provided they have owned shares in the company for a minimum of five years. The capital gain is however subject to social contributions at an overall rate of 11%.

### Capital losses

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

### Dividends

Are taxed after an abatement of 40%. Nevertheless, social contributions are due on 100% of the dividend received by the taxpayer. Starting January 1st 2008, the tax payer may claim for a domestic withholding at a rate of 18% applicable on the total amount of the dividend to be received (plus social contributions).

### Deductions

## Business deductions

Employees can opt for a flat 'business expense' 10% allowance against income, or itemise 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%).

## 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.)

Starting September 1st 2007, there is a tax credit on the interest expenses paid with respect to loans contracted for the acquisition of the principal residence. Such rule is only applicable to French tax residents. The tax credit can be claimed for a maximum period of five years, and is equal to 20% of the annual interest tax charge. The annual tax credit ranges from 3.750 € (single, widow, divorced) to 7.500 € (married couple).

## Other taxes

### Social security taxes

Contributions for social security, national health, unemployment insurance, and the like constitute an approximately 20% deduction 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 770,000 € (for 2008) at a progressive rate starting at 0.55% going up to 1.8% on the net assets (minus liabilities including income tax) valued on January 1 of each year. Exemptions are available for business assets under certain conditions. Non French tax residents are subject to wealth tax on the French real properties.

Starting January 1st, 2008, the wealth tax liability can be reduced if the tax payer makes investments in small and medium size companies. The reduction is capped to 50.000 €.

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 liberalised 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.

## **1. Registration with Government, authorities and permits**

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

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 percent
- age 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 neighbourhood 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 authorisation (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 defence, arms or explosives
- any foreign inward investment which might seriously threaten public health

Applications for prior authorisation 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 authorisation 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 authorisation 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 authorisation.

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, licences and patents, commercial agreements or service agreements which result in the effective transfer of control of a French company to a non resident.

## **2. Transfer of dividends, interest 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.

### **3. Repatriation procedures and restrictions**

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

### **4. Foreign personnel (permits, etc)**

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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, Iceland, Liechtenstein, Norway, Andorra, Monaco, or Algeria 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.

## 1. Introduction

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Any new Investors 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 as no lawyer is required before the Labor Courts and Labor Courts of appeals, employees tend to systematically challenge the legitimacy of their dismissal in order to obtain damages.

## 2. Employment Contracts

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### Classes

There are two main classes of work contracts: fixed term or indefinite term, both of which can be concluded for part time or full time positions.

Fixed term contracts can only be concluded under very strict conditions.

Fixed term and part time contracts are necessarily concluded in writing while full time 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.

In 2005 a new contract was created (Contrat Nouvelle embauche – CNE) which could be concluded only with businesses employing less than 20 employees. The only difference between CNE and other indefinite term contracts was that this contract could be terminated without cause during a maximum 2-year period of time.

The validity of this contract has been challenged on many occasions before the labour courts during the last 2 years. In a decision dated July 6th 2007, the Court of appeals of Paris finally decided that this contract was contrary to the “OIT” convention for the two year period of time during which an employee can be dismissed without a cause cannot be considered a reasonable delay with regards to the fact that during this period of time, the employee is deprived of all rights and guaranties as concerns dismissal.

As of today, CNE has not been withdrawn therefore, existing CNEs are still valid, however with regards to the latest case law of the Court of Appeals of Paris, their termination should be submitted to the legal dismissal proceeding otherwise, the dismissal shall be deemed illegitimate.

Cost of dismissal and wrongful dismissal

- 1/** Under French law, employers cannot unilaterally terminate a work contract without legitimate cause. Such cause can be either, economic, disciplinary or personal (eg: physical disability of an employee or professional insufficiency). If not grounded 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 would exempt a dismissed employee from work during the prior notice period would nonetheless have to pay such employee an indemnity equal to the amount of the remuneration the employee would have been entitled to, had he/ she worked his/her prior notice period.

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

The legal minimum is 1/10 of average gross monthly salary for each year of seniority + 1/15 of average monthly gross salary for each year of seniority over 10 This indemnity is doubled in case of a dismissal for economical reasons. However most collective bargaining agreements provide for more favourable severance indemnities.

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

- 4/ In addition to the payment of a severance indemnity, an employer can be condemned to pay damages to a former employee if the dismissal is judged illegitimate. If the employee dismissed is 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 damage suffered and established 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.

- 6/ In addition to the above, employers can be deemed liable for the termination of work contracts even when the initiative of the termination has been taken by the employee. This happens when an employee considers that his/her employer does not loyally executes its part of the contract and decides either to seek before the labour courts, the termination of the contract or decides to acknowledge the termination of the contract at its employer's tort.

In such case, the courts will appreciate whether or not the demand of the employee for a judiciary termination of the contract is grounded or whether or not the employer committed such breaches that the employee was legitimate to acknowledge the termination of the contract at its employer's torts.

Each time the answer to this question will be affirmative, the consequences for the employer will be pretty much the same as if it had illegitimately terminated the work contract (prior notice indemnity, severance indemnity, damages)

Employment Contracts for Directors; a special regime?

Directors can also be employees of their companies provided that (i) their work contract was 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 work in under the supervision of an employer or an officer of the company (iv) they receive a specific remuneration for their specific duties as employee 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 Directors comes to an end, however, their employment contract becomes effective again.

### **3. Employee representatives and union representation**

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#### **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 Collective Bargaining Agreements.

At the company level, trade union 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 organisation of the business (e.g: acquisitions, disposals, mergers which might affect the work force).

#### **When does 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 organise the elections of employees' 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 organise 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 employees' delegate.

#### **Rights and Privileges of a Labor Union Representation inside a Company**

Union representatives, Employees' delegates and WC members are allotted a fixed number of their working hours to fulfil their duties as employees' representatives. In the fulfilment of their duties, employees representatives are granted access to the entire work place.

Moreover, French law grants the employees' representatives and union representatives a specific protection against dismissals, for no dismissal can be pronounced without the prior authorization of the Labor Authorities. 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.

### **4. Collective bargaining agreements (CBAs). Other Agreements (National, regional, provincial or company level...)**

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#### **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.

## **5. Wages and other types of compensation (Wages, Social Security contributions, remuneration in kind, insurance policies, pension plans...)**

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### **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 2008**

Except where a CBA provides for a higher minimum salary, the statutory minimum salary to be paid to an employee is, as from July 1<sup>st</sup> 2007 of 8,44 Euros / Hour (i.e 1.280,07 Euros/month for a full time job.).

### **Cost of Overtime Hours**

Legal working time in France is limited to 35 hours a week or 1607 hours a year or 218 days a year.

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 employee work must obtain the prior authorization of the Labor authorities.

Where the applicable CBA provides so, employees can be allowed, under specific conditions and on a voluntary basis only, to work overtime hours in excess to the annual credit allotted to the employer without obtaining a prior authorization of the Labor authorities. The cost of such voluntary overtime hours is defined by the applicable CBA.

Where the applicable CBA does not provide otherwise, payment of the first 8 overtime hours is increased by 25% and payment of the following overtime hours is increased by 50%.

Since October 1<sup>st</sup> 2007, payment of overtime hours has been de-taxed for both employers and employees.

However, to benefit from these new favourable tax provisions the employer must implement in the company a very strict and detailed control of the working time of its employees.

Overtime hours can also give rise to a right to compensatory rest time.

## **6. Employment regulations**

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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.

## **7. Social security**

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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 secu-

ity 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 declaration can be made by filing and returning a form to the Tax authorities or on the internet.

### **Social Security Cost for the 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 to the personal use the employee can make of them.

## **7. Health and safety**

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### **Essential duties of the Employer**

Companies 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.

Companies 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 Social Security 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.

## **8. Contracting and outsourcing of work or services**

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Resort to temporary workers is strictly regulated under French law, in order to favour 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 agencies 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.

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, 3/4, 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 «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.

- 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:

- 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 voidance of the sale, and only if the error is in excess of 7/12ths;
  - "violence": physical or mental violence can also void a sale.
- The buyer may also petition for voidance 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 wish-

es 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.



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