Establishing a business in France

SOULIER AARPI

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

The French legal system is based on civil law.

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

The main forms of business vehicle used in France are:

- Classic joint-stock company (*société anonyme à conseil d'administration*) (SA).
- Simplified joint-stock company (*société par actions simplifiée*) (SAS).
- Limited liability company (*société à responsabilité limitée*) (SARL).

These vehicles are created for a commercial purpose and governed by the French Commercial Code and the French Civil Code.

The *Societas Europaea* is not commonly used in France.

SA

Advantages. An SA can make a public offering and be admitted to a regulated market. The SA is suitable for large corporations.

Disadvantages. The disadvantages are that it has significant organisational requirements.

Formalities. It is necessary to register the SA with the Trade Registry (*Registre du Commerce et des Sociétés*) (*see Question 8*). Separate accounts must be kept and annual reports filed each year with the Trade Registry (*see Question 9*).

There are certain formalities which only apply to a listed SA:

- An admission of securities to trading on a regulated market must be submitted to the Financial Markets Authority (*Autorité des Marchés Financiers*) (AMF) (*see box, The regulatory authorities*).
- When admission is obtained:
  - "regulated information" (mainly financial and accounting information) concerning the company must be periodically filed with the AMF;
  - specific operations concerning the company (for example, crossing of shareholding thresholds, and conclusion of shareholders' agreements) must be disclosed to the AMF.

Rights attaching to the shares. Shareholders have rights to receive dividends, vote in general meetings and to have access to corporate information.

Restrictions. SAs have a minimum of seven members, and a minimum share capital of EUR37,000. Public offerings are allowed. Shares can be issued for non-cash contributions, except for contributions of services or technical knowledge (*apports en industrie*). The management consists of a board of three to 18 members. It is mandatory to have statutory auditors. Transfers of shares are freely determined by the bye-laws.

Liabilities. The liability of shareholders for the company's debts is limited to the size of their contribution.

SAS

Advantages. The SAS has a flexible organisational structure, and is suitable for holding and foreign companies.

Disadvantages. A SAS cannot be admitted to a regulated market.

Formalities. It is necessary to register the SAS with the Trade Registry (*see Question 8*). Separate accounts must be kept and annual reports filed each year with the Trade Registry (*see Question 9*).

Rights attaching to the shares. Shareholders have rights to receive dividends, vote in general meetings and to have access to corporate information.

Restrictions. The number of members and share capital can be freely determined by the bye-laws. Public offerings are not allowed. Shares can be issued for non-cash contributions, including contributions of services or technical knowledge. The management consists of a president, who can be a natural person or legal entity, and possibly a specific board or committee.

It is mandatory to have statutory auditors when either:

- The SAS controls or is controlled by one or several companies.
- Two of the three following thresholds are reached:
  - turnover (not including VAT): EUR2 million;
  - total balance sheet: EUR1 million;
  - 20 employees.

Transfers of shares are freely determined by the bye-laws.

Liabilities. See above, *SA: Liabilities.*

SARL

Advantages. A SARL is easy to incorporate and operate.

Disadvantages. A SARL has a maximum of 100 members and is suitable only for small businesses.

Formalities. It is necessary to register the SARL with the Trade Registry (*see Question 8*). Separate accounts must be kept and annual reports filed each year with the Trade Registry (*see Question 9*).

Rights attaching to the shares. Shareholders have rights to receive dividends, vote in general meetings and to have access to corporate information.

Restrictions. A SARL has a maximum of 100 members. Its share capital can be freely determined by the bye-laws. Public offerings are not allowed. Shares can be issued for non-cash contributions, including contributions of services or technical knowledge. The management consists of a manager, who must be a natural person. It is mandatory to have statutory auditors if certain conditions are met. Statutory auditors must be appointed when two of the following thresholds are reached:

- Turnover (not including VAT): EUR3.1 million.
- Total balance sheet: EUR1.55 million.
- 50 employees.

Transfers of shares are restricted and subject to the agreement of the majority of the shareholders representing at least one-half of the shares, unless the bye-laws stipulate a greater majority.

Liabilities. See above, *SA: Liabilities.*

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

The most common options for foreign companies establishing a business presence in France are:

- Setting up a liaison office (*bureau de liaison*).
- Incorporating a subsidiary (*filiale*).
- Setting up a local branch (*succursale*).

Liaison office

This is the corporate vehicle most commonly used by foreign investors wishing to invest in France on a short-term basis. A liaison office is an establishment located in France, the purpose of which is limited to promotion, advertising and seeking out business opportunities for the foreign parent company. A liaison office is not separate from its parent company.

Main advantages. A liaison office is:

- Not subject to French accounting requirements (*see Question 9*).
- Exempt from corporate income tax, VAT and territorial economic contribution (TEC) (*see Question 26*).

Main disadvantages. A liaison office:

- Cannot conduct commercial operations, otherwise the office may be reclassified as a permanent establishment, which will make it liable to French tax (*see Question 27*).
- Is not a separate legal entity, which means that it cannot enter into agreements.

Incorporating a subsidiary

This is the corporate vehicle most commonly used by foreign investors wishing to invest in France on a long-term basis. A subsidiary is an autonomous legal entity, the purpose of which may be freely determined by the bye-laws.

Main advantages. A subsidiary is:

- A separate legal entity, which means that the parent company cannot be held liable for the debts of the subsidiary.
- Allowed to conduct commercial operations.

Main disadvantages. A subsidiary is:

- Subject to French accounting requirements and French tax (*see Questions 9 and 27*).
- A separate legal entity, which means that its losses cannot be offset against the parent company's profits, unless a specific tax regime provides otherwise.

Setting up a local branch

A branch falls between a subsidiary and a liaison office: it is a permanent establishment which may conduct commercial activities and deal with third parties, but is not distinct from its parent company. It is the corporate vehicle most commonly used by foreign investors wishing to invest in France on a long-term basis and keep an eye on day-to-day management, since the branch has no independent legal personality.

Main advantages. A branch is:

- Not a separate legal entity, which means that the subsidiary's losses can be offset against the parent company's profits.
- Allowed to conduct commercial operations.

Main disadvantages. A branch is:

- Subject to French accounting requirements and French tax law as a permanent establishment (*see Questions 9 and 27*).
- Not a separate legal entity, which means that the parent company can be held liable for the debts of the subsidiary.

4. How can an overseas company trade directly in your jurisdiction?

An overseas company can trade directly in France through:

- **A franchise agreement.** A franchise agreement does not have to be disclosed to third parties. However, IP rights licences become enforceable against third parties only when registered with the French National Institute of Industrial Property (*Institut National de la Propriété Industrielle*) (INPI). This registration requires the disclosure of basic information regarding the parties and terms and conditions of the licence.
- **A commercial agency agreement.** A commercial agreement does not have to be disclosed to third parties. However, a commercial agent established in France must be registered with the Trade Registry, which requires the disclosure of the existence of the agreement (but not its terms and conditions).
- **A distribution agreement.** A distribution agreement does not have to be disclosed to third parties.
- **A local branch.** Information regarding the parent company (the parent company's bye-laws and a recent extract from relevant Registry) and the local branch must be disclosed to third parties. A local branch is governed by French law (*see Question 3, Setting up a local branch*).

There are no licensing requirements for foreign companies wishing to enter into a franchise, a commercial agency or a distribution agreement in France. A local branch might face licensing requirements if it conducts regulated activities (*see Question 19*).

5. What are the formalities for setting up a partnership?

There exist two types of partnerships in France:

- General partnerships (*sociétés en nom collectif*) (SNCs). These are governed by Article L.210-1, L.210-2 and L.221-1 to L.221-17 of the French Commercial Code. The process for setting up an SNC is similar to that of a SAS (*see Question 8*). Assets are held by the SNC, which has a separate legal personality. SNC

partners are indefinitely, jointly and severally liable for the debts of the company. Unless the SNC has opted for a corporate tax regime, it is a tax-transparent entity: each partner pays tax on its profit shares and no tax is due on the SNC profits.

- Limited liability partnerships (LLPs). These can take the form of the *société en commandite simple* (SCS) and *société en commandite par actions* (SCA). These forms are similar and rarely used. LLPs are governed by Articles L.222-1 to L.222-12 and L.226-1 to L.226-14 of the French Commercial Code. The setting up process for LLPs is similar to that of a SAS (*see Question 8*). Assets are held by the company, which has a separate legal personality. Some partners (*commandités*) are indefinitely, jointly and severally liable for the debts of the company, whereas the liability of others (*commanditaires*) is limited to the size of their contribution. Unless the SCS has opted for a corporate tax regime, each *commandité* pays tax on its profit shares and the corporate tax is due on the SCS profits corresponding to the *commanditaires* shares only. A SCA is submitted to the corporate tax regime.

6. What are the formalities for setting up a joint venture?

International joint ventures (JVs) between a foreign company and a local business are common in France. They may be structured as:

- **SAS.** This is the most popular form of JV due to its flexibility (*see Question 8*).
- ***Société en participation* (SEP).** This is an unincorporated body, and therefore well suited to confidential short-term projects, such as investment pools and inter-company co-operation. The SEP is rarely used, given the risks for its members; when the existence of the SEP is not revealed to third parties, members who have acted as partners in relation to third parties may be held indefinitely liable for its debts. They are jointly and severally liable if the SEP has a commercial activity.
- **Co-operative arrangements.** These are written agreements under which a distributor or a service provider provides to a supplier (when the supplier's products and services are sold to consumers or in order to resell such products and services to professionals), specific services, which are not within the scope of the obligations of purchase and sale, with a view to encouraging their commercialisation (*Article L.441-7, French Commercial Code*). These agreements are strictly regulated by the French Commercial Code and the French and EU competition rules.
- **Joint-venture agreements.** These are usually composed of:
  - a framework partnership agreement, which defines the objectives, terms and conditions of the co-operation;
  - several "satellite" agreements, which determine the implementing measures.

These agreements are strictly regulated by the French and EU competition rules.

7. Are trusts available in your jurisdiction?

The *fiducie* is the equivalent in France to the Anglo-Saxon trust, under which a settlor (*constituant*) transfers assets, for a limited period of time (up to 99 years), to a trust (*patrimoine fiduciaire*), managed by a trustee (*fiduciaire*), for the benefit of a beneficiary.

The *fiducie* is created by law or by contract, for asset management (*fiducie-gestion*) or guarantee purposes (*fiducie-sûreté*) only. It must then be registered within one month with the French tax authorities and filed with the National Registry of Trust (*Registre National des Fiducies*).

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

Regulatory framework

The corporate vehicle most commonly used by foreign companies to establish a business in France is the simplified joint-stock company (*société par actions simplifiée*) (SAS) because of its flexibility.

It is governed by:

- Articles L.210-1 to L.210-9, L.227-1 to L.227-20, L.228-1 to L.228-106, L.232-1 to L.237-31 and L.244-1 to L.244-4 of the French Commercial Code.
- Articles 1832 to 1844-7 of the French Civil Code.

The following regularly issue non-binding guidance and best practice codes that apply to businesses:

- National Association of Joint-Stock Companies (*Association Nationale des Sociétés par Actions*) (ANSA).
- AMF (*see box, The regulatory authorities*).
- The National Institute of Statutory Auditors (*Compagnie Nationale des Commissaires aux Comptes*) (CNCC).

The main relevant regulatory authority involved in the establishment (registration and incorporation) of a business is the Trade Registry (*see box, The regulatory authorities*).

Tailor-made or shelf company

French SASs are tailor-made. Subject to a few restrictions (*see Question 2*), the bye-laws can freely determine the nature and duties of corporate bodies (such as the board of directors), conditions under which corporate decisions are taken, and rules relating to share transfers.

Shelf companies are rarely used in France. Due to in-built costs (such as minimum filing requirements with the Trade Registry and the Tax Administration), companies are usually incorporated only when needed.

Formation process

French SASs must be registered with the Trade Registry, by filing the following documents:

- Bye-laws including, among others:
  - the appointment of the first president;
  - the appointment of the first statutory auditors (if auditors are required (*see Question 2, SAS*)).
- For cash contributions: certificates delivered by the bank, confirming the receipt of the funds.
- For contributions-in-kind: report from the contribution auditor certifying that the valuation of the contributions-in-kind corresponds at least to the amount of the share capital they represent.
- Proof of address for the registered office (for example, the lease agreement).
- Copy of an announcement in a legal newspaper. This announcement usually costs between EUR200 and EUR300.
- In relation to managers:

- natural persons: copy of ID and sworn statement that he or she has not been convicted of a criminal offence, or copy of a residency permit for non-EU members residing in France;
- legal entities: extract from relevant Registry, copy of ID or residency permit of the legal and permanent representatives, copy of bye-laws translated in French certified by the legal representative and any official document justifying its legal existence translated into French (*see Question 20*).

- For statutory auditors (if any): copy of letters of acceptance.
- Administrative form "M0": the company's main characteristics.
- For regulated activities: copy of relevant diplomas, authorisations, and so on required to conduct regulated activities (*see Question 19*).

These documents cannot be filed electronically.

The registration process takes about one week and costs less than EUR90, which is payable to the Trade Registry. At the end of it, the company is incorporated.

There are no naming requirements or restrictions, as long as:

- Third parties' rights (resulting from a trade mark, a commercial name or a corporate name) are not violated.
- The name does not evoke a regulated activity or a specific status (for example, it suggests it is a bank or foundation).

If a shelf company is being used, the following documents must be filed with the Trade Registry:

- Minutes of the shareholders' meeting deciding the name change.
- Updated bye-laws.
- Copy of an announcement in a legal newspaper of the change of name (this announcement usually costs around EUR50).
- Administrative form "M2", containing the company's main characteristics and amendments to be registered.

This process takes about one week and costs around EUR200, payable to the Trade Registry.

Company constitution

The main documents used to incorporate a French SAS are the bye-laws (*see above, Formation process*). Separate shareholders' agreements can be entered into but are not mandatory.

The bye-laws can be established either by private deed (not necessarily drawn up by a lawyer) or by notarial deed. The notarial form is mandatory when land registration is required (for example, in cases where buildings are contributed to form part of the company's assets).

Their content is set out by the French Commercial Code, which provides that they must include the following information:

- Legal form of the company.
- Duration of the company's existence (which cannot exceed 99 years).
- Corporate name.
- Registered office.
- Purpose of the company.
- Amount of the registered capital.

Other provisions which are not mandatory are required for practical reasons, such as the procedures for:

- Appointment and termination of managers.
- Transfer of shares.
- Shareholders' meetings (quorum and rules concerning what constitutes a majority, and so on).

There are no official model documents. Several websites propose templates for bye-laws but legal assistance is highly recommended.

The bye-laws are public and are available on the Trade Registry website (*see box, The regulatory authorities*).

FINANCIAL REPORTING

9. What financial reports must the company submit each year?

Where a company has been incorporated in France, or where an overseas company has a branch registered in France, the branch accounts are subject to French accounting requirements (*see Question 3*) and must comply with French law as regards financial reporting. This includes:

- The keeping of separate accounting books.
- The filing of the parent company's annual accounts each year with the French Trade Registry, with a French translation.

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

The French Commercial Code provides that all acts and documents coming from a company which are aimed at third parties (including the business website) must include identification details, such as:

- Name.
- Corporate form.
- Share capital amount.
- Address.
- Registration number.

There are specific matters, listed in Article L.441-3 of the French Commercial Code, which must be added on invoices for tax purposes, and additional issues that must be added if the business conducted is a regulated activity.

French companies are required to display their name at their premises for practical reasons. They do not have to put an abbreviation of their corporate form after the company name, except in acts and documents aimed at third parties (including invoices).

11. How do companies execute contracts or deeds?

Contracts can be oral, unless a written form is required (for example, for co-operative arrangements (*see Question 6*)).

Written agreements can be signed by the parties (legal entities are represented by their legal representatives or any other duly authorised person) without formalities or witnesses, unless:

- A notarial deed is required (for example, for real estate contracts).
- Publication formalities are imposed (for example, for certain transfers of shares).

MEMBERSHIP

12. Are there any restrictions on the minimum and maximum number of members?

There are restrictions on the minimum and maximum number of members, depending on the corporate form (*see Question 2*).

The main single member companies are:

- The *entreprise unipersonnelle à responsabilité limitée* (EURL), which is a SARL with a sole shareholder.
- The *société par actions simplifiée unipersonnelle* (SASU), which is a SAS with a sole shareholder.

They are governed by the rules that apply to SARLs and SASs respectively, subject to the necessary modifications.

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

There are minimum capital requirements, depending on the corporate form (*see Question 2*).

14. Are there restrictions on the transfer of shares in private companies?

There are restrictions on the transfer of shares. These can be contained in the:

- Applicable law, depending on the corporate form (*see Question 2*). For example:
  - the shareholders' prior agreement is required when shares of a SARL are to be transferred to a third party;
  - shares representing contributions of services or technical knowledge (*apports en industrie*) cannot be transferred.
- The company's bye-laws or shareholders' agreement. These usually provide pre-emption rights and inalienability clauses.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given?

There are the following protections for minority shareholders:

- Judicial protective instruments. The following protections exist for minority shareholders:
  - the appointment of an independent auditor (*expertise de gestion*). One or more shareholders representing a fraction of the share capital, which depends on the legal form, may submit written questions to the management on the company's management operations and also, if appropriate, those of controlled companies. If no reply is received within a month, or if the information contained in the reply is unsatisfactory, the shareholders can make an ex parte application to a judge sitting in emergency interim proceedings for an order appointing one or more experts to submit a report on specific management transactions;
  - claim for judicial expertise (*expertise judiciaire*). Any shareholder, by way of a petition or a summary procedure, can request an order for legally permissible preparatory inquiries, if there is a legitimate reason to preserve or establish, before a legal proceeding, the evidence of the facts on which the resolution of the dispute depends;
  - request the production of legal documentation (*injonction de faire*). Shareholders who do not obtain required legal documentation (for example, the management report and annual accounts before the annual shareholders' meeting) can ask the presiding judge, ruling on a summary basis, to either order the company's managers to produce them or to designate a representative responsible for producing them;
  - a court challenge based on abusive behaviour of the majority shareholders (*abus de majorité*). A challenge can be brought, for example, in a case of excessive remuneration of managers.
- Specific protection in listed companies. In listed companies, minority shareholders can:
  - form shareholders' associations. In companies whose shares are admitted to trading on a regulated stock market, shareholders whose shares have been registered for at least two years and who hold at least 5% of the voting rights can form associations to represent their interests within the company;
  - claim for a fairness opinion (*attestation d'équité*). When control procedures of complex transactions only provide partial information, the Board can ask an independent expert to provide an opinion on the fairness of those transactions.

Additional protections may be provided by the bye-laws or shareholders' agreements.

The liability of shareholders is limited to the value of their shares (*see Question 2*).

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Do quorum or voting rights need to be proportionate to shareholdings?

There are statutory restrictions on quorum and voting requirements at shareholder meetings, which depend on the legal form of the company:

- **SAS.** There are no statutory restrictions on quorum or voting requirements at shareholder meetings. They can be freely determined by the bye-laws.
- **SA.** Statutory restrictions on quorum and voting requirements at shareholder meetings are provided by Article L.225-96 s. of the French Commercial Code and depend on the type of decisions. For example:
  - an extraordinary shareholders meeting (AGE) can validly deliberate, when first convened, only if present or represented shareholders hold at least 25% of the voting shares and, if reconvened, 20% of the voting shares. If they are not present or represented, the second meeting can be postponed to a date not later than two months after the date originally scheduled. The AGE is the only shareholders meeting able to amend the bye-laws. Consequently, decisions relating to a name change or a share capital increase or decrease (for example) can only be taken by the AGE;
  - an ordinary shareholders meeting (AGO) can validly deliberate, when first convened, only if present or represented shareholders hold at least 20% of the voting shares (otherwise no quorum is required). The AGO can take other decisions (for example, change of managers or approval of annual accounts).

Bye-laws of companies which do not make a public offering can impose higher quorum and voting requirements.

- **SARL.** Statutory restrictions on quorum and voting requirements at shareholder meetings are provided by Article L.223-30 of the French Commercial Code and depend on the type of decisions. The bye-laws may require higher quorum or voting requirements. No quorum or voting requirements exist for SARLs incorporated before 3 August 2005. Otherwise, an AGE can validly deliberate when first convened only if present or represented shareholders hold at least 25% of the voting shares and, if reconvened, 20% of the voting shares. No quorum exists for AGOs.

Quorum or voting rights need to be proportionate to shareholdings in SAs and SARLs only.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?

Voting majorities required by law depend on the legal form of the company:

- **SAS.** There are no specific voting majorities required by law, except those listed in Articles L.225-147 and L.227-19 of the French Commercial Code (adoption or amendment of certain clauses of the bye-laws) and Article 1836 of the French Civil Code, according to which the commitments of a shareholder may not be increased without his consent. Other majority requirements (for example, share capital increases or modalities or appointment and removal of directors) may be freely determined by the bye-laws.
- **SA and SARL.** Specific voting majorities are provided by the French Commercial Code and depend on the type of decisions. In relation to SAs:
  - AGEs (*see Question 16*) rule on a majority of two-thirds of the votes held by present or represented shareholders;
  - AGOs (*see Question 16*) rule on a majority of the votes held by present or represented shareholders.

  Articles L.225-245 and L.227-3 of the French Commercial Code list exceptions to these rules (for example, conversion into a SNC or a SAS requires shareholders' unanimous agreement).

  In relation to SARLs:
  - decisions in AGOs are passed by one or more members representing more than one-half the company's shares. If this majority is not obtained then, in the absence of rules to the contrary in the bye-laws, shareholders are summoned to a second meeting and decisions are passed by a majority of the votes cast, irrespective of the number of parties voting;
  - in SARLs incorporated before 3 August 2005, decisions in AGEs are passed by one or more shareholders representing at least 75% of the company's shares. Otherwise, decisions in AGEs are passed by one or more shareholders representing two-thirds of the company's shares, it being specified that the bye-laws may require a higher majority (but not unanimity).

  Articles L.223-14, L.233-25, L.223-30, L.223-43 and L.227-3 of the French Commercial Code list exceptions to these rules, for example:
  - conversion into a SNC or a SAS requires shareholders' unanimous agreement; and
  - transfers of shares to third parties require the prior approval of the majority of the shareholders representing at least one-half of the shares, unless the bye-laws stipulate a higher majority.

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

Voting majorities required by law may be disapplied to protect minority shareholders through multiple voting rights, voting caps or class rights. The form this will take will depend on the company's legal form.

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

Establishing a business in certain industry sectors will usually require administrative agreements or specific diplomas. These industry sectors include insurance, banking and credit institutions, portfolio management for third parties, retirement homes, pharmacy, manufacturing, importation, exportation and distribution of pharmaceutical products, and transportation.

Banking and credit institutions must obtain prior approval from the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*) (ACP), which is delivered after ascertaining that they have fulfilled the following criteria:

- Legal form appropriate to the activity.
- Minimum paid-up capital.
- Programme of operations and technical and financial resources.
- Identity and suitability of shareholders and, where applicable, their guarantors.
- Headquarters located in the same national territory as the registered office.
- Effective direction of business policy by at least two fit and proper persons.
- Assets which exceed liabilities by an amount at least equal to the required minimum capital.

Portfolio management companies must obtain prior approval from the AMF (*see box, The regulatory authorities*), which is delivered after ascertaining that they have fulfilled the following criteria:

- Minimum paid-up capital.
- Programme of operations.
- Quality of shareholders.
- Registered office in France.
- Effective direction of business policy by at least two fit and proper persons.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders?

There are restrictions on foreign investments, which depend on:

- The type of investment. Restrictions on foreign investments only apply in the cases of:

- direct investment, for example, incorporation of a French company by a foreign company or a non-resident natural person;
- indirect investment, defined as any transaction completed abroad, resulting in a change of control of a non-resident company holding shares or voting rights in a French company, in which more than 33.33% of the share capital and voting rights are held by foreign companies or non-resident natural persons).

- The sector concerned: prior authorisation is required for sensitive sectors listed in Article L.151-3 of the French Monetary and Financial Code (for example, private security services). Otherwise, a simple declaration is sufficient; there are specific cases of exemption, which usually concern transactions completed in French companies already held by foreign companies or non-resident natural persons.
- The nationality of the investor: EU/EEA or non-EU/EEA. Trigger points for prior authorisation are lower for EU/EEA members than for non-EU/EEA members (controlling interest versus 33.33% of equity or voting rights), as well as listed sectors (for example, encryption/decryption technologies and services activities require prior authorisation for non-EU/EEA members).

21. Are there any exchange control or currency regulations?

Credit institutions must declare or communicate to the French Tax Administration, the *Banque de France*, or the Ministry of Economy, for tax and statistical purposes:

- Transfers exceeding EUR10,000.
- Certain transactions (*see Question 22*).
- Accounts held offshore.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

Real estate acquisitions by foreign investors exceeding EUR1.5 million must be declared to the Ministry of Economy.

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

There are the following restrictions on the appointment of directors:

- **Nature.** SARLs cannot be managed by legal entities (*see Question 2*).
- **Age.** For all corporate forms, non-emancipated minors and adults in respect of whom a guardian has been appointed are excluded. Age limits apply to directors of SAs: unless otherwise stipulated in the bye-laws, the number of Board members over the age of 70 must not exceed one-third of the total serving members.
- **Nationality.** Unless they are exempted by specific agreement, non-Europeans must hold a residence card if they reside in France. Otherwise, a prior declaration must be filed with the local authorities (*Préfecture*).
- **Incompatibilities.** Lawyers, notaries, statutory auditors, and accountants cannot generally hold a corporate office while acting for the company in their professional role.
- **Limitations.** There are limits on the:
  - total number of directorship holdings in SAs: no natural persons can concurrently hold more than five directorships in French SAs (excluding controlled companies); and
  - concurrent holdings of an employment contract and a corporate office: the number of directors bound to a company by a contract of employment must not exceed one-third of the serving directors.
- **Prohibitions.** A prohibition on holding an office within a company can be an additional penalty for a felony or a misdemeanour or result from bankruptcy.
- **Other requirements.** The following other requirements apply:
  - gender quotas are applicable in listed SAs and large corporations: the proportion of directors of each gender cannot be lower than 40%; this threshold must be reached by the end of the first ordinary shareholders' meeting following 1 January 2017;
  - specific diplomas might be needed for regulated industries (*see Question 19*).

BOARD COMPOSITION

24. What are the legal requirements for the composition of a company's board of directors?

Structure

The legal requirements for the composition of a company's board of directors depend on its legal form: it is not regulated in SASs, and strictly regulated in SAs.

SAs can be managed either by:

- A single Board headed by a President, who may also act as General Manager.
- A two-tiered board structure, composed of a Supervisory Board and a Directorate. This form is rarely used.

Number of directors or members

SAs must have a board of three to 18 members. A SAS must have a President, and may have a Board of Directors, in which case no minimum or maximum number is required.

In the case of a two-tiered board structure:

- The number of members of the Directorate is between two and five. In companies with a share capital of less than EUR150,000, the functions conferred on the Directorate can be exercised by a single person.
- The number of members of the Supervisory Board is between three and 18.

Employees' representation

Employees have a statutory right to board representation in listed SAs and large corporations only. Large corporations are SAs and SCAs that both:

- Employ, as at the close of two consecutive financial years, either:
  - at least 5,000 permanent employees within the company and its direct or indirect subsidiaries that have their registered offices located in French territory; or
  - at least 10,000 permanent employees within the company and its direct or indirect subsidiaries, which have their registered offices located in French territory or abroad.

- Have the obligation to set up a works council under Article L.2322-1 of the French Labour Code (that is, companies that have employed a minimum of 50 employees during 12 months (whether consecutive or not) over the last three years).

REREGISTERING AS A PUBLIC COMPANY

25. What are the requirements for a business to reregister as a public company?

Membership

Among the main legal forms, only the SA allows public offering and admission to a regulated market (*see Question 2*). The minimum and maximum number of members do not differ from the general requirements set out in *Question 2*, but in the case of a two-tiered board structure, the maximum number of members of the Directorate can be increased to seven (*see Question 24, Number of directors or members*).

Share capital

The minimum share capital is EUR37,000. The rules for admission on a regulated market include the following:

- Minimum distribution: at least 25% of capital or 5% if this represents at least EUR5 million.
- Accounting track-record: three years of audited accounts. If the financial year closed more than nine months before the date of the admission to listing, the issuer must have published or filed semi-annual accounts.

There are no net asset requirements.

TAX

26. What main taxes are businesses subject to in your jurisdiction?

Corporate income tax

The following are payable:

- **Corporate income tax (CIT).** The standard rate is 33 1/3% on the net profit earned in France by companies. The taxation of French companies is based on a territorial principle (*see Question 27*). Groups are allowed to opt for a tax consolidation regime.
- **Additional contribution to CIT.** A social security surtax of 3.3% is assessed on the CIT. This surtax is imposed on the portion of CIT due that exceeds EUR763,000, before offsetting tax credits granted under applicable tax treaties.

  This surtax does not apply to companies whose annual turnover is lower than EUR7.63 million if at least 75% of the company is owned by individuals or by companies that themselves satisfy these conditions.

  Members of consolidated groups must take into account the global turnover of the group to determine whether they reach the EUR7.63 million threshold.

  A temporary additional surtax of 10.7% is assessed on the CIT for companies with a turnover exceeding EUR250 million, for financial years ending from 31 December 2013 to 30 December 2015.
- **Administration.** Companies must file a tax return within three months following the end of their financial year. CIT is pre-paid in four instalments, for example, for a financial year ending on 31 December, the company must pay the instalments on 15 March, 15 June, 15 September, and 15 December. The balance of CIT is due by 15 May of the following year.

VAT

VAT is a general consumption tax levied on all goods supplied and services provided in France. Liability to VAT is determined according to the type of transactions or products concerned, regardless of the personal situation of the liable person or customer. Effective from 1 January 2014, the applicable VAT rates are as follows:

- Standard rate: 20%.
- Intermediary rate: 10%.
- Reduced rate: 5.5%.
- Super reduced rate: 2.1%.

Territorial economic contribution (TEC)

This local contribution is made up of two elements:

- Corporate real estate contribution (*cotisation foncière des entreprises*) (CFE). The CFE base is comprised of the rental value of property tax in France, excluding property exempt from property tax on developed land which the taxpayer used, for business purposes, during the reference period.
- Corporate added value contribution (*cotisation sur la valeur ajoutée*) (CVAE). The CVAE is due on the added value generated by the company.

TEC is due from persons or entities exercising a professional activity in France. TEC is capped at 3% of the added value.

Registration duty

Certain transactions involving shares in France are subject to registration duties, the rate of which depends on the nature of the shares:

- 0.1%: for shares classified as *actions* (that is, shares of a French SA, SCA or SAS).
- 3%: for shares classified as *parts sociales* (that is, shares of any French company other than SA, SCA and SAS).
- 5%: for transfers of ownership interests in companies investing predominantly in real property.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

Tax resident

All EU countries except France tax worldwide profits. In France, only profits made by companies operated in France are liable to CIT, whatever their nationality. This means that profits made by a French company in businesses operated in countries other than France are not liable to CIT. Similarly, a foreign company is liable to French corporation tax only on the profits made from businesses it operates in France.

"Company operated in France" means a company which carries on a regular business in France, whether through:

- An autonomous establishment.
- If there is no such establishment, through dependent representatives or as part of operations forming a complete business cycle, whatever the number of employees.

Non-tax resident

A non-tax resident business is not liable to CIT (*see above, Tax resident*).

28. What is the tax position when profits are remitted abroad?

Taxation of dividends

Dividends are subject to:

- 30% withholding tax on dividends paid to non-residents (subject to the application of tax treaties).
- 75% withholding tax for distributed profits into unco-operative states (tax havens).

Dividends are, however, exempted from withholding tax if, among other conditions, the recipient has been holding 10% or more of the shares of the subsidiary for at least two years (under Directive 90/435/EEC on the taxation of parent companies and subsidiaries (Parent-Subsidiary Directive) as amended).

Contribution on income distributed

A 3% contribution is payable on:

- Distributions resulting from a deliberation or official decision of the competent corporate bodies as well as sums deemed distributed.
- Distributions made to shareholders (whether individuals or legal entities, and whatever their business location or place of residence).

There are a number of exemptions, including but not limited to:

- Dividends distributed by small and medium businesses (SMBs) within the meaning of EU legislation (that is, companies which employ fewer than 250 persons and which have either an annual turnover not exceeding EUR50 million, or an annual balance sheet total not exceeding EUR43 million).
- Distributions between companies belonging to the same French tax consolidated group.

The contribution must be paid spontaneously by the taxpayer together with the CIT instalment due after the month during which distribution was made.

29. What thin-capitalisation rules and transfer pricing rules apply?

Overview of the thin capitalisation rules

The tax deduction of interest paid on loans from related parties is subject to the following limitations:

Interest rate in loans granted by related parties. Interest paid in relation to loans granted by related parties is deductible, up to a maximum interest rate. This maximum is the annual average interest rate granted by banks for medium loans, that is, loans with a duration of more than two years.

For companies that have a financial year which corresponds to the calendar year, in 2013 the maximum rate of deductible interest was 2.79%. A higher rate can be charged to the extent that it corresponds to the rate that could have been obtained from a third party bank or financial institutions under similar circumstances.

Limitation of interest deduction on loans between related parties. The deductibility of interest on loans obtained from related parties is allowed only if the lender is subject, during the same tax year, to an income tax on the interest received, equal to the quarter of the tax that should be paid under common conditions (in practice, 8.33% for companies subject to corporate tax or an equivalent tax). The lender company can be either a French tax resident or a tax resident of another country. This provision applies to profits made after 31 December 2013. Proof of this "sufficient taxation must be provided on request from the tax authorities.

Thin capitalisation rules. Interest paid by a French borrowing company will not be deductible for French tax purposes if the related party loan(s) simultaneously exceed(s) the three following ratios:

- **Debt/equity ratio.** The higher of:
  - a 1.5 to 1 debt/equity ratio based on the net equity (at opening or closing of the financial year);
  - 1.5 times the share capital (at closing of the financial year) of the borrowing entity.
- **Interest coverage ratio.** Interest paid exceeds 25% of the borrowing entity's adjusted current results operating and financial results (before depreciation, amortisation, certain lease payments and interest on group loans).
- **Net paid interest.** Interest paid to affiliates exceeds the amount of interest received from affiliates.

If all the above three limits are exceeded, the fraction of the interest on related party loans which exceeds the higher of the above three limits will not be deductible from that year's taxable results but may be carried forward, subject to certain conditions.

The non-deductible fraction of interest for a given financial year can be carried forward and deducted from the taxable result of the following financial year, within the limit of 25% of its ordinary income before tax, after a 5% reduction for each financial year as from the second financial year.

General limit. A general limit on net interest expenses applies, of up to:

- Financial years 2012 and 2013: 85% of their amount.
- Financial year from 1 January 2014: 75%.

This rule will not apply if the amount of the net interest expenses exceeds EUR3 million. This exception aims at avoiding small- and medium-sized businesses falling under the scope of the new regime. If the EUR3 million threshold is exceeded, the entire amount of interest expenses will be subject to the limitation.

Exemption. The thin capitalisation rules do not apply where:

- The borrowing company is able to evidence that the overall debt/equity ratio of the group either exceeds or equals its own debt/equity ratio with respect to a particular financial year.
- Interest on loans from related parties do not exceed EUR150,000 per year.

Transfer pricing

French entities controlled by, or controlling, entities established outside France are taxable in France on any profits transferred directly or indirectly to the entity located abroad through an increase or decrease in purchase or sales prices or by any other means.

France has implemented Organisation for Economic Co-operation and Development (OECD) transfer pricing methods.

French entities can apply for an advance tax ruling (ATR) in relation to transfer pricing.

A general obligation to provide documentation to the French tax authorities with respect to transfer pricing is imposed on the following companies based in France:

- Companies with a turnover or gross assets exceeding EUR400 million.
- Companies that directly or indirectly hold more than 50% of the capital or voting rights of such a company.

- Companies that have more than 50% of their capital or voting rights held directly or indirectly by such a company.
- Companies that are part of a French tax group in which at least one company of the tax group meets the requirements of the above three bullet points.

The documentation must include:

- General information on the group, comprising:
  - a general description of the business activity, including changes made during the audited period compared to the prior period;
  - a general description of the legal and operational structures forming the group with the identification of the related companies engaged in the audited transactions;
  - a general description of the functions performed and risks borne by the related companies;
  - a list of identification of main intangible assets, such as patents, brand names, business names, and know-how, with a link to the audited company;
  - a general description of the group's transfer pricing policy.
- Specific information on the associated company undergoing a tax audit, comprising:
  - a description of the business activity, including changes that took place during the audited period;
  - a description of the operations carried out on other associated companies, including the nature and amount of flows of transactions;
  - a list of cost-sharing agreements, preliminary agreements on transfer prices and tax rulings on determination of transfer prices which have an impact on the results of the audited company;
  - a presentation of the selected transfer pricing method(s) in respect of the arm's length principle, including an:
    - analysis of functions performed, assets used and risks borne;
    - explanation concerning the selection and application of the retained method(s).
  - when the chosen method requires, an analysis of the comparables considered appropriate by the company.
- Foreign administrative tax rulings concerning the companies that are related to the company subject to the transfer pricing documentation requirements.

The documentation, which does not substitute for the need to retain documentary evidence for each transaction, must be kept at the disposal of the French tax authorities on the audit start date. If the audited company is sent a formal notice from the audit institution and fails to produce the documentation required or produces incomplete documentation within a 30-day deadline, it is liable for either a (*Article L57, French Tax Code*):

- EUR10,000 penalty.
- Penalty equal to 5% the profits transferred for each financial year, if that amount is higher.

The 30-day deadline can be extended by a justified request for an additional period of up to two months.

GRANTS AND TAX INCENTIVES

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

Government support for business

A broad and varied framework of support has been set up in France to respond to the needs of investors. Support can be provided at national level and by regional and local authorities, and comes in various forms:

- Subsidised or interest-free loans.
- Grants for physical investment projects and R&D.
- Reduced real estate costs.
- Tax exemptions.
- Exemptions from employer social security contributions.
- Tax credits.
- Covering certain expenses (for example, training costs for new employees, and so on).
- Government guarantees.
- Equity investments.

The creation of France's public Investment Bank in 2013 consolidates this array of state aid and financing to help companies, particularly those with fewer than 5,000 employees, to expand in France and increase their exports.

Invest in France Agency (IFA) assistance

The IFA helps foreign investors to ascertain which forms of government support their projects may be eligible to receive and to prepare their applications. The IFA can also put foreign businesses in touch with any French government body (ministry, local authority, agency, and so on) that can facilitate their investments in France. See also *www.invest-in-france.org/fr*.

EMPLOYMENT

31. What are the main laws regulating employment relationships?

Main French employment laws

French employment law is derived from many sources:

- French Labour Code.
- Decisions of the Labour Chamber of the French Supreme Court (*Cour de Cassation*).
- Industry and company-wide collective bargaining agreements.
- Written contracts.
- Agreements concluded with works councils.
- Customary practices.
- Unilateral undertakings.

In principle, employees in France can always benefit from the rules which are most beneficial to them.

Applicable law

Article 8 of Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I), which supersedes Rome Convention on the law applicable to contractual obligations (*1980/934/EEC*) and applies to all contracts concluded after 17 December 2009, governs the choice of law for any work performed

in one member state of the EU, including France, and for any work performed outside of the EU by a national of a member state.

The Rome I Regulation states that the parties to an employment contract may freely choose the applicable law, provided that the level of protection offered to the employee is identical to the one provided by the law which would apply in the absence of choice.

In the absence of choice, the law of the country where the employee usually performs his or her duties will apply, unless it appears from the circumstances that the contract is more closely connected with another country, in which case it will be governed by the law of that country.

Regardless of the choice potentially made by the parties, the overriding mandatory provisions of the host country's law will always apply.

Foreign employees working in France

In France, most of the provisions included in the French Labour Code are considered to be overriding mandatory provisions (*see above, Main French employment laws*). Therefore, foreign employees working in France for an indefinite period will in practice be subject to all provisions of French employment law.

Even in case of temporary assignment of foreign employees in France, foreign employees will benefit from French rules on certain individual and collective freedoms, such as (*Article L. 1262-4, French Labour Code*):

- The right to strike.
- Legal working hours' limitations.
- Legal annual paid holidays.
- Compulsory employee benefits.
- Minimum wage requirements.

French employees working abroad

French employees working abroad will most often be subject to the law of the country where they will perform their duty (*see above, Applicable law*). In case of secondment, French employees will keep their original contract and depending on the exact situation, they may continue benefiting from the French social welfare benefits and from certain rights within their original company. In all cases, at the end of the secondment or in case of termination of the temporary contract abroad, they have the right to be reinstated within the original French company in a position which is "equivalent" to the one they used to hold before they left.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

Citizens of the European Economic Area (EEA) (except for Croats until 30 June 2015 (which may be extended until 30 June 2018 and again until 30 June 2020, depending on the employment situation in France)), Switzerland, Monaco, Andorra and San Marino are free to work and reside in France, provided that they have a valid ID card or passport and do not represent a threat to public order.

Other foreign nationals (except Algerians who are subject to a specific process and except specific derogated cases), must first obtain a work permit. This permit must be requested by their future employer to the local division of the Department of Labour (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi*) (DIRECCTE), which will mainly examine the employment market situation in France for the profession concerned and the situation in the concerned geographic location. The duration and cost of the work permit depend on the type of request. A simplified process exists for highly skilled workers.

Once the work permit application is approved, the foreign nationals must obtain a visa/residence certificate (except for specific derogated cases), the delivery of which is subject to a medical examination and is at the sole discretion of the Police authorities.

PROPOSALS FOR REFORM

33. Are there any impending developments or proposals for reform?

In December of each year, the French Parliament adopts a "Finance Law" that sets out state revenues and expenditures for the forthcoming year. The Finance Law traditionally introduces a number of changes in the tax legislation. These changes may affect the information provided in this Q&A.

THE REGULATORY AUTHORITIES

Trade Registry (*Registre du Commerce et des Sociétés*)

Main activities. Companies must register with the Trade Registry, and file their bye-laws and annual accounts with the Registry.

W www.infogreffe.fr

Financial Markets Authority (*Autorité des Marchés Financiers*) (AMF)

Main activities. The AMF is an independent public body which regulates participants and products on French financial markets.

W www.amf-france.org

French Competition Authority (*Autorité de la Concurrence*)

Main activities. The French Competition Authority is an independent public body which carries out all activities of competition regulation: inquiries, anti-trust activities, merger control, publication of opinions and recommendations.

W www.autoritedelaconcurrence.fr

Regional public bodies (*Directions Régionales des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi*) (DIRECCTE)

Main activities. The DIRECCTE are regional public bodies which provide administrative services for citizens and businesses in three main areas:

- Business and skills, employment and labour market.
- Labour policy.
- Competition.

W http://direccte.gouv.fr

Data Protection Authority (*Commission Nationale de l'Informatique et des Libertés*) (CNIL)

Main activities. The CNIL is an independent public body. The CNIL supervises compliance with the data protection law, by inspecting IT systems and applications.

W www.cnil.fr

ONLINE RESOURCES

LEGIFRANCE

W www.legifrance.gouv.fr

Description. Contains up-to-date French Codes and case law, and French, EU and international laws and regulations. Translations available for guidance only.

French Patent and Trade Mark Register (INPI)

W www.inpi.fr

Description. Contains up-to-date information regarding registered trade marks, patents and designs. No translation available.

Other websites

Other websites include:

- www.service-public.fr
- www.immigration.gouv.fr
- www.pole-emploi.fr
- www.immigration-professionnelle.gouv.fr
- www.ofii.fr
- www.travail-emploi.gouv.fr
- www.europa.eu

Practical Law Contributor Profiles

Catherine Nommick, Partner

SOULIER AARPI
T +33 1 40 54 29 29
F +33 1 40 54 29 20
E c.nommick@soulier-avocats.com
W www.soulier-avocats.com

Professional qualifications. France, Attorney-at-Law

Areas of practice. Corporate; mergers and acquisitions; bank and finance; business and commercial law.

Emilie Ducorps-Prouvost, Partner

SOULIER AARPI
T +33 1 40 54 29 29
F +33 1 40 54 29 20
E e.ducorpsprouvost@soulier-avocats.com
W www.soulier-avocats.com

Professional qualifications. France, Attorney-at-Law

Areas of practice. Labour law; individual and collective employment law; employment and social security litigation; corporate reorganisation and restructuring; redundancies; employment-related data privacy law; expatriation and secondment; business immigration law.

Jean-Pierre Chaux, Partner

SOULIER AARPI
T +33 1 40 54 29 29
F +33 1 40 54 29 20
E jp.chaux@soulier-avocats.com
W www.soulier-avocats.com

Professional qualifications. France, Attorney-at-Law

Areas of practice. National and international taxation of corporate groups; cross-border transactions; tax optimisation.

Chems Idrissi, Senior associate

SOULIER AARPI
T +33 4 72 82 20 80
F +33 4 72 82 20 90
E c.idrissi@soulier-avocats.com
W www.soulier-avocats.com

Professional qualifications. France, Attorney-at-Law

Areas of practice. Corporate; mergers and acquisitions; securities law.