

# Establishing a business in France

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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. The main rules governing trading companies derive from statutory law codified in the French Civil and Commercial Codes.

## BUSINESS VEHICLES

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

There are numerous types of company structures provided by French law but the main trading entities take one of the following forms.

- For small and medium-sized business:
  - *Société par actions simplifiée* (SAS) (that is, a simplified joint-stock company);
  - *Société à responsabilité limitée* (SARL) (that is, a limited liability company).
- For large businesses:
  - *Société anonyme* (SA) (that is, a classic joint-stock company) where large business are concerned.

These three vehicles are created for trading purposes and provide their shareholders with a limited liability protection up to the amount of their shareholding.

The use of a *Societas Europaea* (*Société Européenne*) (SE) is very rare in France.

French company law also recognises several types of legal business forms in which partners are jointly and severally liable for the company's debts. These function as flow-through structures from a tax standpoint (see *Question 5*).

## SAS

The SAS is considered the most flexible business form which allows shareholders to tailor the company to their requirements. The manager can either be a natural or a legal person. The SAS is, therefore, appropriate for both holding companies and start-up companies with strong potential.

The company bye-laws can freely determine the rights attached to the shares. This allows the creation of preferred shares. Shareholders usually have the right to:

- Receive dividends.
- Vote in shareholders' meetings.
- Access corporate information.

Drafting the bye-laws can be complex due to their flexibility and often requires the support of an adviser.

An SAS must appoint statutory auditors when at least one of the following criteria applies:

- The SAS controls or is controlled by one or several companies.
- Two of the following three thresholds are reached:
  - the SAS has 20 employees;
  - the total balance sheet of the SAS exceeds EUR1 million;
  - the turnover of the SAS (not including VAT) exceeds EUR2 million.
- One or several shareholders representing 10% of the share capital request the appointment of a statutory auditor before a court.

The SAS cannot proceed to public offering and its shares cannot be admitted to a regulated market.

The SAS must be incorporated with the Trade Registry (*Registre de commerce et des sociétés*) and is subject to accounting and tax reporting requirements.

## SARL

A SARL is easy to incorporate and operate since its functioning is precisely defined and regulated under the French Commercial Code. However, due to its strict legal framework, which does not allow much flexibility, a SARL is generally unsuitable for businesses with an external growth strategy.

Shareholders usually have the right to:

- Receive dividends.
- Vote in shareholders' meetings.
- Have access to corporate information.

Transfers of shares are restricted and subject to the agreement of the majority of the shareholders representing at least 50% of the shares. The bye-laws can require a greater majority. A SARL must have:

- A maximum of 100 members.
- A natural person as its manager.

It is compulsory to appoint statutory auditors when at least one of the following criteria is fulfilled:

- Two of the following three thresholds are reached:
  - the SARL has 50 employees;
  - the total sheet balance of the SARL exceeds EUR1.55 million;
  - the turnover of the SARL (not including VAT) exceeds EUR3.1 million.
- One or several shareholders representing 10% of the share capital request the appointment of a statutory auditor before a court.

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A SARL cannot proceed to public offering and its shares cannot be admitted to a regulated market.

The SARL must be incorporated with the Trade Registry and is subject to accounting and tax reporting requirements.

## SA

An SA is most suitable for larger businesses including companies listed on the stock exchange. This business form is designed to facilitate fundraising through the entrance of new investors in the share capital. Consequently, it may also be appropriate for businesses with very strong potential.

SAs are heavily regulated by the law. For example, there are specific Financial Markets Authority (*Autorité des Marchés Financiers*) reporting requirements with that apply to all listed SAs. However, as a consequence of its strict functioning obligations, the SA is a business form which often reassures investors and trading partners.

An SA must have a minimum of seven shareholders and a minimum share capital of EUR37,000. There is no maximum number of shareholders. Shares cannot be issued for contribution of technical knowledge (*apport en industrie*). Most often, a board consisting of three to 18 members manages the SA (see *Question 24*).

Shareholders usually have the right to:

- Receive dividends.
- Vote in shareholders' meetings.
- Access corporate information.

An SA must be incorporated with the Trade Registry and is subject to accounting and tax reporting requirements.

## ESTABLISHING A PRESENCE FROM ABROAD

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

Foreign companies commonly use a representative office as a first step of establishing a presence in France. The foreign company may then wish to establish a branch in France before incorporating a subsidiary, that is, a separate legal entity from the parent foreign company which can take one of the legal forms offered by French law.

#### Representative office

A foreign company intending to establish a presence in France may prefer to first establish a representative office (*bureau de représentation*), that is, an establishment in France not separate from the parent company. One of the main purposes of a representative office is to observe the local market and seek out business opportunities for the foreign parent company without having a trading purpose. Establishing a representative office is generally the first step before establishing a branch or a subsidiary in France.

A representative office cannot conduct commercial operations and cannot contract with other companies for or on behalf of the parent company. Therefore, it has minimal registration requirements and is not subject to French accounting and tax requirements.

#### Branches

A foreign company wishing to establish a presence in France may, in a second phase, set up a local branch (*succursale*), that is, a permanent establishment which is not a separate legal entity from its parent company.

Setting up a branch can be an appropriate option for either of the following:

- Foreign investors initially looking to establish a presence during the starting phase of a business.
- Foreign investors looking to keep the direct control of local operations in the longer term.

Setting up a branch is easier and less expensive than establishing a subsidiary. It allows a foreign company to conduct business operations in France through a non-distinct legal entity. Therefore, the parent company takes decisions through its own management and the branch's losses can easily be offset against the parent company's profits.

However, a local branch in France is regarded as a permanent establishment of its foreign parent company and, as such, is subject to French accounting and tax requirements. In addition, the parent company is liable for the debts and obligations of its French branch.

Consequently, information on the parent company can become available to third parties or the French tax or financial authorities.

A branch is often used to start a new business in France as a second step of presence, before creating a French subsidiary. However, the conversion of a branch into a subsidiary can have unexpected French tax consequences (in particular with regards to the valuation and transfer of the business goodwill possibly created by the branch).

#### Subsidiaries

The subsidiary is a separate legal entity from the foreign parent company. In addition to the fact that this option has the benefit of using a legal form which local business partners are familiar with,

- The foreign parent company keeps the ultimate control of the subsidiary.
- The parent company benefits from a limited liability protection, which means in particular that it cannot be held liable for the subsidiary's debts.

The following are the main disadvantages:

- A subsidiary, much like a branch, will be subject to all legal, accounting and tax obligations which apply to a French company.
- All losses derived from the subsidiary cannot as a general rule be offset against the parent company's profits (although the use of certain local structures, in particular flow-through structures, may allow such a possibility).

#### Other options

A foreign investor can enter into a joint venture, either through a corporate vehicle or through a contract (see *Questions 5 and 6*). It can also appoint a local agent or distributor acting on its behalf (see *Question 4*).

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

A foreign company can trade directly in France through contractual agreements, such as the following:

- **Distribution agreements.** The foreign supplier contracts a French-located distributor to sell its products in France.
- **Franchise agreements.** The foreign party (the franchisor) consents to provide its brand and support to a French entity (a franchisee) in exchange for a percentage of the income generated in France. Although this agreement does not have to be disclosed to third parties, basic information relating to the licence must be reported to enforce intellectual property rights against third parties.

- **Commercial agency agreements.** A foreign company appoints a French-based intermediary to act on its behalf in dealing with a third party. The French-based commercial agent must be registered with the Trade Registry. This may imply that the existence of the agreement will be disclosed.

A foreign company can also trade directly in France through remote selling and e-commerce.

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

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There are several types of legal business forms in France which could be compared to the common-law "partnership" including:

- *Sociétés en nom collectif* and *sociétés en commandite*, which are commercial concerns.
- *Sociétés civiles*, which are civil concerns.
- *Société civiles immobilières*, which are flow-through real estate companies.
- *Groupement d'intérêt économique* (GIE) which can also be used for its members (usually trading companies) to pool some of their activities.

### *Société en nom collectif* (SNC)

An SNC has legal personality and holds the assets placed by the partners. The partners must all be merchants (*commerçants*). They are jointly and severally liable for the company's debts to an unlimited extent.

From a French tax standpoint, an SNC is a flow-through structure. This means that each partner pays tax on his pro rata profit shares or can offset his pro rata losses derived from the SNC activity against his own profits. The SNC is never liable for corporate or income tax.

### *Société en commandite simple* (SCS) and *société en commandite par actions* (SCA)

Both of these business forms have a legal personality. They are similar entities but are rarely used in France. In both forms the company holds the assets placed by the partners.

Some of the partners (*commandités*) are jointly and severally liable for the company's debts to an unlimited extent, while other partners (*commanditaires*) benefit from a limited liability protection of up to the size of their contribution.

From a French tax standpoint, the SCA is liable for corporate tax. In an SCS (unless it has opted for corporate tax), each *commandité* is subject to tax on his profit shares. The SCS itself is subject to corporate tax on the fraction of profits corresponding to the *commanditaires'* share.

### *Société civile immobilière* (SCI)

A French SCI is a special purpose company dedicated to owning only unfurnished real properties. It has a separate legal personality and is considered as a pass-through entity for French tax purposes. Therefore, its profits are taxed in the hands of its shareholders who are, in principle, jointly and severally liable for the company's debts.

However, from a tax standpoint, the SCI will only function as a flow-through structure as long as its activities remain patrimonial, (that is, remain limited in practice to the management and the unfurnished rental of the property). An SCI performing a business activity (such as furnished rental, property trade on a regular basis) will become liable to corporate tax in France.

### *Groupement d'intérêt économique* (GIE)

The GIE is a consortium with a legal personality, created by two or more members having a similar business, with the purpose of pooling their activities (and generally the related expenses) to facilitate and increase their development. Its members are indefinitely and jointly liable to the GIE's debts.

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

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Joint ventures (JVs) between a foreign company and a local business are common in France and can be structured either through a corporate vehicle (*société*) or through an agreement.

### JVs structured through a corporate vehicle

Depending on the business and the expected profit growth, a JV in France can be structured in either of the following ways:

- Through a limited company such as a *société par actions simplifiée* (SAS), due to its flexibility (see *Question 2*).
- Through a flow-through structure (see *Question 5*) which, from a tax standpoint, would allow its members to offset all losses generated against their results (specifically during the starting phase of the project).

A JV can also be implemented through *asociété en participation* (SEP). The SEP is a company (*société*) which is not registered and does not have a legal personality. If the SEP is not revealed to third parties, its members are held indefinitely liable for the debts. When the SEP has a commercial activity, its members' liability is also joint and several.

### JVs structured through a contractual agreement

Joint ventures can also be structured and implemented through contractual agreements. This can appear more suitable for short-term or one-time projects, since it involves fewer formalities and requirements.

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## 7. Are trusts available in your jurisdiction?

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Although France signed the Hague Convention on the law applicable to trusts and on their recognition on 26 November 1991, it has never ratified it. Therefore, the trust relationship remains unknown to French civil law.

Unlike common law, French civil law makes no distinction between legal and equitable ownership because ownership is unitary and absolute. Therefore, it is impossible to create partial property interests (such as trusts) different from those recognised by French law (usufruct and bare ownership). However, because of the globalisation of businesses and personal relations, trusts have a connecting factor with France. Therefore, there are certain international elements which the French legal and tax issue must deal with.

French Courts have long recognised the effects of common law trusts in France, but these effects are of course limited to what is compliant with the civil law system. In addition, on 31 July 2011, a comprehensive legislation came into force dealing with the tax treatment of foreign trusts. This has led to the co-existence of a French legal regime and a French tax regime dealing with foreign trusts, which do not always properly integrate.

The French *fiducie*, adopted in February 2007, is a very different concept and cannot be seen as an alternative structure to the common law trust, either conceptually or functionally.

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## FORMING A PRIVATE COMPANY

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### 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?

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#### Regulatory framework

Foreign companies wishing to establish a business in France prefer the *société par actions simplifiée* (SAS) for the following reasons:

- Its flexibility, that is, the way an SAS functions can be freely determined by its bye-laws. For example, the bye-laws can freely determine the rules on the:
  - transfer of shares;
  - nature, duties and power of the company's representative bodies;
  - process for taking corporate decisions.
- The fact that its manager can be a corporate entity.

Like any other French private company, an SAS is governed by the French Commercial Code and the French Civil Code. The formation of an SAS is subject to fulfilling certain formalities with the Trade Registry as well as certain legal, accounting and tax requirements.

#### Tailor-made or shelf company

Purchasing a shelf company is not a common practice in France. The formation of a new company is in most cases preferred when establishing a business in France.

#### Formation process

The creation of a (non-listed) trading company such as an SAS, a *société à responsabilité limitée* (SARL) or an SA in France share similar requirements. The company must register with the Trade Registry, by filing the following documents:

- The signed bye-laws. There is no longer a requirement to register those with the French tax authorities.
- Certificates from the depository bank confirming receipt of the funds for cash contributions.
- A report from a "contribution auditor" certifying the market value of the contributions in kind, if any.
- Documents proving the address for the company's registered office.
- A copy of the publication of judicial announcement in a journal of legal notices.
- A completed specific form (MO) which summarises all the company's details (such as name, capital, head-office address, identity of the partners, identity of the managers and so on).
- If the manager is a natural person:
  - a copy of valid ID and sworn statement that he has not been convicted of a criminal offence;
  - a copy of a residency permit for non-EU members residing in France.
- If the manager is a legal entity:
  - an extract from the Trade Registry;
  - a copy of the bye-laws (translated into French if necessary) certified by the legal representative;
  - any official document justifying its legal existence (translated into French if need be); copy of ID or residency permit of its legal representatives.

- If statutory auditors are required (such as a general rule when certain thresholds are met, relating to turnovers, numbers of employees and so on): copy of letters of acceptance.
- If regulated activities are concerned (that is, when either a specific qualification is required – such as physicians, architects, attorneys or when a specific business sector is involved – for example, certain financial operators, certain real estate operators and so on):
  - a copy of relevant diplomas;
  - any administrative authorisations.

All the documents can now be filed electronically with the clerk's office of the competent Commercial Court.

#### Company constitution

A company is constituted by the signature of its bye-laws which must be filed with the clerk's office of the competent Commercial Court to incorporate the company with the Trade Registry and obtain the separate legal personality.

Although companies' bye-laws are not standardised, there are certain restrictions under the French Commercial Code. For example, the bye-laws must provide the main characteristics of the company, including its:

- Name.
- Legal form.
- Registered office.
- Registered capital amount.
- Shareholders' contributions.
- Duration and corporate object.

The bye-laws are often established by a private deed, unless a notarial deed is required (in particular when real estate property is contributed to the capital).

The bye-laws are public and can as a general rule be obtained from the Trade Registry.

## FINANCIAL REPORTING

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

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Every French trading company must comply with accounting requirements and keep annual book accounts which must be filed with the Trade Registry. These requirements also apply to French branches of foreign companies.

## TRADING DISCLOSURE

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

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Generally, a company's external correspondence and official documents must include certain items such as their name, corporate form, amount of registered capital, head office address and registration number.

A company's invoices must provide very specific information including the following:

- The names of the parties and their addresses.
- The date of the sale or service provision.
- The quantity, precise description and the unit price (excluding VAT) of the products sold and services provided.



- Any price reduction applying.
- The date when payment must be made.

There can be additional requirements if the company is conducting a regulated activity.

## 11. How do companies execute contracts or deeds?

Written agreements are signed by the parties (or their legal representatives or any duly authorised person) without any other formalities or witnesses. However, the parties can register the document (with a notary or with the French tax authorities) if they want the date to be specifically established.

Under the "theory of appearance" developed by French case law, apparent authority can produce legal effects with respect to third parties who may have ignored the legal reality due to a common and legitimate mistake (*error communis facit jus*). Therefore, a company may be bound by contractual obligations, even if the contracting party (for example an employee or a manager of the company) did not have the legal capacity to bind the company.

## MEMBERSHIP

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

The SA must have a minimum of seven shareholders.

Both SAS (simplified joint-stock company) and SARL (limited liability company) can have a single shareholder. The SARL can have a maximum of 100 shareholders).

Single member trading companies exist in French law and can either of the following forms:

- *Entreprise unipersonnelle à responsabilité limitée* (a SARL with a single shareholder) (EURL).
- *Société par actions simplifiée unipersonnelle* (an SAS with a single shareholder) (SASU).

EURLs and SASUs are governed by the same rules which apply to all SARLs and SASs, subject to the rules relating to single shareholder companies (such as adapting the drafting of the bye-laws or of the minutes of the general assemblies).

## MINIMUM CAPITAL REQUIREMENTS

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

An SA must have a minimum share capital of EUR37,000. The share capital of a *société par actions simplifiée* (simplified joint-stock company) and a *société à responsabilité limitée* can be freely determined by the bye-laws and can amount to a symbolic EUR1 (see Question 2).

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

As a general rule, shares in a trading company can be freely transferred. However, French law provides for some exceptions which include the following:

- In a SARL the shareholders' approval must be obtained prior to transferring the company's shares to a third party.
- Certain restrictions to the transfer of shares issued from:

- free share allocation plans (benefiting managers);
- share purchase plans or workers' participation plans (benefiting employees).

- Specific approval requirements for certain regulated businesses (in particular for liberal professions such as physicians, architects, attorneys, accountants, paramedicals and so on).

- Shares representing a contribution in kind cannot be transferred.

In addition to the above, the bye-laws and the shareholders' agreements can also contain certain restrictions to the transfer of a trading company's shares (such as approval, pre-emption or inalienability clauses).

## SHAREHOLDERS AND VOTING RIGHTS

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

French law provides specific protections for listed companies' minority shareholders.

Under certain conditions, minority shareholders who have owned their shares for at least two years can form an association which must represent at least 5% of the share capital. Such associations have the same rights as any shareholder owning at least 5% of the company's capital.

Within the context of certain complex transactions operated by a listed company, for which shareholders are usually provided with limited information, an "expert opinion" (called *attestation d'équité*) can be requested. However, this is a limited minority shareholder protection because only the board of the directors can request an expert opinion.

Minority shareholders in trading companies (whether listed or not) can also benefit from all judicial protections provided by law. These protective actions include the following:

- Requesting the opinion of an independent expert, that is appointing an independent auditor (*expertise de gestion*) or requesting judicial expertise (*expertise judiciaire*).
- Making a court application for the disclosure of specific information which is otherwise inaccessible.

Minority shareholders can also bring an "abuse of law" (*abus de majorité*) claim to declare a decision invalid if it was taken in the sole interest of the majority shareholders.

### 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 strict rules governing the management organisation of a *société anonyme* (SA) or a *société à responsabilité limitée* (SARL). However, the rules governing *société par actions simplifiée* are more flexible.

The rules applicable to SA provide statutory restrictions on quorum and voting requirements at shareholder meetings. Depending on the subject, the decision will either be taken by the "ordinary" or an "extraordinary" shareholders' assembly.

## SA

The following rules apply to SA shareholder assemblies.

**Ordinary shareholders' assembly.** The ordinary shareholders' meeting concerns all standard and recurrent decisions such as decisions on the:

- Approval of the annual accounts.
- Allocation of the net profits.

Shareholders representing at least 20% of the voting rights must be present at an ordinary shareholders' assembly.

**Extraordinary shareholders' assembly.** The extraordinary shareholders' meeting concerns decisions on significant or less frequent operations such as decisions relating to the share capital and the amendments to the bye-laws.

Shareholders representing at least 25% of the voting rights must be present at an extraordinary shareholders' assembly. If a subsequent assembly is required, shareholders representing at least 20% of the voting rights must be present.

The company's bye-laws can impose stricter criteria.

### SARL

The rules applicable to SARLs incorporated after 4 August 2005 provide the following statutory restrictions on the quorum and voting requirements of shareholder meetings, (depending on the nature and subject of the decision to be taken).

**Ordinary shareholders' assembly.** No quorum is necessary.

**Extraordinary shareholders' assembly.** Shareholders representing at least 25% of the voting rights must be present. If a subsequent assembly is required, shareholders representing at least 20% of the voting rights must be present.

SARL bye-laws can also impose stricter criteria.

In both the SA and the SARL, quorum or voting rights must be proportionate to shareholdings.

### SAS

The quorum and voting requirements at shareholder meetings can be freely determined by the bye-laws and are not subject to any requirements. Under certain conditions, preferred shares (such as those providing weighted voting rights) can be issued.

## 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)?

Depending on the legal form of the company and the nature of the decision, specific voting majorities can be required by law.

### Société anonyme

The following rules apply:

- Ordinary shareholders' assembly decisions can be taken by a simple majority of the present shareholders' votes.
- Extraordinary shareholders' assembly decisions can be taken by a two-thirds majority of the present shareholders' votes.

### Société à responsabilité limitée

The following rules apply:

- Ordinary shareholders' assembly decisions can be taken by a majority of 50% of the company's shares. If no such majority is reached, decisions are adopted by a simple majority of the shareholders' present at the second assembly.
- Extraordinary shareholders' assembly decisions are taken by a majority of shareholders representing two-thirds of the company's shares.

Although the bye-laws can impose stricter criteria, they cannot require unanimity.

### Société par actions simplifié

The majority rules freely determined by the bye-laws, subject to certain exceptions for which unanimity is required (such as decisions on capital increases, approval clauses, inalienability clauses or forced disposal of shares). In addition, the commitments of a shareholder cannot be increased without his personal consent.

Certain other specific decisions (such as those relating to the modification of the company's form or shareholding) may also require unanimity.

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

Depending on the company's legal form, voting majorities required by law can be disapplied to protect minority shareholders. Due to its flexibility, the *société par actions simplifiée* (SAS) (simplified joint-stock company) allows creating class rights or issuing preferred shares.

## 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?

Certain industry sectors and regulated activities or professions usually require administrative agreements or specific diplomas. These include the following:

- Insurance, banking and credit institutions.
- Pharmacy, manufacturing, exportation and distribution of pharmaceutical products.
- Transportation.
- Portfolio management for third parties.
- Liberal professions.

Most regulated activity requires prior approval from either of the following:

- An independent administrative authority (such as the French Prudential Supervisory Authority for banking and insurance activities, or the French Financial Markets Authority for portfolio management activities).
- A representative order (such as the College of physicians, the Bar association).

## FOREIGN INVESTMENT RESTRICTIONS

## 20. Are there any restrictions on foreign shareholders?

French law places no restrictions on foreign individuals or legal persons holding shares in a French trading company.

The French Monetary and Financial Code, however, provides certain restrictions on foreign investments in activities involved in the exercise of public authority. In addition, in specific sensitive business areas such as weapons trade, investors must obtain the prior authorisation from the competent ministry.

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## 21. Are there any exchange control or currency regulations?

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Anti-money laundering and anti-tax evasion regulations provide certain reporting obligations for both tax payers and financial institutions. Financial institutions must declare all transfers exceeding EUR10,000 as well as all accounts held offshore by a French resident to the tax authorities.

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

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There are no restrictions on foreign companies owning real estate in France.

However, foreign companies whose registered office is located outside the EU/EEA owning (and exploiting) real estate in France may be requested by the French tax authorities to appoint a fiscal representative for all tax correspondence and procedures in relation to such property.

A foreign company which holds one or more real properties situated in France (directly or through any number of other entities) of which the market value exceeds that of all its other French movable/financial assets, is liable to an annual tax equal to 3% of the market value of the property. Due to many exemptions and certain reporting obligations, this tax is only due when either of the following applies:

- The ultimate owners in the holding chain are not disclosed.
- Uncooperative jurisdictions are involved in the ownership structure.

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## DIRECTORS

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

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The general restrictions and requirements that French law provides on the appointment of French companies' directors include the following

- Non-conviction: an individual convicted of certain felonies, misdemeanours or declared bankrupt cannot be appointed as a director.
- Regulated professions: an individual exercising a regulated profession such as legal and accounting professions (lawyers, accountants, notaries and statutory auditors) cannot hold a position in the board members if they act for the company.
- Legal capacity: non-emancipated minors and incapable adults cannot, as a general rule, hold a director position in any form of company.
- Citizenship: non-EU citizens having their domicile in France must in principle hold a residence card to work in France and act as a French company director.

Specific requirements depend on the company's form and include the following:

- *Société anonyme* (SA):
  - the board of directors of an SA cannot comprise more than one third of its members over the age of 70, unless the bye-laws state otherwise; and
  - the board cannot comprise more than one third of directors bound to the company by an employment contract; and

- an individual cannot concurrently be a director in more than five other French SAs (excluding controlled companies); and
  - listed SAs will soon be required to have a minimum proportion of female directors, which cannot be under 40% of the board members as from the first ordinary shareholders' meeting following 1 January 2017.
- *Société à responsabilité limitée* (SARL): a SARL can only be managed by a natural person (see Question 2).
  - Regulated activities: specific approvals may be required to manage regulated activities (see Question 19).

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## BOARD COMPOSITION

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

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#### Structure

The composition of the board is strictly regulated in a *société anonyme* (SA) and unregulated in the *société par actions simplifiée* (SAS).

An SA is in most cases managed by a single board (*conseil d'administration*) headed by a president who can concurrently act as the general manager. An SA can also be managed by a two-tiered board structure, although rarely used, which is composed of a supervisory board (*conseil de surveillance*) and a directorate (*directoire*).

#### Number of directors or members

The board of an SA must comprise between three and 18 members. When a two-tiered board structure is used for an SA, the directorate (*directoire*) must comprise between two and five people. However, in an SA whose share capital is under EUR150,000 a single person can act with the authority of a directorate. The supervisory board (*conseil de surveillance*) must in any case comprise between three and 18 members.

Although an SAS can have only one president, its bye-laws can provide for a board of directors with no minimum or maximum number.

#### Employees' representation

French Labour Law provides that the employees in an SA have a right to board representation if, after the closing of two consecutive financial years, either of the following applies:

- A minimum of 1,000 employees within the company and its direct or indirect subsidiaries that have their registered offices in France.
- A minimum of 5,000 employees within the company and its direct or indirect subsidiaries have their registered offices in France or abroad.

Any company which has employed a minimum of 50 employees during a cumulated period of 12 months (whether consecutive or not) over the last three years must set up a Works Council as well as a Hygiene and Safety Committee.

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## REREGISTERING AS A PUBLIC COMPANY

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

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#### Membership

Only the shares of *société anonyme* (SA) (as opposed to the shares of *société par actions simplifiée* (SAS) and *société à responsabilité limitée* (SARL)) can be traded on the public stock exchange. In a listed SA, all general requirements for the organisation of the

company's board remain unchanged (see *Questions 2 and 24*). The only exception is the maximum number of members of the board of directors (in case of a two-tiered board structure) which can be extended from five to seven people.

### Share capital

Whether listed or not, an SA must have a minimum share capital of EUR 37,000.

A company thinking of listing its shares on a regulated market must:

- Contribute at least 25% of its capital (or 5% if the capital represents at least EUR5 million).
- Provide audited accounts for the past three financial years.

## TAX

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

Businesses are subject to the following taxes.

#### Corporate tax and its additional contribution

French corporate tax is established on a strict territorial basis, that is, it is assessed on French source income and not on a worldwide basis. It is in principle levied at the standard rate of 33.33% on the net profit derived from all operations carried out in France. Double tax treaties may, however, allow France, under specific circumstances, to tax certain foreign source income.

Two co-existing parent-subsidiary regimes are applicable, based respectively on French domestic tax law and on EU regulations (*Council Directive (EU) 2015/121*). These regimes allow a qualifying parent company to benefit from reduced taxation on certain transactions on capital gains realised by the parent company on:

- The sale of "participations" (*titres de participation*).
- Dividends received from its subsidiaries

(See also *Question 33* below).

French tax law also provides a tax consolidation regime (*intégration fiscale*), allowing a parent company to be liable for corporate tax (plus additional contribution) on behalf of its whole group. The consolidated group includes French subsidiaries (foreign subsidiaries are excluded) which are liable to corporate tax and have a share capital 95% of which is held (directly or indirectly) by the parent company. A subsidiary can also be part of consolidated group when more than 95% of its share capital is held indirectly by a foreign EU company. Under the tax consolidation regime:

- Profits and losses incurred by all companies of the group are aggregated to determine a tax consolidated net result.
- Intragroup transactions are neutralised.

Large companies subject to corporate income tax may also be liable to an additional contribution at the rate of 3.3%, assessed on the fraction of corporate tax due exceeding EUR763,000. The additional contribution does not apply to companies whose annual turnover does not exceed EUR7.63 million, provided that at least 75% of the company is owned by individuals or by companies that themselves fulfill these conditions. A consolidated group is liable to pay this additional contribution if its global turnover exceeds EUR7.63 million.

Companies whose turnover exceeds EUR250 million in the period between 31 December 2013 and 30 December 2016 are liable to pay a temporary surtax at the rate of 10.7%, assessed on the

amount of pay corporate tax due in respect of each accounting year.

French corporate tax is pre-paid in four installments (in March, June, September and December). The debit/credit of corporate tax is due/refunded by 15 May of the following year.

### VAT

VAT is levied on all sale of goods, delivery of assets and supply of services, and paid by the end consumer of the goods/services. This very broad scope includes a certain number of exceptions which are set out in the French Tax Code. However, some exempt transactions can be deemed taxable if a VAT election is made.

The following are the VAT rates applicable in France since 1 January 2016 (depending on the goods and services supplied and/or on the business area):

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

### Territorial economic contribution (TEC)

The TEC replaced the former French business tax in 2010. It is a local tax levied by the French departments and regions, made up of the following two components:

- The *Cotisation foncière des entreprises*, which is based on the rental value of the property used for the company's business.
- The *Cotisation sur la valeur ajoutée des entreprises*, which is based on the added value by the business on a yearly basis.

The overall amount of TEC due by the company cannot exceed 3% of the annual "added value" produced by the company.

### Registration duties upon transfers of shares

Registration duties are due on transfers of company shares. Their rate varies depending on the nature of the shares transferred:

- Transfers of shares in a *société par actions simplifiée* (SAS) or a *société anonyme* are taxed at the rate of 0.1%.
- Transfers of shares in a *société à responsabilité limitée* (SARL) are taxed at the rate of 3%.
- Transfers of shares in any company whose assets are mainly composed of real estate property located in France (that is, for more than 50% of their market value) are taxed at the rate of 5%.

### French real estate property tax

Foreign companies which (directly or indirectly) hold one or more French real estate properties of which the market value exceeds that of all other French movable/financial assets owned by the company are in principle liable to pay an annual tax equal to 3% of the market value of the properties (see *Question 22*).

In practice, because there are many legal exemptions, this tax is only due when the real estate situated in France is not used for business and either of the following applies:

- The ultimate owners in the holding chain have not been disclosed.
- An entity situated in a country which has not signed a tax treaty with France (including exchange of information) is involved in the holding structure.



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

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### Tax resident

Entities are subject to corporate tax on profits of any business carried out in France, regardless of whether they are registered in France. Under the principle of "restricted territoriality" of corporate tax provided by Article 209-I of the French Tax Code, profits made by a French company from businesses carried out outside of France are not subject to French corporate tax (see *Question 26*).

A business is carried out in France when a company performs regular business on French territory through an autonomous establishment or dependent representatives.

If a foreign company realises multiple transactions in France which constitute a "complete business cycle", the whole operation will be seen as a business operated in France liable to corporate tax.

### Non-tax resident

A foreign company is liable to French corporate tax only on the profits made from businesses carried out in France (see *above*).

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

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Unless tax treaties provide otherwise, dividends are subject to:

- 30% withholding tax on dividends paid to non-residents of EU and EEA.
- 21% withholding tax on dividends paid to EU and EEA residents.
- 75% withholding tax on dividends paid to non-cooperative states and territories.

However, most tax treaties provide either a reduced rate or a withholding tax exemption.

Under Directive 90/435/EEC on the taxation of parent companies and subsidiaries (as amended), dividends are exempt from withholding tax if the recipient is a EU resident and has held at least 10% of the shares of the subsidiary for at least two years (see also *Question 33 below*).

The use of flow-through structures in France allows the remittance of profits abroad automatically without having to apply the payment of dividends process.

French or foreign companies liable to French corporate income tax must also pay a 3% contribution on:

- Distributions (and sums deemed distributed) resulting from a deliberation or official decision of the competent corporate bodies.
- Distributions made to shareholders whether (legal entities or natural persons) regardless of their location or place of residence.

The French Tax Code exempts the following from withholding taxation:

- Dividends distributed by companies that employ fewer than 250 employees and have an:
  - annual turnover not exceeding EUR50 million; or
  - annual balance sheet total not exceeding EUR43 million.
- Distributions between companies which are parts of the same French tax consolidated group.

The 3% contribution must be calculated and paid **spontaneously** by the taxpayer together with the corporate income tax instalment due after the month during which the distribution was made.

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

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### Thin-capitalisation rules and general limitations regarding interest deduction

Like many other countries, France has legislation providing for certain limitations on interest expenses deduction and, in particular, thin-capitalisation rules.

**General limitation of interest deduction.** French companies liable to corporate tax can deduct from its annual taxable income the net interest expenses it has incurred during the same year up to 75% of their amount, unless the interest amount does not exceed EUR3 million.

In addition, the deduction of interest on loans granted by related parties is disallowed when the lender is liable to tax on the interest received from the borrowing company up to an amount which is less than a quarter of the tax burden it would have been subject to under common conditions (in most cases, if less than a quarter of 33.33% , that is 8.33%).

**Thin capitalisation rules.** Deductibility of interest paid by a French borrowing company can be disallowed for French tax purposes if this interest exceeds cumulatively the three following ratios:

- 1.5 times the company's share capital (debt/equity ratio).
- 25% of the company's earnings results before tax (interest coverage ratio).
- The amount of interest received from affiliates (net paid interest).

Once the ratios have been met, the portion of the interest which exceeds the highest of those is not deductible from the taxable results, unless either of the following applies:

- It does not exceed EUR150,000 per year.
- The borrowing company can prove that the overall debt/equity ratio of the group to which it belongs exceeds or equals its own debt/equity ratio.

Subject to restrictions, the portion of non-deductible interest from a year's taxable results can be deducted from the following fiscal years' results at a 5% reduction per financial year as from the second year.

**Limitation of interest deduction within a tax consolidated group.** Within a French tax consolidation group, the deduction of a portion of the interest paid by a tax group is disallowed and added back into the global taxable income when a member company acquires the shares of either of the following:

- A "head" company controlling directly or indirectly the purchasing company that is, the acquiring company and the purchased company become members of the same group.
- A company controlled directly or indirectly by the "head" company.

### Transfer pricing legislation

France has developed a transfer pricing legislation which states that the correct transfer price for a particular transaction between related parties must be that which the parties would have agreed at arm's length.

In order to determine the tax owed by companies that depend on or control enterprises outside France, any profits transferred to those enterprises indirectly through increases or decreases in purchase or

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selling prices or by any other means must be added back into the taxable income shown in the companies' accounts (*Article 57, French Tax Code*).

The same procedure applies to companies that depend on an enterprise or a group that also controls enterprises outside France.

To enforce Article 57, the French Tax Authorities must prove both that a:

- Dependent relationship existed between the parties involved in the transaction under review.
- Transfer of profits occurred.

French legislation requires certain companies to provide significant documentation to the French Tax Authorities in relation to transfer pricing.

## GRANTS AND TAX INCENTIVES

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

French legislation provides for multiple grants and tax incentives to attract new investors. They take the form of tax credits and exemptions at both a national and regional level. Investors must meet strict criteria to apply for these.

The main incentive provided by French tax legislation is the "R&D tax credit" (*crédit d'impôt recherche*) which is a corporate tax incentive based on the research and development expenditure incurred by any trading company located in France, regardless of sector or size. This mechanism allows all companies to benefit from:

- A 30% partial refunding (either by way of tax reduction or tax reimbursement) of expenditure under EUR100 million.
- A 5% partial refunding (either by way of tax reduction or tax reimbursement) of expenditure exceeding EUR100 million.

The mechanism was extended to "innovation" expenditure incurred by small and medium-sized companies (SMEs), offering a yearly tax credit of 20% up to EUR400,000 of expenses (that is, a yearly tax credit of EUR 80,000).

## EMPLOYMENT

### 31. What are the main laws regulating employment relationships?

#### Sources of the French domestic law applicable

French employment rules are a body of normative material mainly consisting of the following:

- The law itself (codified in the French Labour Code).
- Case law.
- All collective labour agreements entered into between the representative of the employers and the employees in each business sector.
- Employment contracts between the parties.

As a general rule, the most preferential rules and benefits are always afforded to French employees (regardless of the hierarchy of the employment rules).

#### Private international law applicable

Under both the French domestic law and the EU legislation, the employee is considered to be the weaker party in an employment

contract. As a result, the employee benefits from a stronger protection.

The determination of the law applicable to an employment contract in an EU member state, (including France) or to an employment contract outside of the EU but involving an EU national, is provided by Rome I Regulation (593/2008/EC) on the law applicable to contractual obligations (Rome I).

Under Rome I, the employer and the employee can freely choose the law applicable to their employment contract only if the level of protection offered to the employee is at least identical to that provided by the law which should have applied in the absence of a choice.

In the absence of choice of law, the law of the country where the employee usually works will apply unless the contract is more closely connected with another country, in which case it will be governed by the law of that country. In any case, the compulsory employment laws provided by the employment law of the country in which the work is effectively performed must generally always apply.

#### Posted workers

When foreign employees work in France for a temporary period of time, even if they remain employees of the overseas company, they will benefit from certain individual and collective protections, such as the minimum wage requirements, the right to strike and the maximum working hours limitation.

Foreign employees working in France for an indefinite period of time will as a general rule benefit from the provisions of French employment law. Most of the French labour rules are considered as overriding mandatory provisions (*lois de police*).

### 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 EEA, Switzerland, Monaco, Andorra and San Marino can freely work and live in France unless they do not have a valid ID card or passport and/or present a threat to public order.

As a general rule, non-EU nationals require prior entry clearance before entering France to work. They must first obtain a work permit then obtain a visa/residence certificate from the police authorities.

## PROPOSALS FOR REFORM

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

The Finance Law for 2016 (Law No. 2015-1785 of 29 December 2015) and the Amending Finance Law for 2015 (Law No. 2015-1786 of 29 December 2015) introduced certain modifications, among which the following can be retained:

#### Country-by-country reporting obligations

As a result of the OECD measures adopted to fight against "Base Erosion and Profit Shifting", a country-by-country reporting obligation is introduced for accounting years from 1 January 2016. Its purpose is to obtain, on a country-by-country basis, certain accounting and tax information of the member companies of tax consolidated groups.

Such obligation will apply to the following:

- French "group head" companies which keep consolidated accounts (generating an overall income exceeding EUR750

million) and hold foreign subsidiaries (directly or indirectly) or foreign branches.

- French companies held by a foreign parent company meeting the above conditions and located in a jurisdiction with which France has not entered into any agreement including an automatic exchange of information.

#### Parent-subsidiary regime applicable to dividends

The following are some of the characteristics of the parent-subsidiary regime applicable to dividends.

**Scope.** Under the regime, any domestic dividend distribution corresponding to a shareholding of at least 5% (during a minimum two-year period) received by a French company benefits from a partial corporate tax exemption: only a 5% of the distribution is subject to corporate tax.

For accounting years starting on or after 1 January 2016, the regime is extended to dividend distributions made to French non-profit entities, such as French "associations". For fiscal years ending before or on 31 December 2015, any such French non-profit entity holding at least 2.5% of the capital and 5% of the voting rights of a company can benefit from the partial corporate tax exemption on dividends if the shares are held for at least five years (instead of the two-year standard holding requirement).

Dividend distributions corresponding to a shareholding of at least 10% (during a minimum two-year period) made from a French company to an EU parent company will benefit from a full withholding tax exemption.

For accounting years starting on or after 1 January 2016, the following amendments to the regime were introduced:

- To benefit from the withholding tax exemption applicable to French source dividend distributions, the foreign parent company's minimum holding requirement of 10% in the share

capital can now comprise not only shares held in full property but also shares held in bare ownership.

- The regime is extended to qualifying dividend distributions (see below) made to companies registered in an EEA member state with which France has entered into a tax treaty including administrative assistance (such as Iceland, Norway and Liechtenstein).
- The regime also applies to dividend distributions made to an EU/EEA company, corresponding to a shareholding of at least 5% (instead of 10%), when the beneficiary of the dividend cannot offset the corresponding French withholding tax in its State of establishment.

The regime was previously applicable through ECJ's "*Denkavit*" decision (*Denkavit Internationaal BV and another v Ministre de l'Economie, des Finances et de l'Industrie* (Case C-170/05)).

**Participation exemption regime.** This applies to dividends paid within French tax consolidated groups. For accounting years starting on or after 1 January 2016, the full tax exemption on dividends distributed within a French tax consolidated group (that is, corresponding to a shareholding of at least 95%) will no longer be applicable. A 1% fraction of these distributions will now be liable to corporate tax. To avoid any discriminatory tax treatment within the EU/EEA, all distributions received by member companies of a French tax consolidated group from their EU/EEA subsidiaries held up to at least 95% will also be subject to the same tax regime.

**VAT on distance selling.** From 1 January 2016, distance selling made by a supplier established in an EU member State towards France will be liable to VAT when the total amount of distance selling realised in France by the supplier exceeds EUR 35,000 (instead of EUR100,000 previously).

## THE REGULATORY AUTHORITIES

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

**Main activities.** The Trade Registry collects all the mandatory information that companies registered in France must disclose.

W [www.infogreffe.fr](http://www.infogreffe.fr)

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

**Main activities.** The AMF is an independent administrative authority which supervises the participants and the products on French financial markets.

W [www.amf-france.org](http://www.amf-france.org)

### French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel et de Résolution*) (ACPR)

**Main activities.** The ACPR is an independent administrative authority in charge of preserving the stability of the financial system and protecting the customers, insurance policyholders, members and beneficiaries of the persons that it supervises.

W [acpr.banque-france.fr](http://acpr.banque-france.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 in charge of providing administrative services for businesses in labour policy, competition and employment as well as labour market.

W [direccte.gouv.fr](http://direccte.gouv.fr)

## ONLINE RESOURCES

### Legifrance

**W** [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)

**Description.** Legifrance is the official French government entity responsible for publishing legal texts online. It provides access, in French, to laws and decrees published in the *Journal officiel*, important court rulings, collective labour agreements and standards issued by European institutions, and international treaties and agreements to which France is a party.

### French tax authorities

**W** [www.impots.gouv.fr](http://www.impots.gouv.fr)

**Description.** Official French tax authorities' website. It notably provides access to the French tax authorities' official documentation and guidelines as well as official tax forms.

## Practical Law Contributor profiles



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**Professional qualifications.** France, Avocat à la Cour

**Areas of practice.** French and international tax; tax litigation.

**Recent transactions.** Negotiated together with Maryse Naudin the first France-US transfer pricing APAs for Visteon Corporation (an American global automotive electronics supplier spun off from the Ford Motor Company in 2000).

**Professional associations/memberships.** EU Commission Advisory Panel on the choice of methodology for the evaluation of the effective tax rates in Member States, Member (2001); Tax experts panel on the preparation of the French government's, *Assises de la fiscalité*, Member (2014); Tax Commission of the French Committee of the International Chamber of Commerce, Chairman; International Tax Committee of the French Committee of the International Chamber of Commerce, Co-chairman.

### Publications

- "La Fiscalité des Sociétés dans l'UE" (8th edition 2010) translated in English as "Corporate Taxation in EU Countries" (Longmans).
- "Transfer pricing and tax avoidance", French chapter, edited by the European Lawyer Reference (1st Edition 2014).

**Professional qualifications.** France, Avocat à la Cour

**Areas of practice.** French and international tax; tax litigation.

### Recent transactions

- Experience in French and international tax, tax litigation in all aspects of French taxation with a particular emphasis on international tax issues (including European community freedoms and fundamental law principles).
- Particular expertise in advising foreign investors acquiring French assets (in particular real estate property), as well as advising French clients with foreign interests.
- Experience in setting up and structuring multinational large and medium sized groups in Europe (notably in the e-business sector).
- Proven expertise in comparative corporate taxation of trading and holding companies within the EU.
- Negotiated together with Jean-Marc Tirard the first France-US transfer pricing APAs for Visteon Corporation (an American global automotive electronics supplier spun off from the Ford Motor Company in 2000).

**Professional associations/memberships.** Tax experts panel on the preparation of the French government's *Assises de la fiscalité*, Member (2014).

### Publications

- "La Fiscalité des Sociétés dans l'UE" (8th edition 2010) translated in English as "Corporate Taxation in EU Countries" (Longmans).





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- Experience in all aspects of French taxation with a particular emphasis on international tax issues (including European community freedoms and fundamental law principles).
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- Participation in numerous tax litigations and has an excellent knowledge of all stages and aspects of the French tax procedure.