Establishing a Business in France

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A Q&A guide to establishing a business in France.

This Q&A gives an overview of the key issues in establishing a business in France, including an introduction to the legal system; the available business vehicles and their applicable formalities; corporate governance structures and requirements; foreign investment incentives and restrictions; currency regulations; and tax and employment issues.

Legal System

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

Basis of Legal System

The French legal system is based on civil law. The main rules governing trading companies derive from statutory law codified in the Civil and Commercial Codes.

Most EU legal instruments are directly integrated into national law and apply between individuals, without having to be implemented into national law. Individuals can also invoke EU law directly before the national courts.

Federal or Unitary System

France is a unitary state organised on a decentralised basis under the 1958 Constitution. There are three sub-levels of governance:

- Regions (*régions*).
- Departments (*départements*).
- Municipalities (*communes*).

These do not have legislative powers.

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 companies take one of the following forms.

- For small and medium-sized businesses:

    - simplified company limited by shares (*société par actions simplifiée*) (SAS); or
    - private limited company (*société à responsabilité limitée*) (SARL).

- For large businesses: public limited company (*société anonyme*) (SA).

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

The use of *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 and 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's articles of association 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 at shareholders' meetings.
- Access corporate information.

Drafting the articles of association 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 is met:

- The SAS controls or is controlled by one or several companies.
- Two of the following three thresholds are reached:
    - the SAS has 50 employees;
    - the total balance sheet of the SAS exceeds EUR4 million; and
    - the turnover of the SAS (not including VAT) exceeds EUR8 million.

- One or several shareholders representing 10% of the share capital request the appointment of a statutory auditor before a court.

The SAS cannot make public offerings and its shares cannot be admitted to a regulated market.

The SAS must be incorporated with the Commercial and Companies 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, as its functioning is precisely defined and regulated by the Commercial Code. However, due to this strict legal framework, which does not allow for much flexibility, a SARL is generally unsuitable for businesses with an external growth strategy.

Shareholders usually have the right to:

- Receive dividends.
- Vote at 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 articles can require a greater majority. A SARL must have a:

- Maximum of 100 members.
- Natural person as its manager.

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

- Two of the following three thresholds are reached:
    - the SARL has 50 employees;
    - the total balance sheet of the SARL exceeds EUR8 million;
    - the turnover of the SARL (not including VAT) exceeds EUR4 million.
- One or several shareholders representing 10% of the share capital request the appointment of a statutory auditor before a court.

A SARL cannot make public offerings and its shares cannot be admitted to a regulated market.

The SARL must be incorporated with the Commercial and Companies 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. 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 that apply to all listed SAs. However, due to its strict obligations, the SA is a business form that often reassures investors and trading partners.

An SA must have a minimum of two shareholders (seven if shares of the company are listed on a regulated market) 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 at shareholders' meetings.
- Access corporate information.

An SA must be incorporated with the Commercial and Companies 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 in establishing a presence in France. A 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.

Branch

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 that is not a separate legal entity from its parent company).

Setting up a branch can be an appropriate option for:

- Foreign investors initially looking to establish a presence during the starting phase of a business.
- Foreign investors looking to keep 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, as a general rule, 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).

Subsidiary

A subsidiary is a separate legal entity from its foreign parent company. Advantages include the following:

- The subsidiary has a legal form with which local business partners are familiar.
- The foreign parent company keeps ultimate control of the subsidiary.
- The parent company benefits from limited liability protection, which means particularly that it cannot be held liable for the subsidiary's debts.

The main disadvantages are that:

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

Other Options

A foreign investor can enter into a joint venture, either through a corporate vehicle or through a contract (see *Question 5* and *Question 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, including the following:

- **Distribution agreements.** The foreign supplier contracts a French-located distributor to sell its products in France.
- **Franchise agreements.** The foreign party (franchisor) consents to provide its brand and support to a French entity (franchisee) in exchange for a percentage of the income generated in France. Although the agreement does not have to be disclosed to third parties, certain IP licences must be registered to be enforceable against third parties.
- **Commercial agency agreements.** A foreign company appoints a French-based intermediary to act on its behalf in dealing with third parties. The French-based commercial agent must be registered with the Commercial and Companies 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.

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

There are several types of legal business forms in France that can be compared to the common law partnerships, including:

- Equivalents to general partnerships (*sociétés en nom collectif*) (SNCs) and limited partnerships (*sociétés en commandite simple*) (SCSs), which are commercial businesses.
- Civil companies (*sociétés civiles*), which are often used for civil, freelance, and intellectual professions.
- Civil real estate companies (*société civiles immobilières*) (SCIs), which are flow-through companies.
- Economic interest group (*groupement d'intérêt économique*) (GIE), which can be used by its members (usually trading companies) to pool some of their activities.

SNC

An SNC has a legal personality and holds the assets contributed 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 their pro-rata profit shares or can offset their pro-rata losses derived from the SNC activity against their own profits. An SNC is never liable for corporate or income tax.

SNCs are governed by the Commercial Code.

SCS and SCA

Both of these business forms have a legal personality. They are similar companies but are rarely used in France. In both forms, the company holds the assets contributed 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 limited liability protection 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 their profit shares. The SCS itself is subject to corporate tax on the fraction of profits corresponding to the *commanditaires*' share.

SCSs and SCAs are governed by the Commercial Code.

SCI

A French SCI is a special purpose company dedicated to owning only unfurnished real estate 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, severally liable for the company's debts.

However, from a tax standpoint, the SCI will only function as a flow-through structure if 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 or property trade on a regular basis) will become liable to corporate tax.

SCIs are governed by the Civil Code.

GIE

A 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 related expenses) to facilitate and increase their development. Its members are indefinitely and jointly liable for the GIE's debts.

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

Joint ventures (JVs) between a foreign company and a local business are common in France (although not compulsory to do business in France) and can be structured either through a corporate vehicle (*société*) or through an agreement.

Corporate JVs

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

- Limited company such as a SAS, due to its flexibility (see *Question 2*).
- Flow-through structure (see *Question 5*) which, from a tax standpoint, would allow its members to offset all losses generated against their profits (specifically during the starting phase of the project).

A JV can also be structured as a *société en participation* (SEP). The SEP is a company (*société*) that is not registered and does not have a legal personality. Only partners who are revealed to third parties are liable for the company's debts. When the SEP has a civil activity, its partners are held indefinitely liable for debts. When the SEP has a commercial activity, its partners' liability is also joint and several.

Contractual JVs

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

7. Are trusts (or a local equivalent) available in your jurisdiction?

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, with trust relationships remaining unknown to French civil law, a trust cannot be governed by French law.

This is because, unlike common law, French civil law makes no distinction between legal and equitable ownership as ownership is unitary and absolute. French courts have, however, recognised the effects of common law trusts in France. On 31 July 2011, comprehensive legislation came into force dealing with the tax treatment of foreign trusts. Consequently, a foreign trust can be set up to own French assets, including French operational companies and companies owning real estate properties located in France. For French resident settlors, the setting up of a trust after 11 May 2011 can be detrimental from an inheritance tax point of view. However, trusts remain the most appropriate instrument for estate planning purposes for non-French resident settlors.

The French *fiducie*, created 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.

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

Foreign companies wishing to establish a business in France may prefer an SAS for the following reasons:

- Its flexibility, as the way an SAS functions can be freely determined by its articles of association. For example, the articles can freely determine the rules on the:
  - transfer of shares;
  - nature, duties, and power of the company's representative bodies; and
  - process for taking corporate decisions.
- Its legal representative can be a corporate entity.

Like any other French private company, an SAS is governed by the Commercial Code and the Civil Code. The formation of an SAS is subject to fulfilling certain formalities with the Commercial and Companies 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

Similar requirements apply to the creation of (non-listed) trading companies, such as an SAS, a SARL, or an SA. The company must register with the Commercial and Companies Registry through a single formality. A form must be sent to a business registration centre called the Corporate Formalities Centre (*Centre de Formalités des Entreprises*) (CFE) or filed electronically on *www.infogreffe.fr*. The CFE or Infogreffe act as clearing houses for the statutory bodies that need to be aware of the creation of a trading company, such as the tax authorities or social security organisations. The following documents must be filed:

- The signed articles of association.
- 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.
- Domiciliary documents certifying the address of the company's registered office.

- A copy of the publication of a judicial announcement in a journal of legal notices.
- A completed form (M0) that summarises all the company's details (such as name, capital, head office address, identity of the shareholders, identity of the legal representatives, and so on).
- If the legal representative is a natural person:
    - a copy of a valid ID and sworn statement that they have not been convicted of a criminal offence; and
    - a copy of a residency permit for non-EU persons residing in France.
- If the legal representative is a legal entity:
    - an extract from the Companies Registry in its country of incorporation (issued in the last three months before incorporation);
    - a copy of the articles of association (translated into French if necessary) certified by the legal representative;
    - any official document justifying its legal existence (translated into French if necessary); and
    - a copy of the ID or residency permit of its legal representatives.
- If statutory auditors are required (such as when certain thresholds are met, relating to turnovers, numbers of employees, and so on): copy of letters of acceptance.
- If the company will conduct regulated activities (that is, when either a specific qualification is required (such as for physicians, architects and 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; and/or
    - any administrative authorisations.

The registration fees for a commercial company are low (about EUR300 for publication and registration). Registration may take only a few weeks after filing if all supporting documents are completed and filed.

Company Constitution

Although companies' articles of association are not standardised, certain restrictions apply under the Commercial Code. The articles of association must provide information on the company, including its:

- Name.
- Legal form.
- Registered office location.
- Registered capital amount.
- Shareholders' contributions.

- Duration and corporate object.

The articles are often established by a private deed, unless a notarial deed is required (in particular when real estate property is contributed to the company's capital).

The articles of association are public and can be obtained from the Commercial and Companies Registry.

Separate shareholders' agreements can be signed in addition to the articles of association (by all or some of the shareholders), but do not form part of the documents required to create a company.

Financial Reporting

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

Companies

Every French trading company must comply with accounting requirements and keep annual book accounts (balance sheet, profit and loss account, and, if required, management reports, minutes of the annual meeting regarding the approval of the accounts and allocation of profit), which must be filed with the Commercial and Companies Registry.

Branches of Overseas Companies

These requirements also apply to French branches of foreign companies.

Trading Disclosure

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

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 Commercial and Companies Registry's identification number.
- The VAT number of the company.
- The date of issuance of the invoice and its reference number.
- The date of the sale or service provision.
- The quantity, precise description, and unit price (excluding VAT) of the products sold and services provided, and the applicable VAT rates.
- Any price reduction applying.
- The date when payment must be made.

There can be additional requirements, for example, if the company is conducting a regulated activity or doing business with companies located outside France.

The legal form of the company must be indicated (for example, SA, SAS, SCA, and so on) on all formal documentation and administrative or business correspondence.

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 agreements (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 legal representative of the company) did not have the legal capacity to bind the company.

Membership/Shareholders

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

An SA must have a minimum of two shareholders (seven if shares of the company are listed on a regulated market).

Both SASs and SARLs can have a single shareholder. A SARL can have a maximum of 100 shareholders.

Single member trading companies exist under French law and can take one of the following forms:

- Single member private limited company (*entreprise unipersonnelle à responsabilité limitée*) (a SARL with a single shareholder) (EURL).
- Single member simplified company limited by shares (*société par actions simplifiée unipersonnelle*) (an SAS with a single shareholder) (SASU).

EURLs and SASUs are governed by the same rules that apply to all SARLs and SASs, subject to specific rules for single shareholder companies (for example, regarding the drafting of the articles of association or the minutes of general meetings).

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 an SAS and a SARL can be freely determined by the articles of association (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, including the following:

- In a SARL, shareholders' approval must be obtained before transferring the company's shares to a third party.
- Certain restrictions on the transfer of shares issued from:
    - free share allocation plans (benefiting managers); and
    - 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, paramedics, and so on).

- Shares representing "sweat" equity (*apport en industrie*) cannot be transferred.

In addition, the company's articles and the shareholders' agreements (if any) can also include certain restrictions on 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? Is liability limited to the value of shareholders' shares?

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 a partnership (*association*), which must represent at least 5% of the company's share capital. These partnerships have the same rights as any shareholder owning at least 5% of the company's share capital.

In the context of certain complex transactions conducted by a listed company, for which shareholders are usually provided with limited information, an expert opinion (*attestation d'équité*) can be requested to certify that all shareholders are treated in the same manner. However, this is a limited minority shareholder protection because only the board of 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. The most notable protections and rights include the following:

- Shareholders' associations can request an explanation in writing from the chairman of the board of directors or the management board about one or more management operations. In the absence of a response within one month, or in the absence of a satisfactory response, these shareholders can request, in summary proceedings, the appointment of one or more experts to draft a report on one or more management operations.
- Making a court application for the disclosure of specific information that is otherwise inaccessible to minority shareholders.
- Requesting the inclusion of items or draft resolutions on the agenda of the shareholders' meeting.
- Requesting the recusal for a just cause of one or more statutory auditors.
- Bringing an action against directors (*administrateurs*), members of the executive board (*directoire*), or managing director (*directeur général*).
- Bringing an "abuse of majority" (*abus de majorité*) claim to declare a decision invalid if it was taken in the sole interest of the majority shareholders.

Separate shareholders' agreements can provide additional protections. They are only binding on the signatories and should not contradict the articles of association.

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 an SA or a SARL. However, the rules governing an SAS are more flexible.

The rules applicable to SAs impose statutory quorum and voting requirements at shareholder meetings. Depending on the subject, decisions are either taken at "ordinary" or "extraordinary" shareholder meetings.

Generally, each member has the number of votes equal to the number of shares that they hold.

SA

The following rules apply to SA shareholder meetings. The company's articles can impose stricter requirements.

Ordinary shareholder meetings. Ordinary shareholder meetings are competent to make all standard and recurrent decisions, such as:

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

Shareholders representing at least 20% of voting rights must be present at an ordinary shareholder meeting.

Extraordinary shareholder meetings. Extraordinary shareholder meetings are convened to deal with specific decisions on significant or less frequent operations, such as those relating to share capital and amendments to the articles of association.

Shareholders representing at least 25% of voting rights must be present at an extraordinary shareholder meeting. If a subsequent meeting is required (because the quorum was not met at the first meeting), shareholders representing at least 20% of voting rights must be present.

SARL

The rules applicable to SARLs incorporated after 4 August 2005 impose the following quorum and voting requirements for shareholder meetings (depending on the nature and subject of the decision to be taken). SARL articles of association can also impose stricter requirements.

Ordinary shareholder meetings. No quorum requirements apply. A resolution is passed by at least 50% of the shareholding.

Extraordinary shareholder meetings. Shareholders representing at least 25% of voting rights must be present. If a subsequent meeting is required, shareholders representing at least 20% of the voting rights must be present.

SAS

The quorum and voting requirements at shareholder meetings can be freely determined by the articles of association. Under certain conditions, preferred shares (for example, 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 to be made, specific voting majority rules can be required by law.

SA

The following rules apply:

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

SARL

The following rules apply:

- Ordinary shareholders' decisions must be approved by shareholders representing 50% of the company's shares. If this majority is not reached, decisions can be adopted by a simple majority of the shareholders present at the second meeting.
- Extraordinary shareholders' decisions must be adopted by two-thirds of the company's shares held by shareholders present or represented at the meeting.

Although the company's articles can impose stricter requirements, they cannot require unanimity.

SAS

The majority rules are freely determined by the company's articles. However, certain decisions require unanimity (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 their 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, weighted voting or super-majority veto rights)?

Depending on the company's legal form, voting majorities required by law can be disapplied to protect minority shareholders. SASs, SAs and SCAs can also issue preferred shares. Those preferred shares may be accompanied by special rights of any kind. For example, it is possible to give preferred shares, under certain conditions, a double voting right.

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 authorisations 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 activities require prior approval from either of the following:

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

Foreign Investment Restrictions

20. Are there any restrictions on foreign shareholders/company members?

French law does not impose restrictions on foreign individuals or legal persons holding shares in a French trading company.

However, the Monetary and Financial Code (*Code monétaire et financier*) imposes certain restrictions on foreign investments in activities involving the exercise of public authority. In addition, investors must obtain prior authorisation from the competent ministry to invest in specific sensitive business areas such as trade in weapons trade, cryptology, or gambling.

21. Are there any exchange control or currency regulations? Are there any registration requirements under anti-money laundering laws?

Exchange Control or Currency Regulations

France has had no exchange control policy or currency regulations since 1990.

Anti-Money Laundering Laws

The Fifth Money Laundering Directive (*(EU) 2018/843*) aims to strengthen the fight against money laundering and terrorist financing (AML/CFT) through:

- Strengthening the transparency of legal persons and complex legal structures by improving access to beneficial ownership information.
- Harmonising enhanced due diligence measures for business relationships and transactions involving high-risk third countries
- Measures to be implemented in remote business relationships.
- Subjecting certain digital asset service providers to AML/CFT rules.

These rules were transposed into French law by Order no 2020-115 of 12 February 2020.

Other Recording and Reporting Requirements

French law imposes beneficial ownership reporting requirements on all unlisted companies and foreign companies with a French branch. These companies must identify and disclose the identity of any individual who:

- Directly or indirectly owns more than 25% of the company's capital or voting rights.
- Exercises control over the company within the meaning of the Commercial Code.

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

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

However, foreign investors must comply with certain tax obligations. A foreign company 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 selling the real estate held or the company's shares, if it qualifies as a real estate property company (*société à preponderance immobilière*).

Directors

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

French law imposes the following main general restrictions and requirements on the appointment of French companies' directors:

- Non-conviction: an individual convicted of certain felonies or 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 be a board member 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 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:

- SA:
    - the board of directors of an SA cannot have more than one third of its members over the age of 70, unless the articles of association state otherwise;
    - the board cannot have more than one third of directors bound to the company by an employment contract;
    - an individual cannot concurrently be a director in more than five other SAs (excluding controlled companies); and
    - listed SAs must have a minimum proportion of female directors, which cannot be under 40% of the board members.

- 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*).

Board Composition

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

Structure

The composition of the board is strictly regulated in a SA and unregulated in the 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 (seven when the shares are listed on the stock exchange). 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 articles of assocation can provide for a board of directors with no minimum or maximum number.

Employees' Representation

Under French labour law, employees in an SA have a right to board representation if, at the closing of two consecutive financial years, either of the following thresholds are met:

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

Any company that 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.

Re-Registering as a Public Company

> 25. What are the requirements for a business to re-register as a public company or when does an entity become a reporting issuer?

Membership

Only the shares of an SA 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 *Question 2* and *Question 24*). The only exception is the maximum number of members of the board of directors (in the 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 EUR37,000.

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

- Contribute at least 20% 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 Income Tax and its Additional Contribution

French corporate income tax (CIT) applies on a strict territorial basis. It is assessed on French source income and not on a worldwide basis. CIT is, generally, levied at the standard rate of 26.5%.

However, companies with an annual turnover below EUR7.63 million and fulfilling certain conditions are subject to a CIT rate of 15% on the percentage of their net profit lower than or equal to EUR38,120.

Small and medium-sized companies (as defined in the Commercial Code) with an annual turnover between EUR7.63 million and EUR10 million starting their fiscal year on or after 1 January 2021 benefit from a reduced CIT rate of 15% on the percentage of their net profit that does not exceed EUR38,120. They will only be subject to the 26.5% rate on the fraction of their net profit exceeding EUR38,120.

For fiscal years starting on or after 1 January 2022, a 25% CIT rate will apply for all companies.

Two co-existing parent-subsidiary regimes are applicable, based respectively on French domestic tax law and EU law (*Directive (EU) 2015/121*). These regimes allow a qualifying parent company to benefit from reduced taxation 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*.

French tax law also provides a tax integration regime (*intégration fiscale*), allowing a parent company to be liable for CIT (plus additional contribution) on behalf of its whole group. The consolidated group includes French subsidiaries (foreign subsidiaries are excluded) that are liable to CIT and have a share capital of which 95% is held (directly or indirectly) by the parent company. A subsidiary can also be part of a 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 French group are aggregated to determine a tax integrated net result.
- Intragroup transactions are neutralised.

Large companies subject to CIT may also be liable to an additional contribution at the rate of 3.3%, assessed on the fraction of CIT due exceeding EUR763,000. The additional contribution does not apply to companies whose annual

turnover does not exceed EUR7.63 million, if at least 75% of the company is owned by individuals or by companies that themselves fulfil these conditions. An integrated group is liable to pay this additional contribution if its global turnover exceeds EUR7.63 million.

CIT is pre-paid in four instalments (in March, June, September and December). The balance of CIT is due by 15 May of the following year.

VAT

VAT is levied on the 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 Tax Code. However, some exempt transactions can be deemed taxable if a VAT election is made.

The following VAT rates are 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 business tax (*taxe professionnelle*) in 2010. It is a local tax levied by the French departments and regions, made up of the following two components:

- The business property tax (*cotisation foncière des entreprises*), which is based on the rental value of the property used for the company's business.
- The companies added value tax (*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 on Transfers of Shares

Registration duties are due on transfers of company shares. The rates vary depending on the nature of the shares transferred:

- Transfers of shares in an SAS or SA are taxed at the rate of 0.1%.
- Transfers of shares in a 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%.

Real Estate Property Tax

Foreign companies that (directly or indirectly) hold one or more French real estate properties the market value of which 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 that has not signed a tax treaty with France (including exchange of information) is involved in the holding structure.

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

Tax Resident

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

A business is carried out in France when a French or foreign 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 CIT.

Non-Tax Resident

A foreign company is only liable to French CIT on the profits made from business carried out in France through a permanent establishment (see above).

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

Unless tax treaties provide otherwise, dividends are subject to:

- 30% withholding tax on dividends paid to non-resident companies (12.8% for non-resident individuals).
- 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 the Parent-Subsidiary Directive (*2011/96/EU*), dividends distributed by French subsidiaries to EU parent companies are exempt from withholding tax, if, among other conditions, the recipient holds 10% or more of the shares of the subsidiary for at least two years (the 10% threshold is lowered to 5% if the effective beneficiary cannot credit the French withholding tax in its country of residence). See also *Question 33*.

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

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

Thin-Capitalisation Rules and General Limitations on Interest Deduction

Like many other countries, France has legislation imposing certain limitations on financial expenses deduction and thin-capitalisation rules.

General limitation of interest deduction. Interest paid by French companies is deductible if:

- The interest rate does not exceed the average interest rate on loans with an initial duration of more than two years granted by banks to French companies (for example, 1.17% for fiscal years closing on 31 December 2020).
- Their share capital is fully paid up.

A higher rate may be incurred if the paying company is subject to CIT and can show that the interest rate paid was an arm's length interest rate.

Minimum taxation test. Under this test, the tax deduction of interest accrued to related-party lenders is disallowed if the French taxpayer cannot prove, at the request of the French tax authorities, that the related lender is liable for CIT on such interest that is at least 25% of the CIT that would have been due had the lender been established in France.

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 that exceeds the highest of those is not deductible from the taxable results, unless the excess amount is lower than EUR150,000.

Charasse Amendment. This provision of the Tax Code aims to disallow, within a tax-integrated group, the deduction of financial expenses (such as interest) incurred by a group company in the acquisition of another company if:

These companies are both being controlled by the same shareholders.

The acquired company becomes a member of the tax-consolidated group.

Carrez Amendment. This provision aims to disallow the deduction of financial expenses incurred by a company in the acquisition of the shares of another company if the acquiring company is unable to show that it, or a company in France controlling it, effectively makes decisions in relation to the acquired shares and exercises its control and influence over the acquired company.

Deduction of financial expenses. For tax groups with a debt ratio of less than 1.5, net financial expenses are deductible up to the higher of:

- EUR3 million.
- 30% of the tax group's EBITDA (earnings before interest, taxes, depreciation and amortisation).

There is a safeguard clause benefiting any tax group that is a member of a consolidated group. It allows the tax group to deduct 75% of the expenses that could not be deducted in application of the above thresholds.

Transfer Pricing Legislation

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

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

R&D Tax Credit

The main incentive provided by French tax legislation is the R&D tax credit (*crédit d'impôt recherche*), which is a CIT 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 refund (either by way of tax reduction or tax reimbursement) of expenditure under EUR100 million.
- A 5% partial refund (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, offering a yearly tax credit of 20% up to EUR400,000 of expenses (that is, a yearly tax credit of EUR80,000).

Additional information on the application procedure can be found on the website of the *French Ministry of Economy and Finance*.

Reduction of Social Security Contributions

The Tax Credit for Competitiveness and Employment (*Crédit d'impôt pour la compétitivité et l'emploi*) (CICE), which was introduced for financial years closed on or after 31 December 2013, was replaced by a permanent reduction of social security contributions in January 2019. The reduction is calculated on the basis of salaries that are below 2.5 times the minimum wage.

Employment

31. What are the main laws regulating employment relationships?

Sources of French Domestic Law

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

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

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

Private International Law

Under both French domestic law and EU legislation, the employee is considered to be the weaker party in an employment contract. As a result, the employee benefits from stronger protection.

The law applicable to an employment contract performed in an EU member state (including France), or outside the EU but involving an EU national, is determined in accordance with the Rome I Regulation (*593/2008/EC*).

Under Rome I, the employer and the employee can freely choose the law applicable to their employment contract 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 always apply.

Posted Workers

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

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 that concern any of the issues covered in this Q&A?

France has adopted several measures in response to the *BEPS Actions* of the Organisation for Economic Cooperation and Development (OECD) and will continue doing so. In particular, France has adopted the two-pillar solution agreed at the G20/OECD level to address tax challenges arising from the digitalisation of economy.

France introduced a 3% digital services tax in July 2019, with retroactive effect from 1 January 2019. This "GAFA" (Google, Apple, Facebook, and Amazon) tax is meant to be temporary and will be abolished as soon as the first pillar of the OECD solution is effectively implemented (details of this reform are still to be negotiated at the OECD for implementation from 2023).

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- 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).

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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- Participation in numerous tax litigations and excellent knowledge of all stages and aspects of French tax procedure.

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