



DOING BUSINESS IN FRANCE – 2010
LAMY LEXEL Avocats Associés
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- With over 65 million residents, France is a leader among European Nations, and the sixth economy in the world.
- France is a member of the G-8, the EU, the World Trade Organization and the OECD.
- A civil Law country, France has two sets of parallel but independent court systems: an administrative system and a judicial one, plus the Constitutional Council.

To assist a foreign company in doing business in France, a lawyer (“Avocat”) may render legal advice on all matters, draft agreements and contracts, handle business disputes, and plead and defend civil and criminal cases.

I. Distributing in France

Companies wishing to use distribution, franchising, and agency agreements need to ensure that the contracts they put into place are in accordance with EU and French Laws.

EU Directive establishes certain minimum standards of protection for commercial agents who sell or purchase goods and services on behalf of their principals, especially concerning the notice to be given to terminate the agency agreement and indemnity provisions.

Foreign companies must also anticipate certain EU and French Competition legislation, and payment delays which are now legally reduced to 30 days, unless parties agree on 60 days (as a maximum).

Intermediaries may take one of these primary forms:

- Distribution
- Agent
- Salaried Representative (employee)

When using direct marketing, companies have to comply with a wide range of EU and French legislation that impacts the direct marketing sector, especially when dealing with private consumers.

The EU has strict Laws governing the protection of personal data and the completeness of the information to provide to consumers prior to purchase.

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The e-commerce is a highly regulated sector (e-commerce Directive 2000/31/EC) and a tax prior study of the company activities is recommended (direct corporate taxes, VAT...).

- ⇒ Like in most countries, product liability and product safety rules establish producer liability for damage caused by a defect in his product, as well as legal warranties and after-sales services requirements.
- ⇒ Product certification
 - To sell products in the EU market of 27 member states as well as Norway, Liechtenstein and Iceland, exporters are required to apply CE marking whenever their product is covered by specific product legislation.
 - Although CE marking is invented for inspection and conformity purposes, consumers perceive it as well.
 - In France, under AFNOR (the French Certification Body) authority, the main mandated Laboratory for Certification of Products is the Laboratoire National d'Essais ("LNE") www.lne.fr.

II. Protecting your IP/IT

The Laws for the protection of intellectual property are contained in the Intellectual Property Code : Copyrights, trademarks, patents, computer programs, databases may be well protected, keeping in mind that France, like most EU country, has a "first to fill" approach, as compared to the "first to invent" system currently followed in USA.

Trademarks may be protected on a EU wide level, for 10 years (renewable), and Designs for 25 years (renewable).

Patents for inventions have a twenty-year life span, after which they become part of the public domain.

Certificates of utility have a six-year, no-renewable life span.

Software copyrights are valid for 25 years after creation.

In this highly technical sector of IP/IT, the assistance of a specialized Lawyer is of course recommended.

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III. Setting up a Company in France

Whereas you can choose to start your activities in France by entering a simple JV agreement, by contract, you can also easily register a branch, or set up a company, with simplified registration formalities.

Choosing a legal structure will affect the company's legal status, assets and shareholders liability.

Limited liability companies are most common in France, the most popular forms being SAS, SA and SARL.

You will find hereafter a comparison of these main forms of limited liability companies, the liability of shareholders being limited to their contributions:

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	Société à Responsabilité Limitée (SARL)	Société Anonyme (SA) Usual form (Bord of directors)	Société par actions simplifiée (SAS)
Key advantages	Easy to set up and operate. Limited legal costs.	Structured for “monitored delegation”. Organization of ownership.	At least one partner. Freedom of constitutional arrangements for relations with shareholders, management, structure and transfer of capital.
Minimum capital	None. The amount is defined in the articles of the incorporation.	€37,000. Half the capital must be paid up at the time of incorporation and the other half within 5 years.	None. The amount is defined in the articles of the incorporation. No public offerings permitted. Half the capital must be paid up at the time of incorporation and the other half within 5 years.
Director’s status	A director/minority shareholder can also have an employment contract if certain conditions are met (work separate from the company office role, management hierarchy).	The Chairman can also have an employment contract if certain conditions are met (work separate from company officer role, management hierarchy).	Same as a SA as regards simultaneously holding both company officer position and employment contract.
Appointement and Dismissal of Directors	Decision of shareholders representing more than half the company shares.	Decided by the Board of Directors.	Defined by choice in the articles of incorporation.
Shareholders	1 to 100 individuals or corporate entities. At least 1 meeting per year: annual approval of the accounts.	At least 7 (with at least one individual). At least 1 meeting per year: annual approval of the accounts and ordinary decisions by simple majority at Ordinary General Meeting, changes to articles of incorporation require 2/3 majority at Extraordinary General Meeting.	At least 1 individual or corporate entity. Only certain decisions made by Ordinary General Meeting: approval of the accounts, mergers, changes in capital, liquidation.

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Blocking minority	50% of votes + 1 vote in Ordinary Meetings. Extraordinary General Meetings: 33% + 1 vote for amendments to the articles of incorporation.	1/3 of votes at Extraordinary General Meeting. 50% of votes in Ordinary General Meeting.	According to articles of incorporation.
Transfers of shares	Flat rate of 3% €5,000 ceiling for transfers of shares (SA and SAS only)		
Auditors	Auditor necessary if company exceeds two of three thresholds below: net sales over €3.1m; total balance sheet over €1.55m; more than 50 employees).	Statutory auditor required.	Statutory auditor required for companies held by (or holding) another company OR Statutory auditor required if company exceeds two of the following three thresholds: Turnover excl. tax > €2m, total balance sheet €1m, over 20 employees
Tax regime	Corporate tax or optionally income tax (if company is less than 5 years old)	Corporate tax	Corporate tax

IV. French Labor Law

Labor relations are governed by the Labor Code and by industry-specific collective bargaining agreements that reflect the practices of each sector (i.e. services, chemical industry, real estate, etc.).

1. Labor relations within a company

Labor relations within a given company are based on collective bargaining at specific industry level and at the level of individual companies, with employee and employer representatives playing a key role in ensuring flexibility in the organization of working hours and minimum wages, pay holidays, etc.

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2. A freely negotiated work contract

The most common form of employment contract is an open-ended contract (*contrat à durée indéterminée* or CDI) that is generally written in French. In principle, parties are free to draft their own contracts

and have some liberty with regard to content, which may include clauses specifying targets for compensation, providing for geographical mobility or requiring employees to assume different professional roles, as well as non-compete clauses, clauses covering ownership of inventions and intellectual property rights, etc. Contractual clauses must not be contrary to the French Labor Code or to the industry-specific collective bargaining agreement that applies to the employer. Please note that non-compete clauses must be financially compensated by the employer.

Also note that contracts for a fixed term (as opposed to open-ended contract) are highly regulated and can only be suited for limited purposes.

3. Employees representation

The employee representation system varies according to the size of the company and concerns three separate institutions:

- In companies with more than 10 employees, staff representatives are elected by the employees to present individual and collective pay claims and to ensure compliance with labor laws.
- A works council must be set up when a company has 50 or more employees. The council is elected for a period of four years by the employees to represent their interests when decisions are made about economic changes in the company (such as company development and changes in work organization) and social and cultural issues.
- Establishments with 50 or more employees must also set up a Joint Safety Committee (CHSCT – *Comité d'hygiène, de sécurité et des conditions de travail*) to involve the staff in training and other initiatives to prevent occupational risks and improve working conditions.

France has now a favorable environment for international mobility, in terms of residence and work permit, social and tax status.

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V. Business Taxes in France

France has signed tax treaties with more than one hundred countries, thus providing foreign investors with outstanding protection against double taxation.

Specific investments benefits may be offered according to the geographical zone elected in France to set up a business.

1. Tax rates on companies

Excluding temporary additional taxes, the following tax rates are applied:

- Standard rate of 33.33%.
- Small businesses pay 15% on the first €38,120 and the standard rate on remaining profits.
- Reduced rate of 15% on total proceeds of industrial property (royalties and capital gains on asset sales), affecting patents, inventions that can be patented and manufacturing processes.
- Capital gains on the sale of shareholdings are totally exempt except for the 5% representing expenses.

Loss carryforwards

Losses can be carried forward indefinitely. It is also possible to deduct the current year's losses from income in previous years ("carryback") to have consequently a credit tax which can be refunded by Treasury (under conditions).

Groups of companies: favorable rules for tax consolidation

French tax rules enable groups of companies to offset income and losses from their consolidated French businesses and eliminate intercompany transactions. Provided that the French parent company owns at least 95% of the subsidiaries, tax credit that apply to one company of the group can be transferred to the consolidating company that is subject to corporate tax, and thus be deducted from tax to be paid by the group. The fiscal years of the parent company and its subsidiaries must also be identical.

Groups may choose this option for a five-year period. It automatically ceases to apply if ownership conditions are no longer met.

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2. Corporate tax principles

Taxation based on realized earnings

Any foreign entity doing business for profit in France is liable to pay French tax on its earnings in France. This rule applies regardless of the types of entities,

- subsidiaries
- branches or
- permanent establishments.

Since each individual tax treaty defines the notion of permanent establishment as a fixed place of business or a dependent agent, a specific legal and tax research must be done before setting up the business.

Moreover, an “advanced ruling” procedure (“*rescrit*”) may secure the project.

Calculation of taxable earnings

Taxable business income is calculated by deducting eligible expenses from turnover.

Turnover comprises all of the proceeds from the sale of goods and the provision of services. Deductible expenses are those related to the company’s business.

Limits on deductions

There are limits on some deductions. For example, the depreciation allowance and deductible lease payments on company cars are capped.

Intercompany transfers

Management expenses, interest charges and royalties paid to associated companies are deductible if they correspond to actual services rendered and the amounts invoiced are in line with market prices.

Favorable depreciation rules

France’s depreciation rules are particularly favorable. Fixed assets are depreciated on a straight-line basis over their expected useful life. In the case of production assets bought new, acceleration multiples ranging from 1.25 to 2.25 may be applied to the straight-line depreciation rates, depending on the normal useful life of the assets concerned.

As France is especially concerned with ecological problems, energy-conservation equipment, renewable-energy production equipment, noise-abatement equipment and non-polluting vehicles (running on electricity, natural gas or LPG) can be depreciated over 12 months.

Allowable provisions

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Provisions for impairment of assets are allowed if they can be justified and if they relate to clearly identified claims, inventories, securities. Allowable provisions include provisions for contingencies, work in progress, price increases and vacation pay.

3. Distribution of profits

Profits are usually distributed by three different ways:

- Transfer or distribution of net profit from branches and subsidiaries, by dividends ;
- Interest on loans and advances granted by the foreign parent company;
- Royalties or management fees.

Exemptions for dividends transferred through holding companies

When holding companies located in France and holding equity interests in French and foreign companies redistribute dividends from companies in which their interests exceed 5% to their foreign shareholders:

- No tax is levied if the holding company's parent company is located in a Member State of the European Union
- If the parent company is not located in the European Union, the only tax liability is the withholding tax at the rate determined by the relevant tax treaty (for example 0 % between France and US under conditions).

Dividends distributed to a European parent company are exempted under certain conditions from the withholding tax; in other cases, tax treaties set out reduced rates of withholding tax which may be zero in new tax treaties where the subsidiary is at least 10% owned by the parent company.

If no tax treaty exists, the withholding tax is 25% or 18% for dividends and distributions paid to individuals resident in an EU country, Iceland or Norway.

For interest and royalties paid to foreign countries, tax treaties set out rates which vary from between 0 to 15%.

The amounts invoiced must be justified and comparable to similar the prices for transactions between independent companies, thus close to the market prices.

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4. Value added tax : a neutral tax

Value added tax (VAT) is a tax that consumers pay on the consumption of goods and services.

A French company collects the VAT on its own sales and deducts the amount of VAT that it has paid on purchases of goods and services. If companies have paid more VAT than they have collected, the difference will be refunded to them, thus ensuring that this VAT impact is neutral.

Exports of goods outside European Union are fully exempt from VAT.

France's standard VAT rate on sales of goods and services is 19.6% but reduced rates also exist. In particular, the rate on food and certain agricultural products is 5.5%.

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Disclaimer: This guide presents basic rules applying to business activities in France, and is not intended to be complete. Please contact us should you need an advice on specific and individual case.

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