

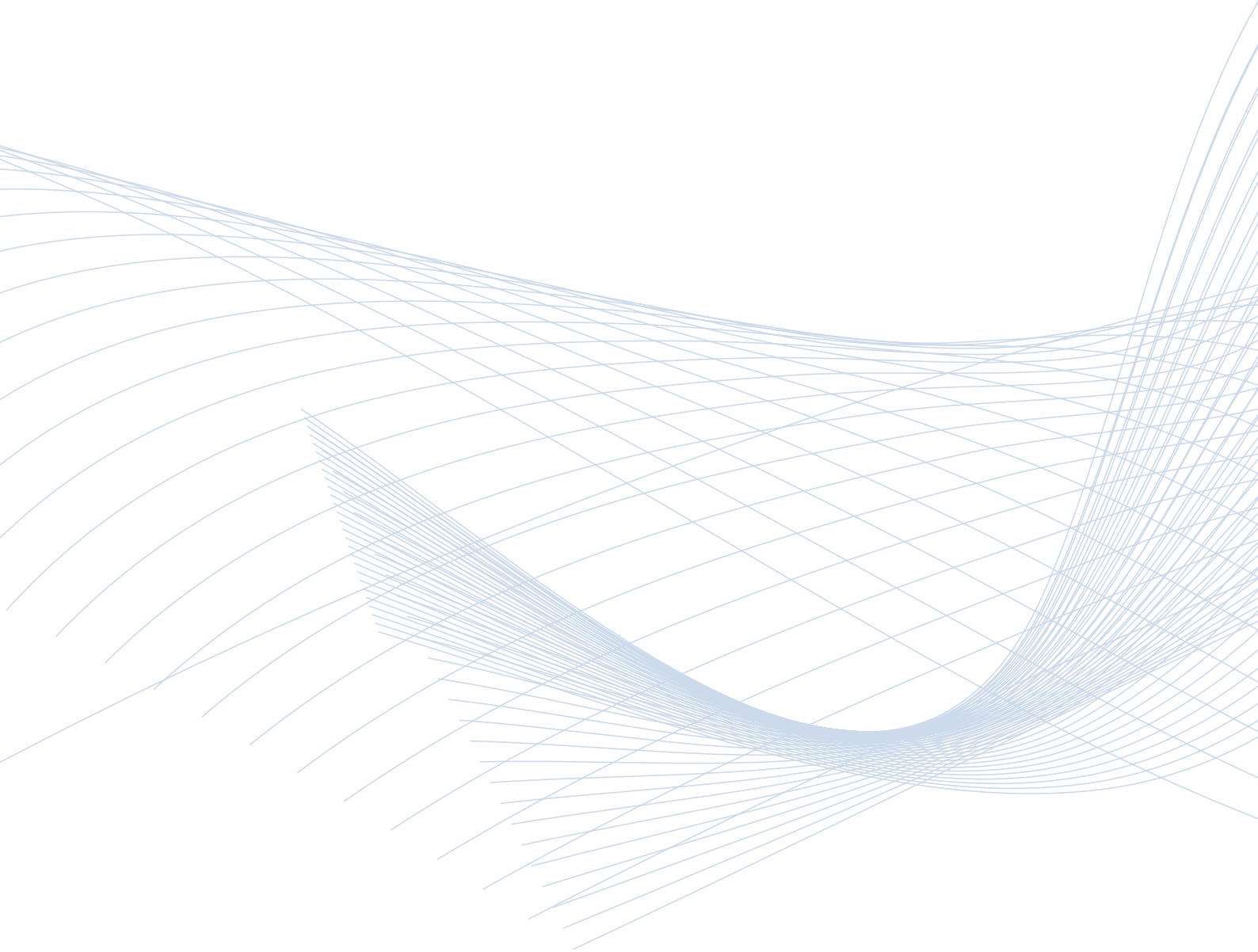
# Doing Business in France

2012 EDITION  
(Updated October 2012)



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# Message from the Ambassador

**T**his guide, written by IFA experts in association with recognized specialists (law firms, auditors, accountants and human resources consultants) is intended to be a working reference guide to the business environment in France.

It has been designed especially for foreign company directors who would like to invest in France, where more than 20,000 foreign companies are already established, running businesses under many different legal forms.

The reforms that France has pursued to promote competitiveness and improve the business environment have fundamentally changed the legal framework in which companies can be set up and expanded.

More specifically, they have promoted R&D by consolidating France's innovation clusters and research tax credit; supported key projects through the "National Investment Program" focused around five strategic priority areas for companies and the French economy (higher education and training, research, SMEs and the industrial sector, sustainable development and the digital economy); and facilitated the arrival in France of foreign companies through the establishment of single contact points for tax issues and the issue of resident permits.

This publication will provide you with an authoritative guide to a legal framework that has made it easy to invest, innovate and create businesses in France.

Please do not hesitate to contact the Invest in France Agency, which is ready to serve as a key partner to ensure the success of your investment project in our country.

David Appia  
Ambassador for International Investment,  
Chairman and CEO of the Invest in France Agency

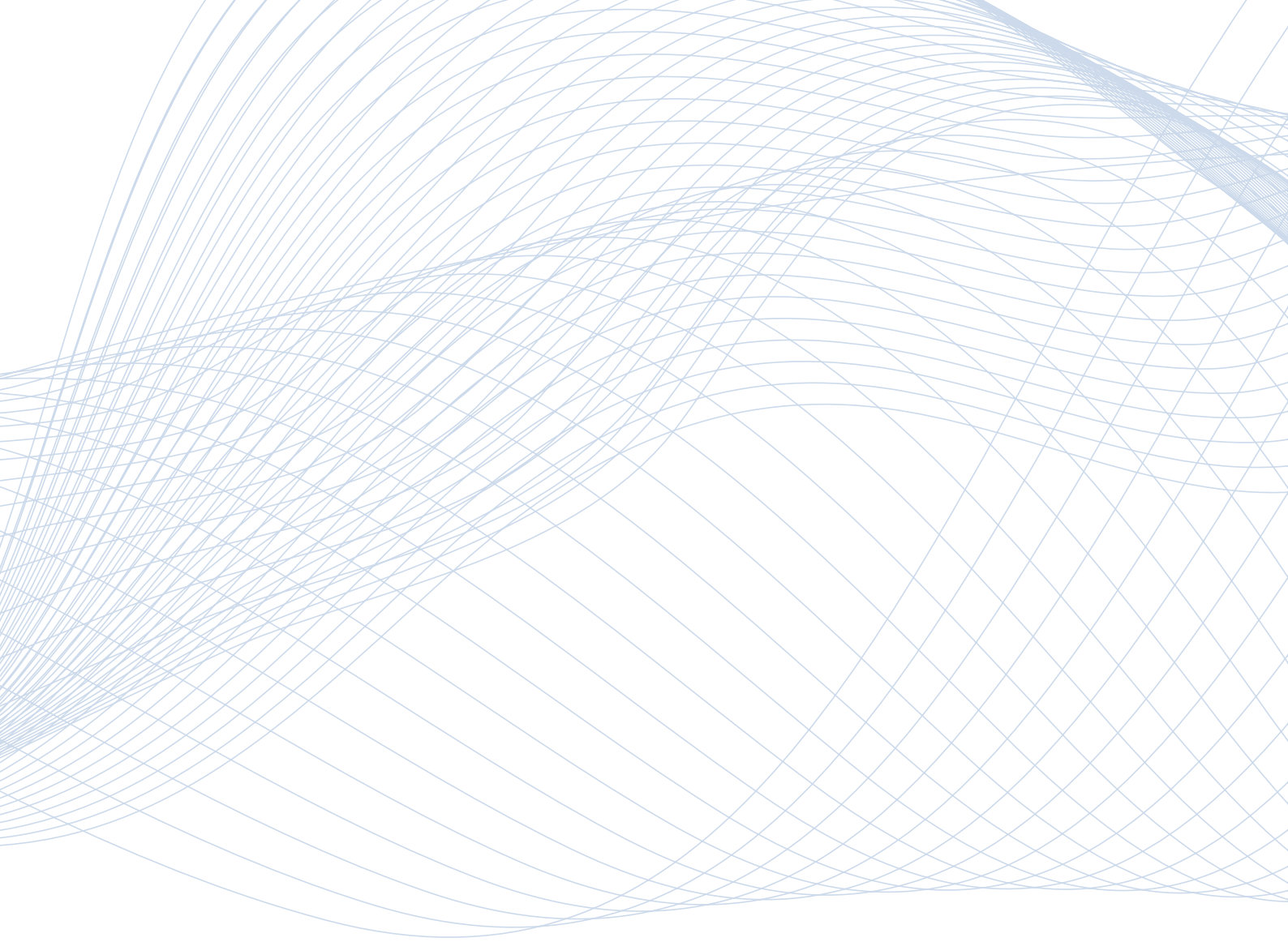
Disclaimer: This document presents the basic rules that apply to international companies locating their business in France. For practical purposes, this document presents a general overview and basic information about legal, tax and labor issues to facilitate company decision-making. The information herein is not comprehensive and the IFA cannot be held liable for any omissions or errors. Investors are advised to use the services of professional consultants for guidance on individual cases. The intellectual property rights to this document are protected and belong exclusively to The Invest in France Agency. No part of this document may be reproduced for commercial purposes without the permission of the IFA.



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**SETTING UP  
BUSINESS  
IN FRANCE  
SUCCESSFULLY**



# Chapter 1. Doing Business in France

## SETTING UP BUSINESS IN FRANCE SUCCESSFULLY

**There are no administrative restrictions on foreign investment in France. Whatever your business development strategy, in France you will find an appropriate legal structure for the kind of business you wish to set up. Investors can set up a permanent or temporary structure and enjoy full legal peace of mind; they are then free to drive their project forward in an uncomplicated and inexpensive environment.**

### IN DETAIL

*Simple steps for foreign investors to follow:*

→ If you acquire 10% or more of the equity or voting rights in a resident company, or your equity or voting rights in the company rise above the 10% threshold: a return for statistical reasons to be filed, in your capacity as a non-resident, with the Banque de France if the amount of these transactions exceeds €15 million.

→ An administrative return to be filed with the Ministry for the Economy and Finance (Treasury Directorate): 1) for investments that create new companies where the investment exceeds €1.5 million, and more generally, 2) transactions (with no minimum amount) that result in the acquisition of all or part of a line of business, or the acquisition of a direct or indirect equity interest in (or any other transaction with) a French company amounting to more than a third of its shares or voting rights (unless the investor already has a majority interest in the French company.)

→ **Prior authorization in special cases:** As in many other countries, prior authorization is required for investments in certain business sectors.

In these sectors, authorization is required in the following cases:

- To acquire a controlling interest (i.e. a majority of voting rights) in a French company and the acquisition of all or part of a business line by any foreign investor.

- For investors from countries outside the EU and the European Economic Area, authorization is also required for the acquisition of interests exceeding 33.33% of equity or voting rights in a French company (unless the investor has already been authorized to acquire a controlling interest).

Authorization is given by the Ministry for the Economy, Finance and Trade within two months (tacit agreement to be assumed if no reply is received).

**Sectors affected by prior authorization:** *Investments from EU Member States:* Private security services; interests concerning the prevention of illicit use of biological or toxic agents or other agents prohibited in the construction of chemical weapons; equipment designed to intercept communications; the evaluation and certification of systems used in information technology; the production of goods or provision of services relating to the security of information systems; goods and technology with dual applications. *Investments from non-EU countries:* *The interests indicated above, plus:* gambling (excluding casinos); encryption and decryption systems for digital applications; businesses certified for national defense; trade in weapons, munitions and explosives for military applications or equipment used in warfare; businesses under contract to supply research or equipment to the French Ministry of Defense or its subcontractors.

#### + For more information:

Articles L151-1 to L152-6 of the French Monetary and Financial Code.

Articles R153-1 and following of the French Monetary and Financial Code.

Ministerial order of March 7, 2003, detailing the information necessary to complete returns or requests for authorization.

## I. MULTIPLE BUSINESS SOLUTIONS

Choosing a business structure in France depends on the investor's strategy and the degree of independence that the French operations are to have from the parent company.

### I.1. REDUCING ADMINISTRATIVE PROCEDURES: SHORT-TERM SOLUTIONS

A foreign company wishing to prospect for business in France can start by hiring a single employee or by opening a liaison office. This option involves a specific tax and company status.

#### I.1.1 Liaison offices: nominal representation without commercial activity

A foreign company may recruit or send an employee to France to represent it through a local liaison or representative office.

Liaison offices may conduct only a very limited amount of non-commercial operations, such as prospecting, advertising, providing information, storing merchandise, or other operations of a preparatory or auxiliary nature. They are not separate legal entities. Invoices must be issued by the parent company, which must also sign any contracts. Tax law stipulates that while liaison offices must pay local taxes and social security contributions, they are not subject to corporate tax or VAT since they are not considered to be permanent establishments. If, however, the office conducts commercial activities, in particular where an employee signs contracts on behalf of the foreign company employing them, or fulfills a complete manufacturing cycle, or acts as a fixed place of business through which the company conducts all or part of its trade, it may be reclassified as a branch or permanent establishment.

Companies wishing to safeguard their business may ask the tax authorities to rule in advance whether or not their establishment qualifies as a permanent establishment in France (the tax authorities are deemed to have given tacit consent if no reply is received within three months).

#### I.1.2 Various sales force options

##### >Sales representatives

Sales representatives may be a VRP (*voyageur de commerce, représentant ou placier* – business traveler, representative or traveling salesperson) which is a company employee with a special legal status.

VRPs are intermediaries employed by one or more companies (*VRP exclusif ou multicarte*) to visit customers in the representative's sales territory. These representatives work independently, contacting prospective clients to offer goods and services. Their primary responsibilities are making sales calls, taking orders and submitting these to their employers.

VRPs have a special legal status according to French law. Should their contract be terminated, for example, they are entitled to receive special financial compensation.

The business activity of a VRP may be considered as a permanent establishment of the foreign company employing the VRP if they sign contracts on behalf of the company.

##### >Sales agents

Foreign companies may also use the services of a sales agent, i.e. a self-employed individual or a company that acts on their behalf.

Agents are responsible for negotiating and, in some cases, signing contracts for sales, purchases, leases and provision of services on behalf of their principals (i.e. not in their own name). They may work for one or more companies, and in most cases are responsible for a defined geographical area and/or sector of activity. They are paid in part or in full by commission on completed transactions.

Since sales agents are external suppliers and not salaried employees, specific rules apply when agreements with them are terminated. Except in cases of professional misconduct, the agent is entitled to compensation based on gross commissions received (in principle, this is equivalent to two years' worth of gross commissions).

Small and medium-sized companies often prefer to use sales agents as a flexible and inexpensive means of introducing their products to foreign markets.

**IN DETAIL***Comparison between different types of sales representative*

TYPE OF SALES REPRESENTATIVE	STATUS	PAYMENT METHOD
Salesperson	Company employee	Salary and any profit-sharing
VRP	“Exclusive” VRP	Salary and any profit-sharing or commissions with guaranteed minimum
	“Multi-card” VRP	Sales commissions
Sales agent	Private individual or corporate entity acting on company's behalf	Sales commissions

**I.2. PLANNING FOR THE FUTURE - TWO KEY DECISIONS**

Companies can set up a branch or a subsidiary to conduct manufacturing or sales operations in France through a permanent principal or secondary establishment.

**I.2.1 Branches - a basic option**

Branches enable foreign companies to establish a foothold in France for a commercial activity.

Branches are headed by a legal representative, functioning like an agency and reporting to headquarters, and have no official restrictions on their decision-making powers. They may carry out all the operations of an industrial or commercial company, but are not separate legal entities and the parent companies are responsible for their initiatives. If they encounter financial problems, the parent company bears liability for their debts.

Branches are permanent establishments with regard to tax laws and must pay corporate tax and VAT. The subsequent conversion of a branch into a separately incorporated subsidiary is possible, but must comply with rules governing the sale and transfer of a business, and is subject to taxation.

**I.2.2 Creating a subsidiary, a company incorporated under French law, offers certain advantages:**

➤ Segregation of subsidiaries' and parent companies' assets means that foreign companies do not bear unlimited liability for the debts of their French structures. On the other hand, losses by subsidiaries cannot be offset against parent companies' profits.

➤ Subsidiaries may apply for government support when starting up or expanding.

➤ Subsidiaries can enter into agreements on sales and technical royalties, commissions, etc.

The company becomes a separate legal entity when it is entered in the Company Register (*Registre du commerce et des sociétés* - RCS). The founders are personally liable for their legal commitments during the incorporation phase, and these are consequently assumed by the newly incorporated company.

The subsidiary must pay all applicable taxes.

Investors are advised to seek specialist legal advice when setting up a subsidiary. Bar associations can provide lists of lawyers in France.

## LEGAL ADVICE

Frédéric Moreau, Partner, and Eric Madre, Associate, Allen & Overy LLP

### THE LIAISON OFFICE: A SIMPLE, FLEXIBLE SOLUTION TO GAIN A Foothold IN FRANCE

A liaison office (*bureau de liaison*), also known as a representative office, is an establishment opened by a foreign company for the purpose of preparing for and facilitating its expansion into France. Liaison offices are easy to set up, and enable foreign companies to gain an initial foothold in the French market with minimal constraints and straightforward procedures.

Liaison offices do not enable foreign companies to conduct direct commercial operations in France. They are intended solely for making business contacts, canvassing, gathering information, and advertising and promoting the foreign company, or conducting other operations of a preparatory or auxiliary nature, such as storing merchandise. Unlike a subsidiary, a liaison office is merely an extension of the parent company. It is therefore not a separate legal entity and does not have its own business name. Liaison offices are not allowed to conduct commercial operations of any kind, in any amount, or they may be reclassified as a permanent establishment and be subject to the substantial legal, accounting, and tax obligations that accompany that status. Liaison offices therefore cannot enter into commercial agreements or issue invoices in the name and on behalf of the foreign company, which remains solely responsible for any commitments that are undertaken. One important consideration to note is that liaison offices are not subject to French accounting requirements.

Although they have no authority in commercial matters, liaison offices are allowed to hire employees in France. Regardless of whether a liaison office is officially registered in France, it is subject to the same employment obligations as French companies with respect to social security contributions and mandatory declarations, among other things.

#### **Straightforward procedures for setting up business**

Depending on the foreign company's requirements, several types of registration are possible. Registration is mandatory only if the liaison office is permanent and its activity involves entering into legal relations with third parties, even if its involvement is limited to carrying out preparations. Registration on the National Register of Companies and Business Establishments (*Répertoire national des entreprises et des établissements*) may take the form of a simple declaration of existence. However, companies are most often advised to register liaison offices with the Companies Register (*Registre du Commerce et des Sociétés*), as it is the only entity that can issue a company registration certificate (*extrait K-bis*),

which is required for basic operations such as opening a bank account or a phone line.

For more comprehensive registration, the foreign company must be able to prove that the liaison office is located in France, by either signing a lease or using a business domicile service. The liaison office must also have a designated legal representative, who may or may not be a salaried employee. If the representative is not an EU, EEA, or Swiss national, and will not be residing in France, they will need to submit a preliminary declaration to the office of the local State Prefect (*Préfecture*). If the representative will be residing in France, they will need to obtain a residence permit. In addition, a French translation of the foreign company's articles (*statuts*) must be submitted to the Business Formalities Center (*Centre de formalités des entreprises*).

#### **Reduced tax requirements**

Because liaison offices are not considered to be permanent establishments by the French tax authorities, and do not conduct commercial operations, they are not required to pay corporate tax or the local economic contribution (CET). Liaison office operations are also exempt from VAT, and the offices are entitled to reimbursement of VAT on the expenses they incur in France. Requests for reimbursement must be submitted either by the tax representative the company has appointed for that purpose, if its registered office is located outside the European Union, or by a representative if the company is based within the European Union. Liaison offices are, however, liable for housing tax on their offices, and payroll taxes, if applicable.

#### **Possibility of converting a liaison office into another type of business structure**

Once a foreign company has set up a liaison office, it should review the office's operations on a regular basis to ensure that they effectively fall within the scope of authorized liaison office activities.

If the establishment is likely to conduct direct commercial operations, it will generally be converted into either a branch office, which is not a separate legal entity, or a subsidiary, by way of a transfer or contribution. When determining the appropriate business structure, companies should consider, among other things, how the structure will be managed and the tax costs involved in the conversion. In the two cases cited above, registration will be mandatory, the establishment will be subject to French tax requirements, and the tax benefits associated with the liaison office will cease to apply.

## II. SETTING UP A BUSINESS RAPIDLY

The formalities for setting up businesses have been greatly simplified and the whole procedure can be carried out over the internet.

### II.1. A ONE-STOP SHOP: THE CENTRE DE FORMALITES DES ENTREPRISES (CFE)

All the formalities for setting up a new company can be dealt with in one place: the *Centre de formalités des entreprises* (CFE). This center handles all the documents required to set up, change or close down companies and delivers them to the relevant authorities, including:

➤ The Commercial Court Registry, which first issues, free of charge, a business creation certificate (*récépissé de dépôt de dossier de création d'entreprise*, allowing procedures to go

ahead for companies being set up), and then, once the company has been registered with the Company Register (RCS), issues a “K-bis” registration certificate.

➤ The French Office for National Statistics and Economic Studies (INSEE) which allocates the APE code corresponding to the company's primary business and the SIREN and SIRET numbers (company registration numbers) required for hiring employees.

➤ The tax authorities (*Service des impôts des entreprises*) and social security agencies, including URSSAF (*Unions de recouvrement des cotisations de sécurité sociale et d'allocations familiales*), which collects social security contributions.

 Find out where your nearest CFE is located and complete your company registration procedures over the internet: [www.cfenet.cci.fr/](http://www.cfenet.cci.fr/)

## IN DETAIL

### *The first key steps in creating a subsidiary*

Creating a company involves carrying out a number of steps before the company can be registered. Investors who wish to create a separate legal entity rather than a subsidiary or a liaison office should anticipate the following steps:

→ Seeking public or private investment (loans, venture capital, business angels, mutual investment funds in innovation etc.).

→ Seeking business premises and a business address agreement for the company's registered office, a commercial lease or the acquisition of real estate.

→ The type of legal structure for the business (e.g. SAS / SARL or SA).

→ Drafting and signing the company articles (before a notary where

the company owns property) which requires preliminary steps to be taken (address, directors, definition of business etc.).

→ Planning the appointment of the company officers.

→ Obtaining where appropriate (for a foreign director outside the European Economic Area) a long-stay visa and residence permit (“Business Activity” or “Skills and Expertise”) or making a prior declaration for a foreign director not wishing to reside in France.

→ Choosing a company name (and ensuring it can be used by conducting searches at the French Patent and Trademark Office (INPI) and the Commercial Court Registry – *Greffe du tribunal de commerce*), address and the appointment of directors.

→ Appointing the statutory auditor(s), where relevant.

→ Evaluating capital contributions in kind by an independent auditor, where relevant.

→ Constituting the share capital.

→ Opening a bank account in France and depositing the capital of the company being formed.

→ Registering the articles with the tax authorities at the registered office's location (free of charge).

→ Publishing the notification of establishment in a legal gazette.

Since some of these steps involve procedures in both the country of origin and in France, they may take several weeks to complete.

### II.1.1 Speedy registration process

The CFE provides the application form (“M0 form”) and list of documents to be submitted, which must be translated into French. The application must be filed by a duly empowered person with written authorization from the company.

It takes a few days for a company to be recorded in the Company Register (RCS). When a company is “pending registration”, its legal representative can use the business creation certificate for dealings with the authorities and public and private-sector organizations (e.g. accessing the new company’s bank account).

The cost of administrative formalities is approximately €84, plus the cost of publishing a notice in the legal gazette (approximately €230).

It is now possible to complete the formalities for setting up, changing or closing a company online.

There are some formalities that the CFE does not handle:

- Formalities to register trade names and brands with the French Patent and Trademark Office (INPI).
- Registering internet domain names ending in “.fr” with the French Internet Names and Cooperation Association (AFNIC).
- Registration of the company with an insurance center.
- Registration with an employee retirement plan (obligatory within three months of registration).

In principle, applications for authorization to engage in regulated or licensed professions or those registered with trade associations (lawyers, accountants, architects, doctors, transporters of goods or people, etc.) must be registered with the respective authorities or professional bod-

ies. However, as a one-stop shop, the CFEs are gradually beginning to receive all the applications for registration, authorization and declarations required to open specific lines of business, apart from actual company creation (i.e. professional licensing, registering with trade associations, filing declarations with municipal offices or the *Préfecture* to open a business, etc.).

Formalities relating to hiring employees must be completed with URSSAF using a special form (*déclaration préalable à l’embauche* – DPAE).

## II.2. REGISTERING A LIAISON OFFICE

In principle, registering your Liaison Office is not required. It becomes necessary for dormant companies where the office has its own premises or is to going be used to employ several employees in France.

Documents to be submitted concern the representative (proof of identity, police clearance record, specific documents for expatriates, including the declaration to the *Préfecture* or “Business Activity” residence permit if necessary), two copies of the company’s articles translated into French, as well as a document attesting tenancy or ownership of premises.

## II.3. A SINGLE CONTACT HANDLING ADMINISTRATIVE PROCEDURES

The representative of a foreign company with no business establishment in France but which employs salaried personnel covered by the French social security system may use their authority to complete the formalities the company requires.

## IN DETAIL

### *Protecting intellectual property in France*

French intellectual property laws provide effective protection for patents, trademarks, models and designs. The French Patent and Trademark Office (INPI) is the core of the French protection system, and filings with it are the starting point for patent and trademark protection. Intellectual property rights

entitle patent holders to a monopoly on use for 20 years. Trademarks are valid for 10 years and can be renewed indefinitely. Models and designs are protected for 25 years.

Company names, trade names and logos are also protected and can be cited in unfair competition lawsuits.



In this case, the representative living in France signs a representation agreement with the company. A sales agent is self-employed and must be registered with the special register of sales agents.

#### II.4. REGISTERING A BRANCH

Registration is mandatory for branches. The registration application must include (in addition to the M0 form):

- One copy of the parent company's articles (the original and, if necessary, one copy translated into French and certified by the legal representative).
- Proof of address.
- Registration Certificate from the foreign company register.
- Documents relating to the person empowered to act on behalf of the company: identity cards and a police clearance record; a declaration to the *Préfecture* (for non-European directors) or residence permit as appropriate and documents certifying the required qualifications if the business is regulated.

#### II.5. SIMPLIFIED REGISTRATION FORMALITIES FOR COMPANIES UNDER FRENCH LAW

The registration application for the new company must include (in addition to the M0 form):

- The original of the articles giving the names of the directors and, where appropriate, the names of the statutory auditors.
- Two copies of the independent auditor's report, if capital contributions in kind are involved.
- A copy of the lease or ownership deed to the business premises.
- A copy of the legal gazette containing notification of the company's establishment.
- Copies of the directors' birth certificates, identity cards or passports, along with a certified clean criminal record and a representative's mandate.
- If appropriate, a copy of the professional license, degree or certificate required to exercise a regulated profession.
- If appropriate, the declaration to the *Préfecture* by any director(s) from non-EEA countries not

residing in France, or residence permit(s) of any foreign director(s) ("Business Activity" or "Skills and Expertise" type).

- A certificate of deposit from a bank for the new company's initial capital reserve.
  - A summary of the formalities completed on behalf of the new company.
- The "K-Bis" certificate issued by the Commercial Court Registry is proof that the company has been set up.

### III. LEGAL STRUCTURES TAILORED TO DIFFERENT NEEDS

Choosing a legal structure will affect the company's legal status, taxes, assets and employment relations.

#### III.1. LIMITED LIABILITY COMPANIES: THE MOST COMMON STRUCTURE IN FRANCE

In this case, financial liability is limited to the amount of owners' capital contributions. Such entities can easily be converted into other forms of companies with minimal tax consequences. The rules governing companies have become much more flexible, with the introduction of simplified companies (SAS), which have greater freedom to draft their articles to suit their own purposes. The elimination of the minimum capital requirement for SARLs and SASs has also resulted in greater flexibility.

By the same token, French company law has kept in step with modern technology: meetings of boards of directors and supervisory boards may now be held remotely (by video-conference or other means) except in cases where company articles stipulate physical meetings or where annual or consolidated financial statements and management reports are to be approved.

##### III.1.1 The three main types of limited liability companies

The most popular company forms are the *société*

## IN DETAIL

## Comparison of the main forms of limited liability companies in France

	<b>SOCIETE A RESPONSABILITE LIMITEE (SARL)</b>	<b>SOCIETE ANONYME (SA) USUAL FORM</b>	<b>SOCIETE PAR ACTIONS SIMPLIFIEES (SAS)</b>
<b>Key advantages</b>	Easy to set up and operate.	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.
<b>Directors</b>	One or more directors, who must not be corporate entities, but do not need to be partners.	One individual to be the Chairman of the Board and CEO or two individuals to be Chairman and CEO respectively. Deputy CEOs (up to 5). Board of directors with 3 to 18 members and a statutory auditor.	At least 1 Chairman (individual or corporate entity) and possibly a board with other members. The company can be represented by a person so empowered by the articles (CEO or deputies).
<b>Director's status</b>	A director who is a minority or equal shareholder can also have an employment contract if certain conditions are met (work separate from company officer 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 an SA as regards simultaneously holding both company officer position and employment contract.
<b>Appointment and dismissal of Directors</b>	Decision of partners representing more than half the company shares. Compensation payable for dismissals without due cause.	Decided by the Board of Directors.	Defined by choice in the articles.
<b>Minimum capital</b>	None: sufficient capital to finance long-term needs. Partners define the amount in the articles. Restrictions apply to issuing bonds. At least one-fifth of contributions must be paid-up capital at the time and must remain so for a period of 5 years.	€37,000. Public offerings permitted. Half the capital must be paid up at the time and must remain so for 5 years.	None: sufficient capital to finance long-term needs. The amount is defined in the articles. No public offerings permitted but an offer may be made to accredited investors. Half the capital must be paid up at the time and must remain so for a period of 5 years.
<b>Contributions</b>	Sweat equity permitted: a partner offers the company his time, work and professional knowledge. Does not contribute to forming the capital but has right to shares in company (share of profits and participation in collective decisions).	No sweat equity permitted.	Sweat equity permitted.
<b>Partners / shareholders</b>	2 to 100 individuals or corporate entities. Or single shareholder (EURL). At least 1 meeting per year: annual approval of the accounts, review of contracts by simple majority at Ordinary General Meeting.	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 the articles require 2/3 majority at Extraordinary General Meeting.	At least 1 (SAS unipersonnelle) individual or corporate entity. Only certain decisions made by Ordinary General Meeting: approval of the accounts, mergers, changes in capital, liquidation.
<b>Quorums for meetings</b>	25% of voting rights on first notice and 20% on second notice of Extraordinary General Meeting.	For an Extraordinary General Meeting, 25% of voting rights on first notice and 20% on second notice. For an Ordinary General Meeting, 20% on first notice and no quorum on second notice.	According to the articles; no obligation to hold an annual meeting of shareholders.
<b>Blocking minority</b>	Extraordinary General Meetings: 33% + 1 vote for amendments to the articles. Ordinary General Meetings: 50% of voting rights + 1 (or majority of votes on second notice).	1/3 of votes at Extraordinary General Meeting. 50% of votes in Ordinary General Meeting.	According to the articles.
<b>Liability of partners / shareholders</b>	Limited to contributions, except in civil or criminal lawsuits.	Limited to contributions, except in civil or criminal lawsuits.	Limited to contributions, except in civil or criminal lawsuits.
<b>Transfers</b>	Buyer pays a 3% filing fee. Equal deduction for each share, to the ratio between €23,000 and the total number of shares in the company.	Buyer pays a filing fee* of 0.1%.	
<b>Auditors</b>	Auditor necessary if company exceeds two of the three thresholds below: net turnover over €3.1 million; total balance sheet over €1.55 million; more than 50 employees.	Statutory auditor required.	Statutory auditor required for companies held by (or holding) another company OTHERWISE Statutory auditor required if company exceeds two of the following three thresholds: Pre-tax turnover > €2 million; total balance sheet > €1 million; over 20 employees.
<b>Tax system</b>	Corporate tax or option of paying income tax (if company is less than 5 years old and has fewer than 50 employees).	Corporate tax or option of paying income tax (if company is less than 5 years old and has fewer than 50 employees).	Corporate tax or option of paying income tax (if company is less than 5 years old and has fewer than 50 employees).

\*Unless the transaction is exempt, such as the acquisition of ownership interests when buying back the company's own shares or raising capital; when buying a company that is undergoing an insolvency or bankruptcy protection procedure (*sauvegarde or redressement judiciaire*); when companies are members of an integrated group; and when partial assets are contributed for mergers.

à responsabilité limitée (SARL), the *société par actions simplifiée* (SAS) and the *société anonyme* (SA). SARLs and SASs can be formed with a single partner [SAS *Unipersonnelle* (SASU) or single-shareholder limited liability company (EURL)], whereas seven partners are required for an SA. The SA is the most sophisticated type of French company and is able to launch a public offering. The SAS (or SAS *Unipersonnelle*) is the most recent form of French company and is well suited to holding companies and foreign companies wishing to maintain 100% control of one of their subsidiaries. This option has gained popularity since the reform allowing partners to draft articles setting any level of capital they choose (like for SARLs).

### III.1.2 Additional options are available

These are mainly general partnerships (*société en nom collectif* – SNC), non-trading partnerships (*société civile*) and economic interest groupings (*groupement d'intérêt économique* – GIE). They are less common because they require a greater level of partner liability in the event of finan-

cial difficulties. However, there are no minimum capital requirements and these structures offer significant levels of flexibility (but decisions must usually be unanimous in SNCs and GIEs) and fiscal transparency that make them attractive as subsidiary companies.

A special form of company, the *société en participation*, is used in the construction industry and in the performing arts and publishing sectors. These are very simple to set up (RCS registration not required) and no legal announcements are required.

### III.1.3 Incorporating as a European Company

Businesses present in at least two Member States of the European Union can opt for European Company status (SE for *société européenne*).

In this case, the company benefits from a unique set of regulations and a unified system of management and disclosure of financial details.

SEs have a minimum capital of €120,000. The company's headquarters is stated in the articles, and its location determines the business law that applies to the company: the company is registered in the country where the headquarters is located. SEs are subject to taxation in all EU countries where they have a permanent business.

## IV. ACQUIRING COMPANIES AND EQUITY INTERESTS

French law makes full provision for business partnerships and takeovers.

### IV.1. ACQUIRING EQUITY IN A COMPANY

Acquiring an equity interest may be the result of an agreement between companies or an unsolicited bid to buy shares (hostile takeover bid).

#### IV.1.1 Administrative formalities: transparency required

Buyers are required to make certain disclosures when more than 5% of the shares or voting rights

## IN DETAIL

### Approval of annual accounts

This decision is made by partners at the Annual General Meeting.

The decision to approve the accounts must be made no later than six months after closure of the accounts for the financial year. This is essential so that profits can be allocated and any dividends distributed.

All limited liability companies must file:

- their annual accounts, business report and where applicable their consolidated statement and auditors' reports;
- the motion or resolution regarding allocation of the profits.

These must be filed in duplicate with the Commercial Court Registry within one month of the annual accounts being passed.

## LEGAL ADVICE

Emmanuel Schulte and Marion Carrega, French Attorneys (*Avocats à la Cour*), Bersay & Associés

# PUBLIC PROCUREMENT IN FRANCE: ACCESS AND TENDERING

### Definition of “public contract”

The French Public Procurement Code (*Code des marchés publics*) defines “public contracts” as contracts that are entered into between a contracting authority and an economic operator, for valuable consideration, to satisfy the purchaser’s requirements in terms of public works, supplies, or services. Contracting authorities may include the French government, government bodies, local authorities, or local authority bodies.

### Tendering by foreign companies

Foreign companies may directly respond to calls for tender in France if they can demonstrate their professional qualifications and expertise, and their compliance with tax, finance, and employment laws in their home country.

In principle, European Union law prohibits requirements imposed by the contracting authority relating to location. However, location is an acceptable criterion for contract award if it is justified in view of the purpose or the terms and conditions of performance of the contract (for example, certain defense contracts). The French Council of State (*Conseil d’Etat*) has ruled that if a tenderer pledges to set up business in France in the event it is awarded the contract, the requirement relating to location is deemed to be satisfied.

### Finding out about procurement opportunities

Companies interested in procurement opportunities are advised to consult the following sources:

- Official publications (*Bulletin officiel des annonces de marchés publics*, journals of legal notices, the Official Journal of the European Union, the websites of contracting authorities);
- Information websites administered by the French government ([www.service-public.fr](http://www.service-public.fr), [www.marchespublics.gouv.fr](http://www.marchespublics.gouv.fr), etc.);
- Private-sector websites, most of which generally provide paid access to information and monitoring services.

### Varying procedures depending on contract value

The tendering procedure applicable to a given contract varies depending on the contract’s value and specific characteristics.

Contracts valued at less than €15,000, exclusive of tax, may be awarded without prior publication or competitive tendering.

Contracts may be awarded under an “amended procedure”, in which publication and competitive tendering requirements are determined by the contracting authority, if their value does not exceed:

- €5,000,000, exclusive of tax, for public works contracts;
- €200,000, exclusive of tax, for other contracts with local authorities;
- €130,000, exclusive of tax, for other government contracts.

Contracts with values exceeding these amounts are subject to “formalized procedures,” which include calls for tenders, negotiated procedures, and other specific procedures such as design contests and competitive dialogue.

### E-tendering

Recent rules concerning “paperless procurement” enable potential tenderers to consult tender notices, download tender documents, and submit tender offers directly by electronic means.

As of January 1, 2012, contracting authorities must accept electronic documents sent by tenderers for contracts valued at more than €90,000, exclusive of tax.

However, in order to submit a tender by electronic means, companies must obtain digital signature software and a digital certificate allowing them to identify themselves.

### Payment terms

Payment for public contracts must be made within:

- 30 days for contracts with the French government or government bodies;
- 30 days for contracts with local authorities or local authority bodies;
- 50 days for contracts with public health bodies or military health care bodies.

Late payments are automatically subject to late payment interest. Companies may obtain advance payments or deposits from contracting authorities. In addition, the French state innovation agency OSEO offers financing solutions for SMEs (assignment of receivables in connection with public contracts, cash advances, etc.).

### FIVE TIPS

- Keep abreast of procurement opportunities by subscribing to a procurement monitoring system.
- Always bear in mind the contract award criteria specified by the contracting authority when drafting a response.
- Inquire about the possibility of obtaining an advance or deposit, and the financing solutions offered by OSEO.
- Avoid any contact or consultation with other tenderers during the preparation and submission of responses (with the exception of tenders submitted as part of a group).
- If a tender offer is rejected, ask the contracting authority to provide the grounds for its decision, and keep them in mind when submitting future tender offers.

in a listed company are likely to change hands:

- A declaration must be filed with the financial market authority within five days.
- The target company must be notified within 15 days.

The same rules apply to transactions that exceed thresholds, up or down, of 10%, 15%, 20%, 25%, 33%, 50%, 66%, 90% and 95% of the shares or voting rights. When buyers intend to acquire more than 30% of the shares in a listed company, they are required to make a bid for all of the outstanding shares so that minority shareholders have an opportunity to sell their shares.

#### IV.1.2 Prior notification to competition authorities of large concentrations between undertakings

Concentrations between undertakings arise from one of the following transactions:

- Mergers of two or more independent companies;
- Full or partial takeovers;
- Creation of joint ventures that conduct their business independently on a long-term basis.

In principle, concentrations are authorized, however large concentrations may require prior authorization from national or European authorities. Restrictions on concentration are intended to ensure that market dominance by a single company does not distort competition.

- Concentrations require the prior authorization of the French Competition Authority (*Autorité de la concurrence* – an independent body) if:

- The aggregate turnover of the companies concerned exceeds €150 million, excluding tax, and
- The aggregate turnover of at least two of the companies in France exceeds €50 million, excluding tax, and
- Turnover remains below EU thresholds.

Specific thresholds have been set for the retail distribution sector (lower notification threshold) and in the French overseas *départements* and authorities. The French Competition Authority's decision will be made within 25 working days of the date when full notification procedure documentation is submitted. However if the transaction is likely to distort

competition, the Competition Authority may open a second phase in order to conduct a more extensive analysis of the transaction (in principle, a period of up to 65 days is set aside for this second phase).

- The European Commission in Brussels must be notified of concentrations between undertakings if:

- The aggregate global turnover of the companies concerned are more than €5 billion, and
- Individual turnover of at least two of the companies concerned in the European Union total more €250 million, except if turnover within a single country accounts for more than two-thirds of each of the companies' total European Union turnover.

The European Commission must also be notified of concentrations that do not exceed the above thresholds if they affect three or more European Union countries.

The procedure can take up to eight months and the concentration is frozen until authorization is granted.

#### IV.2. MANAGEMENT LEASE: A FLEXIBLE TEMPORARY TAKEOVER OPTION

Management leases grant authorization to operate a business without having to buy it outright. The owner or operator of the business or manufacturing establishment signs a contract with a lessee, who manages the leased company at his own risk and pays a lease payment. The owner collects the lease payments and has no say in the management of the leased business.

A management lease is a temporary solution that can be used to assess the viability of a business. At the end of the lease, the company may be sold or transferred to the lessee.

#### IV.3. STREAMLINED PROCEDURES FOR ACQUIRING AN AILING COMPANY

French law on ailing companies has been simplified in recent years, particularly the regulations concerning the takeover of such companies. A procedure affording protection before insolvency

(*procédure de sauvegarde*) can now be undertaken when a company's difficulties are such that they risk becoming insurmountable. This preventive procedure does not provide for the sale of all or part of company assets, for which liquidation proceedings are necessary. Likewise, any partial insolvency is subject to bankruptcy law.

Reorganization (*redressement judiciaire*) is a form of bankruptcy protection that takes place when a company is insolvent and its assets are not enough to cover liabilities. Following reform, the sole aim of this procedure is to facilitate the drafting of a plan that will enable the company to remain in operation, maintain jobs and reduce its liabilities. Any sale of assets must comply with liquidation procedures.

Once either of these two procedures has been initiated, third parties may submit offers to the administrator to save the company as a going concern, through the total or partial sale of business; such sales must be conducted in keeping with liquidation procedures.

Buyers must make their offers to the commercial court-appointed administrator before the deadline set in the court ruling initiating the proceedings (court rulings are published in the legal gazette *Bulletin officiel des annonces civiles et commerciales*).

#### **IV.4. THE BEST ACQUISITION SOLUTION PREFERRED BY JUDGES**

During liquidation procedures, the courts prefer buyers offering the best prospects of keeping the company in business, saving jobs and repaying creditors.

Part or all of a company's assets may be sold to ensure that those operations that can be conducted independently remain in business, to preserve all or part of the associated jobs, and to reduce liabilities.

Offers must include a detailed list of assets, rights and contracts included in the offer; a business recovery plan and financing forecasts; the purchase price and how this will be paid; information about the providers of funds and any guarantors (if the offer is based on loans, it must

specify terms and duration), the date of sale, job numbers and outlook based on projected operations, financial guarantees underpinning execution, asset disposal plans for the next two years, and the duration of each commitment made by the buyer.

Offers cannot be amended or withdrawn once they have been filed with the Commercial Court Registry except for amendments that improve conditions for employees and creditors, which may be presented up to 48 hours prior to the hearing. The court then decides whether to make a partial or full sale of the business and gives the reasons for its decision.

Some contracts may be transferred to the new owner, including employment contracts, equipment and finance leases, supply contracts for goods and services necessary to keep the business going, stock pledge agreements, contracts with customers, etc.

If no solution can be found to keep a business going or if recovery is clearly impossible, the court will liquidate the ailing company and the assets will be sold to the highest bidders once the court proceedings have been completed.

## **V. CORPORATE REAL ESTATE TO MEET VARIOUS NEEDS**

### **V.1 SHORT-TERM, LOW-COST SOLUTIONS**

#### **V.1.1 Using a director's personal address for the company**

A company may use its legal representative's personal residence for its registered office and, in principle, conduct its business there indefinitely. If the residence is rented, the landlord's written consent is required.

Using the director's personal residence for the company's business is sometimes subject to three conditions. These restrictions stipulate that the premises must be: i) the director's



principal place of residence; ii) business done there must be conducted by the director and the other occupants of the premises only and iii) no customers or merchandise can be received at the residence.

If legislative or contract provisions rule out the use of the director's personal residence as the company's registered office, it is still possible to use the address for administrative purposes for up to five years.

### **V.1.2 Using a business center**

A business center (*centre d'affaires*) can be used as the company's temporary registered office. Business centers are specialized service companies that provide registered office addresses for other companies and rent them rooms for holding periodic board meetings. These centers also provide other services, such as answering telephone calls and secretarial services. A contract must be signed between the company using the address for its registered office and the owner or tenant of the premises.

### **V.1.3 Temporary manufacturing facilities**

Companies can use temporary manufacturing facilities (*ateliers-relais*) to train new employees and even start up their business while their new plants are being built. Many local authorities offer such facilities to companies locating in their area. The leases run for up to 23 months and, in some cases, they come with a purchase option, subject to certain conditions.

### **V.1.4 Business incubators**

Business incubators (*pépinières d'entreprises*) provide premises (offices, workshops, laboratories, common areas) for start-ups and enable them to share the costs of faxes, secretarial services, photocopiers, switchboards, training and database access. Business incubators also advise new companies on business development.

### **V.1.5 Short-term leasing options for business premises**

Sub-letting: In its early stages, a company can sub-let premises from another company. If the host company holds a commercial lease, the lease must explicitly authorize the sub-let and the lessor must be asked to be a party to the sub-letting contract.

Short-term leases: Short-term leases are available with terms up to 24 months. The advantage of such leases is that the term can be tailored to the tenant's needs; the drawback is that the tenant is not entitled to automatic renewal of the lease.

## **V.2. LONG-TERM OPTIONS**

Several options are available, depending on the needs of investors.

### **V.2.1 A commercial lease is the most common option**

Manufacturing and trading companies generally sign commercial leases, which are governed by strict legal provisions protecting the tenant's rights. Since 2011, independent contractors can also sign commercial leases.

The statutory term for commercial leases is nine years, but tenants can terminate the lease at the end of the third or sixth year. Tenants register with a company register (except for independent contractors) and are legally protected against non-renewal or eviction. The lessor must pay eviction compensation proportionate to the value of the business and the right to the lease.

Rent increases are capped. The lease stipulates the commercial purpose of the premises (*activité*), but the parties to the lease can agree to amend the lease to change the initial purpose or add another activity (*déspecialisation*).

## LEGAL ADVICE

Julien Balensi, Audrey Nelson, Jean-Nicolas Soret, Attorneys at Altana

# KEY CONCEPTS INVOLVED IN ACQUISITIONS OF AILING MANUFACTURING COMPANIES IN FRANCE

### Methods of acquiring ailing companies

In France, ailing companies can be acquired by means of the following methods:

- Acquisition of an entire company through the purchase of its tangible and intangible business assets (*fonds de commerce*);
- Acquisition of one or more divisions of a company's business; or
- Acquisition of a company's shares (in certain situations).

A company's financial difficulties are open to public knowledge only if the company in question is involved in insolvency proceedings, such as safeguarding (*sauvegarde*), reorganization (*redressement judiciaire*), or liquidation. Notice of these proceedings is published on certain websites (such as [www.infogreffe.fr](http://www.infogreffe.fr) or [www.societe.com](http://www.societe.com)) and recorded on the company's registration certificate (*extrait K-bis*).

However, if a company applies for insolvency prevention measures such as special mediation (*mandat ad hoc*) or conciliation, it will not be public knowledge as, in principle, these procedures are confidential.

### Submission of purchase offers: time frames and procedures vary depending on the type of proceedings.

Within the framework of reorganization proceedings, purchase offers may be submitted from the start of proceedings, and the court will set the deadline by which offers must be received by the trustee (*administrateur judiciaire*). A list of companies available for acquisition is published on the website <http://ventes-actifs.cnajmj.fr/fr> ([www.cnajmj.fr](http://www.cnajmj.fr)).

With safeguarding proceedings, purchase offers may be submitted for one or more divisions of a company's business, or specific company assets, but not for the company as a whole.

Once an offer has been submitted, it can be amended only to reinforce the objectives of saving the company as a going concern and saving jobs. In principle, amendments must be submitted no later than two business days before the date on which the court is scheduled to review the offers. Once an offer has been submitted, it may not be withdrawn.

### Selection of purchaser by the court

The goal in selling a company's assets is to ensure that operations that can be conducted independently remain in business, to preserve all or part of the associated jobs, and to reduce liabilities.

The court will select the offer which best satisfies these objectives, especially with regard to the long-term viability of the acquired operations, and which provides the best financial guarantees underpinning execution. The court will make its decision after consulting with the debtor, the purchaser, other

parties involved in the proceedings, the public prosecutor, and the employee representatives.

The time frame for review of purchase offers will depend on the company's situation, particularly its ability to meet its financial obligations during the observation period. The court will generally issue its decision two weeks to two months following the deadline for offer submissions.

### Structuring and effects of acquisitions

Acquisitions of ailing companies that have applied for insolvency prevention measures commonly take the form of a share purchase (unless only one division of the company's business is being acquired). In such cases, the company retains all of its assets and liabilities, which are then transferred to the purchaser. However, within the framework of an acquisition, company creditors may agree to cancel certain debts.

Under an asset disposal plan (*plan de cession*), acquisitions are generally made through the total or partial sale of the company's business, in principle without any assumption of the company's liabilities. The purchaser has discretion to determine the number of employees that it will keep on under the terms and conditions of the employment contracts in force at the time of acquisition.

### Environmental considerations relating to business acquisitions

This issue is of particular concern with regard to regulated facilities (*installations classées pour la protection de l'environnement – ICPE – aka "classified installations"*).

If the target company is not involved in insolvency proceedings, an environmental audit will determine the condition of the site and, if necessary, enable the purchaser to request remediation or negotiate a specific warranty with the seller.

If insolvency proceedings are ongoing, purchasers are advised to request the environmental review prepared by the trustee, even if the trustee is under no formal obligation to provide it to the purchaser. The purchaser is not entitled to any warranty whatsoever and, if necessary, must bear any remediation costs.

#### TIP:

To ensure the success of an acquisition, it is important to develop a business plan backed by a comprehensive financing plan, taking into account the fact that the process of putting an ailing company on a sound footing may hold a few surprises, as the information available to potential purchasers is sometimes very limited.

### **V.2.2 A more flexible but less secure option: a professional lease**

Non-trading businesses may rent premises under the terms of “professional” leases which are contractually flexible but offer less protection for the tenant than commercial leases. The statutory term is six years with no early termination option.

## **V.3. PURCHASING PROPERTY - SEVERAL OPTIONS AVAILABLE**

### **V.3.1 Full ownership offers the greatest legal security**

Foreign companies are entitled to buy commercial and industrial land and buildings from private-sector and public-sector owners. Real-estate agents can help them find suitable properties. The laws governing property purchases and the services of intermediaries such as notaries ensure the legal security of real-estate transactions. Government support for real estate purchases may be available, subject to certain conditions.

### **V.3.2 Leasing to own is a common practice**

Many companies acquire industrial and commercial buildings by signing a property finance lease. Such leases generally run for nine to 15 years and title to the property is transferred to the tenant at the end of the term. Local authorities may help companies obtain finance leases by arranging meetings with financing organizations. Government investment support in the form of discounts on finance lease payments is also available subject to certain conditions.

### **V.3.3 Construction of industrial and commercial buildings**

Foreign investors can erect industrial and commercial buildings in France. Local maps show zones in which construction is allowed and mayors have the power to authorize construction by issuing planning permission and construction permits. The local *mairie* (municipal offices) offers land owners and other persons entitled to erect buildings a one-stop service for construction permit applications.

### **V.3.4 Commercial buildings**

The construction of a retail outlet or commercial premises with a surface area of more than 1,000 m<sup>2</sup> requires an installation permit, in addition to a construction permit. A Commercial Urban Planning Commission (*Commission d'aménagement commercial*) in the *département* concerned oversees the application procedures.

Some business activities do not require this special permit. These activities are hotels, service stations and motor vehicle dealerships.

### **V.3.5 Acquiring premises through a real estate partnership (SCI)**

A real estate partnership (*société civile immobilière* – SCI) is a separate legal entity where the capital is contributed by companies or individuals. It is used to finance premises that can then be occupied by the company operating the business. This solution protects the real-estate assets from the operating company's creditors. It can also provide tax

## **IN DETAIL**

### *Construction permits*

Construction permit applications must be filed with the local municipal offices with jurisdiction over the land. Applications comprise a printed form and a portfolio of drawings and written documents that will enable the authorities to ensure that the application is compliant with urban planning regulations. Applicants must use the services of an architect when preparing their applications. If the application file is incomplete, the relevant authority has one month in which to request further documents. The timescale for the procedure is between one and three months from the date the completed application is filed.

When planned construction work concerns a regulated facility (cf. Section VI), the construction permit application needs to include proof that a permit or registration or declaration application has been filed with the *Préfecture*.

benefits, since the company can deduct rent and maintenance fees from its taxable income and the partnership can deduct acquisition costs for the buildings if it opts to pay corporate tax.

Investors should seek legal advice to work out the details of such an arrangement.

## VI. SIMPLIFIED RULES FOR REGULATED FACILITIES (ICPEs)

Concern for preventing hazards, pollution and other environmental nuisances means that preliminary administrative formalities are required before operating certain types of manufacturing plants called *installations classées pour la protection de l'environnement* (regulated facilities, aka “classified installations” in France). A nomenclature specifies whether facilities must make a prior declaration, register or obtain a permit depending on the scale of the hazards or pollution that they cause.

### VI.1. BUSINESSES REQUIRED TO MAKE A DECLARATION

Operations that cause the least pollution and hazards are obliged to submit a declaration, a simple procedure whereby the facility operator submits a declaration application indicating the nature and volume of the planned operations to the Prefect of the *département* before the operations begin. The *Préfecture* has two months to review the application and if it is complete and compliant, the Prefect issues the operator with a certificate (*récépissé de déclaration*) and a copy of the general guidelines for the facility (minimum precautions to follow). These documents authorize the operator to begin operations.

### VI.2. REGISTRATION PROCEDURE

The system of registering regulated facilities, which falls between the declaration and permit procedures and was introduced by the Act of February 17, 2009, is a simplified permit procedure designed to reduce authorization periods and to make the applications easier to understand. Registration

only applies to standardized facilities (sectors or technologies with well-understood environmental impacts and hazards) that are not located in environmental conservation areas. Facility operators must submit the registration application to the Prefect of the local *département* before they begin operations. The process has been streamlined to a great degree and operators no longer need to provide an impact study or safety report. The entire review process for a complete application now only takes five months (with an option of a two-month extension).

### VI.3. BUSINESSES THAT REQUIRE A PERMIT

Businesses that can cause hazards or serious damage to the environment must obtain a permit, in this case issued as an order (*arrêté*), from the Prefect. Permits are required mainly for businesses falling within the scope of the European Union “Seveso” or “IPPC” directives. Businesses must complete a permit application and send it to the Prefect of the local *département*, which oversees the procedure. The application must include plans and a detailed description of the facility as well as two studies conducted by the manufacturer itself: a safety report (identifying the risk of accidents and indicating the measures planned to reduce those risks) and an impact study (environmental impact and the measures taken to attenuate these effects).

Administrative formalities have been streamlined in two ways:

- A single environmental protection permit is issued for each manufacturing site;
- The Prefect is the only authority with the power to enforce this legislation, with the assistance of the technical staff from the Regional Directorate for the Environment, Development and Housing (DREAL – *Direction régionale de l'environnement, de l'aménagement et du logement*).

The Prefect's decision is based on the findings of an enquiry, during which the public is notified and invited to comment.

The Prefect's order authorizing operations at the facility also sets out the operating requirements.

In principle, this order should be issued no more than eight to 12 months after the application is filed.

The Prefect may ask their staff to advise and help investors during the earliest stages of preparing permit applications to ensure the legal security of major manufacturing projects.

#### **VI.4. TAKING OVER A REGULATED FACILITY**

When a regulated facility changes owners, the new operator must make a declaration to the Prefect within one month of assuming ownership of the operation. A permit is required from the *Préfecture* for facilities subject to financial guarantees. The Prefect issues a ruling within three months from the date the application is received.

#### **VI.5. LOGISTICS FACILITIES**

Logistics facilities are used to store merchandise. In an effort to prevent accidents, indoor storage facilities are required to make a declaration, register or obtain a permit, depending on their storage volume.

As such, indoor facilities must:

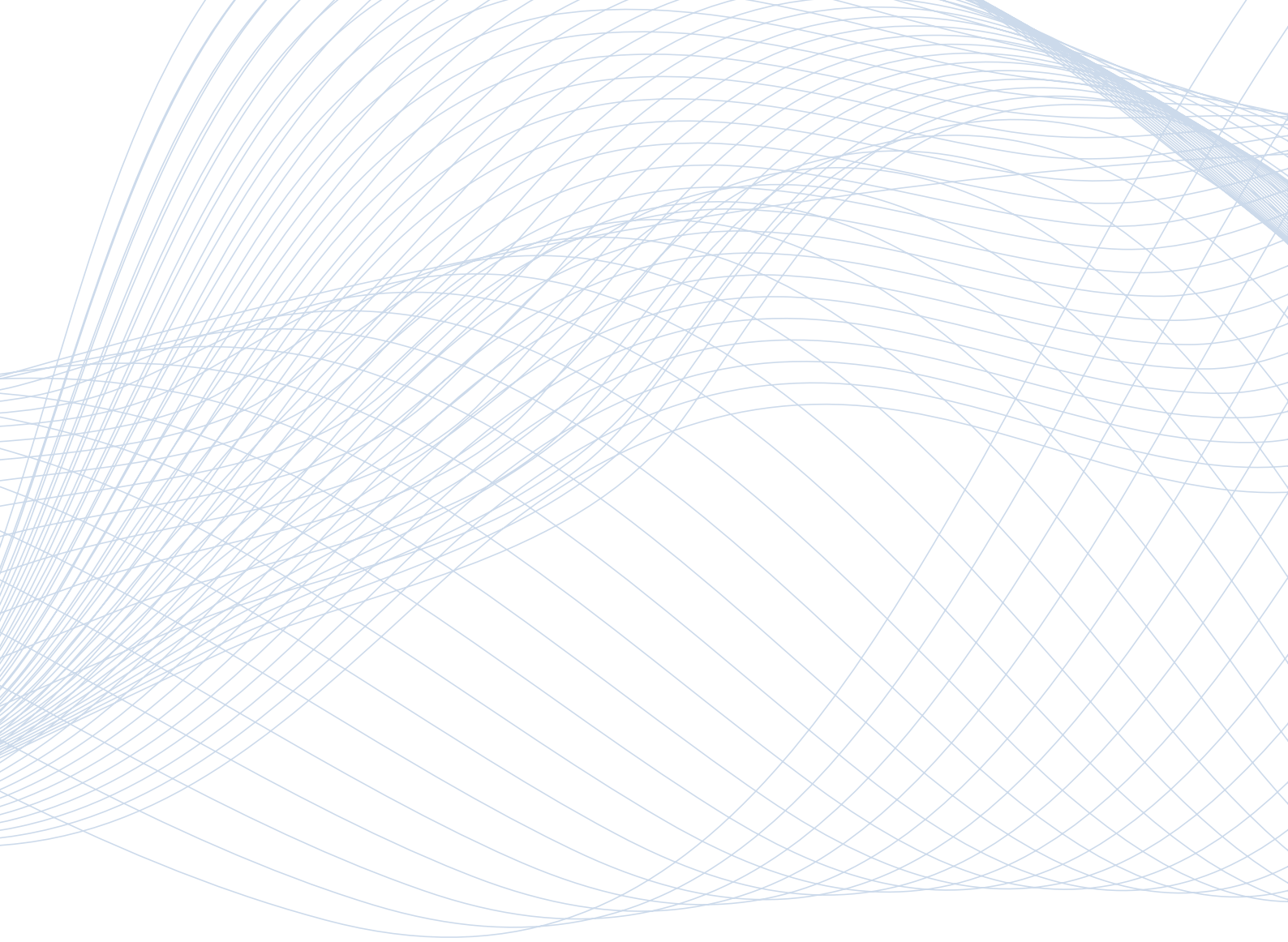
- Make a declaration if the storage volume is between 5,000 and 50,000 m<sup>3</sup>.
- Register if the storage volume is between 50,000 m<sup>3</sup> and 300,000 m<sup>3</sup>.
- Obtain a permit if the building's capacity exceeds 300,000 m<sup>3</sup>.

#### **VI.6. THE “POLLUTER PAYS” PRINCIPLE**

The “polluter pays” principle is applied in France as in all the countries of the European Union. This rule ensures that polluters bear the cost of their emissions and waste. France has also introduced measures to assist businesses with their waste management systems, which are administered by the French Environment and Energy Management Agency (ADEME).









**FRENCH  
EMPLOYMENT LAW**

## Chapter 2 Doing Business in France

# FRENCH EMPLOYMENT LAW

France is an industrialized country with employment laws designed to both protect the interests of employees and match the economic priorities of business. Employment relations are governed by the French Labor Code (*Code du travail*) and by industry-specific collective agreements that reflect the practices of each sector. Working hours and shift patterns can be organized to suit production requirements. Employee profit-sharing schemes are encouraged through tax and social security contribution exemptions.

### I. EMPLOYMENT RELATIONS WITHIN A COMPANY

Employment relations within a given company are increasingly based on collective agreements at industry level and at the level of individual companies, with employee and employer representatives playing a key role.

#### I.1. A FREELY NEGOTIATED EMPLOYMENT CONTRACT

➤ The most common form of employment contract is a permanent contract (*contrat à durée indéterminée* – CDI) which is generally written in French (although the CDI does not necessarily have to be a written document). In principle, parties are free to write their own contracts and have a great deal of liberty with regard to content, which may include clauses

### IN DETAIL

#### *Collective agreements*

Parties are free to substitute agreements reached through collective agreements for certain legislative and regulatory measures so long as these do not contravene the law. Such agreements include:

- Inter-professional agreements reached at national level to ensure a cohesive overall system.
- Industry-specific agreements covering a given profession, which must

stipulate: minimum wage levels, job classification, collective guarantees for insurance and pooling of training funds.

→ Company or establishment agreements reflecting specific features of a company and its employees.

Company or establishment agreements can override industry-specific agreements or collective agreements as long as the latter are not manda-

tory or do not expressly exclude this. Moreover, employers can organize the working hours of their employees on the basis of a company-wide agreement which can override higher-level agreements.



For more information:

[www.legifrance.gouv.fr](http://www.legifrance.gouv.fr) (*conventions collectives / collective agreements*)

## LEGAL ADVICE

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### EMPLOYMENT FLEXIBILITY IN FRANCE: ADVANTAGES FOR COMPANY MANAGEMENT

#### Relative flexibility in hiring practices

Employees can be hired under a permanent employment contract (CDI) for full- or part-time positions. Hiring is also possible under a fixed-term contract (CDD), but this is an option only for specific, temporary assignments and is strictly limited to the cases specified by law. The purpose or effect of hiring an employee under a CDD cannot be to fill a position on a long-term basis within the context of the company's usual, ongoing business. Employees can also be hired under special contracts specifically intended to facilitate the hiring of the unemployed, students, or workers seeking to obtain new qualifications. Employers may also turn on occasion to employees hired through temp agencies, contractors employed by umbrella companies (*portage salarial*), or employees made available by another company at no charge, provided that such employees are not made available for profit-making purposes.

#### Considerable flexibility in working time arrangements

Although the statutory working week in France is 35 hours, the Act of August 20, 2008 eased the rules governing working time arrangements (*aménagement du temps de travail*) and overtime (*heures supplémentaires*) by enabling companies to negotiate company-wide agreements (*accords collectifs*) that provide for longer working hours and prevail over the provisions of the applicable collective agreement (*convention collective*). Exceptions to the maximum length of working days and working weeks, and to the annual overtime quota, can also be provided for under company-wide agreements. Similarly, should the annual overtime quota be exceeded, the statutory rate of increase applicable to overtime pay and time off in lieu can be modified under a company-wide agreement.

The provisions of the applicable collective agreement or company-wide agreement may also allow employers to spread working time over a period longer than one week, up to a maximum period of one year. Otherwise, working time must be spread across periods not exceeding four weeks. Overtime is counted only if working time exceeds the annual limit, or an average of 35 hours, computed on the basis of the applicable reference period.

Certain categories of employees may be exempt from overtime regulations. Due to the level of their responsibilities, managing executives are automatically exempt from these regulations. However, employees who have a sufficient level of independence in organizing their working schedule, and skilled employees whose job requirements are such that they cannot follow the general work schedule of their team or unit, may be employed under company-wide agreements for a set number of hours or days in a given year. This measure must be authorized by the applicable collective or company-wide agreement, and the employment contract of each employee concerned must be amended accordingly with their approval. With regard to employees working for a given number of days annually, the maximum number of days that may be worked in any given year is 218. In exchange, the employees concerned are entitled to a minimum of nine days off in lieu, a portion of which they may waive in exchange for additional pay (up to a total maximum of 235 days worked).

#### Greater flexibility to terminate employment

Employment termination procedures gained considerable flexibility with the passing of the Act of June 25, 2008, which provides for permanent employment contracts to be terminated by mutual agreement (*rupture conventionnelle*). This mutually agreed termination procedure enables employers and employees to negotiate the termination of an employment contract in certain non-contentious situations. The specificities of the procedure must be followed, as the termination agreement (*convention de rupture*) has to be approved by the labor authorities.

Termination by mutual agreement has already proved very popular because employers are not required to provide grounds for terminating employment, and employees are entitled to receive unemployment benefits. This termination procedure does not, however, constitute a settlement agreement. While it does not deprive employees of their right to challenge the validity of the termination before the employment tribunal (*Conseil de Prud'hommes*), the risks of a dispute are limited, as employees have 12 months in which to challenge the termination and are required to present evidence of a lack of consent.

specifying targets for pay, 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 any industry-specific collective agreement that applies to the employer. The company's actual activity, as stated in its articles, determines which collective agreement is applicable. An employment contract must stipulate the employee's pay and job description, along with the working hours and place of work. The contract may also provide for a probationary period, which may be as long as four months for a managerial post (renewable once if an industry-specific agreement allows this). The employee's pay must be at least equal to the minimum wage stipulated by the applicable collective agreement and the statutory minimum wage (SMIC), which was set at €9.40 gross per hour on July 1, 2012, i.e. €1,425.67 a month on the basis of a 35-hour working week, or €1,629.33 a month on the basis of a 39-hour working week including a 25% increase for overtime hours. The contract may also provide for additional benefits and a profit-sharing scheme.

► **Company directors** are bound to their company not by employment contracts but by corporate appointments. The terms of their appointment, pay and dismissal are freely determined in the company's articles. However, some directors may sign employment contracts with their companies, subject to certain restrictions (e.g. managing directors of *sociétés anonymes* (SAs), chairmen of *sociétés anonymes* and *sociétés par actions simplifiées* (SASs) and directors with minority interests in *sociétés à responsabilité limitée* (SARLs)).

► **Extra employees** can also be hired to meet temporary needs. However, French law restricts the use of fixed-term contracts (CDD) and temporary agency employees to specific situations and generally sets an upper limit of 18 months on such arrangements. Fixed-term contracts cannot however be used on a long-term basis to

fill jobs that are related to the company's regular business. These types of contract must be in writing and must specify the duration of the assignment and the reason why the contract is being made:

- Replacement of an absent employee;
- Replacement of an employee who has temporarily moved to part-time work;
- Gap before a new employee takes up their post;
- Temporary increase in the company's business;
- Seasonal work;
- 'Standard' fixed-term contracts (according to certain practices within a given profession).

It is now possible to draft fixed-term contracts for managers and engineers which have a fixed-purpose of a minimum of 18 months and a maximum of three years (provision must however be made for this in an industry-specific collective agreement where one exists, or if not in a company-wide agreement).

► **Employers may propose changes to an employee's contract.** Depending on whether this involves a substantial change or simply a change in working conditions, it may be necessary to obtain the employee's consent. A change to a contract may relate to an essential component such as pay, qualifications, and more generally, the work assigned to the employee. It may also relate to an element of the contract which might have been a determining factor for the employee when they signed the contract, providing it was expressed in a clear and precise clause. In this case, the employer cannot impose a change to the contract but must propose the change to the employee. If the employee refuses, it is up to the employer either to decide against the change or to dismiss the employee. For example: a change from day work to night work is a substantial change; a relocation of the workplace from the north to the south of France is a substantial change, unless mobility clauses in the contract provide for this. Simple changes to working conditions may however be imposed by the employer within the remit of their managerial authority. Refusal on the part of the employee does not lead automati-



cally to termination of the contract but may constitute professional misconduct which the employer could invoke to dismiss them on these grounds.

## I.2. SIMPLE HIRING PROCEDURES THAT CAN ALSO BE COMPLETED ONLINE

### I.2.1 Hiring is the key to optimizing working relationships

Recruitment support services are available in France so you can find the right employees for your company.

– **Finding and recruiting future employees:** France's National Employment Office (*Pôle emploi*) can help companies by publicizing their vacancies, identifying and short-listing applicants. The *Pôle emploi* can also offer and organize training courses for applicants.

– **Training your employees:**

Central government and regional councils, which are responsible for vocational training, can also organize training courses to upgrade and improve the skills of certain categories of future employees to suit the needs of companies locating in France. Based on the company's training program, it is possible to receive support for training current and future employees. These funds are intended to cover a portion of training costs outsourced to a vocational training center and/or courses held inside the company. See

Chapter 5 for further information.

– **Tax breaks and social security reductions for training:**

These are in the form of reduced social security contributions (relief on low salaries or exemptions in certain regional zones) and grants for hiring certain categories of employees (state-subsidized jobs for certain categories of employees). Since January 1, 2010, all companies have the right to request a *rescrit social* (assessment ruling) called *aide à l'emploi* (subsidized employment) which advises them on their eligibility for these forms of support.

### I.2.2 Easy hiring procedures

The administrative formalities involved in hiring employees have been streamlined with the introduction of a pre-hiring declaration form for new employees (DPAE, formerly the *déclaration unique d'embauche*). The employer must fill in the form in the eight-day period before a new employee starts work and send it to the local URSSAF office. The form can also be submitted online. In this way, the following can be carried out in a single procedure: registration of the employee with the social security system (unless on secondment), affiliation to occupational health and the organization of the mandatory medical check-up (during the probationary period) as well as affiliation to the unemployment insurance body (*Pôle Emploi*).

## IN DETAIL

*The “Titre Firms Etrangères” (Foreign Company Status) simplifies employment formalities for foreign companies without a permanent establishment in France.*

Since October 2, 2011 foreign companies that do not have a permanent establishment in France have been able to use a simplified labor status called the *Titre Firms Etrangères* (TFE) to fulfill their social security obligations when hiring workers in France. The procedure requires the employer to send their TFE status every month to the National Center for Foreign Firms (URSSAF in the Bas-Rhin *département*), which performs the following tasks:

- Calculates the applicable social security contributions on the employee's gross salary and pays them into the social security system.
- Draws up the payslip and sends it to the company to give to the employee.
- Files the required social security declarations.

 **For more information:**  
[www.tfe.urssaf.fr](http://www.tfe.urssaf.fr)



In addition to the DPAE, employers must also:

- declare the first employee hired to the labor inspection;
- affiliate to the supplementary retirement funds within three months of setting up the business;
- carry out the necessary procedures for hiring a foreign employee (excluding European nationals).

### 1.3. PROBATIONARY PERIODS

Probationary periods give employers a chance to evaluate an employee's skills.

Employers can terminate an employment contract during the probationary period without having to provide grounds or severance pay. The probationary period and the terms of its renewal must be clearly stated, either in the appointment letter or the employment contract, in order to be enforceable.

The duration of probationary periods under permanent employment contracts depend on the employment status of the employee:

- Up to two months for workers (*ouvriers*) and employees (*employés*).
- Up to three months for supervisors (*agents de maîtrise*) and technicians (*techniciens*).
- Up to four months for highly skilled employees and managers (*cadres*).

Probationary periods can be extended for up to four, six and eight months depending on the employee's position and whether an industry-specific collective agreement authorizes it.

The probationary period for fixed-term contracts of up to six months is one day per week for up to two weeks. The maximum probationary period for longer contracts is one month.

### 1.4. TERMINATING A PERMANENT EMPLOYMENT CONTRACT BY MUTUAL CONSENT

Employment contracts can be terminated at the initiative of the employee (resignation) or the employer (dismissal). The Act of June 25, 2008 on modernizing the labor market established a new way of terminating an employment contract: '*rupture conventionnelle*' or termination by mutual consent.

An employer and employee may use this procedure, which is quite flexible, to negotiate an amicable termination to an employment contract.

At least one interview is required to enable both the employer and the employee to agree upon the termination and to determine the accompanying conditions (no formal legal procedure). The employee may be assisted by a person of their choice from among the company personnel. The employer and employee sign an agreement in writing, setting out the termination date and conditions including the payment due to the employee. The employer and employee then have 15 calendar days during which they can withdraw their position. The agreement must then be approved by the employment authorities (local unit – *unité territoriale* – UT – within the *Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi* – DIRRECTE) within 15 working days, subject to the UT checking that the procedure has been carried out correctly and that both parties have given their consent, as well as the nature of the termination payment, which cannot be less than the statutory severance pay due (or the contractual severance pay due, should this be higher).

This procedure can only be used following redundancy or resignation, as it cannot be imposed upon the other party. Legal action can only be taken within 12 months of the date upon which the agreement is approved.

### 1.5. LAYOFFS FOR PERSONAL OR BUSINESS REASONS

Layoffs are permissible for either business or personal reasons.

Like in many countries, employers must provide genuine and serious reasons for dismissal, and comply with the legally prescribed procedures, which vary according to the reason for termination, the number of employees concerned, and the number of people employed by the business.

#### 1.5.1 Layoffs for business reasons

Layoffs for business reasons can result from cutbacks or job changes or when an employee

rejects a modification to a key component in their employment contract in the wake of:

- financial problems;
- technological change;
- restructuring to protect the company's competitiveness; or
- a business closure.

Layoffs can be individual or collective. Individual employees must be asked to attend a preliminary interview before they are laid off. The head of the company must meet with the works council and consult with it about collective layoffs.

Individual layoffs and layoffs of two to nine employees can only become effective seven days after the interview date, or 15 days later, in the case of supervisory personnel.

A job preservation plan (*plan de sauvegarde de l'emploi* – PSE) must be drawn up when a business with 50 employees or more decides to lay off 10 or more employees in a 30-day period. This plan must explain all action taken to avoid job losses, such as reorganizing work, job sharing, redeployment of employees inside and outside the company, etc. The plan must also explain the financial terms of the severance package. It is then submitted to the employee representatives and the employment authorities.

**The notification period for layoffs** under a job preservation plan varies according to the number of employees concerned. Layoffs of up to 100 employees can take place 30 days after the employment authorities have been notified of the plan. The waiting period is 45 days for layoffs of 100 to 249 employees and 60 days for 250 or more employees.

Severance pay for layoffs resulting from business conditions is at least one-fifth of the employee's monthly pay (including bonuses) for each year of service after one year and two-fifteenths of the employee's monthly pay for each additional year beyond ten years.

For example, an employee with 10 years of service and a gross monthly salary of €2,500 will be entitled to €5,000 or two months' pay. However, collective agreements in some cases provide for higher severance pay than this statutory minimum.

**Severance pay is treated favorably by the tax and social security system**, receiving partial exemptions from social security contributions and income tax.

Voluntary departures following cutbacks, job changes or restructuring, and refusals to accept substantial changes to employment contracts are treated as layoffs.

### 1.5.2 Layoffs for personal reasons

Personal dismissal procedures can be initiated for misconduct on the part of the employee or for actions that fall short of misconduct but nevertheless significantly harm the company's interests. A warning is often issued before initiating the dismissal procedure. The employee must be given an opportunity to provide explanations at a preliminary interview, before the dismissal becomes effective. The employer must also comply with the notice period to which the employee is entitled by law or the relevant collective agreement. In principle, the notice period is two months for employees with more than two years of service.

Employees dismissed for personal reasons are now entitled to severance pay equal to that paid for layoffs for business reasons.

Employees are not entitled to severance pay in cases of serious misconduct.

## 1.6. RETIREMENT

In principle, employees cannot be forced by their employer to retire before they are 70. The employer can however propose retirement to an employee once they reach an age of between 65 and 67, depending on their date of birth. Employees must be at least 60 before they can retire; the exact age is rising gradually for all employees by four months every year, starting on July 1, 2011, and will reach 62 for people born in or after 1955. Early retirement is, however, possible for people who entered employment at an early age or who are permanently incapacitated.

Retirement pension benefits are paid by specific benefit offices.

## II. PROFIT-SHARING AND EMPLOYEE SAVINGS PLANS

In addition to their wages and salaries, employees and company directors may be offered attractive employee profit-sharing schemes and savings plans.

The range of schemes available enables companies to set up pay and benefit systems tailored

to their specific needs, including supplementary retirement and family benefits, stock options, corporate and inter-company employee savings plans, etc.

Employee profit-sharing is mandatory in companies with more than 50 employees and in this case is referred to as *participation*, as opposed to voluntary profit-sharing which is referred to as *intéressement*.

*Participation* involves allocating employees a frac-

### IN DETAIL

#### *Employee representation*

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

→ In companies with at least 11 employees, employee representatives are elected by the employees to present individual and collective pay claims and to ensure compliance with employment laws.

→ A works council must be set up when a company has at least 50 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.

If the company has fewer than 200 employees, the employer may decide, after consultation with employee representatives, to opt for a single employee representation delegation which combines employee and works council representatives in the same elected body.

→ Establishments with at least 50 employees must also set up a Joint Safety Committee (CHSCT – *Comité d'hygiène, de sécurité et des conditions de travail*) to involve employees in training and other initiatives to prevent occupational risks and improve working conditions.

Only union representatives have the power to negotiate and enter into collective agreements. Where there are no union representatives, an industry-wide agreement may allow the employer to negotiate with elected employee representatives, either those making up the works council or those chosen as delegates. Failing this, in which event the situation must be confirmed in a written report, the employer may be authorized to negotiate with an employee mandated for this purpose. The result of these negotiations must then be submitted to employees for approval by a majority of votes cast.

Trade unions are also entitled to set up bargaining units within a company.

In order to ensure improved employee representation in companies and better dialogue between employers and employees, a reform initiated by the government on union representation in companies has been passed:

→ Unions now have to obtain at least 10% of the votes cast in the first round of the professional elections to be represented. When a union does not have representation in a company or establishment, it can designate a representative to represent it in the company or establishment, primarily with a view to achieving representation at the next professional elections.

→ Since January 1, 2009, collective company-wide agreements have only been valid if they are signed by one or more unions with at least 30% of votes and in the absence of union opposition accounting for over 50% of votes.

tion of company profits in accordance with clearly defined rules. Procedures for implementing the scheme are established by an agreement between employer and employee representatives. Bonuses earned by an employee under a profit-sharing scheme no longer have to be frozen for five years; employees can request immediate payment of all or part of the corresponding sums. Tax and social security relief apply to sums which have been frozen; sums paid out immediately are only eligible for social security contributions relief.

*Intéressement* allows employees to benefit financially from the results or performance of their company (or companies belonging to the group of employers for which the employees work). Immediately available (with no period during

which sums are frozen), the sums are calculated in accordance with the agreement which established the measure.

These schemes are collective and individual arrangements are not permitted. Companies that offer an employee savings plan must present employees with a booklet setting out the provisions of the plan when they sign their employment contract. Provisions can also be made for employee savings plans (PERCO promoting retirement saving or PEE for constituting a securities portfolio).

Since 2011, trading companies with more than 50 employees and headquarters in France must pay their employees a bonus when the dividends paid out to their shareholders are higher than

## IN DETAIL

### For your business

	SOCIAL SECURITY CONTRIBUTIONS	TAX
<b>Mandatory profit sharing (<i>participation</i>)</b>	<ul style="list-style-type: none"> <li>→ Exempt from social security contributions</li> <li>→ Fixed 20% social security contribution (sums allocated from Sep. 1, 2012)</li> </ul>	<ul style="list-style-type: none"> <li>→ Exempt from deductions to finance apprenticeships, training and housing</li> <li>→ Sums allocated to the special <i>participation</i> reserve fund deducted from taxable profits</li> </ul>
<b>Voluntary profit sharing (<i>intéressement</i>)</b>	<ul style="list-style-type: none"> <li>→ Exempt from social security contributions</li> <li>→ Fixed 20% social security contribution (sums allocated from Sep. 1, 2012)</li> </ul>	<ul style="list-style-type: none"> <li>→ Sums allocated deducted from taxable income</li> <li>→ Exempt from deductions to finance apprenticeships, training and housing</li> <li>→ Companies with fewer than 50 employees which conclude a profit-sharing agreement of this sort before December 31, 2014 will receive a tax credit amounting to 30% of the sums paid to employees, up to €200,000 over three years.</li> </ul>

### For your employees

	SOCIAL SECURITY CONTRIBUTIONS	TAX
<b>Mandatory profit sharing (<i>participation</i>)</b>	<ul style="list-style-type: none"> <li>→ Exempt from social security contributions</li> <li>→ Subject to CSG and CRDS deductions (no reduction)</li> <li>→ 3.4% social security deduction, deduction of the additional solidarity and independence tax (0.3%) and to the tax financing the RSA (1.1%)</li> </ul>	<ul style="list-style-type: none"> <li>→ Not taxable (except interest on frozen accounts received annually and not reinvested)</li> </ul>
<b>Voluntary profit sharing (<i>intéressement</i>)</b>	<ul style="list-style-type: none"> <li>→ Exempt from social security contributions</li> <li>→ Subject to CSG and CRDS deductions (no reduction)</li> </ul>	<ul style="list-style-type: none"> <li>→ Not taxable provided profit-sharing is within the framework of an employee savings plan.</li> </ul>

the average paid in the previous two tax years. The amount and terms of this profit-sharing bonus are determined in a company-wide agreement or, failing this, by the employer's unilateral decision. Both the employer and the employees receive a social security contribution exemption for bonuses of up to €1,200 (except for the CSG and CRDS and the fixed social security contribution).

### III. ORGANIZING WORKING HOURS: AGREEMENT NEGOTIATED WITHIN THE COMPANY

Companies in France have a good deal of flexibility in how they organize their working hours so as to make best use of their facilities and increase the productivity of their company. Working hours can be negotiated within their company.

#### III.1. 35-HOUR WEEK: GREATER FLEXIBILITY

Statutory working hours in France are 35 hours per week. These hours serve as the basic reference, beyond which overtime is calculated. Overtime hours (*heures supplémentaires*) worked

## IN DETAIL

### Working hours in France

	LEGAL PROVISION	STANDARD OVERTIME QUOTA	BEYOND STANDARD OVERTIME QUOTA	
<b>Companies concerned</b>	All companies	All companies	Small companies <sup>(1)</sup>	Large companies <sup>(1)</sup>
<b>Working hours</b>	35 hrs per week or 1,607 hrs per year	Set by collective agreement (company- or industry-specific) or statutory annual limit of 220 overtime hours i.e. 39 hours per week over full year = 1,827 hrs/year	Set by a collective agreement (company- or industry-specific) without exceeding the maximum working hours limit (EU regulations)	
<b>Administrative formalities</b>	None	Simply inform the Works Council	Works Council must be consulted	
<b>Overtime pay rates <sup>(2)</sup></b>	Not applicable	→ Rate provided for in collective agreement for the business or sector (10% minimum) → or by default 25% from the 36 <sup>th</sup> to the 43 <sup>rd</sup> hour → or 50% beyond that	Same as standard overtime quota	
<b>Mandatory time off in lieu</b>	Not applicable	None Time off in lieu is optional within the standard overtime quota and must be included in a collective agreement	50% beyond quota (= 1/2 hour per overtime hour beyond quota)	100% beyond quota (= 1 hour per overtime hour beyond quota)

<sup>(1)</sup> Small companies have up to 20 employees and large companies have at least 21 employees.

<sup>(2)</sup> If provided for in the collective agreement, time off in lieu can partially or entirely replace overtime pay.

in excess of statutory working hours are paid to employees at an increased rate (25% more than regular pay for the first 8 hours; 50% more thereafter), except where a collective agreement provides for a lower rate, which may not in any case be less than 10%.

**The overtime quota available to an employer is negotiated** through a company-wide agreement (by default this is 220 hours per year per employee), which increases annual working hours to 1,827, the equivalent of over 39 hours per week for 47 weeks. The payment of overtime can be substituted by time off in lieu if this arrangement is provided for in a collective agreement.

**The collective company-wide agreement** may also state how overtime can be performed beyond this overtime limit. In this case, in addition to overtime pay, the works council's opinion must also be sought and mandatory time off in lieu planned.

Maximum working hours are 10 hours per day (a contractual exemption up to 12 hours can be made) and 48 hours in any one week, with a maximum average of 44 hours per week over a 12-week period.

**Provision can be made for a package of hours or days** for particular categories of employees stated in the company-wide agreement (managers and employees free to organize their own work). Where a package is over a year, it must be part of the collective agreement (unlike the weekly or monthly hours package). Collective agreements must ensure that maximum working hours as well as daily and weekly rest time will be respected, in accordance with European Union directives.

In every case, the use of a package implies the agreement of the employee.

The 35-hour week does not apply to executives, to whom regulations on night work, daily and weekly rest periods, and legal holidays do not apply either. By the same token, management personnel and non-management employees working off the premises (such as sales representatives, maintenance technicians, etc.) are free to organize

their own work but may be subject to agreements based on a basic number of hours or days worked (such agreements must be made in writing).

These personnel free to organize their own work are offered annual packages that stipulate the annual number of days worked, with a maximum of 218 days. Employees may have their time off "bought back" (excluding paid leave) in return for a salary increase: the number of working days may then reach 235 days per year.

The salary increase paid to the employee is set by an amendment to the initial package agreement and must be at least equal to an increase of 10%.

Employers must respect the European Union directives governing daily 11-hour rest periods, weekly 24-hour rest periods in addition to the daily rest periods, paid leave and unworked days in the company. They must also conduct interviews to discuss workloads and work-life balance.

### III.2. STAGGERING PAID LEAVE

Employees in France are entitled to five weeks of paid leave. The employer can refuse to let an employee take paid leave if the workload it is too great. However, employers must let employees take at least four weeks of paid leave between May 1 and October 31. In addition to paid vacation, there are 10 legal holidays and personal leave days (births, marriages, bereavements).

### III.3. SUNDAY IS A DAY OFF BUT RELAXED REGULATIONS INTRODUCED IN 2009

Employees must be given a weekly day of rest lasting at least 24 hours on Sunday. However, there are exceptions to the Sunday rule:

- Permanent exemptions are granted when warranted by the nature of certain businesses (e.g. manufacturing firms using or producing perishable goods, factories operating around the clock, maintenance firms, etc.), in *communes* categorized as tourist or spa attractions, and in certain other highly popular tourist areas.
- The authorities may also grant temporary exemptions, for example when manufacturing



firms are operating with extra shifts. Exemptions may also be granted within a month by the local *Préfecture* to avoid a situation detrimental either to the public or business interests.

- Exemptions may also be granted in urban areas of over 1 million inhabitants.

These exemptions, granted on an individual or collective basis, are granted by the State Prefect in the *département* for a five-year period. The local mayor may also allow non-food retail stores to open five times a year on Sundays.

Employees who work on Sunday receive extra pay and are still entitled to a weekly day of rest.

### III.4. ORGANIZING WORK TIME OVER THE YEAR BY AVERAGING PAY

Companies have several ways of adjusting working hours to suit their business requirements without incurring extra payroll costs. Organizational arrangements of working time are integrated into a single framework: a collective agreement may organize working hours over a period of longer than a week to up to a year.

If the company experiences uneven fluctuations in business which can be forecast, working hours can be increased or cut in certain periods without incurring additional costs or exceeding legal limits.

#### > Shift work does not entail additional payroll costs

Shift working, over a period of several weeks, can be introduced by the employer. The exemption from the Sunday rule may be automatic or may require local authorization, depending on the activities concerned.

#### > Working time arrangements are organized by company-wide agreements

Provision is made in the collective agreement for the conditions and notice required of changes to working hours or times (by default, seven days), the limits for calculating overtime, how to calculate an average salary and the threshold for triggering overtime, etc. In the absence of any collective agreement regarding working time arrangements, the employer can organize work-

ing hours in the form of cycles, each up to four weeks long.

#### > Work may also be organized with rotating shifts or teams

In all of these cases, the company is not required to pay increased wages or overtime pay, and it is not required to provide time off in lieu, as long as the statutory working hours are not exceeded on average over the cycle.

## IV. EXTENSIVE HIGH-QUALITY SOCIAL SECURITY COVER

The quality and scope of social security cover in France ensure that both employers and employees can benefit from a stable professional and family environment.

### IV.1. A VERY GENEROUS SOCIAL SECURITY SYSTEM

France's health and social security system pays virtually all healthcare costs incurred by the employees and their families. The system offers four types of benefits:

#### > Health insurance (healthcare, maternity, disability and death benefits)

Employees are partially reimbursed for medical care and hospital expenses, which are covered by social security (benefits in kind). The employee's family and any legal dependents also receive medical cover if they reside in France and are not covered by another health insurance plan. Social security provides female employees paid maternity leave of up to 16 weeks (six weeks before the birth and 10 weeks after) while fathers receive 11 days of paid paternity leave in the first four weeks after the birth.

#### > Old-age pensions

> **Family benefits** are paid to people with dependent children living in France (e.g. family benefit, birth or adoption allowance, back-to-school allowance, etc.).

### > Accidents at work

The system is backed up by compulsory unemployment insurance and supplementary retirement schemes. Employers are free to add other insurance coverage to suit their employees. The health and retirement benefits for employees compare favorably with those offered in many other countries (particularly the United States and United Kingdom).

## IV.2. SOCIAL SECURITY CONTRIBUTIONS INSURE THE COMPANY IN CASES OF SICKNESS, RETIREMENT AND UNEMPLOYMENT

Employer and employee contributions are collected by URSSAF. The employers' share of contributions amounts to 42% on average of gross wages and the employees' share amounts to nearly 21%. Employer

social security contributions are substantially lower on low wages: depending on the size of the company (more or fewer than 20 employees), they vary between 17% and 21% on behalf of employees earning the legal minimum wage (SMIC).

To a large extent, these contributions relieve employers of their responsibilities to employees. For example, social security partially covers employee pay when they are sick or on maternity or accident leave. Similarly, by making monthly contributions to the company's career training fund (*fonds de formation professionnelle*), all or part of both the employee and employer career-training costs are covered.

## IN DETAIL

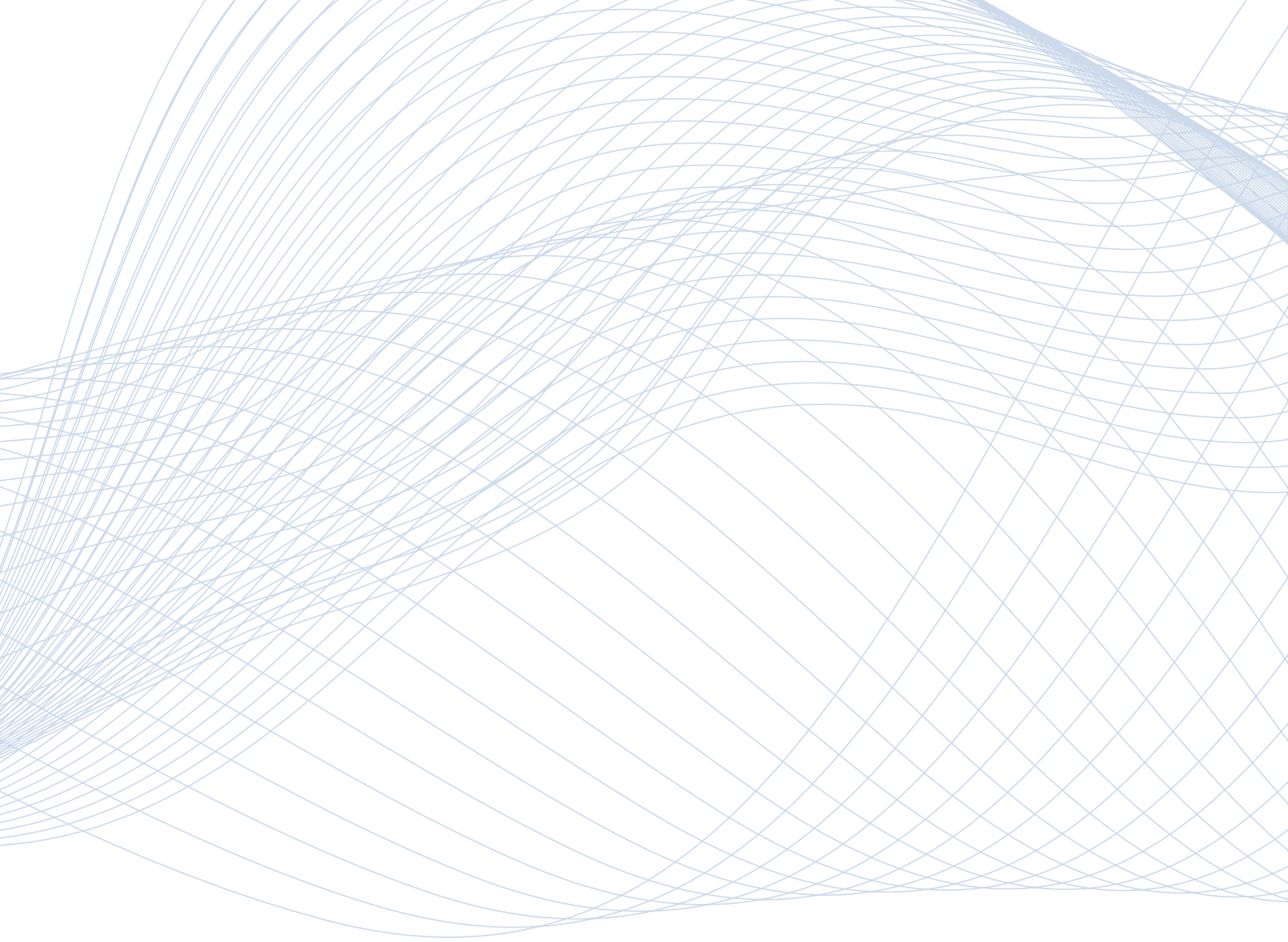
### Working arrangements

	CONVENTIONAL SHIFT WORK	ALTERNATING SHIFTS
<b>Principle</b>	Fixed round-the-clock shifts <sup>(1)</sup>	Shifts longer than normal working hours
<b>Examples</b>	<ul style="list-style-type: none"> <li>→ Shift A: 6am - 2pm</li> <li>→ Shift B: 2pm - 10pm</li> <li>→ Shift C: 10pm - 6am</li> </ul> (Three eight-hour shifts)	<ul style="list-style-type: none"> <li>→ Shift A: 6-10am/2-6pm</li> <li>→ Shift B: 10am-2pm/6pm-10pm</li> </ul> Or: <ul style="list-style-type: none"> <li>→ Shift A: 6am-2pm</li> <li>→ Shift B: 9am-5pm</li> <li>→ Shift C: 12pm- 8pm</li> </ul>
<b>Average working week</b>	35 hours	35 hours

	ROTATING SHIFTS	PRODUCTION CYCLE
<b>Principle</b>	Working days and days off divided among employees <sup>(1)</sup>	Working hours are scheduled over the cycle
<b>Examples</b>	<ul style="list-style-type: none"> <li>→ Shift A: Monday to Friday</li> <li>→ Shift B: Tuesday to Saturday</li> </ul>	<ul style="list-style-type: none"> <li>→ Weeks 1 and 2: 44 hrs</li> <li>→ Week 3: 38 hrs</li> <li>→ Weeks 4 and 6: 28 hrs</li> <li>(average over cycle: 35 hrs)</li> </ul>
<b>Average working week</b>	35 hours	Average of 35 hours over cycle

(1) With special arrangements for working on Sunday.





**AN ENVIRONMENT  
CONDUCTIVE  
TO INTERNATIONAL  
MOBILITY**

## Chapter 3 Doing Business in France

# AN ENVIRONMENT CONDUCTIVE TO INTERNATIONAL MOBILITY

France has implemented international mobility measures designed to help bring in highly skilled employees and facilitate intra-group employee mobility.

As such, multi-year residence permits have also been introduced that provide foreign nationals with a complete legal framework. The extension of the “Skills and Expertise” residence permit to company directors and the “Expatriate Employee” residence permit for employees transferred within their group are two further illustrations of these changes. Moreover, the families of foreign nationals holding these residence permits are also granted very advantageous residence and working conditions.

A ‘one-stop shop’ has been introduced in selected *départements* to improve the quality of service to companies expatriating their employees to France or bringing in corporate directors and skilled employees through intra-group transfers. Run by the French Immigration and Citizenship Office (OFII), this ‘one-stop shop’ is streamlining immigration formalities and providing a refined welcome to company directors and skilled employees, as well as their families.

Expatriate personnel in France also benefit from tax and social security measures specifically designed to offset the costs of expatriation.

### I. ADMISSION AND RESIDENCE CONDITIONS FOR FOREIGN NATIONALS IN FRANCE

Unless special dispensation is granted, admission to and residence in France requires a visa. The category of visa is primarily determined by the duration and reason for residence. The main visa categories for international mobility are the short-stay visa (up to 90 days) and the long-stay visa (more than 90 days).

#### I.1. SHORT-STAY VISA

The short-stay visa is commonly referred to as the “Schengen visa” because it enables the holder to travel throughout the 25 States of the Schengen area.

This visa can be issued for a maximum of 90 days per six-month period.

A request must be filed with the embassy or consulate of France in the country of residence.

This visa is primarily intended for travelers on business, official visits and personal visits.

#### IN DETAIL

#### *Flexible conditions for salaried employees from the European Union (EU) and the European Economic Area (EEA)*

EU, EEA and Swiss nationals are free to travel and work in France without a visa, residence permit or work permit. They must simply register with the *mairie* (municipal offices) of their *commune* within three months of their arrival.

Only Romania and Bulgaria which joined the European Union on May 1, 2007 remain subject to specific rules during a transition period until January 1, 2014, during which time nationals of these two Member States must obtain a residence per-

mit when carrying out an economic activity as well as a work permit for any work performed as an employee. There are no restrictions on them finding work in one of the 291 sectors listed by the Ministerial Order of October 1, 2012.



Business people wishing to conduct business relations in France without actually residing in the country may request a circulation visa. The circulation visa is a specific Schengen visa issued for a total period of one to five years, thereby saving holders with legitimate business activities in France from having to apply for a new visa each time they travel.

The short-stay visa does not authorize the holder to engage in paid employment in France, for which a work permit must be obtained.

As such, when a company wishes to send or receive an expatriate employee in France for an assignment of less than three months, the reason for the stay must be specified:

**>If the employee is traveling to France on a business trip** to attend an occasional meeting or to meet clients, a short-stay visa is sufficient, unless special dispensation is granted (based on nationality).

**>If the employee is on a short-term assignment** to train, advise, or provide technical assistance to a company in France, a temporary work permit (*autorisation provisoire de travail*) is required as well as the visa.

The deciding factor is whether the employee provides a service and/or effectively participates in the host company and/or is under orders from the host company.

## 1.2. LONG-STAY VISA

Foreign nationals who wish to stay in France longer than 90 days for personal reasons (family reunion, retirement, etc.) or professional reasons (to create a company, or engage in paid employment, etc.) must submit an application for a long-stay visa to the French consular authorities in their country of residence.

The long-stay visa is in principle valid for a three-month period, during which the visa holder must go to the *Préfecture* to complete the administrative formalities to obtain the residence permit corresponding to the reason for the stay: “Expatriate Employee”, “Scientific Activity”, “Skills and Expertise”, etc.

Some categories of foreign nationals have been issued a long-stay visa equivalent to a residence permit (*visa long séjour valant titre de séjour*), which is valid for three to 12 months and does not require the holder to apply at the *Préfecture* for a residence permit for the first year.

This simplified procedure is available to students, spouses of French nationals, visitors, research scientists and interns, as well as employees with a work contract at a company based in France and employees whose foreign-based company has temporarily seconded them to work in France for a specific period of time (except for intra-group transfers).

## IN DETAIL

### *Applying for a work permit for a short-term stay in France*

The originating company sends a completed temporary work permit application to the French local employment authorities (*Unité territoriale*) at least three weeks before the arrival of the foreign employee to obtain a temporary work permit. The temporary work permit is valid for up to 90 days; the short-stay visa cannot be renewed and the company must ensure that the validity periods

for the work permit and the visa correspond.

For foreign companies that regularly send employees to their subsidiaries in France for assignments shorter than 90 days, a government memorandum on November 12, 2010 allows them to apply for an annual work permit. Employees can use this work permit to obtain a multiple-entry short-term visa from their local

Consulate which is valid for 12 months. The visa and the work permit authorize three-month stays in France in every six-month period to conduct business-related activities. This simpler process means companies no longer have to apply for work permits and visas several times a year on behalf of employees who need to make frequent trips to a subsidiary in France.



Within three months of arriving in France, foreign nationals are summoned by the French Immigration and Citizenship Office (OFII) to pass a medical examination.

## II. PAID EMPLOYMENT IN FRANCE

Immigration procedures in France depend on the type of activity being conducted by the foreign national. In this respect, a distinction should be made between a salaried employee and a company director because they each have to follow a different procedure to obtain specific residence permits. The exception to the rule is that some residence permits allow any type of activity to be undertaken on French soil (salaried or commercial activities) without any specific formalities: these are the “Private and Family Life” temporary residence permit and the standard residence permit.

### 2.1. A FOREIGN COMPANY DIRECTOR'S STATUS WHEN CONDUCTING A COMMERCIAL OR INDUSTRIAL ACTIVITY

Company directors include independent business people (*commerçants*), self-employed entrepreneurs (*artisans*), or persons holding the authority to make company decisions. The latter category concerns, in particular, directors of a *société à responsabilité limitée* (SARL – limited liability company), CEOs of a *société anonyme* (SA – public limited company), or individuals (*personnes physiques*) who have the authority to direct a foreign company in France (representative of a branch or a liaison office).

Setting up a company in France does not require any specific formalities to be undertaken by EU citizens or those of Iceland, Lichtenstein, Norway or Switzerland.

The administrative formalities for nationals from third-party States primarily entail choosing between one of two statuses: either the foreign director wishes to permanently relocate

to France or the director is a non-resident, meaning he or she resides in a foreign country and directs a company in France but does not intend to live there.

#### 2.1.1 Foreign directors who wish to reside in France can obtain a multi-year “Skills and Expertise” residence permit

If a foreign director **creates or takes over an existing company**, they may under certain conditions obtain a “Skills and Expertise” residence permit, which is valid for three years on a renewable basis.

In this case, the director must present a project for starting up or taking over a company that meets one of the following criteria: investment of at least €300,000 (tangible and intangible assets), creation of at least two jobs, or creation of a subsidiary whose parent company has existed for at least two years.

**Foreign nationals who are named legal representative of an existing company in France** can also apply for a “Skills and Expertise” residence permit if their salary is equal to at least three times the SMIC (French statutory minimum wage), i.e. €4,277 gross per month since July 1, 2012.

If the conditions for issuing a “Skills and Expertise” residence permit are not met, they can apply for a “Business Activity” visa, which is valid for one year on a renewable basis.

Where an application for a “Business Activity” or “Skills and Expertise” residence permit is made abroad, the Consulate has the authority to process the application and decide whether to issue the permit. In cases where foreign nationals already residing in France currently hold a residence permit that does not permit them to conduct commercial or industrial activity, they can apply for a change of status at the *Préfecture* of their place of residence.

As a rule of thumb, the application for creating a company entails providing supporting documents such as those relating to the applicant’s civil status (birth/marriage certificate), an excerpt of their police record or similar from their country of

origin, a written description of the project and its multi-year projected budget, a copy of the company's articles, written proof of the appointment or letter of intent from an authorized body. In the case of taking over an existing entity, an excerpt of the company's registration certificate (*extrait K-bis*) issued within the previous three months by the Companies Register is required.

Family members of a "Skills and Expertise" residence permit holder are automatically granted a "Private and Family life" residence permit, which enables them to seek employment. The Act of June 16, 2011 made this residence permit valid for three years on a renewable basis.

Family members of a "Business Activity" residence permit holder receive a "Visitor" residence permit.

**The memorandum of August 3, 2012 introduced a 'one-stop shop' in the following départements: Paris, Hauts-de-Seine, Yvelines, Rhône, Haute-Garonne, Isère, Nord, and Puy-de-Dôme.** In these eight *départements*, the French Immigration and Citizenship Office (OFII) has become the single point of contact for holders of the "Skills and Expertise" visa and their families once they arrive in France. As such, all administrative formalities are centralized at the OFII, from the medical examination to the issue of the residence permit.

### 2.1.2 A single preliminary declaration for non-resident directors

Legal representatives of a company located in France who do not wish to reside in the country make a preliminary declaration with the local *Préfecture* in the company's *département*. This declaration is either sent by registered letter with acknowledgement of receipt or delivered in person by the legal representative or their proxy (by presenting a mandate). The supporting documents required are the applicant's civil status papers (birth/marriage certificate), an excerpt of their police record or similar from the country of origin, a copy of the company's articles and a written statement declaring them director.

The Prefect issues a certificate containing the applicant's name, business activity status and the company's business name, address and activity. This procedure makes it possible to issue a certificate within 15 days (or immediately if the application is delivered in person).

### 2.1.3 The "Exceptional Economic Contribution" residence permit

Since the Decree of September 11, 2009, a foreign national who wishes to make an investment in France of over €10 million, or plans to create or save at least 50 jobs, can apply for an "Exceptional Economic Contribution" residence permit, valid for a 10-year period (on a renewable basis). The Prefect where the investment is planned is authorized to review the application.

The Prefect may decide to issue this residence permit even if these numbers are not yet reached if they consider that the applicant's economic contribution is exceptional due to specific aspects or conditions in the local job market.

The Act of June 16, 2011 also grants spouses a 10-year residence permit.

## 2.2. TEMPORARY RESIDENCE PERMITS AUTHORIZING SALARIED EMPLOYMENT

In principle, a work permit is required to engage in salaried employment in France.

If a foreign national plans to stay in France longer than 90 days, the competent authorities issue them a single permit that is valid for both residency and work in France.

Specifically, this applies to the "Expatriate Employee" and "Skills and Expertise" residence permits as well as the "Employee" and "Student" long-stay visas equivalent to a residence permit

### 2.2.1 The European Union Blue Card

The Act of June 16, 2011 introduced a residence permit for highly skilled employees that was transposed from a European Union Directive on mobility within Member States.

To obtain the card, applicants must meet the following eligibility criteria:

- Hold a degree certifying at least three years of higher education or have at least five years of professional experience.
- Possess an employment contract lasting at least one year.
- Earn a salary worth at least 150% of the average gross salary (i.e. €4,287 gross per month in 2012).

Applicants must submit a request to the OFII 'one-stop shop' if the company is located in one of the following *départements*: Paris, Hauts-de-Seine, Yvelines, Rhône, Haute-Garonne, Isère, Nord, and Puy-de-Dôme. Elsewhere in France, the request must be submitted to the local employment authorities (*Unité territoriale*) where the company is located. Employment levels have no bearing on the award of this new residence permit, so employers are not required to justify the hiring decision with reference to the local job market, nor are holders obliged to undergo a medical examination.

Once the procedure is complete, the employee receives a renewable three-year residence permit and their family members are given a **"Private and Family Life"** temporary residence permit. After 18 months, the holder of a European Union Blue Card issued by a Member State can apply for a similar permit to secure a highly skilled position in another EU country.

### 2.2.2 The "Expatriate Employee" temporary residence permit

**This renewable three-year residence permit is specifically reserved for intra-group transfers.**

It can be issued either:

- for a secondment (the initial work contract remains in force and the employee is paid by the originating company); or
- for an expatriation (the initial work contract is suspended for the duration of the assignment in France and a new work contract is signed with the company in France, which pays the employee).

The following conditions must be met to receive this permit: the work contract must have been valid for at least three months; the secondment or expatriation must be to a company in the same

group or an organization belonging to the same company; gross monthly salary must be equal to at least 150% of the SMIC (French statutory minimum wage), i.e. €2,138.50 since July 1, 2012.

Employment levels will not determine whether or not holders of temporary "Expatriate Employee" residence permits can be employed. As such, the employer is not obliged to justify the hiring decision with reference to the local job market. If the "Expatriate Employee" permit holder resides in France continuously for more than six months, family members can apply for the **"Private and Family life"** temporary residence permit. Since the Act of June 16, 2011 this residence permit is valid for three years and automatically enables family members to seek employment.

### 2.2.3 The "Employee" long-stay visa equivalent to a residence permit

This one-year visa is intended for foreign nationals who are hired by a company located in France, for a period of one year or more.

The future employer must initially request a work permit, which may be rejected on the grounds of employment levels.

At the end of the first year, the expatriate employee must go to the *Préfecture* within two months of their visa's date of expiration to apply for an annual residence permit, which can be renewed.

Holders of this type of residence permit must sign an integration contract (*contrat d'accueil et d'intégration – CAI*). This contract is a means by which the French state provides foreign nationals with access to individual rights and French language training.

### 2.2.4 The "Temporary Worker" long-stay visa equivalent to a residence permit

This visa is issued to employees admitted to France to work for a fixed period of three to 12 months. This especially applies to employees seconded by a foreign company to provide a particular service at a client company.

The future employer must initially request a work permit, which may be rejected on the grounds of employment levels.

In principle, the visa serving as a residence permit is valid for the same length of time as the work permit, but only for up to 12 months. However, a renewal application may be submitted two months before the expiry date. In this case, the holder then appears before the *Préfecture* to be issued with an annual residence permit.

Due to the temporary nature of the work performed in France, holders do not have to sign an integration contract.

### 2.2.5 The “Scientific Research Activity” long-stay visa equivalent to a residence permit

This residence permit is issued to foreign nationals who are engaged in research activities or teaching at a university level.

The applicant must possess a hosting agreement issued by a scientific organization or an approved university, certifying their status of scientist and the purpose and length of their stay. Research scientists are exempt from obtaining a separate work permit.

The hosting agreement must be stamped by the French consular authorities in the applicant’s home country.

After the first year in France, the scientist receives a “Scientific Research Activity” temporary residence permit, valid for one to four years.

Holders of this type of residence permit must sign an integration contract if they sign a permanent employment contract.

The scientist’s family members receive a “**Private and Family Life**” temporary residence permit

### 2.2.6 The “Student” long-stay visa equivalent to a residence permit

This one-year visa is issued to foreign nationals studying in France who can prove that they are financially self-sufficient (€620 per month as of January 1, 2012).

It allows the student to engage in **secondary** paid employment of up to 60% of the legal working

year. No work permit is required but the employer must file a declaration with the *Préfecture* where the student resides. At the end of the first year, if the student is to continue their studies, they can apply for a residence permit with the *Préfecture* within two months of their visa’s expiry date.

## 2.3. ADMISSION PROCEDURES

### 2.3.1 The usual admission procedure

If you are an employer wishing to send a foreign national to work in France, you must follow an admission procedure, which verifies the enforcement of French employment laws, particularly regarding legislation on working hours, social security contribution payments (in the absence of social security agreements or conventions) and equal opportunities.

This procedure applies to any salaried work performed by a foreign national from a third-party State, particularly:

- for an intra-group transfer (“Expatriate Employee”) except in those parts of the country operating the ‘one-stop shop’ (see below);
- for a transnational secondment (to provide a service or independent operation);
- when a company located in France wishes to hire a foreign national who does not live in France.

It is up to the employer, whether located in France or abroad, to begin the procedure.

First, the employer files an application for admission with the local employment authorities (*Unité territoriale*) where the activity will be conducted at least two months prior to the employment term commencing. The documents submitted with the application must be written or translated into French.

The local employment authorities review the application and decide whether or not to issue a work permit.

The work permit is obtained by filling out a government form (formulaire CERFA) that is submitted to the French Immigration and Citizenship Office (OFII).

The OFII then transfers the application file to

**IN DETAIL***Economic immigration: international mobility for company directors  
(non-EU/EEA/Switzerland)*

STATUS/ POSITION	VISA AND RESIDENCE PERMIT ISSUED	MAXIMUM PERIOD OF RESIDENCE IN FRANCE	ELIGIBILITY CRITERIA	APPLICATION FILING	REQUIREMENT TO OBTAIN WORK PERMIT	ACCOMPANYING FAMILY
<b>Company director</b> “Exceptional Economic Contribution”	Long- or short-stay visa + “Exceptional Economic Contribution” residence permit	Permanent residence permit: 10 years, renewable	<ul style="list-style-type: none"> <li>→ Must run the company or hold an interest of at least 30%</li> <li>→ Must invest at least €10 million</li> <li>→ Or must create or maintain at least 50 jobs</li> </ul>	<b>At the <i>Préfecture</i></b> local to the planned investment site.	N/A	<b>Yes.</b> Spouse receives 10-year residence permit
<b>Company director residing in France</b>	Long-stay visa + “Skills and Expertise” residence permit	3 years, renewable	<ul style="list-style-type: none"> <li>→ Must create and run a company, certain conditions apply (intra-group mobility or creation of two jobs and investment of at least €300,000).</li> <li>→ Must be an existing appointed paid company director.</li> <li>→ Must be the representative of the branch or liaison office.</li> </ul>	<b>Initial application :</b> at the consulate in the applicant’s country of residence. <b>To change status:</b> at the <i>Préfecture</i> local to the applicant’s place of residence.	N/A: the applicant is a company director who does not have the status of employee as defined by French employment law.	<b>Yes.</b> “Private and Family Life” residence permit issued for three years (renewable). The spouse can freely seek employment.
<b>Company director residing in France</b> (ineligible for a “Skills and Expertise” permit)	Long-stay visa + “Business Activity” residence permit	1 year, renewable	<ul style="list-style-type: none"> <li>→ Must create and run a business company or be a self-employed entrepreneur.</li> <li>→ Must be an appointed company director (Director of a limited liability company, Chairman of simplified company, etc.)</li> <li>→ Must be the representative of the branch or liaison office.</li> </ul>	<b>Initial application :</b> at the consulate in the applicant’s country of residence. <b>To change status:</b> at the <i>Préfecture</i> local to the applicant’s place of residence.	N/A: the applicant is a company director who does not have the status of employee as defined by French employment law.	<b>Yes.</b> “Visitor” residence permit issued. The spouse must obtain a work permit to seek employment.
<b>Company director not residing in France</b>	Schengen short-stay “business trip” visa. Option to obtain a <b>circulation</b> visa.	90 days maximum per 6-month period	<ul style="list-style-type: none"> <li>→ Must be the company’s legal representative.</li> </ul>	<b>Consulate</b> in the applicant’s country of residence.	N/A: the applicant is a company director who does not have the status of employee as defined by French employment law.	<b>No.</b>

EU: European Union - 27 countries

EEA: European Economic Area - EU + Iceland, Liechtenstein and Norway - 30 countries

Schengen Area: 25 Member States of the EU

Local employment authorities (*Unités territoriales*, formerly DDTEFPs)OFII: French Immigration and Citizenship Office (*Office français de l’immigration et de l’intégration*)

## IN DETAIL

*Economic immigration: international mobility for skilled employees  
(non-EU/EEA/Switzerland)*

STATUS/ POSITION	VISA AND RESIDENCE PERMIT ISSUED	MAXIMUM PERIOD OF RESIDENCE IN FRANCE	ELIGIBILITY CRITERIA	APPLICATION FILING	REQUIREMENT TO OBTAIN WORK PERMIT	ACCOMPANYING FAMILY
Employee on intra-group transfer	Long-stay visa + “Expatriate Employee” residence permit	3 years, renewable	<ul style="list-style-type: none"> <li>→ Must be on secondment or expatriation within same business group</li> <li>→ Must be paid gross monthly salary of at least 150% of the SMIC (French minimum wage)</li> <li>→ Work contract must be valid for at least 3 months</li> </ul>	<p><b>Local employment authorities (Unité territoriale)</b> where work is to be performed in France: the employment authorities issue the work permit and send the file to the consulate (through the OFII).</p> <p><b>or:</b></p> <p><b>OFII ‘One-stop shop’</b> in the <i>départements</i> concerned. The employer forwards all documentation to the OFII which acts as a single point of contact between the <i>Unité territoriale</i>, the company and the Consulate.</p> <p><b>Consulate:</b> issues long-stay visa (filed at same time)</p>	<p><b>Yes.</b> The employer sends the application file to the local employment authorities, which review the application within 10 days.</p>	<p><b>Yes.</b> “Visitor” permit if residence is less than 6 months. Three-year “Family and Private Life” permit if residence is more than 6 months.</p>
Highly skilled employee (Intra- European transfer)	Long-stay visa + “European Union Blue Card” residence permit	3 years, renewable	<ul style="list-style-type: none"> <li>→ Must hold a degree certifying at least three years of higher education or have at least five years of professional experience</li> <li>→ Must have an employment contract lasting at least one year</li> <li>→ Must earn a salary worth at least 150% of the average gross salary (€4,287 gross per month as of January 1, 2012)</li> </ul>	<p><b>OFII ‘One-stop shop’</b> in the <i>départements</i> concerned</p> <p><b>or:</b></p> <p><b>Local employment authorities (Unité territoriale)</b> where work is to be performed in France</p>	<p><b>Yes.</b></p>	<p><b>Yes:</b> “Private and Family Life” permit for same duration as holder of the European Union Blue Card.</p>
Employee (secondment < 3 months)	Short-stay visa + <b>temporary work permit</b>	90 days maximum	<ul style="list-style-type: none"> <li>→ Must be a salaried employee of the foreign company prior to the secondment</li> <li>→ Must be seconded for an assignment on the foreign company’s behalf or to provide a service with a company based in France</li> </ul>	<p><b>Local employment authorities (Unité territoriale):</b> issue work permit.</p> <p><b>Consulate:</b> issues short-stay visa.</p>	<p><b>Yes.</b> The employer sends the application file to the local employment authorities.</p>	<p><b>No.</b></p>
Employee from outside group (secondment > 3 months)	Long-stay visa equivalent to a “ <b>Temporary Worker</b> ” residence permit	Depends on length of assignment: 3 to 12 months, renewable subject to certain restrictions.	<ul style="list-style-type: none"> <li>→ Must be a salaried employee of the foreign company prior to the secondment</li> <li>→ Must be seconded for an assignment on the foreign company’s behalf or to provide a service with a company based in France</li> </ul>	<p><b>Local employment authorities (Unité territoriale):</b> issue work permit. The employment authorities send the file to the OFII, which forwards it to the consulate.</p> <p><b>Consulate:</b> issues long-stay visa.</p>	<p><b>Yes.</b> The employer sends the application file to the local employment authorities.</p>	<p><b>No</b> May apply for a “Visitor” visa.</p>

EU: European Union - 27 countries

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Schengen Area: 25 Member States of the EU

Local employment authorities (*Unités territoriales*, formerly DDEFPs)

OFII: French Immigration and Citizenship Office (*Office français de l’immigration et de l’intégration*) which serves as ‘one-stop shop’ in eight *départements* (Paris, Hauts-de-Seine, Yvelines, Rhône, Haute-Garonne, Isère, Nord, and Puy-de-Dôme) for “Expatriate Employee”, “European Union Blue Card” and “Skills and Expertise” applicants.



the French consulate in the employee's place of residence. The employee then appears at this office to be issued their visa corresponding to the reason for their stay.

Once in France, foreign nationals can begin work immediately and have a maximum of three months in which to submit their application file for a residence permit and attend the OFII medical visit. The employer must pay the OFII a fee in accordance with the length of the employment contract and the employee's salary.

Depending on the nature and term of the assignment in France, the residence permit issued will be:

- An "Expatriate Employee" residence permit valid three years for intra-group transfers.
- A "Temporary Worker" long-stay visa equivalent to a residence permit for employment contracts of less than one year (an annual residence permit will be issued at the end of the first year).
- An "Employee" long-stay visa equivalent to a residence permit for employment contracts of one year or more (an annual residence permit will be issued at the end of the first year).

## IN DETAIL

### Applying for a work permit

The application for a work permit is filed with the foreign labor department of the local employment authorities (*Unité territoriale*).

The decision to issue or refuse a work permit is made by the local employment authorities (*Unité territoriale*) once the application has been consulted.

#### CRITERIA FOR THE ISSUE OF A WORK PERMIT

When deciding whether to refuse or accept the work permit application, the local employment authorities assess the following criteria:

- ➔ Employment levels in the relevant sector and geographic area, taking into account the specificities of the position being offered and the employer's previous attempts to fill it by recruiting a job seeker, mostly with help from the local *Pôle emploi* (National Employment Office).
- ➔ The appropriateness of the foreign applicant's qualifications and experience for the position being offered.
- ➔ The employer's adherence to French employment and social security legislation.

➔ The employee's adherence to any appropriate regulations concerning the profession in question.

➔ The employment conditions and remuneration must be similar to those provided to other employees in the company (or the profession) for a similar position.

➔ The salary must be at least equal to the French statutory minimum wage (SMIC) (or greater in certain cases, as for the "Expatriate Employee" residence permit).

➔ Any steps taken by the employer to ensure that the foreign national is able to find decent living accommodation.

#### EMPLOYMENT LEVELS

The administrative authorities may refuse to issue a work permit if they consider that unemployment is too high for a particular sector or geographic area and that the employer has not already searched in the local labor market.

The employment situation is not an issue, however, for employees on an intra-group transfer ("Expatriate Employee" residence permit), hold-

ers of a "Skills and Expertise" residence permit, employees conducting a business activity in a sector in a geographic area experiencing recruitment issues and included in a list established by administrative authorities (cf. 14 sectors listed by the Ministerial Order of August 11, 2011).

#### APPLICATION FOR A WORK PERMIT

To be made by the employer.

#### DOCUMENTS TO BE SUBMITTED

Several documents must be submitted with the work permit application (see "Compiling an admission file" below).

#### LENGTH OF PROCEDURE

The decision is normally made by the local employment authorities (*Unité territoriale*) within two months of the application being filed. For "Expatriate Employee" applications filed at the OFII 'one-stop shop', **this period is reduced to 10 days.** If no reply is received within this time, the application is deemed to have been rejected.

### 2.3.2 Introduction of a ‘one-stop shop’ for “Expatriate Employees” in eight départements: Paris, Hauts-de-Seine, Yvelines, Rhône, Haute-Garonne, Isère, Nord, and Puy-de-Dôme

The memorandum of August 3, 2012 simplified the administrative procedures for certain categories of foreign employees and introduced a ‘one-stop shop’ at local French Immigration and Citizenship Office (OFII) offices for “Expatriate Employees” and European Union Blue Card holders in the following eight départements: Paris, Hauts-de-Seine, Yvelines, Rhône, Haute-Garonne, Isère, Nord, and Puy-de-Dôme. The company’s local OFII branch oversees all the immigration formalities, including

forwarding the work permit to the local employment authorities (*Unité territoriale*), informing the company, contacting the Consulate, scheduling the employee and family for the medical examination when they arrive in France and issuing them their residence permits.

The memorandum specifies that applications for family members of expatriate employees are to be processed at the same time as theirs, chiefly in terms of issuing the visa and the medical examination.

This measure to simplify the process provides a higher quality of service for multinational companies and saves employees and their families valuable time by eliminating multiple visits to the *Préfecture*.

## IN DETAIL

### Compiling an admission file for a foreign employee

Main documents to be submitted by the employer to the local employment authorities (*Unité territoriale*) to support a work permit application for a salaried employee that the employer wishes to recruit or transfer to France:

- Letter of motivation for the recruitment of the employee giving details of the employee’s future position and responsibilities.
- The relevant CERFA form that corresponds to the employment to be carried out in France.
- A valid K-bis document if the employer is a corporate entity (*personne morale*); a valid K document (if the entity is an *entreprise individuelle*), a tradesperson’s card or, failing this, a tax receipt if the employer is an individual (*personne physique*).
- Documents proving the link

between the company based in France and the company based abroad in the event of an intra-group transfer.

- A copy of the employee’s passport or national identity card if the employee is resident abroad.
- The employee’s curriculum vitae or any other document that shows the employee’s qualifications and professional experience; where applicable, a copy of the employee’s educational diploma or certificate entitling the employee to carry out the employment in question; and in the event that the exercise of the employment is subject to specific regulatory conditions, proof that these conditions are properly fulfilled.
- In the event of employment levels being an obstacle, documentary evidence of efforts made to recruit a

candidate from the French labor market.

If the employer is based abroad, the application should also include the following documents:

- A certificate of employment from the company based abroad or initial employment contract, showing at least three months’ service.
- A certificate of secondment or signed statement of the request for registration with the French social security system.
- Where applicable, a signed statement of the request for registration with the paid leave fund.
- Where applicable, a copy of the letter of mandate addressed to the person established in France in order to carry out administrative procedures on the employee’s behalf.

## 2.4. EMPLOYEES SECONDED BY AN EMPLOYER RESIDING OUTSIDE FRANCE (TRANSNATIONAL SECONDMENT)

A foreign company may temporarily assign employees to France in order to provide services for a subcontracting contract or to conduct an operation independently without a service contract.

Seconded employees remain under contract with the foreign company before, after and during the term of their secondment in France.

By virtue of this regulation, seconded employees are not employees of the client company, which does not pay their salary. They are subject to employment laws to the same extent as employees in the client company (working hours, minimum wages and payment of salaries, annual leave, health and safety conditions, etc.)

The foreign-based company (or its representative) begins the work permit application procedure at the local employment authorities (*Unité territoriale*) of the place of employment.

If the secondment is for a period of less than three months, in addition to the short-stay visa (unless special dispensation is granted) a **temporary work permit** (*autorisation provisoire de travail*) is required.

If the secondment is for a period of more than three months, employees must hold a long-stay visa equivalent to a residence permit bearing the specification “Temporary Worker”.

If the assignment is for more than three months, the employer must pay the OFII a fee in accordance with the employee’s salary.

Foreign companies must also make a **mandatory preliminary declaration** to the regional employment inspector in the location where the process is taking place. Foreign companies that do not have offices in France must register with URSSAF in the Bas-Rhin *département* (*Centre national des firmes étrangères – CNFE*) to enroll their employees and pay social security contributions (unless a special dispensation is granted through a social security agreement and a certificate of secondment is obtained).

### 2.4.1 Changing from student status

A student who has a qualification at least equivalent to a Master’s degree can apply for a temporary residence permit, valid for six months and non-renewable after their “Student” residence permit has expired.

During this period, the holder may seek and perform work related to their training combined with a gross monthly salary of at least 150% of the SMIC (French statutory minimum wage) i.e. €2,138.50 since July 1, 2012.

At the end of this period, and providing they can prove that they are working, they can apply for a change of status through the *Préfecture* to obtain a “Skills and Expertise” or “Employee” residence permit. Employment levels will not be taken into account provided that the job is commensurate to the employee’s training and the gross monthly salary paid is at least 150% of the SMIC.

## III. HEALTH COVER AND SOCIAL SECURITY BENEFITS FOR EMPLOYEES IN FRANCE

Employees may opt for continued coverage by the health and social security system in their home country if a reciprocal agreement exists between their home country and France.

In the absence of a reciprocal agreement, any salaried employee working in France, irrespective of their nationality, age or type of employment contract, must be registered with the French social security system (principle of territoriality).

### 3.1. PRINCIPLE OF TERRITORIALITY: IN THE ABSENCE OF AN INTERNATIONAL AGREEMENT, SOCIAL SECURITY CONTRIBUTIONS ARE PAYABLE TO THE SOCIAL SECURITY SCHEMES IN THE COUNTRY OF EMPLOYMENT

The French social security system is based on the

## LEGAL ADVICE

**Yan-Eric Logeais, Attorney, and Stéphanie Poussou, Lawyer, Gide Loyrette Nouel AARPI**

### SOCIAL SECURITY FOR INTERNATIONALLY MOBILE EMPLOYEES

By virtue of the principle of territoriality, individuals who work in France must be registered with the French social security system, regardless of their nationality or place of residence (1).

However, if an international social security agreement has been signed with their home country, foreign employees may maintain coverage under their home country's system (2).

A variety of social security benefits are available to employees who are on leave due to an accident or illness (3).

#### 1. The principle of territoriality

Foreign nationals who work in France are subject to French social security laws, regardless of their nationality or their employer's place of business. Foreign employees are therefore required to pay the applicable social security contributions relating to their work, which are determined with respect to the full amount of their remuneration, including benefits in kind.

If a foreign employee is a salaried employee, their employer or the employer's representative is responsible for submitting any declarations required by law (for example, the employee hiring form – *déclaration unique d'embauche* – a single document that covers seven formal hiring requirements, including in particular, registration with the French social security system, the local French health insurance office (CPAM), and for unemployment insurance). Social security contributions owed by foreign employees are withheld by their employers at source. If a foreign employee's home company does not have any business establishments in France, it must submit the necessary declarations and pay the requisite contributions to the Bas-Rhin social security collection office (URSSAF), which is the sole competent authority. To satisfy these obligations, an employer may appoint a representative who resides in France, which may be the foreign employee himself, to be personally responsible for making obligatory declarations and contributions on behalf of the company.

Self-employed foreign nationals are personally responsible for registering with and paying social security contributions to the social security funds for the self-employed.

#### 2. International social security agreements

In accordance with European Union Regulations (EC) 883/2004, 987/2009, and 1231/2010, EU, EEA, Swiss, and third-country nationals assigned to work in France may, under certain conditions, temporarily maintain social

security coverage under their home country's system. Foreign assignments are subject to a maximum length of 24 months, but it is possible to extend exemption from contributions for up to 12 additional months.

Before sending an employee on a foreign assignment, employers must notify the competent authority and obtain an A1 form, which is a certificate stating the applicable social security legislation. For extensions, employers must submit a request for application of article 16 of Regulation 883/2004.

Foreign employees from countries that have signed bilateral social security agreements with France may, in accordance with the provisions of such agreements, maintain coverage by their home country for the duration of their assignment in France. To date, France has signed 40 bilateral social security agreements (notably with the United States, India, and Canada). The length of foreign assignments, which may be renewed, is specified under a specific clause in the agreement.

In any event, for a social security agreement to apply, foreign employees must provide proof of coverage by their home country. Once a foreign assignment has ended, employees must apply for coverage under and pay contributions to the French social security system. Employees may also maintain parallel coverage by their home country; this is referred to as "dual coverage".

#### 3. Benefits

In the event of an accident at work, the employee must report the accident to their employer within 24 hours; the employer then has 48 hours to report the accident to the CPAM. The employer will provide the employee with a work accident form to give to the doctor, which saves employees from having to advance related expenses.

In the event of a temporary disability, employees are entitled to benefits in kind, including the reimbursement of medical expenses in connection with medical consultations, prostheses, personal attendants, etc. The CPAM may make direct payments to practitioners, medical assistants, and treatment facilities.

Employees may also be entitled to cash benefits (income replacement to compensate loss of income, including per diem allowances, disability or invalidity pensions, and death benefits). In case of death, survivors' benefits are paid to eligible parties.

Additional compensation for work accidents or occupational illnesses may be provided in the event of gross negligence on the part of the employer.

principle of territoriality: foreign employees working in France are, in principle, subject to French health cover and social security legislation, regardless of their nationality or the location of their employer. Foreign employees may however contribute to optional social security schemes in their home countries. As such, the salary and benefits (benefits in kind, expatriation bonuses, etc.) paid to foreign employees are subject to social security contributions at the rate in force, payable to the mandatory and supplementary schemes.

The Economic Modernization Act of August 4, 2008 reaffirms the principle of territoriality. It offers an exemption from basic retirement insurance (without supplementary retirement benefits) for foreign employees who make a joint request with their employer based in France, or failing this with their host company in France. To become exempt, proof must be supplied of registration with an insurance scheme. The applicant must not have been registered with a mandatory French retirement scheme, or the social security scheme of a Member State bound by EU rules for coordinating social security systems, during the five years prior to the application. This exemption is granted for three years. It may be renewed for the same period.

### **3.2. INTERNATIONAL AGREEMENTS AND EU REGULATIONS PROVIDE FOR EXEMPTIONS FROM FRENCH SOCIAL SECURITY CONTRIBUTIONS**

**Nationals of countries that have signed bilateral agreements** with France may remain registered with the social security system of their country of origin during their secondment in France.

The length of the secondment is limited by a specific clause in the bilateral agreement, although it can be renewed. At the end of this period, the seconded national must register with the social security system of the host country (in this case, France). They can however continue to contribute to the social security system in their country of origin; this is called making dual contributions.

In practice, the employee must supply proof of their registration in their country of origin to be able

to benefit from the application of social security bilateral agreements.

**Citizens of the European Union, European Economic Area and Switzerland** may also be seconded to other Member States for two-year periods by virtue of EU regulations.

An exemption may be requested in order to extend the term of the secondment if the assignment is expected to exceed two years or run over the full two-year term. Each Member State determines the maximum secondment term it agrees to grant.

At the end of this initial or extended period, the seconded employee must register with the social security system of the country where the paid employment is carried out (in this case, France).

## **IV. TAX REGULATIONS FOR EMPLOYEES IN FRANCE**

In principle, French employees and foreign employees are subject to the same tax regulations. However, under certain circumstances, employees who come to work in France benefit from a very generous tax system.

### **4.1. DETERMINING TAX RESIDENCY**

It should be noted that the employee's status (seconded employee or expatriate employee) has no bearing on their residence for tax purposes.

Tax residence is not a matter of choice for the employer or the employee; it depends on legal or reciprocal agreements and treaties.

A person is considered to be resident in France for tax purposes if one of the following criteria is met:

- ▶ France is the person's permanent place of residence (household), in other words the habitual place of residence of the person or their family (spouse and children).
- ▶ In the event that the person has dual permanent residence: if France is the center of their financial and personal interests.
- ▶ In the event that the center of interests cannot be determined: if their primary place of residence is in France (they reside in France for more than



183 days in the same year).

- In the absence of any other deciding criteria (primary place of residence or no place of residence in either country): if the person holds French nationality.
- In the event that the person has dual nationality or neither of the two nationalities, the matter is decided by mutual agreement of the tax authorities in the two countries.

Tax residents in France are taxed on the entirety of their income earned from French sources or from other sources, but are also subject to international tax treaties and certain special tax systems such as those for expatriates (cf. §4.3). If foreign sources of income are also taxed in the country of origin, double taxation is avoided through the large number of bilateral tax treaties that France has signed.

## 4.2. INCOME TAX SYSTEM FOR TAX RESIDENTS

### 4.2.1 General

Salaries (tax category “wages and salaries”) are taxable once social security contributions and all other mandatory contributions and business expenses have been deducted. For business expenses, there is a choice between a flat deduction of 10% or an option to deduct their actual amount

A French resident’s income is taxed at progressively higher rates:

TAX PAYABLE IN 2012	
2011 INCOME BRACKET (by allowance unit)	TAX RATES IN 2012
Income up to €5,963 inclusive:	0%
From €5,963 to €11,896 inclusive:	5.5%
From €11,896 to €26,420 inclusive:	14%
From €26,420 to €70,830 inclusive:	30%
Over €70,830:	41%

Income tax is calculated on the basis of total household income (taking into account the resident and any spouse’s income, as well as the number of dependent children). The effective tax rate is determined by the allowance method based

on the size of the household whereby the total household income is divided by the number of household units, which is based on the number of people associated with the household (one unit for each adult; half for each of the first two children, then one for each child thereafter). Assuming income remains unchanged, larger families entitle households to a higher number of allowance units, and thus lower effective tax rates.

Other expenses may also be tax-deductible or eligible for tax credits; these include childcare expenses or school fees, expenses for domestic help, and some household equipment costs.

Overtime hours worked in addition to the statutory 35-hour week are exempt from income tax, social security and employer contributions. With a view to balancing the government budget, an exceptional tax on high incomes has been instituted for taxes filed in 2012 that amounts to:

- 3% of taxable household income between €250,000 and €500,000 for people filing as single and between €500,000 and €1,000,000 for joint returns.
- This rate goes up to 4% for the portion of taxable household income that is higher than €500,000 for single people and €1,000,000 for couples.

### 4.2.2 A special exemption scheme for expatriate personnel

The tax system for expatriate personnel is open to any person, regardless of their nationality, coming to work in France and who has not been a tax resident in France during the five calendar years prior to the date they commenced their post. The person must have been called to work for a company in France (regardless of the host company’s nationality). The system is also open to non-salaried employees subject to certain conditions and official approval. To immediately benefit from this exemption, the taxpayer must determine their tax residence in France by December 31 of the year following the year during which they commenced their post (i.e. by December 2013 at the latest for a post in France beginning during the course of 2012).



Beneficiaries of the system receive exemption from income tax on any additional remuneration (“expatriation bonuses”) that they receive from their activity in France (various compensating premiums, repayment of expenses, etc.). The expatriation bonus is fully exempt, provided that the salary of the employee or the company director that is taxable in France is at least equal to that earned working in a similar position for the same company or, if not, for a similar company established in France.

Furthermore, the system provides for an income tax exemption on income received for work undertaken abroad. The exemption cannot exceed 20% of taxable income.

To be more conducive to employees whose remuneration for work undertaken abroad is high, there is provision in the new system for being able to opt instead for an overall exemption ceiling (expatriate bonus and income received for work undertaken abroad) amounting to 50% of their total pay.

Provision is also made in the new system for exemption on 50% of so-called “passive” receipts (income from securities, copyright royalties, capital gains from transfers of shares and ownership interests) from a foreign source.

The expatriate exemption scheme applies for up to five years starting in the first full year after they assume their new position.

As regards the “wealth tax” (*impôt de solidarité sur la fortune* – ISF), expatriates are only taxed on their accumulated assets located in France for five years starting in the first full year after they take up residence in France. Thereafter, ISF is only payable on net taxable assets are over €1,300,000 (threshold as of January 1, 2012).

Social security contributions paid by an employee to a social security scheme in the home country are deducted from taxable income in France, where a social security agreement exists between the two countries permitting an expatriate employee in France to continue to pay into the scheme in their home country. This system also allows the contributions paid by expatriates and their foreign company into a supplementary social security pro-

tection scheme and a supplementary retirement scheme to be deducted from taxable income.

#### **4.2.3 A tax information center for non-residents and expatriates (SANR)**

Non-residents who plan to move or return to France can contact a helpdesk for non-residents and expatriates (*service d'accueil pour les non-résidents et expatriés* – SANR) for any tax information or an assessment of their tax liability upon taking up residence in France. Non-residents who decide to relocate to France can protect their legal status by requesting a “new resident” advance tax ruling.

### **4.3. TAXATION FOR NON-TAX RESIDENTS**

Employees who are not tax residents are only taxed on income from French sources. Remuneration paid in return for work carried out on French soil is taxable in France.

As such, salaries are subject to a 20% deduction at source for the portion of income over €41,327 (threshold for 2012 income) and employers based in France who pay salaries to non-resident employees must comply with this.

Non-resident salaried employees are still required to file an income tax return with the French tax authorities at the *Centre des impôts des non-résidents* (non-resident tax service), and, if necessary, pay any difference between the amount deducted at source and the tax due.

In order to avoid double taxation, tax deducted at source in France usually gives rise to an equivalent tax credit in the country of residence (depending on the tax treaty between France and the country of residence).

Furthermore, most international taxation treaties make provision for temporary secondments, whereby income earned through salaried work in a country is not judged to be taxable in that country if the beneficiary resides there for less than 183 days per year and if their remuneration is paid by or on behalf of an employer who is not resident in that country.

**IN DETAIL***A working example of the tax system with reference to the income of an expatriate employee in France*

A highly skilled employee, employed by a company based in the US, and who has not been resident in France for tax purposes since January 1, 2007, is seconded by their employer to a company based in France as of January 1, 2012. They regularly travel abroad for professional reasons.

→ Their net annual salary for 2012 amounts to €200,000, including an “expatriation bonus” of €60,000.

→ Their “net comparative salary” in France amounts to €150,000.

→ Their pay corresponding to work undertaken abroad amounts to €33,000.

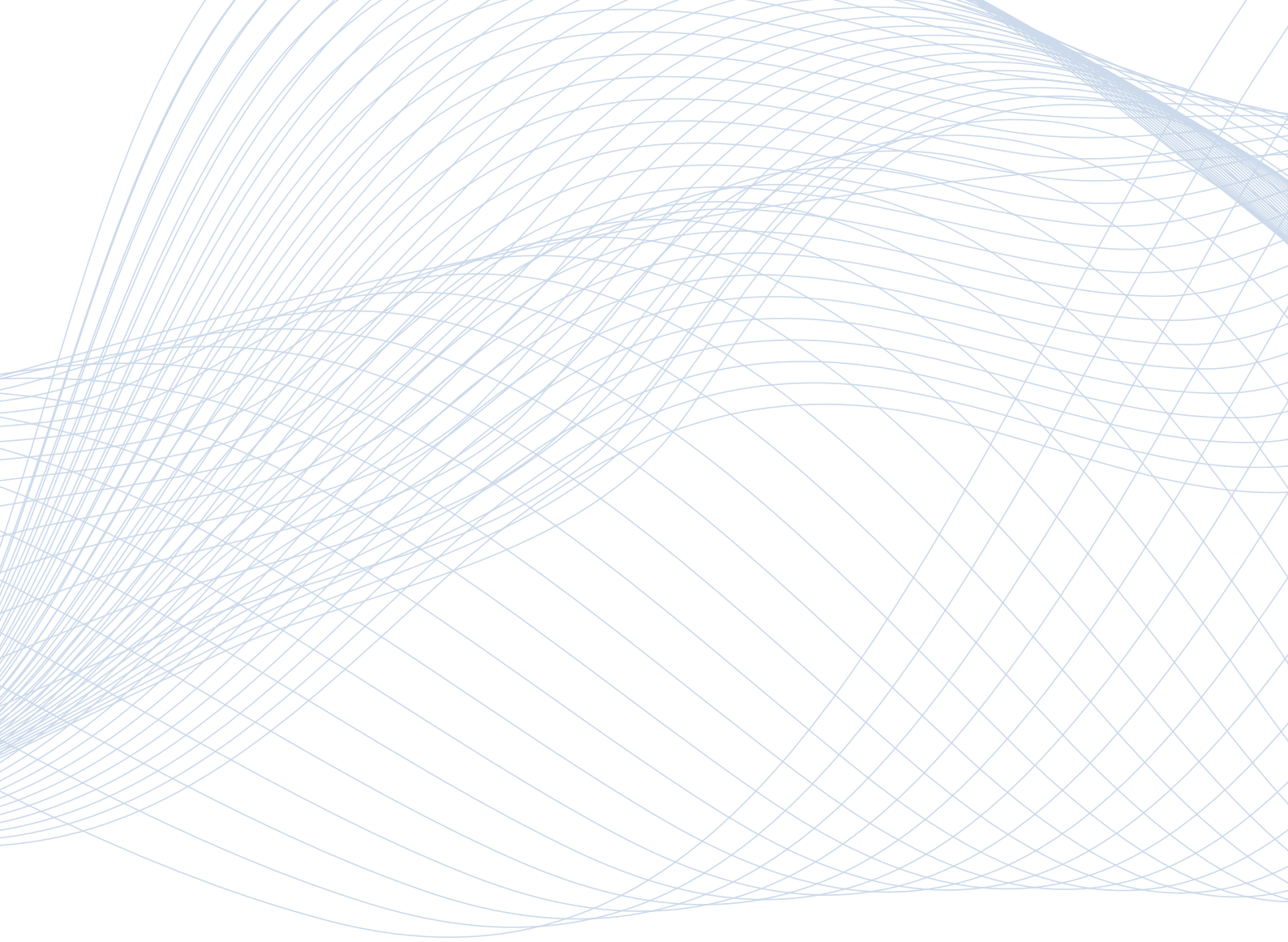
The following are exempt from income tax for the year 2012:

→ An “expatriation bonus” of up to €50,000, the remainder (€10,000) being taxable in the event that the expatriate employee’s taxable income (€140,000), is lower than the “net comparative salary” (€150,000).

→ The employee’s pay corresponding to work undertaken abroad, up to a limit of €30,000 [(200,000 – 60,000 + 10,000) x 20%], if the taxpayer has chosen this exemption option.

Total exemption: €80,000,  
i.e.: €50,000 + €30,000.

If, however, the employee chooses the overall ceiling of 50%, they will benefit from a higher exemption equal to €83,000 (i.e. €50,000 + €33,000), which falls below the ceiling of €100,000 (€200,000 x 50%).





**BUSINESSTAXES  
IN FRANCE**

## Chapter 4 Doing Business in France

# BUSINESS TAXES IN FRANCE

A large part of France's corporate tax system is designed to promote business investment, regional development and international expansion. France's efforts to develop a fair tax system are also evident in its policies designed for corporate groups. France has signed bilateral tax treaties with most of the countries it trades with (more than 100 countries) and thus provides foreign investors with outstanding protection against double taxation.

In January 2012, the French tax authorities created a helpdesk within the Public Finances Directorate (*Direction générale des finances publiques – DGFIP*) to provide support and information to non-resident companies in France. Foreign companies can now obtain any tax-related information and even advance rulings (*rescrits*) from the tax authorities regarding investment projects.

### I. CORPORATE TAX IN LINE WITH EU STANDARDS

#### I.1. 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 (principle of territoriality). This rule applies regardless of the types of entities:

- Subsidiaries
- Branches
- Permanent establishments

If a branch or a permanent establishment is not a separate legal entity, its earnings from activities in France are reconstituted using the financial statements of the foreign company. Each individual tax treaty defines the notion of a permanent establishment as a fixed place of business or a dependent agent (as defined in Article 5 of the OECD Model Tax Convention). One of the most common examples of this in practice is when a foreign company sends one of its employees to France to prospect the French market, it runs no risk of being considered a permanent establishment in France. But once the employee signs contracts in France on behalf of the foreign company, the company is deemed to have a permanent establishment in France, and is liable to pay tax on

the profit earned by this business in France.

Since January 1, 2005, an “advanced ruling” procedure (*rescrit*) enables any company already set up in France, or planning to do so, to ask the tax authorities to rule whether or not it has a permanent establishment in France; the authorities will then reply within three months.

#### I.2. CALCULATING TAXABLE EARNINGS

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

Income 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. They include:

- Depreciation and amortization (excluding goodwill and land)
- Provisions
- Rent for buildings and equipment
- Salaries
- Social security contributions
- Specific taxes and duties
- Goods purchased
- Energy consumption
- Advertising
- Financial expenses, etc.

### 1.2.1 Limits on deductions

In an effort to prevent abuse, there are limits on some deductions. This especially applies to so-called “sumptuary” expenses and private passenger vehicles for which the deductible depreciation allowance and lease payments are capped, depending on the situation, at €18,300 or €9,900 for the least environmentally friendly cars. The thresholds include all taxes (including VAT).

### 1.2.2 Monies transferred from a parent company to its French subsidiary are deductible

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.

This particularly applies when taking out a patent, a patentable invention or a licensed or sub-licensed manufacturing process whereby any royalties paid qualify for a deduction, provided the license is actually being used.

## 1.3. GENEROUS DEPRECIATION RULES

Fixed assets are depreciated on a straight-line basis over their expected useful life. In the case of certain production assets bought new with a minimum three-year depreciation period, 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 (declining balance scheme). Equipment and tools used for scientific and technical research and purchased or produced after January 1, 2004 can be depreciated on an accelerated declining balance basis. The acceleration multiples in this case range from 1.5 to 2.5.

SMEs that construct or hire a firm to construct an industrial or commercial building for the purposes of operating their business in a rural regeneration area (ZRR) or urban regeneration area (ZRU) prior to January 1, 2014 are eligible for a one-time depreciation equal to 25% of the total cost once construction is completed. The residual value of

construction is depreciated over the normal useful life (the first annuity is added to this one-time depreciation).

## 1.4. ALLOWABLE PROVISIONS FOR DEPRECIATION

These are allowed if they can be justified and if they relate to clearly identified claims, inventories, securities or tangible and intangible assets. Allowable provisions include provisions for contingencies, work in progress, price increases, annual leave, etc.

## 1.5. TAX RATES ON COMPANIES

Corporate tax (*impôt sur les sociétés* – IS) rates are as follows:

- For large companies: standard rate of 33.33% plus, for companies with taxable profits at the standard rate of over €2,289,000, an additional “social contribution” of 1.1%<sup>1</sup>, i.e. a rate of 34.43%.
- For small and medium-sized businesses (SMEs): reduced corporate tax rate of 15% up to €38,120 of profits and standard 33.33% rate on the remainder. SMEs are exempt from paying an additional “social contribution”<sup>2</sup>.

<sup>1</sup> Contribution at rates of 3.3% calculated on the standard corporate tax amount (i.e.  $3.3\% \times 33.33 = 1.1\%$ ), minus a €763,000 rebate.

<sup>2</sup> Intended for SMEs with at least 75% of their shares owned, directly or indirectly, by individuals, or for companies satisfying the same conditions with an annual turnover of less than €7,630,000, subject to having fully paid up share capital.

- Reduced rate of 15% on total proceeds of intellectual property (royalties and capital gains on the transfer of patents, if they have been held for at least two years<sup>3</sup>). This affects patents, inventions that can be patented and manufacturing processes as well as improvements made to patents and patentable inventions as of 2011.

The reduced rate benefit applies to sub-licensed operations, provided that the licensor has not already received the reduced rate on the licensing fees it collects and that the sub-licensing company can produce proof of this sub-licensing arrangement and its profitability. The difference between the licensing fees paid by the sub-licensee and those paid to the licensor is taxed at 15%.



**Example:** Company A is domiciled in a foreign country and licenses a patent it owns to Company B, which pays a fixed annual licensing fee of €10,000. Company B sub-licenses it to Company C, which pays a fixed annual licensing fee of €25,000.

Company B receives a reduced tax rate on the licensing fees it collects after the licensing fees paid to Company A are deducted, i.e.  $(25,000 - 10,000) \times 15\% = €2,250$

➤ Capital gains on the sale of shareholdings held for at least two years are totally exempt except for the 10% representing expenses.

➤ Companies with over €250 million in turnover must pay an exceptional contribution of 5% gross corporate tax, which is applied before deducting tax credits, tax reductions and any type of credit. The contribution applies to corporate tax owed for the tax years ending between December 31, 2011 and December 30, 2013. For companies whose financial year coincides with the calendar year, the exceptional contribution will only be owed for profits made in 2011 and 2012.

## 1.6. CARRYING LOSSES FORWARD (OR BACK)

Losses recorded in a given year can be carried forward indefinitely against future profits and, to a lesser degree, can also be carried back against profits made in the previous year.

<sup>(3)</sup> If no arm's-length relationship exists (companies in the same group), transfers are not eligible for a reduced rate.

## IN DETAIL

### *Losses can be carried forward indefinitely*

Annual losses of up to €1,000,000 (plus 60% of subsequent profits exceeding this figure) may be carried forward.

#### *Example 1:*

A company records a loss of €900,000 in the tax year ending in 2012.

In 2013, it makes a profit of €1,500,000.

The company can then deduct the entire loss recorded in 2012, leaving a taxable profit for the tax year 2013 of €600,000.

#### *Example 2:*

For the tax year ending in 2012, a company records a loss of €2,000,000.

In 2013, it makes a profit of €1,500,000.

The loss carried forward to 2013 is €1,300,000 [= €1,000,000 + (60% x €500,000)] and the company's taxable profits will be €200,000 (= €1,500,000 - €1,300,000).

The portion of the loss recorded in 2012 that cannot be deducted from the company's 2013 profits, i.e. €700,000 (= €2,000,000 - €1,300,000) can then be carried forward to the subsequent tax years.

## LEGAL ADVICE

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### ADVANCE TAX RULINGS: DON'T HESITATE TO REQUEST ONE!

Inspired by “ruling” procedures in English-speaking countries, advance tax rulings (*rescrits fiscaux*) were introduced in France by the Act of July 8, 1987. Advance tax ruling procedures enable applicants to obtain a formal position from the French tax authorities concerning the application of a tax rule to a particular situation.

In the last few years, the range of advance rulings has grown significantly. In addition to the “general” procedure, there are also a certain number of special procedures designed to continuously ensure greater predictability and legal certainty for businesses with regard to tax matters:

- The general advance ruling procedure, whereby the French tax authorities take a formal position, is the cornerstone of prior approval procedures. It enables any taxpayer to ask the tax authorities to determine the conformity of a specific situation and to obtain a ruling that is binding in the event of an audit.

- In addition to the general advance ruling procedure, other specific procedures are also available. These include prior approval for transfer pricing methods, which enables multinational groups to have their transfer pricing methods pre-approved by the tax authorities, and the valuation ruling procedure (*rescrit-valeur*), in which the tax authorities are asked to take a position with regard to the value of a business to be transferred.

- “Tacit approval” ruling procedures concern all taxpayer requests for rulings that require a response by the tax authorities within a set time period. The absence of a response constitutes tacit approval of the matter in question. These procedures apply to: rulings relating to eligibility for exceptional depreciation allowances and various tax exemptions (for new businesses, urban enterprise zones, innovative new companies, etc.); “research tax credit” rulings; “permanent establishment” rulings, which enable foreign companies to determine whether they have permanent establishments in France; and “abuse of law” rulings, which enable taxpayers to obtain a response from the tax authorities regarding whether a transaction is abusive or not.

Regardless of the type of procedure, all requests must be made in writing and sent to the appropriate office by registered letter, return receipt requested. Requests must indicate the taxpayer’s name and address, and include an accurate, complete, and honest description of the situation or anticipated transaction. In most cases, requests must be submitted before the transaction in question is carried out.

Requests generally must be sent to the department that oversees the office that processes the taxpayer’s returns. However, depending on the procedure in question, another office may have the requisite authority (for example, the state agency Oseo Innovation has authority to review requests relating to France’s research tax credit).

In principle, the tax authorities must issue their ruling within three months following receipt of a request. With the exception of “tacit approval” rulings, the absence of a response within the applicable time period does not constitute approval by the tax authorities.

If a taxpayer’s request is denied, they may seek a second review or, at their own risk, choose to disregard the tax authorities’ ruling. However, if the relevant office rules in the taxpayer’s favor, the latter will then have obtained guaranteed protection against future risks of litigation, provided that their situation is strictly identical to the situation described in the request.

Despite being little known and occasionally derided, advance ruling procedures can unquestionably be of great use to companies. However, applicants must ensure that they choose the most appropriate procedure, that the matter in question is accurately described, and that their subsequent situation complies with the description provided to the tax authorities, otherwise the advantage granted under the ruling may be withdrawn. Legal advice on advance ruling procedures is often invaluable.

Finally, it should be noted that the tax authorities publish certain rulings on their website (in an abridged form that protects the applicant’s anonymity), and that these rulings are binding.

### **I.7. GROUPS OF COMPANIES: THE FRENCH TAX SYSTEM PROVIDES FLEXIBLE RULES FOR TAX CONSOLIDATION**

French tax rules offer the advantages of a comprehensive system that enables groups of companies to offset income and losses recorded in France from their consolidated businesses and eliminate intercompany transactions. Tax credits that apply to one company in the group, for example the research tax credit, 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 tax consolidation option may apply once the French subsidiaries in the consolidated group are at least 95% owned, directly or indirectly, by a French parent company. The financial years of the parent company and its subsidiaries must also coincide. Groups may choose this option for a five-year period. It automatically ceases to apply if ownership conditions are no longer met.

SMEs can deduct from their income the deficits of their branches or subsidiaries in which they have a direct stake of at least 95%, if the latter are established in a European Union Member State (or in a State which has signed a tax treaty with France containing an administrative assistance clause) and are subject to a tax equivalent to corporate tax. This benefit is bound by the European Union 'de minimis' policy cap (€200,000 for a three-year sliding period).

French subsidiaries owned through a European company (located within the European Union, Norway or Iceland) not subject to corporate tax in France can now be considered part of a consolidated group.

As of January 1, 2012 companies in corporate groups can choose to apply the optional VAT payment consolidation scheme. Only the consolidating company will have to pay the VAT balance on behalf of the group's companies. This balance will be calculated as the difference between taxes owed and any tax credits due on the tax returns filed by the group's members. The parent company must directly or indirectly hold a stake of at least 50% in the subsidiaries' capital or voting rights. As such, the scope of the VAT payment consolidation will not in theory match the scope of tax consolidation in the corporate tax system. This option will be available as of January 1, 2013.

### **II. WAYS TO REPATRIATE EARNINGS**

Earnings may be repatriated in three ways:

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

## **IN DETAIL**

### *Carry-back rules*

Carry-back rules allow the current year's loss to be offset only against taxable income in the previous year and only up to the profit recorded in the previous tax year or €1,000,000, whichever is smaller. This results in a non-taxable claim against the French Treasury for previously paid taxes. The Treasury reimburses the claim after five years if the company fails to deduct it from their forthcoming corporate tax bills. This claim can also be used as collateral with credit institutions (Daily Act).

Example:

In 2011, a company subject to corporate tax records taxable income of €1,500,000. In 2012, it declares a taxable loss of €3,000,000.

Since the offset losses cannot exceed €1,000,000, the company will only be able to carry back €1,000,000. The remaining €2,000,000 (= €3,000,000 - €1,000,000) can be carried forward.

## **II.1. NO TAX OBSTACLES TO THE INVOICING OF INTEREST, ROYALTIES OR MANAGEMENT FEES**

The amounts invoiced must be justified and in line with the prices for arm's-length transactions between independent companies. The French authorities may demand evidence that transfer prices are in line with actual market prices.

## **II.2. REDUCED RATES OF WITHHOLDING TAX AND EXEMPTIONS**

### **II.2.1 Dividends paid out to a resident of the European Union (EU)**

Dividends distributed to a European parent company are exempted from the withholding tax if its headquarters are located in the European Union and it holds a stake of at least 10% in its French distributing subsidiary.

As of January 1, 2011 the withholding tax rate is 19% on dividends collected by an individual residing in an EU country, Iceland or Norway.

### **II.2.2 Dividends paid out to a resident outside the EU**

Most of the tax treaties France has signed with major industrial nations provide for the application of a withholding tax on dividends with a standard rate of 5% for companies (subject to a minimum stake in the subsidiary created in France) or 15% for individuals. The new tax treaties signed by France (with Japan and the United States) provide for no withholding tax to be applied when dividends are paid (subject to specific conditions of stake ownership). If no tax treaty exists, the withholding tax is 25%.

### **II.2.3 Additional corporate tax contribution on dividends distributed by a company established in France**

Dividends paid out as of August 17, 2012 by a company established in France are subject to an additional contribution of 3%. However, dividends

paid out by an SME (as per the European Union definition) or by an entity not subject to corporate tax, dividends paid out as shares, and dividends paid out within consolidated groups (cf. paragraph 1.7) are all exempt.

Foreign companies established in France as branches are subject to the 3% contribution due to the sums that cease to be available for operations in France.

### **II.2.4 Earnings from securities and royalties**

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

### **II.2.5 Higher rates for "tax havens"**

Since March 1, 2010 a 50% withholding tax has applied to the distribution of investment income (primarily dividends and interest) from a French source received through financial institutions located in tax havens officially referred to as "Non-Cooperative States or Territories" (NCSTs)<sup>4</sup>, regardless of the beneficiary's actual income tax residence.

## **II.3. SIGNIFICANT ADVANTAGES FOR DIVIDENDS TRANSFERRED THROUGH HOLDING COMPANIES**

Permanent establishments located in France that hold equity interests in French and foreign companies are only taxed at a rate of 5% of these companies' redistributed dividends. Companies are eligible for this reduced tax rate if they own a stake of at least 5% in each company and have owned the securities for at least two years.

When securities that have been held for at least two years are transferred, tax is levied on 10% of the net gain.

This exemption no longer applies to transferred securities of companies located in a non-cooperative state, while companies holding a majority of real estate assets are also ineligible for this reduced tax rate.

<sup>(4)</sup> List of NCSTs set out in the Ministerial Order of February 12, 2010 and revised by Ministerial Order of April 14, 2011: there are seven NCSTs in the Caribbean, four in Central America (including Costa Rica and Guatemala), four in Oceania, two in Asia (Brunei and the Philippines) and one in Africa (Liberia).

With the exception of the additional 3% corporate tax contribution for all liable companies (cf. paragraph II.2.3), holding companies do not pay any tax when they distribute dividends to a parent company located in an EU Member State, provided that the parent company owns a stake of at least 10% in the holding company. If the parent company is located outside the EU, it is subject to withholding tax in accordance with the tax treaty in force.

### III. VALUE ADDED TAX AND CUSTOMS DUTY

#### III.1. VAT: A NEUTRAL TAX FOR COMPANIES

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

When companies are formed, the French tax authorities assign them an EU VAT number.

Companies merely collect the VAT on their own sales and deduct the amount of VAT that they have paid on purchases of goods and services. This is reported in a monthly, quarterly or annual statement based on sales and the amount of VAT paid during the previous year. Depending on the size of the company, this declaration is sent to either the corporate tax office (*Service des impôts des entreprises* – SIE) or the large business tax office (*Direction des grandes entreprises* – DGE) before the deadline set by the French tax authorities. If companies have paid more VAT than they have collected, the VAT credit will be refunded to them on request.

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

France's standard VAT rate on sales of goods and services is 19.6%, but there are several reduced rates. As of January 1, 2012, a 7% tax rate applies to books, restaurants, hotels, public transport, newspapers and magazines and certain leisure activities. The rate on food and certain agricultural products is 5.5% while the rate on medications is either 5.5% or 2.1%. As of January 1, 2013, the rate on all books, including those downloaded online, will be 5.5%.

#### III.2. UNIFORM CUSTOMS REGULATIONS THROUGHOUT THE EU

##### Goods move freely within the European Union:

A customs duty is only charged once on imports from outside the EU, even if they are subsequently shipped from one Member State to another. Goods entering France for re-export to another EU Member State are not subject to any VAT (as VAT is paid in the country where the goods are delivered to end users).

VAT payments are suspended until a later stage for transactions involving goods subject to EU custom transit procedures or placed in a bonded warehouse. This purpose of this measure is to defer VAT payments to a later time.

Companies are not required to complete any administrative formalities for the movement of most types of goods between EU countries. They are only required to file a "declaration of trade in goods" (DEB) form for statistical purposes. Companies importing or exporting goods worth more than €460,000 a year to or from another Member State must file a DEB form each month. The form provides information about product categories, countries of origin and destination, values and weights.

Computerized customs clearance accelerates formalities and release of goods. Companies may opt for electronic transmission of DEB forms to the customs' data center (CISD) and online filing. The DEB must be filed electronically when the shipments or intakes conducted during the previous calendar year exceed €2,300,000, excluding taxes.

Clearance is through the relevant customs department.

Companies providing services to businesses located in other EU Member States must file an EU VAT return with the French customs authorities if the company in the other Member State has already paid the VAT. This form must be filed online when sales exceed €32,600.

##### Clearance of non-European Union goods:

Imports and exports of goods between EU Member States and other countries require a customs declaration, which must be filed using the Single

Administrative Document (SAD). The main items on the SAD are the name of the company, the type of declaration (according to the source of the merchandise), and the type, origin and value of the goods, net of tax.

Invoices and any documents required to claim preferential tariff treatment or for inspection of certain imports (agricultural products, etc.) must also be provided. The SAD information is used to calculate the duties and taxes due, and for physical and statistical identification of the goods.

## IV. LOCAL TAXES PAID BY COMPANIES

### IV.1. LOCAL ECONOMIC CONTRIBUTION (CONTRIBUTION ÉCONOMIQUE TERRITORIALE – CET)

In 2010, the local business tax (*taxe professionnelle*) was replaced by the *contribution économique territoriale* (CET), which comprises the corporate property contribution (*cotisation foncière des entreprises* – CFE) and the contribution for value added by businesses (*cotisation sur la valeur ajoutée des entreprises* – CVAE).

This reform means that tax is no longer levied on investments classified as productive, which include machines, tools, movable property and equipment. The CET is capped at 3% of the company's value added.

At the same time, a network flat tax (*imposition forfaitaire de réseau* – IFER) was introduced that only pertains to certain utilities companies (facilities that generate electricity with wind turbines, hydro turbines or from photovoltaic or hydraulic sources; electrical generators; radio transmitters; rail rolling stock; and mainframes for the copper access network). The IFER is payable in addition to the CET and is calculated on the basis of a scale specific to each sector.

#### IV.1.1. The corporate property contribution (CFE)

The CFE is assessed annually by the municipalities that set the tax rate for businesses located in their area.

The tax base comprises the rental value of fixed assets subject to the corporate property contribution (buildings and land used for business purposes) that the company occupied at the end of the closing of the financial year N-2, with N being the tax year.

## IN DETAIL

### *Measures to simplify customs procedures:*

In an effort to simplify administrative and tax procedures, and in order to improve the competitiveness of businesses based in France, the following measures have been adopted:

→ A simplified goods collection procedure that allows the operator to continue their customs formalities.

→ Paperless incentive measures have led to a fully digitized customs system, electronic payment and automatic reconciliation. These efforts are a vehicle for the authorities to simplify and facilitate customs formalities and make them more secure.

→ The ICS (Import Control System) and ECS (Export Control System) have been developed to improve security for goods flows through the transmission of logistics and trade data.

→ A national 'one-stop shop' has been set up that liaises with the other government authorities.

→ Companies can make a single monthly VAT payment for imports, to be paid on the 25th of the month following the date of import.

→ The VAT deposit on bonded imports when using deferred payment facilities has also been phased out.

These measures have led to the elimination of financial costs arising from VAT payments on imports.

The government has improved the economic attractiveness of French ports and airports through these reductions in taxes and charges on the transfer of goods and caught up with other EU countries like the Netherlands and Belgium in this area.



## Chapter 4

The rental value of commercial premises and offices is set by the tax authorities according to the so-called “comparison” assessment method whereby their rental value is either assessed based on the amount paid in rent (when rented at “standard” pricing as of January 1, 1970) or by comparing the rental value of similar facilities (when buildings are rented subsequent to January 1, 1970 or rented at “non-standard” pricing at that time).

The land registry rental value for industrial busi-

nesses is equivalent to 8% of the cost of land, buildings and equipment. The rental value for industrial businesses receives a 30% deduction when calculating the CFE.

Facilities intended for photovoltaic-based electricity production (solar panels) are exempt from the CFE.

When a company is created in Year N, the rental value of all the premises, equipment and land the company owns as of December 31 of Year N is eligible for a 50% deduction on taxes paid in Year N+1.

**IN DETAIL***Working example: calculating the CET***A COMPANY MAKES THE FOLLOWING CAPITAL INVESTMENTS IN THE YEAR 'N':**

Land and buildings (fixed assets subject to the property tax)	€30 million
Production equipment and tools (fixed assets not subject to the property tax)	€70 million
Estimated annual value added (after cap is applied)	€50 million

A local tax rate of 27.26% determined by the local authorities.

**CALCULATING THE CFE:**

Rental value (RV) of fixed assets subject to the property tax	N	N+1	N+2
Land and buildings (fixed assets subject to the property contribution)	No CET due	€30m	€30m
The RV is 8% of these fixed assets, i.e. 30 x 8%		€2.4m	€2.4m
30% deduction of RV for industrial investments		-30%	-30%
RV after deduction		€1.68m	€1.68m
50% reduction in the second year (N+1)		-50%	
RV after reduction		€0.84m	€1.68m

No CET is due in the first year (N), while there is a 50% reduction in the tax base of the CFE component in the second year. Production equipment and tools are fully exempt.

**CFE DUE FROM THE COMPANY**

	N	N+1	N+2
Tax base		€840,000	€1,680,000
Rate		27.26%	27.26%
CFE due		€228,984	€457,968

**CALCULATING THE CVAE:**

CVAE due = €50 million x 1.5% = €750,000 (no reduced rate since the annual turnover is presumed to exceed €50 million).

**CALCULATING THE CET:**

	N	N+1	N+2
CFE due		€228,984	€457,968
CVAE due		€750,000	€750,000
CET due		€978,984	€1,207,968

#### IV.1.2 The contribution for value added by businesses (CVAE)

The (CVAE) is assessed on the value added (VA) companies realize during the previous calendar year (January 1 to December 31) or the last 12-month financial year if this does not coincide with the calendar year.

Only companies with annual pre-tax turnover of over €500,000 must pay the CVAE.

The CVAE rate is 1.5% for companies with an annual pre-tax turnover of over €50 million. Below this amount, companies are subject to a reduced CVAE rate (variable depending on turnover).

The CVAE is calculated based on VA that is capped at either 80% or 85% of turnover depending on whether the company's turnover is under or over €7,600,000.

#### IV.1.3 Exemptions for the CET:

The following are exempt from the CET at the discretion of the local authorities:

- Subject to European Union caps on state aid, new companies operating in specific regional zones as well as companies formed to take over distressed businesses (for a period of two to five years only).

- Innovative new companies (*jeunes entreprises innovantes* – JEI) for seven years after their startup date and for up to €200,000 over three years.

- New and expanded industrial businesses or businesses dedicated to scientific and technical research activities located in certain areas for two to five years, subject to EU caps and approval. Companies do not require approval if they create a minimum number of jobs and meet minimum investment levels.

### IN DETAIL

#### Working example: calculating property tax

##### AN INDUSTRIAL COMPANY MAKES AND COMPLETES THE FOLLOWING INVESTMENTS IN 2012:

Land	€100,000
Buildings	€600,000
Production equipment	€1,500,000

##### THE TAX BASE IS CALCULATED USING THE RENTAL VALUE OF LAND AND BUILDINGS ONLY:

Land: 100,000 x 8%	€8,000
Buildings: 600,000 x 8%	€48,000
Hence, the gross rental value	€56,000
Standard 50% rebate	-50%
Net rental value after rebate	€28,000

##### Tax rate decided by local authorities:

<i>Commune</i>	15.00%
<i>Département</i>	12.41%
Total	27.41%

##### PROPERTY TAX DUE OVER THE THREE FOLLOWING YEARS:

	Tax base	Rate	2012	2013	2014	2015
To the <i>commune</i>	€28,000	15.00%	-	€4,200	€4,200	€4,200
To the <i>département</i>	€28,000	12.41%	-	Exemption		€3,475
Total			-	€4,200	€4,200	€7,675

The company is exempt from property tax in 2012 as it is its startup year (assuming the company is created after January 1, 2012). The company is also exempt from paying property tax to the *département* in the two years following the completion of the buildings (assumed in this example to have been completed in 2012).

- Businesses based in an innovation cluster for a period of five years.

Also worth noting is that companies are exempt from the CET<sup>5</sup> in their startup year and that the CFE tax base is reduced by 50% in the second year.

<sup>(5)</sup> Unless the company is already set up as of January 1 of that year.

## IV.2. PROPERTY TAX

Companies are subject to property tax on the rental value of land (property tax on unconstructed land) and buildings (property tax on constructed land). Land with buildings or infrastructure in place are included in the constructed land category. The tax base is equal to the land registry rental value (or registered income) minus a standard 50% rebate for buildings or 20% for land.

The same methods used to determine the CFE (see “In detail”) are applied to assess the land registry rental value for buildings.

The amount of the tax to be paid can be calculated by multiplying the tax base by the rates decided upon by the local authorities (*communes* and *départements*).

Property tax (*taxe foncière* – TF) is payable by the building or land owner on January 1 each year. As such, a company created after January 1 of year N will not owe property tax for the startup year.

There are a large number of property tax exemptions, which include:

- New professional, industrial and commercial buildings are partially exempt from property tax on constructed land for the first two years after construction is completed.
- Tools and other equipment and operational material resources for industrial units (excluding property facilities).
- Facilities intended for photovoltaic-based electricity production (solar panels). These facilities are also exempt from the CFE (see “In detail”).
- Companies operating in specific regional zones that are creating a new business, expanding operations or taking over distressed businesses may benefit from temporary exemptions (between two and five years) at the discretion of the local authorities.
- Buildings owned by companies eligible for the

innovative new companies (JEl) tax status, which may be exempt at the discretion of the local authorities for a period of seven years.

- For individuals, new housing units completed as of January 1, 2009 with an overall energy performance level higher than the level required by the legislation in force (minimum exemption period of five years).

## V. A WIDE RANGE OF TAX INCENTIVES FOR INVESTORS

### V.1. TAX CREDITS

#### V.1.1 France’s research tax credit is one of the most generous in the world

Manufacturing, trading and agricultural companies that spend money on research are eligible to receive a tax credit which can then be offset against their corporate tax liability. If they do not owe any tax due to a lack of profits, they will receive the research tax credit (*crédit d’impôt recherche* – CIR) in the form of a cash rebate after a three-year period. SMEs, innovative new companies (JEl), startups and distressed companies qualify for an immediate research tax rebate.

Companies may opt to cash their research tax credit payment at a bank (Daily Act on discount payment instruments).

To be eligible for the research tax credit, expenditure must be on basic research, applied research (test model of a product, operation or method) or experimental development (use of prototypes or pilot equipment).

For expenditure incurred after January 1, 2011, the research tax credit amounts to 30% of total yearly expenditure on research activities up to €100 million, and 5% of yearly expenditure above this level. The 30% rate rises to 40% and 35% in the first and second years, respectively, for first-time research tax credit applicants, or companies that have not received the research tax credit in the previous five years. Similarly, these higher

## LEGAL ADVICE

Mr. Alain Girard, Managing Partner, FIDAG Auditors and Chartered Accountants

### MANDATORY ACCOUNTING PROCEDURES DURING INITIAL MONTHS OF ACTIVITY

The local Business Formalities Center (*Centre de formalités des entreprises*) is the authority to which the mandatory declarations concerning the creation and details of new businesses subject to Corporation Tax (IS) and Value Added Tax (TVA) must be sent. This office informs the Tax Authorities (SIE) or alternatively the Directorate for Large Companies (DGE) as soon as all formalities relating to incorporation and registration have been completed. In addition to these two taxes which finance State spending, another two taxes which finance local authorities (*communes, départements and régions*) are collected by the tax authorities: the corporate property contribution (CFE) and the contribution for value added by businesses (CVAE).

The relevant SIE office is the nearest to the company's registered office, or the address from where the company is actually managed, if different.

A permanent establishment in France, corresponding to the definition provided in a bilateral double taxation convention, is bound by the same obligations as a company registered in France (unlike a liaison office which has no obligations).

#### 1. Corporate property contribution (CFE)

As soon as the SIE or the DGE is informed of the creation of a new company by the Business Formalities Center, it sends this company a request for further information, specifically to determine in which communes the company's taxable assets (land and buildings) are located so as to identify which local authorities should receive tax from the company.

For the year in which the company is created, no corporate property contribution is due. The company must complete an annual declaration detailing its tax base in May of the second year, and in each May thereafter should any changes occur to the company's taxable assets.

The CFE is calculated using the registered rental value of taxable assets and is collected by either the SIE or the DGE according to their lists for the first time at the end of the company's second year of existence. The tax base for the first payment is reduced by 50%.

Since October 1, 2011, companies with a pre-tax turnover for the previous year greater than €230,000 must settle their corporate property contribution either online or by direct debit.

#### 2. Contribution for value added by businesses (CVAE)

No CVAE is due in the company's first year of existence and is only due thereafter for companies with an annual turnover of over €500,000<sup>1</sup>. It is calculated as a percentage of the value added produced by the company. The rate depends on the company's turnover figures and varies from 0.5% (if turnover is between €500,000 and €50 million) to 1.5% (if turnover is greater than €50 million). The CVAE for the year in question

is declared and paid by companies at the start of May the following year.

All companies subject to the CVAE must settle their installments and final payments online.

#### 3. Value added tax (TVA)

Upon company registration, the SIE or the DGE allocates it a European VAT number, which includes the SIREN number (identity number allocated by the French Office for National Statistics, INSEE) on the following basis: FR + 2 figures or letters + SIREN number.

Thereafter, VAT is declared (and collected based on turnover minus VAT on expenses) on a monthly basis using the tax form No 3310-CA 3. This declaration must be filed to the SIE or the DGE before the relevant deadline set between the 15th and 24th of the following month.

Companies may opt for quarterly filings if their total annual VAT liability is less than €4,000.

Since October 1, 2011, companies with a pre-tax turnover for the previous year greater than €230,000 must file and settle their VAT online.

From October 1, 2012, all companies subject to corporate tax, regardless of their turnover, must file and settle their VAT online.

#### 4. Corporate tax (IS)

The deadline for companies to send the balance sheet, income statement plus notes to the accounts accompanied by tax forms to the SIE or the DGE is three months from the end of their financial year. The official package required to do this comprises forms 2050 to 2059-G and 2065 (*liasse fiscale*).

Companies with a pre-tax turnover greater than €15 million must file their *liasse fiscale* online.

Companies must send form No. 2572-K to the SIE or the DGE within three and a half months of the end of their financial year. This form details either the year's corporate tax losses brought forward for deduction from the following year's taxable profits and the absence of taxable profits for the year just finished, or a calculation of the tax due, with payment attached.

Since October 1, 2011, companies with a pre-tax turnover for the previous year greater than €230,000 must settle their corporate tax online.

From 2013, all companies subject to corporate tax must file their accounts online. From October 1, 2012, all corporate tax payments must be settled online, starting with the installment due by December 15, 2012.

<sup>(1)</sup> However, all companies with an annual turnover of over €152,500 must submit a declaration.

## Chapter 4

rates are only for companies that are not at least 25% owned by a partner who in the previous five years had held a 25% stake in a company no longer doing business which received the research tax credit within that same period.

Eligible research expenditure includes:

- Personnel costs (gross salaries and social security contributions) for researchers and research technicians working directly and exclusively on research.
- 200% of the salaries paid to junior final-year doctoral and post-doctoral research personnel in their first two years of employment.
- Expenses incurred for the filing, maintenance and protection of patents and plant variety rights (*certificats d'obtention végétale* – COV).
- Depreciation of infrastructure and equipment used directly for research operations.
- Operating expenses set at:
  - 50% of eligible personnel costs;
  - 75% of the depreciations for buildings and equipment allocated to R&D;
  - 200% of salaries paid to junior final-year doctoral and post-doctoral research personnel in their first two years of employment.
- Bonuses and payments relating to patent insurance contracts (up to €60,000 per year).
- Depreciation of patents acquired for research purposes.
- 50% of standardization costs.
- Spending on technology watch (up to €60,000 per year).
- Spending on research contracted out to public-sector research agencies, higher education institutions offering Masters programs, technical centers, accredited public interest foundations in the research sector, scientific partnership foundations and public-sector scientific partnership institutions (double-counting of expenses incurred).
- Spending on research contracted out to accredited private-sector research agencies, or certified experts, up to triple the total amount of other research expenses eligible for the research tax credit.

If there is an arm's-length relationship between

the company placing the order and the subcontracting company, the subcontracting expenses are capped at €10 million. However, if no arm's-length relationship exists (i.e. a group of companies), the subcontracting spending cap is set at €2 million. This €10 million cap is raised by €2 million when these expenses are contracted out to providers other than accredited private-sector research agencies or certified experts.

## LEGAL ADVICE

Valérie Marillat, Technical Director, R&D tax incentives department  
at Global Approach Consulting

### R&D FUNDING MEASURES IN FRANCE

French legislation includes a very diverse array of measures to encourage the development and facilitate its funding of scientific and technical research, making France especially attractive to investors in this area.

#### France's research tax credit (*Crédit d'impôt recherche – CIR*)

Among the various R&D funding measures available in France, the research tax credit, which is being used by nearly 16,000 companies, currently leads the way. €4.7 billion in research tax credits have been refunded to companies for R&D spending incurred in 2009. France's research tax credit is highly successful; several studies have shown that it is currently the most competitive and effective in the world, encouraging companies of all sizes to invest in their R&D programs. Thanks to its success in boosting companies' competitiveness, this funding measure has become the envy of and source of inspiration for several other countries.

#### “INNOVATIVE NEW COMPANY” (JEl) STATUS

Created in 2004, the “innovative new company” status entitles new companies to tax relief for R&D spending, subject to certain conditions. Alongside the research tax credit, this status currently granted to more than 2,000 companies in the country has made France an especially attractive location for innovative companies.

#### To obtain JEl status, companies must satisfy five concurrent conditions:

- The company is no more than eight years old.
- The company is an SME, as defined by EU regulations.
- The company is truly new.
- The company is independent.
- The company's R&D spending must account for at least 15% of its expenses.

Companies that satisfy all five of these conditions may obtain “innovative new company” status by filing a declaration with their local tax office, or by requesting the tax authorities' approval by way of an advance tax ruling. The tax authorities have three months to issue their response, the absence of which constitutes tacit approval.

#### The various benefits of “innovative new company” status

The legislation governing the benefits offered in connection with “innovative new company” status has been amended. As of January 1, 2012, the details of these benefits are as follows:

- Exemptions from social security contributions: Companies with JEl status are exempt for eight years from employer social security contributions for certain categories of employees involved in R&D operations.

This benefit is subject to two caps and gradual withdrawal:

- Cap per employee: monthly remuneration is capped at 4.5 times the statutory minimum wage (SMIC), i.e. €6,292.80 for 2012.
- Cap per establishment: five times the annual social security limit, i.e. €181,860 for 2012.
- Tax relief subject to the EU “*de minimis*” ceiling (total state aid may not exceed €200,000 over any three-year period):
  - Full exemption from corporate tax in the first year; partial exemption (50%) in the second year.
  - Full exemption from IFA (*impôt forfaitaire annuel*), an annual tax based on company revenues, for as long as the company maintains JEl status.
  - Exemption from property tax and/or the local economic contribution (CET) for seven years, with the approval of the relevant local authorities.
  - Exemption, subject to certain conditions, from capital gains on transfers of shares or ownership interests for members of companies with JEl status.

#### Immediate reimbursement of research tax credits

##### Combination with the research tax credit:

Companies may combine the benefits of JEl status with those of the research tax credit. Accordingly, companies with JEl status may apply the expenditure included in the base used to calculate the research tax credit towards the 15% requirement for JEl status.

##### Loss of “innovative new company” status:

Companies that cease to meet the requisite conditions for JEl status immediately lose the benefit of the exemptions associated with that status. However, the corporate tax relief is withdrawn gradually.



Consultancy fees incurred regarding the research tax credit application process that either exceed €15,000, excluding tax, or 5% of the research tax credit tax base less any government support received for R&D operations are deducted from the research tax credit tax base. These expenses are fully deducted from the research tax credit tax base when they are calculated proportionately to the credit obtained.

### V.1.2 Family tax credit initiative helping employees with children to achieve a better work-family balance

Companies can obtain a tax credit equal to 50% of the cost of child care for children under three years old paid for by the company's employees or 25% of the cost of issuing universal employment service vouchers (*chèques emplois universels*) to make access to personal services easier (child care at home, domestic help, etc.).

The tax credit is capped at €500,000 per company per year. It can be offset against the company's corporate tax liability for the year in which the spending was incurred.

If the tax credit is greater than the tax due for the year in question, the difference is granted as a rebate.

### V.1.3 Cinema or audiovisual tax credit to encourage creativity

Cinema and audiovisual production companies which act as associate producers and pay corporate tax can obtain a tax credit (cinema or audiovisual, as applicable) for certain production expenditures specified by law. The tax credit is available for projects carried out in France to produce approved feature-length films.

The tax credit rate (cinema or audiovisual, as applicable) is calculated for each financial year and amounts to 20% of eligible technical expenses. Eligible expenditure items include: salaries and social security contributions for technicians and manual labor, spending on technical materials, rents for film sets and film-editing expenses. The related produc-

tions must be produced primarily in French.

- The **cinema** tax credit is capped at €1 million, regardless of the type of production.
- The **audiovisual** tax credit (documentaries, fiction, animations) is capped at €1,150 or €1,200 per minute produced and delivered, depending on the type of production.

The tax credit (cinema or audiovisual, as applicable) can be offset against the company's corporate tax liability for the year in which the spending was incurred. If the tax credit is greater than the tax due for the year in question, the difference is granted as a rebate.

### V.1.4 Tax credit for video games

Video game development companies subject to corporate tax are entitled to a tax credit for video game development expenses which meet specific criteria and are approved by the National Center for Cinema and Animation (*Centre national du cinéma et de l'image animée* – CNC). To be eligible for the tax credit, games must incur development costs higher than or equal to €150,000, and also contribute to French or European cultural creativity in the video-gaming field, as well as variety and quality.

The tax credit equals 20% of total eligible expenditure, which essentially includes: depreciation of new assets and expenditure for salaried staff directly assigned to create games, copyrights, other costs, overheads and subcontracting up to €1 million. The tax credit is capped for all companies at €3 million per financial year.

## V.2. TEMPORARY EXEMPTION FROM THE CONTRIBUTION ÉCONOMIQUE TERRITORIALE (CET) AVAILABLE IN AILING REGIONS

In certain designated areas in France (regional aid areas (*zones AFR*), urban enterprise areas (*ZFU*), employment priority areas (*BER*), military restructuring areas (*ZRD*), etc.), local authorities (*communes, départements, régions* and intermunicipal authorities) have the right to grant full or partial

temporary exemptions from the *contribution économique territoriale* (CET) to companies that set up or expand their operations or take over distressed businesses. The maximum exemption period is five years.

### **V.3. TEMPORARY EXEMPTION FROM CORPORATE TAX (*IMPÔT SUR LES SOCIÉTÉS – IS*) FOR NEW COMPANIES**

#### **V.3.1 Companies created before December 31, 2013 located in some areas may qualify, subject to certain conditions, for a temporary exemption from corporate tax, diminishing over time.**

The exemption is 100% for the first 24 months, after which tax is levied on earnings at a rate of 25% in the third year, 50% in the fourth year and 75% in the fifth year.

These exemptions are restricted to companies engaging in new business and which are not more than 50% owned by other companies.

Companies benefiting from these measures may also be exempted at the discretion of the local authorities from paying the CET and/or property tax for a maximum period of two to five years.

Furthermore, companies subject to corporate tax (IS) set up before December 31, 2013 in order to take over a distressed industrial business may also, subject to certain conditions, receive exemption from corporate tax (IS) for the 24 months following the takeover as well as an exemption, at the discretion of the local authorities, from the CET and/or the property tax for a maximum period of two to five years. A seven-year tax exemption is planned for businesses located in regions classified as military restructuring areas (ZRD) as part of the “defense modernization plan”, which foresees the closure of 83 sites or units between 2009 and 2016. Companies that relocate to employment priority areas (BER) in the Champagne-Ardenne and Midi-Pyrénées regions are also fully exempt from corporate tax for seven years.

## **IN DETAIL**

### *Tax Rebate for International Productions (TRIP)*

In order to improve France’s attractiveness as a location for foreign film and audiovisual productions, this tax credit has been extended to cinematographic or audiovisual productions produced by companies based outside France. This new measure (“TRIP”) applies to expenditure incurred between January 1, 2009 and December 31, 2012. The tax credit amounts to 20% of expenditure in France, capped at 80% of

the film’s total production budget. The tax credit is capped at €4 million per film (and not per company).

To qualify, films must be approved by the National Center for Cinema and Animation (*Centre national du cinéma et de l’image animée – CNC*), which ensures that films contain elements of French culture, national heritage or landscape.

### **V.3.2 Innovative new companies (*jeunes entreprises innovantes – JEI*) are entitled to generous tax advantages**

Specific measures exist to help new companies whose research and development spending accounts for at least 15% of their tax-deductible costs. The “innovative new companies” tax status grants beneficiaries the following exemptions:

- Full exemption from corporate tax (IS) in the first profitable year and then a partial exemption (50%) in the following profitable year.
- Exemption, at the discretion of the local authorities, solely for innovative new companies created before December 31, 2013, from the CET and/or the property tax for a period of seven years.

Total tax breaks are capped at €200,000 in any three-year period.

Furthermore, the salaries paid to these companies’ research personnel are fully exempt from employer social security contributions for four years and then on a diminishing basis for the following four years. These tax exemptions are capped at a monthly gross salary of €6,292 per employee per month in 2012. The total exemption for employer social security contributions during that same year is limited to €181,860 per company per year.

These measures are for SMEs created in the last eight years with under 250 employees, turnover of less than €50 million or total assets of less than €43 million that are majority owned (over 50%) by individuals or by companies that meet the same criteria.

Sales of shares in these companies are exempt from capital gains tax if the seller has held the shares for three or more years.

These tax and social security measures have been extended to new university companies (*jeunes entreprises universitaires – JEU*). New university companies are SMEs that are less than eight years old, at least 10% owned, individually or jointly, by current students, Master’s degree postgraduates or postdoctoral students who received their degree within the last five years, or by people working in teaching and research

fields and who fund at least 15% of research expenditure.

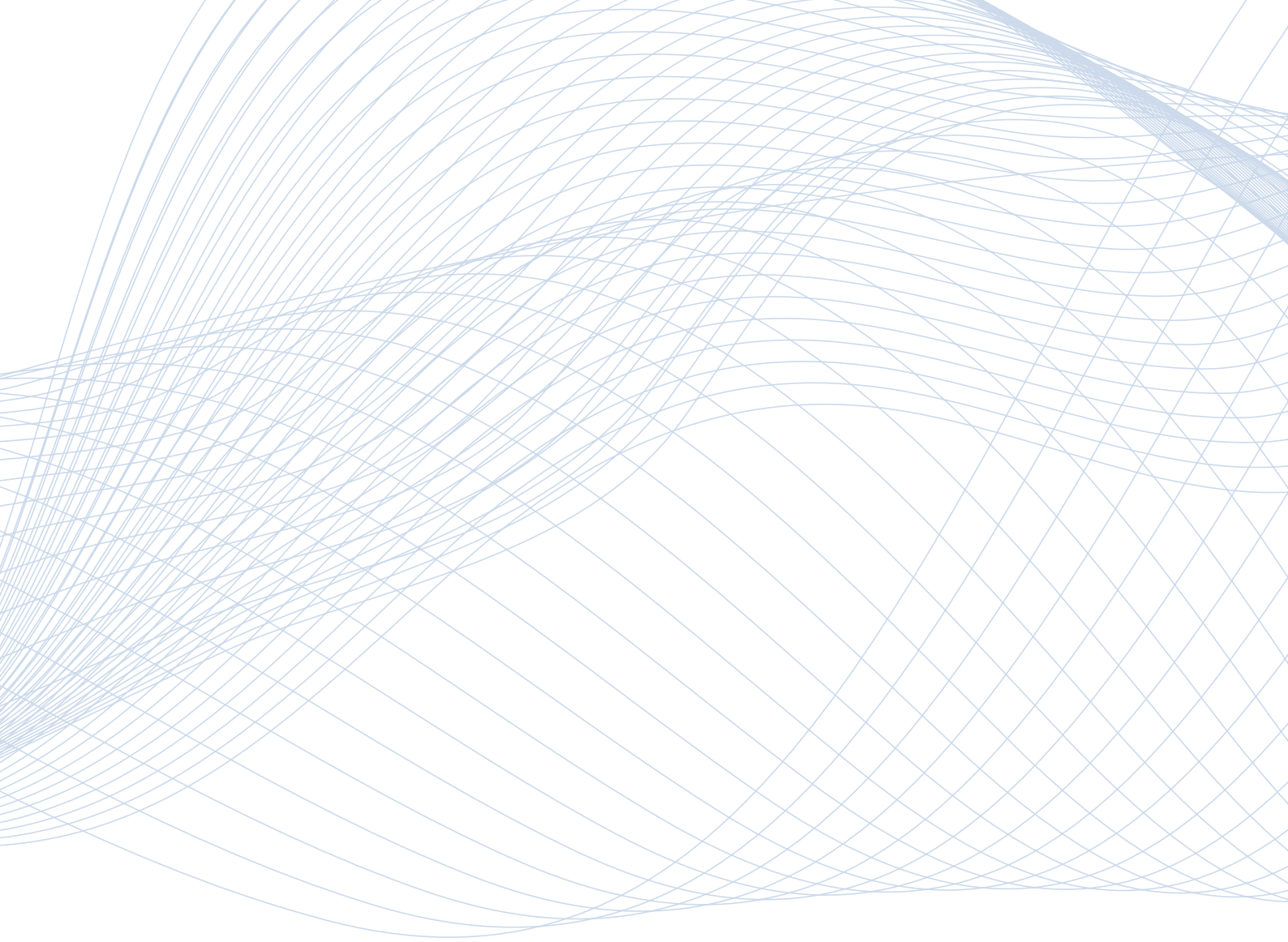
## **VI. SPECIAL TAX SYSTEM FOR CERTAIN HEADQUARTERS**

These centers must be set up solely for the provision of specialized services. Headquarters may provide only management, administration, coordination and auditing services, while logistics centers handle only packaging, labeling and distribution.

To be eligible, services must only be provided to companies in the same group and the majority of these must be located abroad. The tax rules are based on a fixed cost-plus formula that is arrived at in agreement with the tax authorities. This agreement eliminates the risk of a change in the cost-plus rate applied by the company during a subsequent tax audit. Tax is assessed at the standard rate on earnings that is derived by applying the agreed cost-plus formula to expenditure incurred by headquarters, logistics centers or R&D coordination centers. The cost-plus rate applied is usually between 6% and 10%; agreements are usually reached for periods of three to five years.

As part of the tax regulations seeking to eliminate expatriation costs, headquarters and logistics centers may pay supplementary remuneration that is fully or partially exempt from personal income tax to their expatriate employees. Companies must apply to the tax authorities to benefit from these measures, which may not be combined with the new scheme for expatriate employees: potential beneficiaries must opt for one or the other.







**GOVERNMENT  
SUPPORT FOR  
BUSINESS**



## Chapter 5 Doing Business in France

# GOVERNMENT SUPPORT FOR BUSINESS

**A broad and varied framework of support has been set up in France in response to the needs of investors. This support depends on the type of investment project (productive investment, research and development, innovation, training, etc.), its location (priority development areas or non-priority areas) and the type of company conducting the project (large company, mid-size company or SME\*).**

The French authorities support investment projects that entail:

- Investment and job creation by large companies in economically disadvantaged regions and regions undergoing industrial redevelopment; these regions are indicated on a map approved by the European Commission (regional aid areas map).
- Corporate research and development and innovation process projects.
- Vocational training programs for employees.
- Job creation for defined populations.
- Investment and job creation by SMEs in all parts of the country.
- Environmental protection.

With the exception of support for investment and job creation by large companies which is specifically zoned (except for 'de minimis' support, as defined by the EU), the French authorities can provide support to all companies throughout France for certain types of projects, such as research and development and innovative pro-

jects, employee training and hiring programs, as well as investments intended for environmental protection initiatives.

Support may be granted by the national government or local authorities (*régions, départements* and *communes* in France) and government agencies in various forms, such as subsidies, repayable advances, tax exemptions and tax credits. Support can be received from several different sources, up to but not exceeding the maximum allowable limit. EU law requires that support is of an incentive nature, and as such applications must be made before the company's project gets underway. Furthermore, state aid granted to a large company's project must lead to investments and/or generate a sizeable increase of this investment. The rules described above will apply to all requests for support made before the end of 2013. State aid in France provides effective support for business start-ups, job creation, investment and business development.

\* See "In detail": Assessing the size of a company

### IN DETAIL

#### *IFA assistance*

The Invest in France Agency helps foreign investors to ascertain which forms of government support their projects may be eligible to receive and to prepare their applications. The IFA can also put foreign businesses in touch with any French government body (ministries, local authorities, agencies etc.) that can facilitate their investments in France.

## I. RECEIVING SUPPORT FOR INVESTMENT AND JOB CREATION

There are a variety of financial incentives for business investment and job creation. Support is permitted for either investment outlays (buildings, land and equipment) over three years or the cost of job creation arising from the investment (estimated salaries and social security contributions over two years). Investment projects receiving aid are required to remain in the same region for five years (large companies) or three years (SMEs).

### I.1. INVESTMENT AND JOB CREATION INCENTIVES FOR LARGE COMPANIES

Investment projects by large companies may be given support in certain parts of the country eligible for regional aid (*zones AFR*) except in certain sensitive sectors (e.g. steel making and synthetic fibers). The location of a project is a determining factor in assessing the extent of support available.

Outside of these regional development areas, government support allocated to large companies for an investment project is capped at €200,000 per company over three years ('*de minimis*' support within the EU). SMEs are still eligible for investment support throughout the country amounting to 10-20% of the investment (unless '*de minimis*' support is more advantageous).

## IN DETAIL

### *Assessing the size of a company (excluding agri-food sector)*

#### EU REGULATORY DEFINITION OF SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)\*

→ **Medium-sized** enterprises satisfy all of the following criteria: fewer than 250 employees, annual turnover under €50 million or a balance sheet total under €43 million and free of any controlling interest (25% of equity or voting rights) by a large company.

→ **Small** enterprises have fewer than 50 employees and annual turnover or a balance sheet total under €10 million. They are also independent of any large company.

Calculation of employee numbers, turnover and balance sheets must factor in all the businesses in which the company has a direct or indirect interest exceeding 25%. Employee and finance thresholds must be exceeded in two consecutive financial years for the company to gain or lose SME status.

#### DEFINITION OF A MID-SIZE COMPANY \*\*

Mid-size companies are companies that have:

- between 250 and 5,000 employees;
- a total balance sheet under €2 billion;
- turnover that remains below €1.5 billion.

Under EU regulations on state aid, mid-size companies are subject to the same rules as large companies, yet they are eligible for the measures designed for them under French law.

#### EU REGULATORY DEFINITION OF A LARGE COMPANY

EU regulations on state aid stipulate that a large company is an enterprise that does not meet the aforementioned criteria for SMEs.

#### + For further information:

\*European Commission recommendation of May 6, 2003 concerning the definition of micro, small and medium-sized enterprises

\*\*Definition as per the French government Economic Modernization Act of August 4, 2008.

### 1.1.1 Investment support for large companies depends on their location in EU-recognized areas for regional funding

In accordance with the zoning for regional aid (*aides à finalité régionale – AFR*) in France approved by the European Commission for the period from 2007 to 2013, the limit on aid ranges from 10 to 15% of the investment for large business, and from 20 to 25% for medium-sized companies, and from 30 to 35% for very small companies. The maximum total amount of support for productive investment and job creation is calculated in accordance with the location of projects and the size of the companies receiving support. If an investment project exceeds €50 million, government intervention must be reduced to comply with EU rules (see “In detail” about large projects).

### 1.1.2 Government support within regional aid areas

To obtain the maximum amount of support available in a given regional aid area (10 to 15% of the investment for large companies and up to 35% for SMEs) companies can receive various types of support simultaneously. This aid comes in the form of subsidies or repayable advances (from the State or from local authorities), aid for real estate or tax/social security contribution exemptions. Each of these measures comes with its own set of conditions. In most cases, they can only be claimed in regional aid areas. However, some measures may be activated outside these areas, although they are then capped at €200,000 per company over three years for large companies (or the ceiling, described above, assigned to SMEs).

**Grants for industry and services (*Prime d'aménagement du territoire – PAT*).** PAT grants are based on the number of jobs created. Grants are made on a case-by-case basis, and take into account the features of each project (number of jobs created and total amount of investment). The ceiling is €15,000 per job created and can only be claimed in a regional aid area (see “In detail” about PAT grants). Applications are reviewed by the Interministerial Commission for Business Location Aid (CIALA).

**Interest-free loans for industry:** The purpose of the *aide à la réindustrialisation* business development loan scheme is to fund investment projects throughout France. The project must somehow contribute to developing business in or transferring business to France, diversifying or expanding production or upgrading industrial processes and may be associated with the takeover of a company or establishment.

For SMEs and mid-size companies (company or group of companies with fewer than 5,000 employees), eligible projects must amount to an investment of:

- **at least €5 million** and be responsible for the **net creation of at least 25 permanent jobs** within 36 months;

## IN DETAIL

### Large projects

A large project is defined as having eligible costs in excess of €50 million. It is implemented over a period of up to three years by a single business or several businesses which constitute an economically indivisible whole.

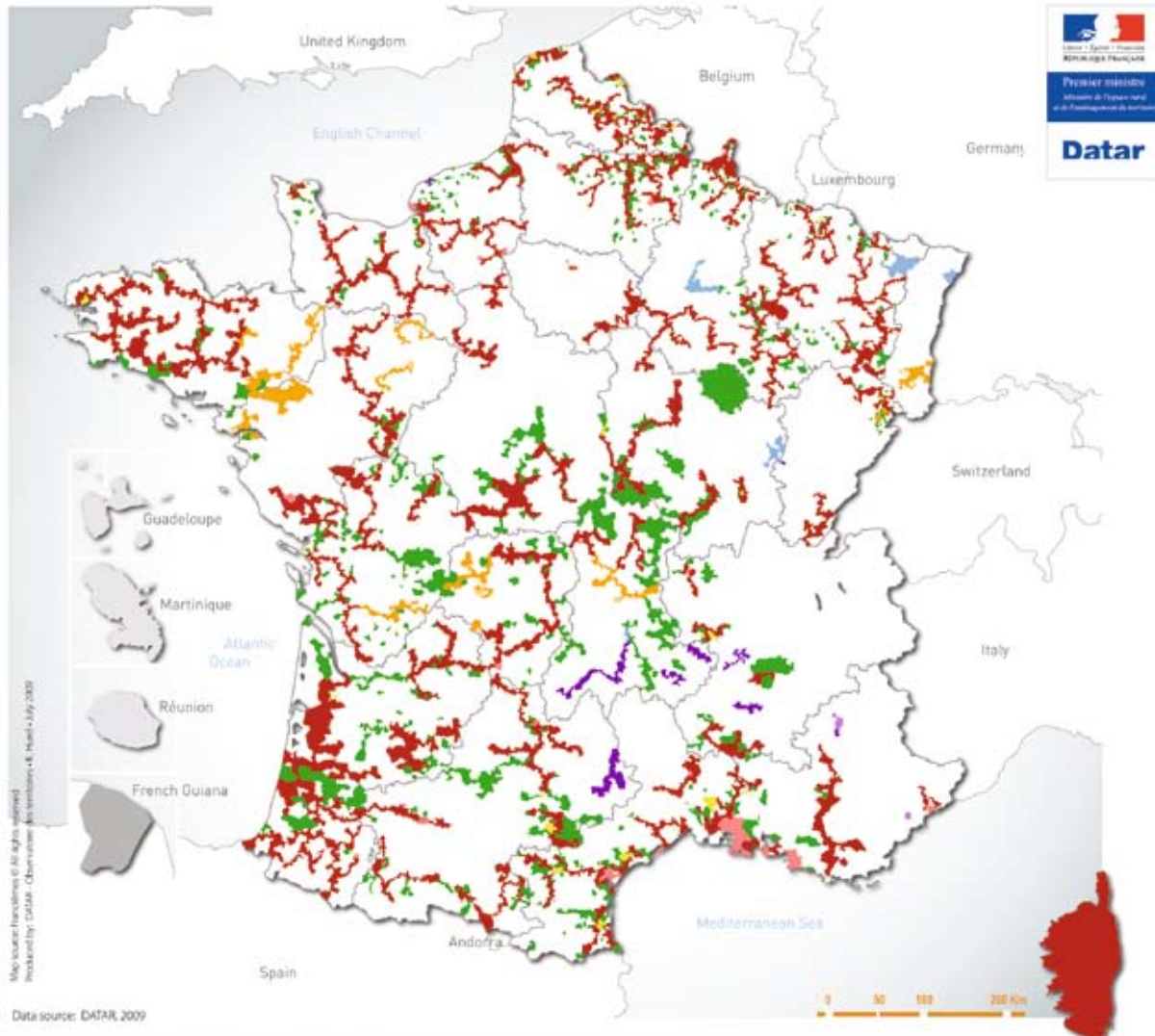
→ Member States are required to inform the European Commission of support they provide for productive investment where the investment exceeds €50 million.

→ Member States are required to notify the European Commission of aid exceeding €11.25 million in areas where the aid ceiling is 15%, and exceeding €7.5 million where the ceiling is 10%. In these instances, authorization is required from the European Commission prior to receiving any state aid.

Large investment projects in areas eligible for regional aid are subject to automatic reductions in permitted support in accordance with the size of the projects, as shown below:

Size of investment	Adjusted aid ceiling	Ceiling in reduced regional aid areas ( <i>Zones AFR réduites</i> )	Ceiling in normal regional aid areas ( <i>Zones AFR normales</i> )
Less than €50 million	100% of ceiling	10%	15%
€50 to €100 million	50% of ceiling	5%	7.5%
Over €100 million	34% of ceiling	3.4%	5.1%

*Map of regional aid areas*  
(Decree of July 27, 2009 modifying decree n°2007-792 of May 7, 2009)



<p><b>Permanent areas [2007-2013] not limited to SMEs</b></p> <p><b>Normal rate</b> Rate of aid for large companies: 15% Rate of aid for medium companies: 25% Rate of aid for small companies: 35%</p> <p><b>Area eligibility:</b></p> <p>Partial  Total </p>	<p><b>Reduced rate</b> Rate of aid for large companies: 10% Rate of aid for medium companies: 20% Rate of aid for small companies: 30%</p> <p><b>Area eligibility:</b></p> <p>Partial  Total </p>	<p><b>Permanent areas [2007-2013] limited to SMEs</b></p> <p><b>Normal rate</b> Rate of aid for medium companies: 25% Rate of aid for small companies: 35%</p> <p><b>Area eligibility:</b></p> <p>Partial  Total </p>	<p><b>Reduced rate</b> Rate of aid for medium companies: 20% Rate of aid for small companies: 30%</p> <p><b>Area eligibility:</b></p> <p>Total </p>
<p><b>Transitional areas [2007-2008]</b></p> <p>Rate of aid for large companies: 10% Rate of aid for medium companies: 20% Rate of aid for small companies: 30%</p> <p><b>Area eligibility:</b></p> <p>Partial  Total </p>		<p><b>Overseas French territories totally eligible [2007-2013] not limited to SMEs</b></p> <p><b>Normal rate:</b> Rate of aid for large companies: 50% Rate of aid for medium companies: 60% Rate of aid for small companies: 70%</p> <p><b>Area eligibility:</b></p> <p>Total </p> <p><b>Increased rate:</b> Rate of aid for large companies: 60% Rate of aid for medium companies: 70% Rate of aid for small companies: 80%</p> <p><b>Area eligibility:</b></p> <p>Total </p>	

**+** For further information:

To find out whether your investment project is located in an area that is eligible for financial support, consult the geographical area questionnaire on the DATAR website ([www.territoires.gouv.fr](http://www.territoires.gouv.fr)).

- or at least €2 million, if the investment is of major economic, industrial or technological interest.

For companies or groups with more than 5,000 employees, eligible projects must amount to an investment of at least €50 million and create at least 200 permanent jobs.

Expenses that are eligible for aid comprise the pre-tax cost price of buildings, equipment and machines plus internal or external engineering-related project costs. The building-related expenses may not exceed 25% of the total qualifying investment budget.

The aid comes in the form of interest-free **repayable advances**. The advances are deferred for a maximum period of two years as of the program's completion date and then repaid in

quarterly installments over five years, unless the French Minister for Industry makes an exception after reviewing the case. The CIALA is responsible for reviewing applications.

For mid-size companies in regional aid areas, this measure is capped at 40% of eligible investment costs, or 60% for SMEs. Outside of these regional aid areas, aid is capped at €200,000 over three years for mid-size companies and 30% for SMEs.

### Local government support

Local authorities may grant various forms of support to business investment projects in regional aid areas. These may include subsidies or supplements to PAT grants and support to finance business premises (land and buildings), such as reduced purchase prices and funding for real estate projects

## IN DETAIL

### Grants for industry and services (prime d'aménagement du territoire – PAT)

PAT grants are distributed by the DATAR (*Délégation interministérielle à l'aménagement du territoire et à l'attractivité régionale*) and are available to businesses for company creations, expansions, conversions or takeovers of existing businesses.

#### ELIGIBILITY:

#### 1. In the case of company creations, investments on the site designated for funding must involve either:

- a) The net creation of at least 25 permanent jobs if eligible investment is more than €5 million;
- b) Or the net creation of at least 50 permanent jobs if eligible investment

is less than €5 million.

#### 2. In the case of expansions or changes to existing operations, investments on the site designated for funding must meet one of the following conditions:

- a) The net creation of at least 25 permanent jobs and an increase of at least 50% in employment on the site;
- b) Or the net creation of at least 50 permanent jobs;
- c) Or eligible investments of at least €10 million.

#### 3. PAT grants may be available for takeovers of existing businesses subject to all three of the conditions below being met:

- a) A severe deterioration in the local labor market;
- b) The planned takeover will lead to a sustainable, structural improvement in the competitiveness of the business and contribute to the diversification of its customer base;
- c) The takeover involves the preservation of at least 80 jobs and eligible investments of at least €5 million (excluding capital buyback).

The amount granted may not exceed the equity of the recipient company together with any partners' accounts frozen for the duration of the investment program.

#### + For more information:

Ministerial decree no. 2007-809 of May 11, 2007 relating to the granting of grants (PAT) for industry and services (list of eligible NAF codes in the Ministerial Order of March 3, 2010). Application dossiers for aid can be downloaded from the DATAR website. They comprise a letter of intention and a form.



as part of a lease contract, within the restrictions applying to regional aid in the area concerned (15-35% of the investment depending on the size of the company). Rent support is limited to €200,000 per business over three years ('*de minimis*'). Local authorities have the power to use the European aid available in their areas.

### Main tax and social security contribution exemptions

The advantage of tax and social security contribution exemptions is that they can be triggered automatically by the company as soon as the required conditions are met.

Tax exemptions apply to the local economic contribution (CET) and/or corporate tax as well as property tax.

- Exemptions from the CET and/or corporate tax are generally subject to authorization by the local authorities. Their decision stipulates the duration (between two and five years) and the extent of the exemption being granted. Some exemptions do not require authorization by the local authorities and apply automatically for a five-year period.
- Corporate tax exemptions are possible in some regional areas, mainly in military restructuring and high-unemployment areas, and last for seven years. Companies created for the express purpose of taking over an ailing industrial business receive a two-year corporate tax exemption.
- Social security contribution exemptions consist of reduced employer contribution rates which require investment projects to be located in areas particularly affected by economic restructuring programs. In cases where projects are located both in EU-recognized regional aid areas and in these priority development areas, the social security contribution exemptions can be combined with the measures described above in EU-recognized areas. Otherwise, total state aid is limited to €200,000 per company over a three-year period ('*de minimis*').

### Public-sector redevelopment companies

Several large public-sector industrial groups have

set up industrial redevelopment companies to support economic development in their regions (e.g., Groupe Alpha, FINORPA, SODIV).

These companies provide support to new investors in the form of medium- and long-term loans, sub-market rates, unsecured lending, and equity funding through the acquisition of temporary minority interests.

## I.2. SUPPORT FOR INVESTMENT AND JOB CREATION OUTSIDE DESIGNATED REGIONAL AID AREAS

In the rest of France, support for investment may still be possible for small and medium-sized companies. Aid is capped at 10% of the investment for medium-sized companies and 20% for small companies (or €200,000 over three years if this is more favorable). If a large company is behind the project, aid is capped at €200,000 per company over three years.

- **Support for SMEs:** France's central government and regional authorities may grant subsidies to small and medium-sized companies to help them purchase technology-rich equipment. Such support is available throughout France, and it is particularly focused on designated regional aid areas.
- **Real-estate support for SMEs or large companies** (except for Ile-de-France (Paris region), excluding deprived urban areas (ZUS) or rural regeneration areas (ZRR))
- **Support can also be provided through the European Regional Development Fund (ERDF)** if the Operational Program, negotiated region by region, has been approved by the European Commission.
- **Loans and guarantees for SMEs and/or mid-size companies depending on the company's project (until December 31, 2012):** For example, SMEs and companies with fewer than 500 employees (owned by a mid-size company) are eligible for an unsecured low-interest regional regeneration loan (*prêt pour la revitalisation des territoires* – PRT). PRTs are designed to support investment programs that create or maintain jobs (to develop business,



take over a facility, make extensive modifications to a production process, diversify production or raise working capital) in areas that qualify for this measure upon request from the State Prefect (see zoning for the French regional regeneration fund). Loans range from €100,000 to €1 million over a maximum period of 10 years and must be associated with foreign funding (co-funding rule).

**NB: Some employment areas** are eligible for **regeneration agreements**, introduced after large numbers of permanent layoffs, and awarded to companies that create economic activity and employment in the local area. Aid granted under these agreements can take different forms, but is generally paid as a subsidy or low-interest loan. Such “private” aid is financed by companies conducting wide scale layoff programs in the local area and, as such, is not subject to EU State aid regulations.

## II. FUNDING FOR TRAINING AND RECRUITMENT

The French government has developed a variety of instruments to provide financial incentives for businesses to create jobs and train employees.

### II.1. FUNDING FOR JOB CREATION

#### II.1.1 Government employment funding

Businesses of all sizes can receive support for job creation unrelated to any investment project.

The main forms of funding in this area are:

- Exemptions or relief on social security contributions, with a particular focus in certain regional aid areas: urban regeneration areas (ZRU), rural regeneration areas (ZRR), urban enterprise areas (ZFU), military restructuring areas (ZRD) and, since January 1, 2007, employment priority areas (BER).
- Subsidized employment contracts which may be aimed at specific employees and, depending on the contract, qualify for contribution exemptions and/or subsidies (e.g. ‘professionalization’ contracts or integration contracts).

#### II.1.2 Employment incentives

Some forms of aid and partial exemptions from social security contributions depend on the category of employee recruited. They are granted automatically and independently from the invest-

## IN DETAIL

### Training aid rates

	LARGE COMPANIES	SMEs
<b>Targeted training:</b> Training with direct application to the employee's tasks and developing skills not transferable to other businesses or other types of work. An increase of 10 percentage points is awarded when the training is provided to disadvantaged or disabled employees.	25%	35%
<b>General training:</b> Training not limited to applications in the employee's current or planned position, instead developing skills that are in large part useable in other businesses or positions and thus significantly enhancing the recipient's employability. An increase of 10 percentage points is awarded when the training is provided to disadvantaged or disabled employees.	60%	70%

ment incentives described above. In this respect, reduced employer contributions for low-wage earners mean that companies pay reduced social security contributions for wages under 160% of the minimum wage (SMIC). These reduced employer contributions amount to around 21% on behalf of employees being paid the minimum wage.

## II.2. FUNDING FOR EMPLOYEE TRAINING

Enhancing workforce skills is a key priority in France and this is reflected in a variety of programs to support business training initiatives.

These programs can partly cover costs including payments to training leaders, travel expenses for training leaders and employees being trained, other overheads, depreciation of training equipment, related consultancy fees and the time taken off work by employees being trained.

The level of funding depends of the type of training and the size and location of the business.

To benefit from maximum allowable levels of support for their training programs, companies of all sizes may take advantage of the various forms of aid described below.

### ► Aid from local authorities.

The National Employment Fund (*Fonds national pour l'emploi* – FNE) intended for companies experiencing financial hardship whose employees have urgent training needs. The competent local employment authority (*unité territoriale*) may provide support for a variety of initiatives:

- Training initiatives providing between 50 and 1,200 hours of theoretical and practical training.
- Initiatives helping employees adapt to a new position requiring the equivalent of at least 120 hours in lost work time.

### ► European funding channeled through regions.

The European Social Fund and European Regional Development Fund may cover a portion of operating expenses relating to training, salary expenses for employees participating, and ancillary expenses. The initiatives can be co-funded by government support of up to 50%.

### ► Tax credit for spending on management training in SMEs. This applies to individual entrepreneurs,

managers, CEOs and directors of SMEs. The tax credit is limited to 40 hours of training per year. Depending on circumstances, it may be offset against personal income or corporate tax.

### ► EDEC professional development contracts.

Businesses can also call on their professional and inter-professional organizations to receive technical and financial support covering 25% to 80% of training expenses.

### ► Companies can also receive training support for future employees through the *Pôle emploi* (National Employment Office). The pre-hiring training initiative (*action de formation préalable à l'embauche* – AFPE) and operational hiring program (*programme opérationnel d'embauche* – POE) are training subsidies employers receive once the employee they choose to hire has been fully trained (subject to certain conditions):

- support of up to €5 net/hour for internal training, up to €2,000 per employee;
- support of up to €8 net/hour for external training, up to €3,200 per employee.

The AFPE and the POE are granted at the discretion of the local branch of the National Employment Office. The professional development joint collection agency (*organisme paritaire collecteur agréé* – OPCA) to which the company contributes can add to this funding to cover all or part of training costs.

Where the amount of support granted to a company exceeds €2 million, the European Commission must be notified.

## III. RECEIVING SUPPORT FOR INNOVATION, RESEARCH AND DEVELOPMENT

France's industrial policy has a strong focus on support for research, development and the innovation capacity of businesses. Support is available throughout the country.

Government support for innovation, research and development in the private sector is chiefly provided by the research tax credit. This is calculated at 30%

of annual research expenditure on R&D operations carried out in France. Furthermore, the “innovative new company” (JEI) status enables eligible companies to receive special benefits to encourage their development in France (tax relief, social security contribution exemptions, and exemptions on capital gains from equity transfers).

In addition to this extremely attractive tax environment, the French authorities have created state funding tools for R&D projects within the EU framework. The Ministry for the Economy and Finance, the Ministry responsible for industry, the Ministry responsible for research and the Ministry responsible for ecology, assisted by public-sector organizations, including the National Research Agency (*Agence Nationale pour la Recherche*) and OSEO, are ready to act. Regional and local authorities can provide additional support in this area.

### III. I. AID FOR R&D AVAILABLE THROUGHOUT FRANCE

Subsidies may cover a portion of R&D expenditure including related payroll expenses, equipment procurement, expenses for contracted research, intellectual property and patent rights, as well as overheads.

The level of support depends on the stage of R&D underway, which may concern fundamental research, industrial research or experimental development. Government contributions to large businesses conducting shared experimental R&D projects may cover up to 40% of the total cost.

## IN DETAIL

### R&D aid rates

		COMPANIES WITH 250 OR MORE EMPLOYEES	MEDIUM-SIZED ENTERPRISES	SMALL ENTERPRISES - SMEs WITH MAX. 50 EMPLOYEES
<b>Funding for R&amp;D projects</b>	Fundamental research	100%	100%	100%
	Industrial research	50%	60%	70%
	Industrial research involving cross-border cooperation between companies with the participation of at least one SME or research body	65%	75%	80%
	Experimental development	25%	35%	45%
	Experimental development involving cross-border cooperation between businesses with the participation of at least one SME or research body	40%	50%	60%
<b>Funding for technical feasibility studies</b>	Preparatory studies for industrial research	65%	75%	
	Preparatory studies for experimental development	40%	50%	

## LEGAL ADVICE

Mr. François Drouin, OSEO Chief Executive

### OSEO SUPPORTS BUSINESS GROWTH AND INNOVATION

French innovation agency OSEO has been charged by the French government to help companies grow and become more competitive.\* OSEO steps in on “risky projects” where the capital market falls short and positions itself to work as a partner with banking and financial institutions.

#### A RANGE OF FINANCIAL PRODUCTS GEARED TO THE NEEDS OF COMPANIES

OSEO works in three complementary areas: (1) support for innovation, (2) guarantees and (3) joint financing (with commercial banks). This unique combination allows it to offer a range of solutions to help companies at every stage of their development, from starting up to their sale to a new owner.

#### 1. Innovation support

OSEO supports innovation through its direct-financing products: interest-free loans, repayable advances, and grants. For the most ambitious projects, which require collaboration between companies, OSEO’s special Strategic Industrial Innovation (ISI) program provides support of up to €10 million per project. This support takes one of two forms:

- Grants of up to 50% of eligible expenses, solely for activities relating to industrial research.
- Repayable advances of up to 40% of eligible expenses (plus a 10% bonus in certain cases) for experimental development.

Since 2010, OSEO has also managed the Interministerial Fund (FUI), which provides financial support for France’s innovation cluster programs.

Another of OSEO’s key missions is to award “innovative company” recognition, which opens eligibility for such companies to investments from the innovation-focused mutual fund (FCPI).

OSEO is also responsible for administering advance tax rulings governing the eligibility of company spending plans for France’s research tax credit.\*\*

#### 2. Bank loan guarantees

OSEO’s second focus is providing loan guarantees to banks and venture capitalists in order to make bank loans and venture capital more available for high risk projects. OSEO supports bank lending by shouldering between 40% and 70% of the risk, depending on the type of project.

#### 3. Financing in partnership with commercial banks

OSEO’s financing activity complements that of commercial banks with a range of standard and mezzanine loans for financing intangible investments. In that connection, it provides uncollateralized, deferred-payment loans for up to €3 million.

#### Additional funds now available under the “National Investment Program”

OSEO is playing a major role in implementing the French government’s “National Investment Program”. Initially, a total of €2.44 billion was allocated under this program to strengthen OSEO’s response capacity. Today, this total has increased to include €2 billion for participatory development contracts, €300 million for subsidized ‘green loans’ and €300 million for the innovation cluster key project program (PSPC).

Participatory development contracts are mainly for companies with a track record of more than three years and fewer than 5,000 employees. They are intended to strengthen corporate capital structures to improve investment capacity. With a scope of between €300,000 and €3 million, they are systematically combined with third-party financing (banks or venture capitalists). The participatory development contract is a seven-year, uncollateralized loan with two-year deferral of payment.

#### Commitments in 2012

This year will see the creation of a subsidiary, OSEO Industrie, backed by a fund portfolio of €1 billion, whose mission is to provide finance to support this industry and to foster the emergence of mid-size companies. With leveraging, OSEO Industrie is expected to be able to make loans totaling €10 billion, and with private-sector support to provide a boost of €20 billion to the quasi-equity of industrial companies.

2012 also marks the launch of a FSI Régions by France’s strategic investment fund (FSI) and OSEO, deepening their existing partnership to support SMEs. FSI Régions will be a powerful, efficient funding instrument to boost the equity of SMEs.

\* OSEO supports independent companies with up to 5,000 employees.

\*\* France’s research tax credit is a tax incentive to stimulate corporate R&D spending. If the tax credit due exceeds a company’s tax liability, the difference to be refunded by the government can in the meantime be used as collateral for a bank loan.

### III.2. EXISTING GOVERNMENT SUPPORT FOR R&D PROJECTS

To benefit from maximum permitted levels of support for their research and development programs, businesses may take advantage of the various forms of aid described below:

- Regional development grants for research, development and innovation (*Prime d'aménagement du territoire* – PAT) can be as much as €15,000 for each job created or involved in the R&D project (or €25,000 per job in the case of a cooperative project). They are available for R&D projects leading to the net creation of at least 20 permanent jobs or eligible expenditure of at least €7.5 million.
- Grants from the Ministry responsible for industry (Company competitiveness fund; R&D strategic line for international projects with high value added).
- OSEO support for SMEs and mid-size companies is in the form of grants, repayable advances or assistance towards the recruitment of R&D personnel.
- National Research Agency (*Agence nationale de la recherche*) assistance supports fundamental and applied research, public-private partnerships and dissemination of public research results to business and industry. It operates on the basis of calls for proposals.
- Local-authority support for R&D projects may be in the form of grants, interest-free loans and advances, or loans and advances at rates below the bond-market average, and interest subsidies setting rates at between zero and the bond-market average.
- Support from the ADEME (French Environment and Energy Management Agency) for R&D projects, in particular for R&D project feasibility studies.
- Support for innovation in service-sector processes and organization may be available from local authorities and the DATAR. Limits are 15% of related spending for large companies, which can only benefit if they are working with an SME, 25% for medium-sized companies and 35% for small companies.

## IN DETAIL

### *Aid for research and development in innovation clusters*

Innovation clusters bring together entities from the industrial, scientific and public-sector communities working in the same region. They are a source of innovation as their proximity encourages the spread of information and skills, thereby facilitating the emergence of more innovative projects. They also boost France's investment attractiveness given the international profile

generated by such a concentration of stakeholders.

Businesses participating in one of France's innovation clusters and conducting an R&D project approved by that cluster may be eligible to receive subsidies from public organizations supporting R&D. Limits on subsidies for an experimental development project are raised from 25% to 40% when the project is conducted within an innovation cluster.

Businesses situated within an area eligible for R&D support inside an innovation cluster may also, provided agreement is obtained from the local authorities, receive exemptions from the local economic contribution (CET) and property tax for five years, amounting to as much as €200,000 per company over a rolling three-year period.

### *Subsidized R&D employment contracts*

CIFRE (*Conventions industrielles de formation par la recherche*) contracts offer post-graduate students an opportunity to prepare

their doctorate in the workplace, which receives an annual fixed grant of €14,000. These contracts are administered by the National

Association for Technical Research (*Association nationale de la recherche technique*).

►Funding is available from the French government's €35 billion "National Investment Program", which focuses largely on research and development. These funds are administered by various bodies (e.g. OSEO, ADEME, and the French government investment bank, the *Caisse des dépôts et consignations*) and may be awarded through calls for projects in support of programs of excellence in the form of grants, repayable advances and equity or quasi-equity investments. For further information about current calls for projects, please visit: <http://investissement-avenir.gouvernement.fr/>

#### IV. SUPPORT FOR ENVIRONMENTAL INVESTMENTS BEING DEVELOPED

The French authorities may award grants to companies for investments that protect the environment. These subsidies may cover up to 50% of expenditure for large companies and 60% for SMEs. In principle, the amount of support is calculated according to the additional investment costs arising from environmental protection. Depending on the measure being claimed, any profits or operating costs associated with the additional investments may have to be deducted from this base.

Eligible investments are expenditure on property, plants and equipment to reduce pollution, noise, odors, and to protect the environment. Consideration may also be given to expenses relating to technology transfers through operating licenses and the acquisition of expertise, patented or otherwise.

The level of funding depends on the type of investment for environmental protection:

- SMEs may receive funding of either 10% or 15% over a three-year period to support investments that comply with EU standards in advance.
- Companies may also receive decision-making aids (pre-diagnostic, diagnostic and project study) for a range of areas, including waste,

air pollution, noise control, energy efficiency, renewable energies, polluted sites and grounds, transport.

- All businesses may receive support depending on the size of the business of between 35% and 55% of investments which exceed applicable EU standards.
- Three types of investments may benefit from higher rates: energy saving investments, combined heat and electricity generation and investment in renewable energy may benefit from investment support.
- Investments in renewable energy sufficient to supply an entire community may benefit from aid covering up to 50% of total spending.

Government agencies and other public bodies able to provide support for environmental investments include the Agency for the Environment and Energy (*Agence de l'environnement et de la maîtrise de l'énergie* - ADEME), the Water Agency (*Agence de l'eau*), and guarantee funds for investments in energy savings and renewables (FOGIME and FIDEME).



# Glossary

Below is a list of French terms that foreign companies are likely to encounter when locating their business operations in France, followed by a brief explanation in English. Readers should be aware that the technical terms in English serve only as a guideline and do not necessarily correspond entirely to the same concepts as the French terms. For further information, please contact the IFA.

FRENCH TERM	ENGLISH TERM
<i>Activité professionnelle commerciale, artisanale, industrielle</i>	Commercial, entrepreneurial or industrial activity
<i>Activité professionnelle salariée</i>	Salaried employment
<i>Aides à finalité régionale</i>	Regional aid
<i>Autorisation provisoire de travail</i>	Temporary work permit
<i>Bail commercial</i>	Commercial lease
<i>Bail professionnel</i>	Professional lease
<i>Bureau de liaison</i>	Liaison office
<i>Carte de séjour mention « commerçant »</i>	“Business Activity” residence permit
<i>Carte de séjour mention « salarié en mission »</i>	“Expatriate Employee” residence permit
<i>Carte de séjour mention « scientifique »</i>	“Scientific Activity” residence permit
<i>Carte de séjour mention « compétences et talents »</i>	“Skills and Expertise” residence permit
<i>Carte de résident pour « contribution économique exceptionnelle »</i>	“Exceptional Economic Contribution” residence permit
<i>Cadre dirigeant</i>	Senior executive
<i>Cadre de haut niveau</i>	Highly skilled employee
<i>Centre des impôts</i>	Tax office
<i>Centre d'affaires</i>	Business center
<i>Changement de statut</i>	Change of status
<i>Code du Travail</i>	French Labor Code (employment laws)
<i>Comité d'entreprise</i>	Works Council
<i>Commune</i>	City or municipal authorities
<i>Contrat à durée indéterminée (CDI)</i>	Permanent contract
<i>Contrat à durée déterminée (CDD)</i>	Fixed-term contract
<i>Conseil d'administration</i>	Board of directors
<i>Conseil de surveillance</i>	Supervisory board
<i>Contribution économique territoriale (CET)</i>	Local economic contribution (replaced the local business tax in 2010)
<i>Convention collective</i>	Sector-specific collective agreement on labor relations
<i>Convention fiscale</i>	Tax agreement
<i>Convention de sécurité sociale</i>	Social security agreement
<i>Crédit d'impôt recherche</i>	Research tax credit
<i>Déclaration unique d'embauche</i>	Employee hiring form
<i>Décret</i>	Decree
<i>Département</i>	For administrative and political purposes, France is divided into 27 <i>régions</i> and 101 <i>départements</i> (broadly equivalent to a county in English-speaking countries). <i>Départements</i> are further subdivided into <i>communes</i> .
<i>Détachement / salarié détaché</i>	Secondment/seconded employee
<i>Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi – DIRRECTE</i>	Regional Directorate for Enterprise, Competition, Consumption and Employment
<i>Dirigeant</i>	Director
<i>Entreprise individuelle</i>	Sole proprietorship
<i>Entreprise de taille intermédiaire (ETI)</i>	Mid-size company
<i>Entreprise Unipersonnelle à Responsabilité Limitée (EURL)</i>	Single-member limited liability company
<i>Expatriation / Expatrié</i>	Expatriation / Expatriate

FRENCH TERM	ENGLISH TERM
<i>Extrait K-bis</i>	Company registration certificate
<i>Gérant</i>	Manager
<i>Greffe du tribunal de commerce</i>	Commercial Court Registry
<i>Groupement d'intérêt économique (GIE)</i>	Economic interest grouping (business consortium)
<i>Impatrié</i>	Tax status granted to expatriate employees in France, subject to certain conditions
<i>Impôt sur les sociétés (IS)</i>	Corporate tax
<i>Impôt de solidarité sur la fortune (ISF)</i>	Wealth tax
<i>Inspection du Travail</i>	Labor Inspectorate
<i>Installation classée (ICPE)</i>	Regulated facility (aka "classified facility" in France)
<i>Mairie</i>	Municipal offices
<i>Mandataire social</i>	Company director (representing the company)
<i>Office Français de l'Immigration et de l'Intégration (OFII)</i>	French Office for Immigration and Integration
<i>Personne morale</i>	Corporate entity
<i>Personne physique</i>	Private individual
<i>Plan social</i>	Layoff plan / redundancy plan
<i>Pôle emploi</i>	National Employment Office
<i>Prestation de service</i>	Service provision
<i>Procédure d'introduction</i>	Admission procedure
<i>Préfecture</i>	The office of the Prefect, who is the local representative of national government in each French <i>région/département</i> .
<i>Prime à l'aménagement du territoire (PAT)</i>	Development grant
<i>Prud'hommes</i>	Labor or employment tribunal
<i>Récépissé</i>	Receipt
<i>Région</i>	See entry for " <i>département</i> "
<i>Registre du commerce et des sociétés (RCS)</i>	Company register
<i>Résidence fiscale</i>	Tax residence
<i>Salaire minimum interprofessionnel de croissance (SMIC)</i>	Statutory national minimum wage
<i>Salarié</i>	Employee
<i>Sécurité sociale</i>	Social security
<i>Service des impôts des entreprises (SIE)</i>	Corporate tax office
<i>Société anonyme (SA)</i>	Public Limited Company (PLC)
<i>Société à responsabilité limitée (SARL)</i>	Limited liability company (LLC) / Private limited company (Ltd.)
<i>Société civile</i>	Non-trading partnership (e.g. real estate or medical services)
<i>Société en commandite par actions</i>	Limited partnership
<i>Société en nom collectif</i>	General partnership
<i>Société par actions simplifiée (SAS)</i>	Simplified company
<i>Stagiaire</i>	Intern / Trainee
<i>Taxe d'habitation</i>	Housing tax
<i>Taxe foncière</i>	Property tax
<i>Taxe sur la valeur ajoutée</i>	Value-added tax
<i>Travailleur temporaire</i>	Temporary worker
<i>Visa de circulation</i>	Circulation visa
<i>Visa court séjour / Visa de long séjour</i>	Short-stay visa /Long-stay visa
<i>Visa de long séjour valant titre de séjour</i>	Long-stay visa equivalent to a residence permit
<i>Voyageur de commerce, représentant ou placier (VRP)</i>	Business traveler, representative or travelling salesperson (special legal status)

# Useful contacts

NAME	LINKS
<b>Administration douanière</b> Customs authorities.	<a href="http://www.douane.gouv.fr">www.douane.gouv.fr</a>
<b>Administration fiscale</b> Tax authorities – regulations for companies and individuals, tax agreements.	<a href="http://www.impots.gouv.fr">www.impots.gouv.fr</a>
<b>Agence de l'environnement et de la maîtrise de l'énergie (ADEME)</b> French Environment and Energy Management Agency. Government agency responsible for the application of environment, energy and sustainable development policy. The ADEME helps finance projects in five sectors (waste management, land preservation, energy conservation/renewable energy sources, air pollution and noise pollution) and assists efforts towards sustainable development.	<a href="http://www.ademe.fr">www.ademe.fr</a>
<b>Ambassades et consulats français à l'étranger</b> French Embassies and Consulates.	<a href="http://www.mfe.org/index.php/Annuaire/Ambassades-et-consulats-francais-a-l-etranger/">www.mfe.org/index.php/Annuaire/Ambassades-et-consulats-francais-a-l-etranger/</a>
<b>Autorité de la Concurrence</b> Competition Authority – rules on anti-competitive practices and must be notified of large concentrations between undertakings.	<a href="http://www.autoritedelaconcurrence.fr">www.autoritedelaconcurrence.fr</a>
<b>Autorité des Marchés Financiers (AMF)</b> Financial Market Authority – financial regulations.	<a href="http://www.amf-france.org">www.amf-france.org</a>
<b>Centre de formalités des entreprises (CFE)</b> Business Formalities Center. CFEs provide a one-stop service for companies, enabling them to file a single document to register the establishment, modification or cessation of their business activity. In general, CFEs are either chambers of commerce and industry or the local Commercial Court Registry.	<a href="http://www.annuaire-cfe.insee.fr/AnnuaireCFE/jsp/Contrroleur.jsp">www.annuaire-cfe.insee.fr/AnnuaireCFE/jsp/Contrroleur.jsp</a> <a href="http://www.cfenet.cci.fr/">www.cfenet.cci.fr/</a> <a href="http://www.infogreffe.fr/infogreffe/index.jsp">www.infogreffe.fr/infogreffe/index.jsp</a> <a href="http://www.guichet-entreprises.fr">www.guichet-entreprises.fr</a>
<b>Centre des liaisons européennes et internationales de sécurité sociale (CLEISS)</b> Center of European and International Liaisons for Social Security. Acts as a liaison body between French social security organizations and those in other countries, with regard to international regulations and social security agreements.	<a href="http://www.cleiss.fr">www.cleiss.fr</a>
<b>Centre national des firmes étrangères (CNFE)</b> National Center for Foreign Firms. For foreign companies without a permanent establishment in France employing personnel.	<a href="http://www.strasbourg.urssaf.fr">www.strasbourg.urssaf.fr</a>
<b>Chambres de commerce et de l'industrie</b> Chambers of Commerce and Industry. Information on setting up a business plus general advice concerning legal and tax issues.	<a href="http://www.cci.fr">www.cci.fr</a>
<b>Commission nationale de l'informatique et des libertés (CNIL)</b> French Data Protection Authority. The CNIL checks that the law is respected through audits of computer data processing. "Sensitive" data processing is referred to the CNIL for authorization. The CNIL audits public use of individuals' national identification numbers and receives declarations regarding the processing of other data.	<a href="http://www.cnil.fr">www.cnil.fr</a>
<b>Délégation interministérielle à l'aménagement du territoire et à l'attractivité régionale (DATAR)</b> Interministerial Delegation for Regional Development and Economic Attractiveness. Department of the Prime Minister's office which works with the Ministry responsible for regional development. The DATAR is jointly responsible, with the DGCIS, for France's innovation clusters. The DATAR is also responsible for PAT grants which encourage businesses and job creation.	<a href="http://www.datar.gouv.fr">www.datar.gouv.fr</a>
<b>Directions régionales des entreprises, de la concurrence, de la consommation du travail et de l'emploi (DIRECCTE)</b> Regional Directorates for Enterprise, Competition, Consumption and Employment. Local units ( <i>unités territoriales</i> ) within each DIRECCTE issue work permits (foreign labor department).	<a href="http://www.direccte.gouv.fr">www.direccte.gouv.fr</a>
<b>Direction Générale de la Compétitivité, de l'Industrie et des Services (DGCIS)</b> The Directorate for Competitiveness, Industry and Services is responsible for the <i>aide à la reindustrialisation</i> (ARI) business development loan scheme. It is jointly responsible, with the DATAR, for France's innovation clusters.	<a href="http://www.industrie.gouv.fr/dgcis/index.php">www.industrie.gouv.fr/dgcis/index.php</a>
<b>Direction générale de la consommation, concurrence et de la répression des fraudes (DGCCRF)</b> Directorate for Competition Policy, Consumer Affairs and the Prevention of Fraud. Responsible for the regulation and proper functioning of markets.	<a href="http://www.economie.gouv.fr/dgccrf">www.economie.gouv.fr/dgccrf</a>
<b>Direction générale du trésor (DG Trésor)</b> Treasury Directorate. Receives declarations of foreign investment; authorizes investment in sensitive sectors.	<a href="http://www.tresor.economie.gouv.fr">www.tresor.economie.gouv.fr</a>
<b>Direction Générale des Finances publiques (DGFIP)</b> Public Finances Directorate, a merger of the Taxation Directorate (DGI) and Public Accounts Directorate (DGCP). Help desk for non-resident companies since January 2012.	<a href="http://www.impots.gouv.fr">www.impots.gouv.fr</a>

NAME	LINKS
<b>Directions Régionales de l'Environnement, de l'Aménagement et du Logement (DREAL)</b> Regional Directorate for the Environment, Development and Housing – responsible for regulated facilities.	<a href="http://www.developpement-durable.gouv.fr">www.developpement-durable.gouv.fr</a> <a href="http://www.installationsclassees.ecologie.gouv.fr">www.installationsclassees.ecologie.gouv.fr</a>
<b>Fonds stratégique d'investissement (FSI)</b> Strategic investment fund (state-funded venture capital)	<a href="http://www.fonds-fsi.fr">www.fonds-fsi.fr</a>
<b>Greffe du tribunal de commerce de Paris</b> Paris Commercial Court Registry. Business startups (documents to be submitted with the articles), corporate takeovers.	<a href="http://www.greffe-tc-paris.fr">www.greffe-tc-paris.fr</a>
<b>Institut National de la Propriété Intellectuelle (INPI)</b> French Patent and Trademark Office. Self-funded government body, reporting to the Ministry responsible for industry, that issues patents, trademarks, and design rights. Provides information on intellectual property rights and companies.	<a href="http://www.inpi.fr">www.inpi.fr</a>
<b>Ministère de l'Ecologie, du développement durable et de l'énergie</b> Ministry for Ecology, Sustainable Development and Energy. Regulations concerning building, demolition and renovation permits.	<a href="http://www.developpement-durable.gouv.fr/">www.developpement-durable.gouv.fr/</a> <a href="http://vosdroits.service-public.fr/particuliers/F1986.xhtml">http://vosdroits.service-public.fr/particuliers/F1986.xhtml</a>
<b>Ministère de l'Economie et des Finances</b> Ministry for the Economy and Finance.	<a href="http://www.minefe.gouv.fr">www.minefe.gouv.fr</a>
<b>Ministère de l'Education nationale</b> Ministry for Education.	<a href="http://www.education.gouv.fr">www.education.gouv.fr</a>
<b>Ministère de l'Enseignement supérieur et de la Recherche</b> Ministry for Higher Education and Research.	<a href="http://www.recherche.gouv.fr">www.recherche.gouv.fr</a>
<b>Ministère du Travail, de l'Emploi, de la Formation professionnelle et du dialogue social</b> Ministry for Employment, Vocational Training and Industrial Relations. Procedures for hiring foreign salaried employees, addresses of regional employment offices, practical information on French employment law.	<a href="http://travail-emploi.gouv.fr/">http://travail-emploi.gouv.fr/</a>
<b>Office Français de l'Immigration et de l'Intégration (OFII)</b> French Immigration and Citizenship Office Responsible for the reception in France of legal immigrants. “One-stop service” for employees and directors transferred within a group (trial underway in three <i>départements</i> ).	<a href="http://www.ofii.fr">www.ofii.fr</a> <a href="http://www.immigration-professionnelle.gouv.fr">www.immigration-professionnelle.gouv.fr</a>
<b>OSEO (Agence française de l'innovation)</b> French Innovation Agency – Government agency responsible for providing financial aid and support to SMEs and mid-size companies (ETIs), in conjunction with banks and investment organizations, at crucial phases in company life cycles.	<a href="http://www.oseo.fr">www.oseo.fr</a>
<b>Pôle Emploi</b> National Employment Office – places the unemployed into work and administers benefits.	<a href="http://www.pole-emploi.fr">www.pole-emploi.fr</a>
<b>Portail de l'administration française</b> French government portal.	<a href="http://www.service-public.fr">www.service-public.fr</a>
<b>Préfecture de police de Paris</b> Paris Police Headquarters - Issuing and renewing residence permits for foreign nationals residing in Paris.	<a href="http://www.prefecture-police-paris.interieur.gouv.fr">www.prefecture-police-paris.interieur.gouv.fr</a>
<b>Service des impôts pour les particuliers et les entreprises résidant à l'étranger</b> Tax offices for individuals and companies residing abroad.	<a href="http://www.impots.gouv.fr">www.impots.gouv.fr</a>
<b>Service d'accueil des non résidents (SANR)</b> Non-residents' tax office, providing precise advice to non-residents and expatriates about their tax liability upon their return to France (advance ruling – rescrit – available on request). <b>Service d'accueil fiscal des entreprises non résidents (SAFEF)</b> Helpdesk for non-resident companies investing in France, providing advice in advance on the tax implications of their investment projects.	<b>Direction Générale des Finances Publiques</b> <b>Service d'accueil des non-résidents</b> <b>Bureau des agréments et rescrits</b> 86-92 allée de Bercy - Télédocus 957 01.53.18.19.46 <a href="mailto:sanr@dgfip.finances.gouv.fr">sanr@dgfip.finances.gouv.fr</a> <a href="mailto:safee@dgfip.finances.gouv.fr">safee@dgfip.finances.gouv.fr</a>
<b>Textes législatifs et réglementaires en vigueur en France et convention collective</b> French legislation and regulations in force	<a href="http://www.legifrance.gouv.fr">www.legifrance.gouv.fr</a>
<b>Union européenne</b> European Union.	<a href="http://www.europa.eu">www.europa.eu</a>
<b>Unions de recouvrement des cotisations de sécurité sociale et d'allocations familiales (URSSAF)</b> Agency responsible for collecting social security contributions.	<a href="http://www.urssaf.fr">www.urssaf.fr</a>

# The IFA Network



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With over 150 personnel working in 27 locations around the world, the IFA has a presence in most major business capitals. Where the IFA does not have a country office, economic missions based at the French embassy or consulate work on behalf of the IFA to promote France's economic attractiveness and detect foreign investment projects.

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The IFA network operates worldwide, with offices in France as well as in North and South America, Europe, the Middle East and Asia. In France, the IFA works in partnership with regional economic development agencies to offer international investors outstanding business opportunities and customized services.

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