DOING BUSINESS IN France

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### Business Structures:
What types of business structures are permitted?

- **Simplified joint stock company (“société par actions simplifiée“) (SAS):** This form of business offers flexible corporate and governance structures set in the company’s articles of association.
- **Limited liability company (“société à responsabilité limitée“) (SARL):** Alternative for the SAS, but with less flexibility.
- **Joint stock company (“société anonyme“) (SA):** Generally used for larger sized businesses as its governance is strictly governed by law. Also, this is the only form of company from the listed companies above that can be publicly listed on a stock exchange.

### Taxation:
Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

- **Residence and basis:** Profits of companies operating in France are subject to corporation tax. The principle of territoriality implies that all companies, either French or not, can be taxed on their profits earned in France.

- **Taxable income:** The taxable income is the net profit. This includes capital gains, dividends, interests, etc... It is possible to deduct from the net profit various expenses such as rents, research and development expenses, etc...

- **Losses:** The deficit incurred during a financial year is considered as a deductible charge from the profit of the following years without any time limitation.

- **Rates:** A 15% rate applies to the first €38,120 of taxable income of SMEs. The normal rates of corporation tax are 28% up to €500,000 of taxable profits and 33.33% for all profits beyond this amount. A flat 28% rate will apply to all companies as of 2020.

- **Surtax:** A 3.3% social contribution applies to companies with a corporation tax higher than €763,000.

- **Participation exemption:** A participation exemption on dividends applies where the recipient owns at least 5% of the distributing entity during 24 months, whereby the dividends are 95% tax exempt. A participation exemption also applies to capital gains arising from the sales of shares (substantial investment) if the shares have been held for at least 24 months. The gain is 88% exempt.

- **Withholding tax:** Companies that carry on business in France and pay certain sums to persons domiciled outside of France are subject to withholding tax:
  - Dividends: the standard rate to dividend distributions is 12.8%
  - Royalties: The applicable rate to the distribution of sums of money corresponding to salaries, income from services rendered or derived from the exploitation of industrial property rights is 33.33%.

- **Value added Tax:** The standard VAT rate is 20%, and 8.5% for some overseas territories.
### Immigration: Summarize immigration laws, including visas available for foreign employees.

No resident permit is needed for UE, EEA or Suisse nationals. Non-European nationals can be granted professional resident permits known as “Passeport Talent” that can notably be granted to qualified workers, investors or entrepreneurs.

### Foreign Investment Review and Issues: Does the government review and approve foreign investments? What factors are considered?

Foreign investment in France is free, unless it is carried out in a sensitive domain (Public Authority and Security, Defense, Weapons…) where a prior authorization of the Ministry of Economy will be needed.

### Dealing with the Government: Identify major issues when dealing with local and federal governments.

Public contracts: Public contracts are awarded by public buyers (central government, local authorities and public bodies) following specific rules implying tender procedures. Public authorities may use different criteria such as price, technical and environmental aspects. Businesses registered in the EU or in WTO countries can usually compete for public contracts.

Procedure Thresholds: The following thresholds broadly apply for determining the applicability of “Formalized tendering procedures” (call for tenders, competitive procedure, negotiated competitive call, competitive dialogue):

- **Supply and services contracts above**:
  - €134,999 with the State,
  - €208,999 with local authorities and public hospitals,

- **Construction contracts above €5,224,999**.

“Simplified procedures” apply to supply/services/construction contracts below €25,000 and “adapted procedures” up to the above thresholds.

Publicity: Call for tenders are published in the Official Journal of Public Procurement Tenders (BOAMP) for contracts above €89,999, and in the Official Journal of the European Union (OJEU) for contracts above €134,999 (or above €5,224,999 for construction contracts).

### Dispute Resolution and Court Systems: Summarize the court system, including the use of juries and arbitration.

Distinction between Judicial and Administrative orders: French justice is structured around two main jurisdictional orders, the “Judicial order” and the “Administrative order”. Both Judicial and Administrative orders have three main levels: first instance Courts, Courts of appeal and Supreme Courts.

Judicial order: Civil and Criminal Court systems: The Judicial order comprises the Civil and the Criminal justice. Disputes between private individuals are brought before civil courts while criminal courts are in charge of sanctioning the authors of criminal offences.

The Civil justice is subdivided into three main branches: employment, commercial and civil court systems. Each branch has its own territorially competent first instance Courts and dedicated chambers within the Courts of appeal and the Supreme Court (called “Cour de Cassation”):
Foreign Corrupt Practices: What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?

- Employment first instance Courts are called “Conseil de Prud’hommes” and are competent for employment-related disputes.

- Commercial first instance Courts are called “Tribunal de Commerce” and are competent for disputes between commercial companies.

- Civil first instance Courts are called “Tribunal d’Instance” or “Tribunal de Grande Instance” (competent for claims exceeding €10,000) and are competent for disputes between private individuals.

The Criminal justice is subdivided into two main branches: The most serious offenses (such as murder, rape, armed robberies) are tried by the “Cour d’assise”, where a jury is often involved. Other offenses are tried by the “Tribunal correctionnel” or by the “Tribunal de police”.

Administrative order: The Administrative order is in charge of disputes arising between private individuals and the French State or local authorities or public bodies. First instance courts are called “Tribunal administratif”, second level Courts are called “Cour administrative d’appel” and the supreme court is the “Conseil d’Etat”.

Arbitration: Both ad hoc and institutional arbitrations are broadly developed in France with Paris holding a prominent position as seat for international arbitrations. Particularly renowned are the International Chamber of Commerce (ICC), the International Arbitration Chamber of Paris (CAIP) and the Center for Mediation and Arbitration of Paris (CMAP).

Both active (giving a bribe) and passive (receiving a bribe) bribery are sanctioned with a 5 years’ imprisonment and a fine of €500,000 (and up to €2,500,000 for corporations). Bribing a foreign or French public official is sanctioned with 10 years’ imprisonment and a fine of €1,000,000 for individual (and up to €5,000,000 for corporations).

Companies above 50 employees must have a procedure to protect whistleblowers. Companies above 500 employees must have internal control measures to fight against bribery and undue influence, and implement a code of conduct. Failure to do so is sanctioned by a €1,000,000 fine for the company and €200,000 fine for its Directors.

Types of transaction: How may businesses combine?

Businesses in France may combine in different ways, such by:

- Merger: When two or more companies join together to make one larger company;
- Spin-off: A company means to create a new company that is separate from the original one;
- Partial transfer or contribution of assets: Assets that a company receives from another or from any person;
- Takeover: situation in which a company gets control of another company by buying out enough of its shares;
- Joint-Venture: Business or business activity that two or more people or companies work on together;
- Shares acquisition: Process of buying out the shares, by a company, of another company;
- Assets acquisition: process of buying out the assets, by a company, of another company.
### Competition Law: How do laws impact competition?

**Sources of competition Law and purpose:** French competition law derives from EU Treaties (namely the 1957 Treaty of Rome) and domestic transposition of EU Directives.

**Sanctioned behaviours:** Sanctioned behaviours, collective or individual, are listed under the Commercial Code (Book IV), such as: abuse of dominant positions; anti-competitive agreements; economic dependency between commercial partners; market sharing and sharing of sources of supply; predatory pricing and other related behaviors.

**Sanctioning authorities:** Sanctions are enforced by an independent administrative authority called the "Autorité de la Concurrence" (Competition Authority), by a governmental agency called DGCCRF standing for Directorate General for Competition Policy, Consumer Affairs and Fraud Control, and civil courts.

### Employment Relations: Briefly summarize major laws impacting employment and employee relations.

**Sources of Employment law:** French Labour Code. Branch collective bargaining agreements (branch CBA) which are setting up the rules applicable in a given industry; Company’s agreements (that can now somehow override branch CBA); Individual employment contracts.

**Employment contract:** The drafting of a written employment contract is not mandatory but is highly recommended. Some types of employment contract must however be in writing (part time contracts, fixed-term contracts etc.). Fixed-term employment contracts can only be concluded in writing and in limited circumstances for the performance of a specific and temporary task. These contracts cannot normally be terminated prior to the expiry of the agreed term. They may be renewed twice under specific conditions.

**Working time rules:** Any hour worked beyond 35 hours is considered as overtime. Overtime gives rise to special pay increases or can be replaced in whole or in part by compensatory leaves. Employee must at least be granted:
- 20 minutes break after 6 consecutive hours of work;
- Daily rest of at least 11 consecutive hours;
- Weekly rest of at least 35 consecutive hours.

Autonomous employees with an executive or managerial status, if allowed by a branch or a company’s agreement, can have their working time calculated with no reference to hours, but days (usually 218 days per year).

**Minimum wages:** The statutory minimum hourly wage equals to €9.88 gross/hours (on 01.01.2018). The applicable branch CBA or company’s agreement can provide for higher minimum wages.

**Social Security:** Social security contributions (calculated on the gross salary) are used to finance all mandatory employee benefits (sickness allowance, pensions, unemployment insurance, etc.). The employer contributes at a rate of approx. 45%. The employee contributes at a rate of approx. 20%.

**Dismissal and redundancy:** The termination of an employee’s contract can result from personal (poor performance or disciplinary action) or economic grounds (redundancy). The termination must rest on a real and serious ground and the employer has to comply with the required procedure in the related timetable.
**Statutes and regulations:** What are the main laws and regulations governing business combinations?

Business combinations are mainly concerned by civil, commercial and corporate bodies of law. The Civil code sets out the essential source of contract law – it includes general principles applicable to any transactions and to any type of company. The Commercial code sets out the business structures and relevant rules. The Monetary and Financial code and the General Regulation of the Financial Markets Authority contain the rules applying to listed companies and financial markets.

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<th>Governing Law: What law typically governs the transaction agreements?</th>
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<td>If a French company is concerned directly, French law and EU law shall usually apply to the transaction. Parties can include governing law and jurisdiction clauses to their contract.</td>
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<th>Filings &amp; Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?</th>
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<td>The acquisition of shares requires formal filing by the registration of: The transfer, in the books of the target company; the share acquisition, made by the buyer with the relevant tax authorities (form n°2759); for shares referred to as “parts sociales”, the transfer with the trade registry of the relevant Commercial court. The acquisition of assets requires several filings which may differ according to the nature of the assets acquired.In respect of duties to be paid, the transfer of business assets attracts registration duties as follows: -3 % of the market value of the business assets for a purchase price exceeding €23,000 and up to €200,000; -5 % for the portion of the consideration or the market value exceeding €200,000. A transfer of listed shares is not subject to stamp duty unless there is a written deed of acquisition and, in this case, a duty of 0.1 % shall be paid, subject to a minimum €25 per transfer.</td>
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Redundancies, most specifically, lead to further formalities: consultation with the staff representatives, determination of the order of dismissals, research for redeployment opportunities (limited to France only), proposition of mandatory redeployment leaves etc. If 10 or more employees are involved: negotiation with the Unions of a social plan (named as “PSE”) that provides for extra exit packages and benefits.

**Compensation payable:** The basic severance payment in case of termination equals to: 1/4 of salary per year of service for employees with less than 10 years seniority and 1/3 for employees with more than 10 years seniority. Damages for unfair dismissal claimable before the employment tribunals are now capped depending mainly on the employee’s seniority (except in cases of harassment, discrimination).

**Staff representation:** Staff representation has now been merged into one single body. From now on, companies with more than 11 employees must have an Economic and Social Council (“Comité Social et Economique”) in place. Union delegates can be appointed with whom the employer can negotiate Company’s agreements. The employer can also negotiate Company’s agreement directly with staff representatives or to consult employees directly through referendum votes.
Information to be Disclosed:
What information must be made public in a business combination? Does this depend on the structure used?

Disclosure of substantial shareholdings: What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

Duties of directors and controlling shareholders: What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Approval and appraisal rights: What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

A transfer of non-listed shares attracts a stamp duty for which rate depends on the form of business:
- SA or SAS: 0.1% subject to a minimum of €25 per transfer;
- SARL: 3% after deduction of an allowance depending on the total amount of shares held in the company, in the limit of €23,000;
- Real estate companies: 5%.

Information to be disclosed depend on whether companies are listed on a regulated stock exchange or not. Private transactions are not generally submitted to any disclosure obligations. However, transactions involving publicly listed companies need to satisfy transparency requirements to ensure information to the market. For instance, in relation to a merger plan and provisional information such as the exchange parity must be made public and disclosed to the French stock market regulator and the Financial Markets Authority. Also, after the shareholders’ general meeting for approving the transaction, the merger project shall be filed with the Registrar office of the Commercial court, even in the event that the company is not listed on a regulated market.

Any shareholder, person or legal entity, of a company, which is listed on a regulated stock exchange, shall immediately inform both the company and the Financial Markets Authority every time its shareholding or voting rights, following the acquisition or the sale of shares, exceed the different reporting thresholds (5%, 10%, 15%, 20%, 25%, 30%, 33.33%, 50%, 66.7%, 90% and 95%). These requirements shall not be affected when the company is a party to a business combination.

The directors have a general duty of loyalty and transparency. They shall inform the shareholders of any business combination and request their approval where necessary, as usually set out in the articles of association.

The creditors may have a right of opposition in a business transaction in relation to a business transfer and the directors must ensure the implementation of the rules in this respect (for instance, merger, contribution of assets, spin-off, business assets acquisition).

Undue use of by the controlling shareholders of their majority powers at the detriment of the minority shareholders may be punished.

Approval rights of the shareholders depend on the type and the size of the business combination at stake. The shareholders shall approve any reorganization of the company in general meeting such as merger, spin-off, and contribution in asset. A share acquisition shall not require the shareholders’ approval (except in case of agreement clause, change of control provisions, etc.). In business combinations such as merger, spin-off, contribution of assets, it is required to appoint an expert appraiser in order to value the assets and liabilities by a decision of the shareholders in general meeting.
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<th><strong>Hostile transactions:</strong> What are the special considerations for unsolicited transactions?</th>
<th>The Financial Markets Authority may require from any person that it reasonably believes is preparing a public offer to disclose its intention, known as the French &quot;put up or shut up&quot; rule. The offer must immediately be filed in order to enable the shareholders to take a decision on the project and the competitors to make counteroffers. The board of the target subject to an unsolicited transaction can take pre and post-bid actions to defend a hostile bid such as preventive defense mechanisms and advance preparation for potential hostile takeover attempts.</th>
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<td><strong>Break-up fees – frustration of additional bidders:</strong> Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders?</td>
<td>Break fees are not prohibited as such. However, they can be challenged on the basis that they constitute an unlawful deterrent against possible third-party counter-offers if their amount is excessive, and they can be reduced by French judges if manifestly excessive and challenged. Break fees payable to a bidder by a listed company must be disclosed to the Financial Markets Authority at the date of filling of the offer and to the public in the offer prospectus.</td>
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<td><strong>Government influence:</strong> Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?</td>
<td>Investments shall be free in France and not subject to restrictions other than administrative notifications and statistical filings under certain conditions. Hence, all foreign investments must be declared with the French Central Bank. Also, most foreign investments must be declared with the Public Treasury that verifies if any prior authorization is required. A prior authorization from the Ministry of Economy is required if such investments are made in “sensitive industries“, i.e., in sectors which may affect public order, public safety, public utilities, national defense... These restrictions apply to any foreign investors seeking to acquire either the control of a company or all or part of a branch of an undertaking whose registered office is located in France. These restrictions also apply to non-European investors seeking to acquire 33.33% or more of the share capital or voting rights of a company whose registered office is located in France. Moreover, the government may use &quot;golden shares&quot; in order to have a right of control in companies, which are preferred shares with particular rights attached, usually a right of decisive vote such as a right of veto.</td>
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<td><strong>Conditional offers:</strong> What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?</td>
<td>A tender offer for a public company must be unconditional. However, the following exceptions apply: -Minimum acceptance threshold; -In case of multiple offers, the bidder can make each offer conditional on the success of the other offers; -Competition approvals; -Corporate authorization.</td>
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<td><strong>Financing:</strong> If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?</td>
<td>If a buyer needs to obtain financing for a transaction, this condition will be included in the transaction documents as a condition precedent. The transaction will not be completed unless the condition subject to obtaining adequate financing will is satisfied. The typical obligations of the seller are to act in good faith in relation to the negotiations and the conclusion of the agreement. Pursuant to provisions of article 1112-1 of the French Civil code, the party who knows information which may be decisive in relation to the conclusion of the contract must disclose it to the other party. The seller shall assist the buyer in completing the conditions precedent.</td>
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### Minority squeeze-out: May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Following a buyout offer, or within three months following the closing of a successful public offer, a controlling shareholder of at least 95% of the share capital and voting rights of the target, can automatically acquire from the minority shareholders the remaining of the share capital and voting rights. In this situation, the following conditions must be met:

- The bidder have informed the Financial Markets Authority;
- The securities not tendered by minority shareholders do not exceed 5% of the company’s share capital and voting rights;
- The bidder provides the Financial Markets Authority with an independent expert valuation unless the squeeze out is made following a standard cash tender offer. The proposed price of the squeeze-out must not be lower than that of the prior public buyout offer or tender offer. The remaining securities of minority shareholders will be de-listed and automatically transferred to the bidder.

### Cross-border transactions: How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border transactions can be structured by: merger, demerger, partial contribution of assets, asset purchase, Share purchase.

**The key steps of a cross-border merger are the followings:**

- Appointment of the independent appraiser in each merger company;
- Draft a common merger agreement containing specific information;
- Filings and legal announcement;
- Board report;
- Worker’s council consultation;
- General meeting approving the transaction;
- Compliance control;
- Legality control.

**Specific laws and regulations applying to cross-border transactions are, for example, the followings:**

- Regulation no. 2157/2001 and EU directive no. 2001/86/CE dated 8 September 2001 relating to the SE;
- EU directive no. 2005/56/EC dated 26 October 2005 relating to cross-border mergers transposed into French law by a law dated 3 July 2008;

### Waiting or notification periods: Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

Liabilities and contracts are not automatically transferred on the purchase of business assets. The consent of the relevant party to the transferred contract must be obtained in advance. This is generally the case for contracts entered into in consideration for the personality of the contracting parties (intuitu personae).

In addition, an opposition period shall apply in relation to the acquisition of assets of a business. French law gives the seller’s creditors the right to oppose payment by the buyer directly to the seller to ensure that their debt will be paid. The purchase price can be freeze for 25 days.

In the event the company is listed on a regulated market, a prior notification must be done to the Financial Markets Authority. The target’s works council must be convened by the target’s chief executive officer to inform the works council of the offer. The bidder
| **Sector-specific rules:** Are companies in specific industries subject to additional regulations and statutes? | Investments companies in specific industries may be subject to additional regulations as set out above under the question relating to the “Government influence”. Investments in sectors such as pathogenic or toxic agents, or Security IT products and systems must obtain a prior authorization of the French Ministry of Economy and Finance.

A prior authorization from the Prudential Supervision and Resolution Authority (ACPR) is required in relation to banking activities or from the Audiovisual Council and the French national electronic communications and postal regulation authority (ARCEP) in relation to media activities. |
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<td><strong>Tax issues:</strong> What basic tax issues are involved in business combinations?</td>
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| **Labour and employee benefits:** What is the basic regulatory framework governing labour and employee benefits in a business combination? | Business combinations entail the automatic transfer of all employment contracts to the new entity (section L.1224-1 of the Employment Code). Such contracts are continued under the same conditions, and the employees’ seniority is maintained.

When the sale of a middle sized company with less than 250 employees is envisaged, employees must be preliminary informed of the operation. The ability to engage into redundancy procedures in cases of business combinations is restricted. |
| **Restructuring, bankruptcy or receivership:** What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring? | If the target is in bankruptcy or engaged in a similar restructuring, a court decision is required before the merger is realized.

Without obtaining the court approval, there is a general prohibition of any transfer of assets.

Otherwise, the target company needs to be sure that the business combination is included in the corporate rehabilitation plan. |
| **Anti-corruption and sanctions:** What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations? | See above |