

Normand
associés



SUMMARY GUIDE

TO DOING BUSINESS IN France

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INTERNATIONAL
ALLIANCE
OF LAW FIRMS

1. Introduction

Doing business in France, according to the *Doing Business* 2012 ranking by the World Bank Group, is not always an easy task, especially when it comes down to protecting investors and registering property¹. We hope this Guide will help you get acquainted with various aspects of French legislation. It is not meant to be exhaustive, but to outline some of the legal questions one might come across when doing business in France. For personal legal advice, please contact us directly.

This publication is current as of January 2013.

2. Our firm

Normand & Associés was founded in 1950. It operates in the strategic areas of business law, and acts on behalf of corporate and institutional clients, local authorities, government bodies, in France and globally.

Key areas in which the firm operates are :

- **Litigation** : we act before all judicial, administrative and arbitration courts, and leverages an extensive expertise based upon over 60 years of practice.
- **Consulting** : we assist our clients in the identification and prevention of potential legal disputes, by deciding with them of the most appropriate strategies, by drafting contracts and during negotiations.
- **Arbitration and mediation** : we act as arbitrator and mediator.

3. Judicial System

The French judicial system is comprised of two sets of parallel but independent court systems : an administrative system and a judicial one.

The administrative system has three levels of jurisdiction :

- the State Council (*Conseil d'Etat*, which sits in the Palais Royal, across the street from our firm!)
- administrative appellate courts
- first instance tribunals

The judicial system has two levels of jurisdiction, plus a higher court (*Cour de Cassation*) which controls the decisions of the lower courts :

- the Supreme Judicial Court (*Cour de Cassation*)
- appellate courts
- first instance tribunals

¹ In 2012 France is ranking respectively 82nd and 146th out of 185 economies.

The administrative judiciary (*Ordre Administratif*) has jurisdiction over matters concerning administrative law and cases in which the Administration is involved.

The judicial system (*Ordre Judiciaire*) handles criminal, civil and commercial matters for disputes arising between private parties. The principal civil court is the *Tribunal de Grande Instance*, which has general jurisdiction over non-commercial matters. The *Tribunal de Grande Instance* also has specialised jurisdiction over certain matters important to businesses, notably trademarks and patents.

However, many cases go before lay courts, at least at first instance. In particular, Commercial Courts having general jurisdiction over commercial matters are made up of representatives of the business community. Employment tribunals are composed of representatives of employers and employees.

The Constitutional Council (*Conseil Constitutionnel*) is not a court ruling on the merits of individual cases. It examines legislation and decides whether it is in conformity with the Constitution. Legislation can be referred to it, before being promulgated, by 60 members of the National Assembly, 60 members of the Senate, the President of the National Assembly, the President of the Senate, the Prime Minister or the President. Since the 10th December 2009 Act, legislation can also be referred to it by a court of the administrative or of the judicial system when, during a trial, a claim of unconstitutionality (Question Préalable de Constitutionnalité) is made that presents a particular difficulty, is made by a party.

The application for a priority preliminary ruling on the issue of unconstitutionality is the right for any person who is involved in legal proceedings before a court to argue that a statutory provision infringes the rights and freedoms guaranteed by the Constitution.

An application for a priority preliminary ruling on the issue of constitutionality must be made during court proceedings.

The court called upon to hear such proceedings will, when such an application is made, promptly look into this matter. It will decide whether the application is admissible and if the conditions laid down by the Institutional Act have been met.

If these conditions have been met, the court will then transmit the application to the State Council ("Conseil d'Etat") or the Supreme Judicial Court ("Cour de cassation").

The State Council or the Supreme Judicial Court will then proceed to look more closely at the issue raised and decide whether or not to transmit the application to the Constitutional Council

Once conditions of admissibility have been complied with, the Constitutional Council, to whom the application will have been referred by the State Council or the Supreme Judicial Court, will give its ruling and, if need be, repeal the challenged statutory provision.

The claim of unconstitutionality (Question Préalable de Constitutionnalité) has been implemented since March 1st 2010. From the 1st of March 2010 to the 1st of September 2012, the State Council and the Supreme Judicial Court have referred 281 "Questions Préalables de Constitutionnalité" to the Constitutional Council, ie 21% of the claims transmitted by lower courts or raised before them.

The Constitutional Council has ruled on 231 decisions, and 26% of these decisions decided that the provisions referred were either totally or partially unconstitutional.

The two main areas affected by these decisions are criminal procedures and taxes.

Prior to this reform, it was impossible to challenge the constitutionality of a statute which had come into force.

Now people involved in legal proceedings will be vested with this new right under Article 61-1 of the Constitution.

4. Dispute resolution

Disputes may be resolved through the judicial system or through alternative methods such as mediation or arbitration when the parties have agreed to it.

Length of court proceedings

Court litigation is often a two stage process, in that there is usually an automatic right to appeal, which is often exercised. When giving estimates of length of proceedings, it is therefore prudent to reason in terms of a decision at first instance plus an appeal. For example, in the case of a commercial matter heard in Paris and going to appeal, the proceedings are unlikely to be concluded in less than a couple of years.

Appeals are rehearings rather than a review of the previous decision. Parties can therefore use new evidence and arguments, although there are restrictions on the bringing of new claims.

The general rule is that an appeal will operate an automatic stay of enforcement of the first instance decision. However, a first instance court may order provisional enforcement of its decision and certain decisions are provisionally enforceable as of right (for example certain elements of awards in employment cases).

Final appeals go to the *Cour de Cassation*, essentially on matters of law only and this form of appeal rarely suspends the decision of the court below. This form of appeal is not a rehearing and if necessary, the *Cour de Cassation* will remit the case for a new hearing before a different Court of the Appeal.

Costs

The general rule is that the successful party in proceedings will be awarded costs. However, the award of costs will not cover the real costs of litigation. There are two orders for costs. The first is an order for what is known as *dépens*. This essentially covers court and service fees, plus a small amount of taxed fees of the lawyers. However, it also covers the cost of the fees of a court-appointed expert, which can be substantial. The second order made for costs is made under article 700 of the Civil Procedure Code and is a contribution towards costs not covered by *dépens* (i.e. lawyers' fees).

When litigating in France, parties should work on the basis that most of their real costs will not be recoverable.

Mediation

Mediation of disputes remains rare in France, although there is a growing body of support for it among judges and practitioners.

The Civil Procedure Code contains modern provisions facilitating the use of mediation and recent case law has favoured enforcement of agreements to mediate.

A recent bill ("ordonnance") of the 16th of November 2011 defines the mediation and establishes a common status to all mediation disputes.

This bill implements the EU Directive 2008/52/CE of the 21st of May 2008 and aims at contributing to the development of alternative modes of resolving disputes.

The decree N° 2012-66 of the 20th of January, 2012 concerning the amicable resolution of disputes specifies rules applicable to each of the modes of amicable resolution of conflicts.

Arbitration

French law has a strong policy favouring international arbitration, perhaps owing to the presence of the ICC in Paris. This is reflected in a number of ways. For instance, if despite an arbitration agreement a party brings an action before a French court in relation to a dispute arising out of the underlying contract, the court will dismiss the action and invite the parties to refer their dispute to arbitration. This will also be the case if the validity of the arbitration agreement is contested. The arbitral tribunal has primary jurisdiction to rule on the validity of the arbitration agreement

An important arbitration reform came into effect on the 1st of May 2011. This reform aimed at:

- modernizing the French law of the arbitration, both internal and international;
- softening rules relative to the compromise of arbitration, to the exequatur and to the notification of the arbitration judgments;
- allowing in particular the authority of the arbitration jurisdiction to pronounce, towards the parties in the arbitration, provisional and conservatory measures;
- dedicating the place of the French judge as the judge acting in support of the arbitration procedures ("juge d'appui");
- and finally clarifying and improving rules relative to the appeals regarding arbitration.

5. Corporate law

5.1 Structures for doing business

There are numerous types of company structure which are provided for by French Law, however today the great majority of trading entities in France are limited liability companies and have taken the form either of a *Société Anonyme* (SA) or a *Société à Responsabilité Limitée* (SARL). The relatively newly introduced *Société par Actions Simplifiée* (SAS) is finding favour with entrepreneurs, having the advantage of combining a greater flexibility in its organization with the protection afforded by the limitation of liability. This is especially reflected through the Memorandum and Articles of Association (by-laws) which take on a much more contractual nature regarding the S.A.S. whilst the SA and SARL must make room for provisions set out in statute law.

The SA and SAS are stock companies whose shares are freely transferable and negotiable unless the by-laws contain contrary dispositions. The rules governing the SARL are aimed at preserving personal bonds between shareholders as the shares of the SARL are not freely negotiable and any new shareholder must be approved by a vote of the other shareholders.

Unlike the SA which has a minimum of seven shareholders, the SAS and the SARL have no minimum number of shareholders.

5.2 Requirements for the establishment of a business

Formal requirements

Registering a company is the first and most important step in establishing a business in France. In practice, the *Centre de Formalités des Entreprises* (CFE) handles all formalities related to the trade register in the court (RCS i.e. Registre du Commerce et des Sociétés, Tribunal de Commerce), statistics (INSEE), tax authorities (Centre des Impôts), social security (URSSAF), labour (Direction Départementale du Travail et de l'Emploi), health insurance (Caisse régionale D'assurance Maladie), unemployment insurance, pension, Pôle Emploi (Public Service for Employment which includes the former ANPE and ASSEDIC since 2009), and similar bodies.

Substantial requirements

Antitrust law

Compliance with antitrust laws is one aspect of establishing a business that cannot be overlooked. French law contains similar rules to European Union legislation concerning anti-competitive agreements and abuse of a dominant position. Fines may be subject to a tax of up to 5% of the turnover earned, before taxes, in France during the previous fiscal year. French law also provides for criminal and civil sanctions against restrictive trade practices such as price fixing, unfair commercial practices, and discriminatory pricing.

The amount of the fine cannot exceed 10% of the turnover realized during the previous fiscal year by the company participating in the breach.

Merger control in France is an administrative process under the responsibility of the Minister of Economy. A concentration operation is controllable if it attains one of the two alternative thresholds (market share threshold / turnover threshold). The fact that an operation is controllable does not make notification compulsory, since notification is

optional in France. However, it does give the administration the right to investigate the operation.

The European merger control does not add to the French one, it replaces it when the operation reaches another set of thresholds. The European Commission then has jurisdiction to review the operation.

Created in 2010, the DIRECCTE ("Directions Régionales des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi") are regional offices, working with the region's Prefect, to ensure the loyalty of markets and the safety of the consumers.

6. Tax Law

6.1 Tax on individuals

France has entered into many international conventions with foreign countries to avoid double taxation. Therefore, any situation presenting an international aspect requires checking those conventions.

Any individual, whether a French or foreign national who establishes residency in France is subject to French **income tax** on his/her worldwide income. Under French law, one is resident in France for tax purposes if any one of the following four conditions is met:

- having a permanent home in France,
- spending most of one's time in France (at least 183 days during a calendar year, or even less if one spends more time in France than in any other country),
- having one's main professional activity in France,
- having one's center of economic interest in France.

The income tax is based on the household's net revenues of the previous year, which include any income of a spouse or children under 18. The rate of taxation is also proportional to the size of the household (the more people in the household, the lower the rate). It is a progressive rate by brackets ranging from zero to 40%.

France 2013's budget introduced a new 45% tax rate for revenues over 150.000 euros.

Individuals are subject to various other taxes such as :

- inheritance and gift tax (progressive rate)
- real estate and habitation tax (only owners are subjected to the former whereas the latter is levied on owners and tenants alike)
- wealth tax applicable to property exceeding € 800.000 .

In addition, social security and welfare system contributions are levied on earned incomes and sometimes also on substitute income, property income and proceeds from fixed-interest securities. These contributions are :

- *The Contribution Sociale Généralisée* (CSG, widespread social security contribution);
- *The Contribution au remboursement de la dette sociale* (CRDS, contribution for the reimbursement of the social debt).

6.2 Tax on corporations

Most French limited liability trading companies, Sociétés Anonymes (SA), Sociétés par Actions Simplifiées (SAS), and a majority of Sociétés à Responsabilité Limitée (SARL), are subject to the **Impôt sur les Sociétés** (I.S.) being the French equivalent of Corporation Tax in the UK and other countries.

This tax is payable upon the net profits of the corporation and the rate is currently fixed at 33.33%, plus a surtax of 3%, which brings the effective tax rates to 34.33%.

A reduced rate applies to a limited number of Long Term Capital Gains.

Taxable profit is calculated on income minus deductible expenses. Income encompasses all proceeds from business, sales or services. Only expenses incurred as part of the business conducted can be deducted.

Other significant direct contributions are social security contributions levied on gross salaries at 35% to 45% for the employer.

A specific local business tax, known in French as the *Taxe Professionnelle* (TP), was payable by all French business entities until 2010 after the Government decided to do away with it and to replace it by a *Contribution Economique Territoriale* (CET, Territorial economic contribution) in order to lighten the fiscal burden on companies and increase as a result the competitiveness of French companies.

Subject to very limited exceptions, all economic activity in France is subject to VAT. VAT is not an expense for the company, as input VAT can be offset against output VAT.

There are several different rates, which are currently applicable, but the standard rate is 19.6%. The VAT rate will rise from 19.6% to 20% from the 1st of January 2014. There will also be an increase in the reduced VAT rate from 7 to 10 %, being specified that the average VAT rate in Europe is now over 21%.

Stamp or registration duties are payable on transactions on shares, real estate, intangible assets of all business entities. They also apply to leases, donations, successions, and some specific types of contracts.

Rates vary from 1% to 15%. They are payable by the purchaser or the tenant, but payment may also be claimed from the vendor in certain cases.

7. Intellectual property law

The laws for the protection of intellectual property are contained in the Intellectual Property Code which came into force in 1992, gathering various legislations in the areas of :

- artistic or creative rights (approximately equivalent to copyright), laws of March 11, 1957 and July 3, 1985 ;

- patents, law of January 2 1968 (amended);
- trademarks, law of January 4 1991.

Know-how is also protected under French law.

Over the years, the IP code has been amended numerous times in order to reflect changes in this field. In 2004, certain modifications were brought to the French IP Code on issued such as the protection of biotechnological inventions and bioethics.

Some recent laws should also be mentioned such as :

- 2006 “DADVSI” law (*Droit d'auteur et droits voisins dans la société de l'information*) ruling on Digital Rights Management,
- 2007 law on reinforcing procedure on counterfeiting,
- 2009 “HADOPI” law on creation and the internet , ruling on unlawful downloading

Moreover, all European Union legislations with respect to intellectual and industrial property are fully applicable in France, which is also a party to a number of international treaties. Most of the recent regulatory French texts are issued from European legislation.

Most of the rights under intellectual and industrial property must be registered with a centralized authority, the INPI (*Institut National de la Propriété Intellectuelle*). This office handles any agreements on industrial rights and know-how, as well as the corresponding royalties, which have been consented by a person or a corporation domiciled in France for the benefit of foreign corporations or persons.

Within France and internationally, rights are protected according to the date of registration.

Notarization is not required with respect to industrial/intellectual property. Nevertheless, patent, trademark and design licenses, as well as assignments, must be filed with the INPI in order to be valid. However, Decree n°2004-199 has clarified and simplified filing procedures with the INPI.

In France, there are regulatory guidelines for licenses. There is much more freedom for parties who wish to draft industrial property licenses agreements (trademarks, patents and/or know-how). However, any license agreement for a patent which has not been put into writing will be deemed void.

As far as copyright is concerned, there are many stringent legal requirements with respect to the licensing of rights to third parties, in order to protect the artist or author (e.g. obligation of a written agreement which specifies the exact scope of the rights transferred).

Local anti-trust and competition laws do apply to licenses.

A very recent reform should finally be mentioned here:

At present, the European patent requires a deposit in front of the European Patent Organization (EPO) in Munich and then a validation in every service of Members States in order to obtain a national title in every State.

Protecting an invention in Europe is therefore expensive for companies in the absence of a unified system.

The European Parliament has voted for the Unitary Patent Regulation on December 11th, 2012.

This unified institution should insure a better legal security, a coherence in disputes of patents, a reduction of costs of contentious procedures and a better efficiency in the fight against forgery of patents certificates. It should also insure an automatic protection in the 25 participating Members States.

This international agreement which just created the unified jurisdiction concerning patents will come into effect on January 1st, 2014 of after its ratification in thirteen contracting parties States, provided that United Kingdom, France and Germany take part in this agreement.

8. Labour law

Over the years, more and more laws have been passed to regulate labour relations in so much that foreigners are often surprised at how regulated labour relations are in France.

Labour relations are governed by the Labor Code and collective agreements (*conventions collectives*) that reflect the practices of each economical sector.

Employment regulations

The legal working time in France is 35 actual hours per week, or 1,600 hours per year. Beyond that, any extra time is considered as overtime and involves an overtime premium. A limit on overtime may be set in the various collective agreements.

An employee cannot work more than 6 days per week. Therefore at least one full day (24 hours) of rest has to be given, which is usually Sunday. However, depending on sector and geographical area, some companies may be authorized to do business on Sunday.

If a company's business fluctuates in a predictable although uneven manner during the year, the hours worked by employees can be averaged out over the full year without any extra costs. The maximum working time is 10 hours a day and 48 hours a week, with a maximum of 44 hours per week on average over a period of 12 weeks.

The 35-hour week rule does not apply to executives and managers whose work does not directly relate to production. Their maximum working time is set to 13 hours per day and 217 days per year.

Employees are entitled to 5 weeks paid vacations (2.5 days of paid vacations per month). There are at least 11 public holidays each year but only one is compulsory: May 1st.

The minimum wage or SMIC (*Salaire Minimum Interprofessionnel de Croissance*) is determined by the government and revised at least every year in order to adjust it to the cost of life. The minimum gross salary is currently €9.43per hour or €1430.22per month (on a 35 hour week basis).

Hiring and firing requirements

Hiring a new employee involves, before he/she may actually take on his/her task, filing a hiring statement (DéclarationPréalable à l'Embauche, or DPAE, which replaces the former DUE ("Déclaration Unique d'Embauche") which is to be sent to the URSSAF, the French social security tax office (this may be done electronically). The URSSAF will then complete themselves all required formalities, such as registering the employee for social security, unemployment insurance, etc. New employees are subject to a medical check-up.

The Pôle Emploi may assist companies in recruiting their staff, by providing to potential applicants information about the position or helping in the selection process, offering and organizing preliminary training sessions.

Dismissal

There are two main types of work contract in France : the *contrat à durée indéterminée* or CDI, which has no set time limit and the *contrat à durée déterminée* which is only valid for a fixed term.

A fixed term contract cannot be interrupted in anticipation, except for serious breach of contract or in case of force majeure. It can, however, be interrupted if both parties agree to it, with no specific procedure.

An indefinite term contract can be terminated on real and serious personal grounds (misconduct) or for economic reasons. The law provides for a specific procedure to be followed including:

- a preliminary meeting with the employee where the company explains the reasons why a dismissal is being considered and hears anything the employee wishes to respond.;
- a letter of dismissal, that can be sent no sooner than 48 hours following the preliminary hearing, by registered post, wherein the employer must state the ground for dismissal.

The employer must pay various indemnities, the number and nature of which vary depending on the grounds for dismissal, the employee's status and his seniority.

The contractual termination of a work contract ("Rupture Conventionnelle du Contrat de Travail") is a case of breach of a French work contract introduced by the law N°2008-596 of June 25th, 2008.

It allows the termination of the contractual relation between the employee and the employer by means of an agreement between these two parties. This reform introduced in France an amicable breach of work contracts.

This procedure only concerns indefinite term contracts and is exclusive of the dismissal or the resignation.

It cannot be imposed by one or other of the parties.

This agreement is subjected to the imperative measures fixed by the Labor code, which intend to guarantee the freedom of consent of both parties.

Special regulations apply to layoffs for economical reasons, such as :

- a layoff plan (*plan de licenciement*) if over 10 employees are affected;
- resettlement or outplacement support;
- consultation with the staff representatives;
- information and reports to the Ministry of Labor;
- payment of severance benefits.

9. Real Estate Transaction

Buying property in France is a two steps process that includes a preliminary contract and a final contract.

Preliminary contract

There are several kinds of preliminary contracts, but the most common one is referred to as *Compromis de Vente*. It is a legal document binding on both parties. It should not be taken lightly as it really commits both sides to the sale. At this stage the buyer pays a deposit of a minimum of 10% of the purchase price which remains 'blocked' in a special account at the notaires office until such time as completion takes place or the purchase is aborted. At this stage the property is taken off the market. It is always stipulated in the *Compromis* how the purchase is going to be financed. If the buyer intends to take out a mortgage, a substantive clause (condition precedent) will be included in the *Compromis* to protect the purchaser in the event that a loan is not made available

The *Promesse de Vente* is another kind of preliminary contract, although a less common one. By signing it the vendors still commit themselves to selling the property to the purchasers, but this commitment takes the form of promising not to sell it to anyone else within a stated period, usually 3 months. A deposit of between 5% and 10% is paid and again the purchaser will usually forfeit the deposit if they do not go ahead.

Once the *Compromis* has been signed there follows a period of generally 6 - 8 weeks in which the searches are carried out to ensure that the property is not subject to any limitation or impediment pursuant to town planning legislation and during which time the purchaser will be required to resolve the financing of the purchase. Where relevant, the sale may be subjected to a pre-emptive right to the benefit of the town.

These searches and the other contractual matters are carried out by the **notaire**. The notaire is unlike most European Solicitors/Lawyers as he is not appointed to act for either party in the transaction but as a public official whose duty is to the State. Their function is to ensure that the transaction is carried out legally and accurately and in accordance with the proper processes and to give the transaction absolute validity that cannot be contested. Their fees are non negotiable and are identical whether two notaires are involved in the transaction or only one. Therefore retaining two notaires, one for the buyer, one for the seller does not add cost.

In this event, the sale does not proceed and the deposit is returned. In the event of the discovery of a 'planned nuisance' through the searches, the buyer can withdraw and the deposit is returned. Should, however, the buyer break the contract, the deposit is paid to the vendor as an indemnity - conversely, should the vendor break the contract, the deposit is returned to the purchaser.

Final contract

The final contract, referred to as the *Acte de Vente* is signed at the notaire's office and the property passes to the buyer, who must pay the balance of the purchase price. It should be noted that the balance must be in the notaire's possession before the contract is signed.

From the signing of the contract the purchaser is responsible for the insurance of all the buildings on the property.

Fees

The buyer of a French real property pays legal fees and registration taxes which amount to approximately 7.5% of the purchase price (except if the sale is liable to a 19.6 % VAT, which is the case for , among other cases, buildings that are new or not older than 5 years, or for building sites) , including any geometrist's costs that might have been incurred such as establishing boundaries, repositioning boundaries and preparing plans for the *Acte de Vente*. These fees are paid to the notaire on the day of signature of the *Acte de Vente* and are paid as an 'all encompassing' sum together with the balance of the purchase price.

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