

LEGALINK

INVESTMENT AND BUSINESS START UP IN FRANCE

(A) Legal system

1. **What is the legal system (i.e. common law system, civil law system or both) in your country?**

France's has a dual civil-law based legal system divided in two branches between public and private law, which are respectively applied by public and private law jurisdictions (private law being itself divided between civil and criminal law).

2. **What are the major law courts in your country?**

Major law courts in France are Courts of appeals (*Cours d'appel*).

The *Conseil d'Etat* and *Cour de Cassation*, respectively the "supreme" courts for public and private matters are not to be considered themselves as third degree jurisdictions as they only review points of law by ruling on the legality of the decisions brought by the various Courts of appeal.

3. **What are the sources of laws (such as constitution, statute law and common law) in your country?**

Sources of law in France are a *corpus* of rules comprising the Constitution and constitutional rules, international conventions and treaties, European law, Acts passed by Parliament, case-law, and finally custom, this collection being ordered in accordance with a hierarchy of rules

4. **What is/are the official language(s) in your country?**

Official language is French.

(B) Foreign investment

5. **Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?**

Two procedures (which can be cumulative) can be applied to foreign investors:

- **Statistical or administrative return:**

Formalities to be carry out by foreign investors	Hypothesis
Return for statistical reasons to be addressed to the <i>Banque de France</i>	In case of an acquisition of 10% or more of the equity or voting rights in a resident company – or when equity or voting rights in the company rise above the 10% threshold, if the amount of these transactions exceeds EUR 15 million.
Return to be addressed to the Treasury Directorate of the French Ministry for the Economy and Finance	<p>When new companies are created, if the investment exceeds EUR 1.5 million.</p> <p>Transactions (with no minimum amount) that result in the acquisition of all or part of a business line.</p> <p>Acquisition of a direct or indirect equity interest in (or any other transaction with) a French company amounting to more than one-third of its shares or voting rights (unless the investor already has a majority interest in the French company)</p>

- **Prior authorization to be obtained in order to operate in some “sensitive” sectors** (such as the trade of weapons, private security services, goods and technologies with a dual application, etc) in case of:

- Acquisition of a controlling interest in a French company and the acquisition of all or part of a business line by a foreign investor;
- For investors from countries outside the European Union 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).

Some particular rules may also apply in case the activity of a NewCo is considered as a regulated profession (accounting, architecture, medicine and pharmaceutical sector, transporters of goods or people) which have to be *per se* registered with the respective authorities or professional bodies.

6. Are there any exchange control or currency regulations in your country?

Since France is a member-State of the European Union, there are no specific exchange control or currency regulations.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

The French State Agency “Invest in France” centralizes the instructions related to grants and incentives available to foreign individuals or companies, which may often depend on the contemplated sector.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

From our standpoint of legal practitioners, foreign investors tend to use mainly the SAS (*Société par Actions Simplifiée*) corporate form as their business vehicle rather than any other corporate forms.

Please provide details on:

i. Registration formalities;

The registration process requires at first that a bank account is opened in the name of the company in the process of incorporation before any formalities are started.

Once the initial share capital is deposited on this account and the articles of incorporation are signed, the relevant documentation and its appendixes have to be filed with the competent Clerk office of the local Commercial Court.

Please note that the articles of incorporation have to be registered (free of charge) with the tax authorities before this filing occurs.

Once these formalities are completed, the local Trade and Companies Registry emits a first temporary trade register excerpt which is the equivalent of a certificate of incorporation.

The business identification numbers (*SIREN* and *SIRET*), which are often required on business documentation, are provided to the company at a later stage

ii. Minimum (and maximum) share capital;

The SAS’ and SARL (*Société à responsabilité limitée*; equivalent of a limited liability company)’s minimum share capitals are set by law at EUR 1.

The SA (*Société anonyme*; equivalent of a limited company)’s minimum share capital is set by law at EUR 37,000.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

Share can be issued for non-cash consideration for some corporate forms. Although prohibited in SA corporate form companies, in SAS and SARLs for instance sweat equity is permitted. However, partners offering the company their time, work and professional knowledge do not contribute to forming the share capital but have rights to shares in company (share of profits and participation in collective decisions).

iv. Any restrictions on foreign shareholders;

At the exception to those listed under heading (B) 5 above, there are no specific restrictions with respect to foreign shareholders.

v. Management structure and any restrictions on foreign managers;

The only corporate office imposed by the law for an SAS is the *Président*, which can be a legal or natural person. It is possible, if provided by the articles of association, to appoint one or several Managing Directors (*Directeur Général*) and/or deputy Managing Directors (*Directeur Général Délégué*).

Non European-Union individuals, when not French residents, must process their original criminal records (or equivalent) through Prefectural authorities before being appointed.

vi. Directors' liability;

Directors are subject to civil liability in connection with acts or omissions: (1) committed in violation of statutory or regulatory provisions, (2) violating any provision of the corporation's articles of incorporation or bylaws or (3) attributable to "errors" in management. Directors are also subject to criminal liability in various circumstances (including misuse of corporate funds or assets in a manner known to be contrary to the interests of the corporation, but also for violations of certain provisions of corporate law, such as unlawful dividend distributions, financial assistance and the requirements with respect to the issuance of shares).

vii. Parent company liability; and

In limited liability corporate form companies, the liability of parent companies is limited to their contributions except in case of civil and criminal lawsuits.

viii. Reporting requirements (including filing of accounts).

When exceeding some thresholds which depend on the corporate form or when entirely held by a sole legal person shareholder (in case of SAS corporate form), incumbent and statutory auditors are to be appointed.

Also, most of French companies are required to file their annual accounts with the clerk office of the relevant commercial court (*Greffe du Tribunal de Commerce*).

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The main legislation regulating employment relationships in France is the French labor Code. It sets out mandatory rights, obligations, benefits and protections for employees and employers in France. Any term of an employment contract may differ from provisions of the labor Code only to the extent that it is more favorable to the employee or provided by the law.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

A written employment contract is not required under French law for full time indefinite term employment contracts. It is however usual that an employment contract be drafted in any case. Written employment contracts are required for specific employment contracts and situations *e.g.* part time indefinite term contracts, full or part time fixed term employment contracts, interim employment contracts, *etc.* Such

contract will also have to contain particular language. Furthermore, the employment contracts should be written in French.

In addition to express terms, an employment contract also consists in a number of terms implied by the French labor Code (which parties can exclude only to the extent that exclusion is more favorable to the employee), by the collective bargaining agreement or the industry wide agreements applicable to the company, by internal rules and customs, provided they comply with the labor Code.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

A distinction should be made between foreign nationals, members of the European Union (EU) or European Economic Area (EEA), who are not required to have a residence permit with permission to work according to the “free movement of persons” principle, and foreign nationals who are not members of the EU or the EEA and who must be granted a residence with a work permit.

Should the foreign national who is not member of the EU or the EEA already live in France, the employer must verify that the said foreign national has a valid residence permit authorizing him/her to work as an employee. If not, it is to the foreign national to obtain an authorization from the prefecture of his/her place of residence by requesting a change in his administrative status.

Should the foreign national, who is not member of the EU or the EEA, live abroad, the employer has to initiate an admission procedure.

Firstly, the employer shall send an application file to the foreign workforce Labour Administration of the contemplated workplace of the future employee, at least two months before the contemplated start date of the activity. The Labour Administration will investigate the case and decide, whether to issue a work permit or not.

If the authorization is granted, it is forwarded to the French Office for Immigration and Integration (OFII), which transfers the file to the French consulate competent for the employee’s residence place.

The employer must pay a tax for the benefit of OFII. The amount depends on the length of the employment contract and the amount of salary (between EUR 106 and 260).

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Should the number of workers hired in a Company exceed certain thresholds, employees will be entitled to elect personal representatives (staff delegates and works council members).

The French Labor Code provides that several members of the works council shall participate to board meetings with consultative powers.

Members of the works council and personnel delegates may have to be consulted in relation to corporate transactions, such as redundancies and disposals, before the decision to implement the said corporate transactions is made.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

There are employment protection laws in France such as, e.g. a minimum wage as provided by applicable regulations. Should the employee work 35 hours per week, i.e. 151,67 hours per month, the legal gross minimum wage is EUR 1.430,22 per month in 2013.

Applicable collective bargaining agreements may provide for higher amounts which shall then be applied to the concerned employees. There also are protection laws relating to legal working time (35 hours per week, to be extended under some conditions), paid vacation entitlements, strict law regarding terminations, protection awarded to staff representatives, pregnant women, sick employees, *etc.*

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

There are several pension systems in France.

Firstly, there is a legal basic State pension system run by the social security administration. Unless provided otherwise, and provided he/she has worked for a sufficient number of quarters, an employee is entitled to retire at the age of 60 years old if he/she is born before July 1st, 1951 and 62 years old if he/she is born after January 1st, 1955. The retirement age increases for employees born between these two dates.

The amount of the annual pension may be determined according to several factors, such as the duration of the registration to the Social security scheme, the employee's average annual base salary, pursuant to a social security ceiling defined each year and pension rates.

On top of the legal basic State pension system, there is a mandatory supplementary pension system, called AGIRC pension for executive employees and ARRCO pension for non executive employees.

These pension systems are conventional since they are established and governed by national cross-industry agreements.

An employee is entitled to benefit from accrued mandatory supplementary pension rights at the age of 65 years old if he/she is born before July 1st, 1951 and 67 years old if he/she is born after 1956. This age increases for employees born between these two dates.

However, an anticipated benefit is possible under specific conditions.

Finally, the French legislator encourages companies to implement a voluntary pension system by providing tax and social incentive mechanisms.

This pension system completes the first two systems by providing, in principle, a life annuity.

Such systems are financed by social contributions paid both by the employee and the employer.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

The termination of individual employment contracts is strictly regulated in France.

An indefinite employment contract can be terminated mainly through a resignation, a termination based upon personal grounds, a termination based upon economical grounds, an agreed termination.

Dismissals are subject to a compulsory procedure which includes an invitation to a pre-dismissal meeting, the holding of a pre-dismissal meeting during which the grounds for the envisaged termination are explained to the employee, who can be assisted, and the drafting of a duly grounded termination letter based upon personal or economical grounds.

The parties to an employment contract may also chose to terminate it through an amicable procedure, the agreed termination procedure which entails the filling of an administrative form and the implementation of a procedure including a labor administration decision.

In cases where the employee whose termination is contemplated is a personnel representative, a specific procedure must be applied, including notably, in some cases, the obligation to consult employee representatives before the decision is made and, in any case, to obtain prior authorization from the labor administration to terminate the employee.

A terminated employee is generally entitled to the payment of various sums: a termination indemnity, a notice period indemnity, a paid vacation indemnity, training rights, maintenance of health coverage and any outstanding amount owed to him/her upon termination.

A termination will be unlawful when not sufficiently grounded or undertaken in violation of the protective rules, *etc.*

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Terminations based upon economical grounds entail additional procedure obligations for the employer, on top of those mentioned above for terminations based upon personal grounds, such as the obligation to look for a redeployment position within the company or the group or even out of the group for the employee whose termination is envisaged, the obligation to apply selection criteria to select the employee who may be made redundant, the obligation to propose any position made available within the company within 12 months following the redundancy.

Multiple layoffs will also entail information/consultation of personnel representatives if any.

In cases where the company hires more than 50 employees and contemplates to terminate 10 employees or more within 30 days, the redundancy procedure would be more complex to implement as it requires:

- i. Drafting a Social Plan.
- ii. Consulting the staff representatives on the Social Plan.
- iii. Implementing a specific calendar to organize the meetings with the staff representatives, and respecting very precise dates and fixed-durations.
- iv. Holding a specific meeting with the staff representatives who can request the help of an accountant.
- v. Subjecting the process to the Labor administration which has very important attributions as it not only has to verify the correct application of the consulting procedure, but must also must verify and validate the Social Plan.

The social plan could entail additional costs. Some of the costs related to the social plan or the voluntary departure plan, will be negotiated with the personnel representatives insofar as French law does not provide for an exhaustive list of social measures: *e.g.* payment of a complementary departure indemnity, compensation for the creation of a company, financial assistance in the event that the employee must move to another region of France after being redeployed, training, *etc.*

A termination will be unlawful when not sufficiently grounded, or when no redeployment effort was made by the employer, when undertaken in violation of the social plan, *etc.*

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Please see below.

18. Under what circumstances are employees subject to taxation in your country?

A French tax resident is taxable on his/her worldwide incomes, unless tax treaties signed by France provide otherwise to prevent double taxation.

An individual is considered as a tax resident in France if one of the following criteria is met :

- His/her permanent household (usual residence of the individual's family) remains in France, even if he/she, for professional needs, remains in another country temporarily or for the greater part of the year. In the absence of household, tax residency is defined as the main place of residence in France (the person has to reside in France for more than 183 days in the same year);
- The individual exercise in France a professional activity (employed or self-employed), unless the activity is secondary;
- The individual has in France his financial interests (place of his principal investments, place of his business, *etc.*);
- The individual is a French national (if none of the above criteria applies).

Should the individual be a bi-national, his/her situation will be dealt with by the related national tax administrations.

19. What income tax or social security contributions must be paid by:

i. Employees?

When an individual is considered as a French tax resident, he/she has to fulfill the payment of a tax fixed according to the following yearly salary amounts and rates (valid as of December 5th, 2013):

- Below EUR 5,963: 0 %
- Between EUR 5,963 and EUR 11,896: 5,5 %
- Between EUR 11,897 and EUR 26,420: 14 %
- Between EUR 26,421 and EUR 70,830: 30 %
- Between EUR 70,831 and 149,999: 41 %
- Above EUR 150,000: 45 %

Concerning the social security contributions, they are calculated by multiplying the employee's gross salary (some contributions are based on the entire salary, contrary to other contributions which are based on a limited part of the said salary) by current rates which vary according to the risks covered (old-age insurance, family allowances, unemployment insurance, etc.).

It is usually considered that the applicable rate is 25 %, to be deducted from the gross salary. However this depends upon various factors.

In addition to these social security contributions, employees also pay a social tax called CSG and CRDS, created to diversify the sources of the social security financing. The cumulated rate of these two contributions is 8%, paid upon 98.25% of the gross salary (as of December 9th, 2013).

ii. Employers, in relation to their employees?

Employers are subject to the same social security contributions as employees but in a different proportion. It is usually considered that the applicable rate is 45% to be added to the gross salary. However this also depends upon various factors.

Employers are not subject to the CSG and CRDS contributions.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

In general all the profits generated in France are taxable in France even if generated by a foreign company. Conversely, the profits generated outside France by a French company are not taxable in France.

21. Under what circumstances are incorporations subject to taxation in your country?

An incorporation of a company would be subject to taxation in case of an asset transfer.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

Corporations are subject to the main following taxes (this list is not exhaustive):

- Corporations tax (*Impôt sur les sociétés*): the rate is currently fixed to 33.33% plus a surtax of 3%;
- Social security contributions are levied on gross salaries at a rate between 35 to 45%;
- Separate general social security contributions are levied on all income at a rate of generally 10%;
- Specific local business tax (*Contribution Economique Territoriale (CET)*) is payable by all French business entities. Its calculation is based upon the annual rental value of their tangible assets linked to a proportionate amount of the overall added value of the company. The CET is capped to a 3% rate of the added value of the company;
- Value Added Tax (*Taxe sur la Valeur Ajoutée - TVA*) : there are several different rates, which are currently applicable, but the standard rate is 19.6% (20,0% on January 1st, 2014) ;
- Stamp or registration duties are payable on transactions on shares, real estate, intangible assets of all business entities, they also apply to leases, and some specific types of contracts: rates vary from 1% to 15%.

23. Please explain how each of the following is taxed in your country:

There are no general rules regarding this matter, as each case will vary according to the applicable double-taxation treaty.

- i. Dividends paid to foreign corporate shareholders?**
- ii. Dividends received from foreign companies?**
- iii. Interest paid to foreign corporate shareholders?**
- iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?**

Royalties paid to a non-resident entity are subject to a 33.33% withholding. The tax may possibly be reduced or discarded under an applicable double-tax treaty. In light of the specificity of each given situation, tax matters call for personalised advice.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

Intergroup loans are authorized under French law. However, they shall be consistent with the corporate purpose of the lending company and concluded under market conditions.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

As for question 23, France is party to a very important number of double-taxation treaties.

Therefore, there is no general rule regarding this matter.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

France has a comprehensive set of rules governing transfer pricing to prevent indirect transfers of profits to foreign countries by companies that control or are controlled by foreign companies, by over-estimating or under-estimating the price of goods or services French regulations and guidelines are based on the OECD guidelines. Article 57 of the French General Tax Code provides the main legal provisions on transfer pricing. Articles L13 AA, L13 AB and L13 B of the Tax Procedures Code define the transfer pricing documentary requirements.

At the time of drafting this report, several upcoming reforms which include transfer pricing regulations are currently discussed by the Parliament or under review before the French Constitutional Court.

27. How are imports and exports taxed in your country?

Within the EU, imports and exports are not subject to customs duties. Imports in France from outside the EU are subject to VAT. The standard VAT rate for importing items into France is 19.6% (20% from January 1st 2014), with certain products attracting VAT at the reduced rate of 5.5% (7% from January 1st 2014). Exports outside the EU are generally not subject to EU VAT.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

There is a wide network of more than 120 double tax treaties in France including all the EU countries, the US, Canada, Australia and Japan. The latest double taxation treaty is a bilateral treaty between France and China signed in November 2013. This double taxation treaty will shortly replace the 1984 China-France treaty. The list of the double tax treaty is available on the French Government's Tax Information Site [Tax information site](#). The full texts of the tax treaties and protocols are available on this site through an easy to use interface and guide to abbreviations (French language only).

(F) Competition

29. Is there any competition law in your country? If so, please give details.

The main principles governing competition were set forth in France by the Order No 86-1243 dated December 1st, 1986 on competition and freedom, which also established a competition authority with the powers to initiate proceedings, issue injunctions and impose fines ("*Conseil de la concurrence*", now "*Autorité de la Concurrence*").

Competition law has then undergone several reforms, notably by the Law No 96-588 dated July 1st, 1996 on loyalty and balance in commercial relations ("*Loi Galland*"), the Law No 2001-420 dated May 15th, 2001 on new economic regulations ("*Loi NRE*"), the

Law No 2008-3 dated January 3rd 2008 on the development of competition for the benefit of consumers (“Loi Chatel”) and the Order No 2008-1161 dated November 13th, 2008 on the modernization of competition’s regulation.

The main provisions of French competition law (including merger control) are set out in book IV of the Commercial Code, which relates to freedom of prices and competition.

In addition, European competition law is directly enforceable in France if an agreement or behavior is likely to affect trade between EU member states or if a merger exceeds the EU turnover thresholds. This notably includes articles 101 and 102 of the Treaty on the Functioning of the European Union and the EU Block Exemption Regulations. In addition, the European Commission has published different guidelines setting out principles which may also be taken into account by the French Competition Authority or French courts.

30. Are restrictive agreements and practices regulated by competition law in your country?

Article L.420-1 of the Commercial Code prohibits anti-competitive practices and agreements, through concerted practices, express or tacit agreements, or coalitions, when they have as their object or may have the effect of preventing, restricting or distorting free competition within the internal market.

Agreements and practices would notably be deemed to be anti-competitive when they are intended to:

- limit the access to the market or the free exercise of competition by other undertakings,
- prevent the price fixing by the free play of the market, by artificially favoring the increase or reduction of prices,
- limit or control production, opportunities, investments or technical progress,
- or
- share the markets or the sources of supply.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Pursuant to article L.420-2 of the Commercial Code, it is prohibited for an undertaking or a group of undertakings to abuse of a dominant position on the market. Such abuses may notably consist in refusal to sell, tied-selling, discriminatory conditions of sales, or termination of established commercial relations on the grounds that the other party refuses to agree to unjustified commercial conditions.

Article L.420-2 of the Commercial Code also prohibits, when it is likely to affect the functioning or structure of competition, the abuse by an undertaking or a group of undertakings of a client’s or a supplier’s situation of economic dependence.

French law also provides for specific provisions concerning transparency requirements and other prohibited practices referred as “restrictive competitive practices” (articles L 441-1 et seq. of the French Commercial Code).

32. Are mergers and acquisitions subject to merger control in your country?

Articles L 430-1 et seq. of the Commercial Code govern the merger control procedure.

Such procedure applies to mergers as defined by article L. 430-1 of the Commercial Code, i.e.: (i) merger of two or more previously independent undertakings, (ii) the acquisition of control of the whole or of parts of one or more other undertakings, directly or indirectly, whether by equity investment or purchase of assets, contract or any other means, and (iii) creation of a joint venture operating, on a long-term basis, as an autonomous economic entity.

It is required to notify to the Competition Authority the operation when the following cumulative thresholds, set forth by article L. 430-2 of the Commercial Code, are met:

- the combined aggregate worldwide turnover exclusive of tax of all of the companies or of all of the entities involved in the merger is greater than EUR 150 million; and
- the combined aggregate turnover exclusive of tax achieved in France by at least two of the companies or groups of natural persons or legal entities concerned is greater than EUR 50 million; and
- the operation does not fall under the EU merger control.

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?**
- ii. How is it protected?**
- iii. How is it enforced?**
- iv. How long is it protected?**

In France, the main intellectual property rights are patents **(a)**, trademarks **(b)**, copyrights **(c)** and designs **(d)**.

1. Patents

i. What is the nature of the right?

Pursuant to Article L.613-1 et seq. of the Intellectual Property Code, the owner of a patent owns the exclusive right to use the patented invention and to prevent others from making, using, offering for sale or importing the invention in or into France.

Under French Patent Law, an invention which is new and has an inventive characteristic can be patented by registration as long as it is susceptible of industrial use (Article L.611-10 of the IP Code).

The rights deriving from a patent application or a patent can be assigned in whole or in part. The patentee can also grant an exclusive or non-exclusive patent license

agreement. After three years from the grant of the patent (or four years from the filing date of the patent application), a third party can request to be granted a compulsory license if the patent has not been commercialized by its owner (Article L.613-11 of the IP Code).

ii. How is it protected?

Pursuant to Article L.612-11 of the IP Code, the grant of a patent in France is based on the registration by the National Institute of Industrial Property (INPI). Once the patent application is submitted, the INPI conducts a patentability study of the invention. Because the patentability study is limited to a prior art search, only an obvious lack of novelty prevents a patent from being granted. It is strongly recommended to conduct a patentability search before filing a patent application with the INPI in order to limit the risks of having a granted patent challenged in Court.

iii. How is it enforced?

Pursuant to Article L.615-1 et seq. of the IP Code, A patent gives the patentee the legal right to sue the alleged counterfeiters for manufacturing, using, selling or importing the invention subject of the patent or of a pending application.

Under French Intellectual Property Law, all intellectual property rights may be enforced both by administrative and court proceedings. The Intellectual Property Code provides for both civil and criminal sanctions. Penalties are up to three years of imprisonment and EUR 300 000 fine. The penalty is up to five years of imprisonment and EUR 500 000 fine in aggravated cases (dangerous products, criminal bands...) (Article L.615-14 of the IP Code).

The owner may request from the customs authorities to withhold and seize the infringing goods. The owner may also initiate summary proceedings before the judicial authorities to obtain measures to prevent an imminent infringement or to secure the evidence of an infringement (Article L.615-5 of the IP Code).

The owner may seek all necessary reliefs against the infringer, such as an injunction to cease infringement. The owner can also seek for damages and the Court must take into consideration the negative economic consequences including the lost profits suffered by the owner as well as the benefits made by the infringer. The owner can request the destruction of the infringing goods and publication of the judgment in newspapers or professional magazines, and/or obtain an injunction, as well as legal costs and expenses (Article L.615-14-2 of the IP Code).

iv. How long is it protected?

The patent is delivered for a term of 20 years starting from the filing date (Article L.611-2 of the IP Code).

Renewal fees have to be paid each year, from the filing, in order to maintain the patent in force, at the end of the anniversary month of the filing.

2. Trademarks

i. What is the nature of the right?

Pursuant to Article L.713-1 of the IP Code, the owner of a registered trademark has an exclusive right to use it in relation to the goods and services for which it is registered and

to prevent any non authorized third party from using it. Under French Trademark Law, a trademark does not exist unless it has been duly registered. The use of a trademark that has not been registered does not confer any right.

All signs that are distinctive and that are capable of being represented graphically can be registered as trademarks: words, names, acronyms, letters, numbers, devices, emblems, geographical names, holograms, colors, the three-dimensional form of a good or its packaging, sound and olfactory marks and any combination of the these signs.

The rights deriving from a trademark may be assignable in whole or in part. The trademark owner can also grant an exclusive or non-exclusive license agreement concerning the trademark. Pursuant to Article L 714-5 of the IP Code, when a trademark has not been used within 5 years from the publication of the registration, it may be cancelled through a court order. Subsequent use of the trademark can restore protection if no party has requested cancellation due to non-use in the meantime.

ii. How is it protected?

The application is filed with the INPI. The INPI makes a formal examination and an examination of distinctiveness, but does not search for prior similar or identical trademarks. A sign that is not distinctive at the time of the examination can be registered if the applicant demonstrates that the trademark has acquired distinctiveness through its use (Article L711-2 of the IP Code).

iii. How is it enforced?

The options abovementioned in section a) iii) are available to deal with infringing goods and impose measures against third parties using the trademark in the course of trade or business in France in relation to the same or similar goods or services without consent of the trademark owner (Articles L.716-1 et seq. of the IP Code).

Additionally the Intellectual Property Code provides for an opposition proceeding handled by the INPI which may be initiated within two months from the publication of a trademark registration in the Official Bulletin of Intellectual Property (Article L.712-8 of the IP Code).

iv. How long is it protected?

A trademark registration lasts for 10 years from the date of application and the registration is renewable for periods of 10 years. Renewals are possible until the last day of the last month of the 10-year period (Article L.712-9 of the IP Code).

3. Copyrights

i. What is the nature of the right?

Pursuant to Article L.111-1 of the IP Code, French Copyright Law grants authors both moral and patrimonial rights to the copyrighted work.

The patrimonial right of the author includes the right to copy and distribute the work, the right to sell the work for profit and the right to show or perform the work Publicly (Article L.122-2 of the IP Code). Pursuant to Articles L.121-1 et seq. of the IP Code, the moral right consists of four rights: the right for the author to present his/her work to the public; the right of paternity over his/her work; the right to preserve the integrity of his/her work; and the right to withdraw his work from the market after publication.

There are several exceptions to the exclusivity of the rights granted to the author (Article L.122-5 of the IP Code). Private and not for profit representations limited to the family circle are permitted. Copies or reproductions exclusively for the private use of the copyist are also authorized. Analyses, short citations, press reviews; diffusion of a public speech as news; parodies, imitations and caricatures are permitted, provided that the name of the author is clearly mentioned.

French Copyright Law protects intellectual works of any kind, as long as they are original and expressed in a medium : works of plastic arts, designs, paintings, sculptures, lithographs, engravings, architectural works, works of applied art, plastic works relating to architecture, science and other fields, fashion articles, software, books, brochures and other writings, conferences, speeches, sermons and other works of the same nature, titles, advertising campaigns, photographs, cinematographic works, screen plays and musical compositions with or without words (Article L.112-1 et seq. of the IP Code).

ii. How is it protected?

An author can register his/her work in order to benefit from a presumption of ownership. Meanwhile the registration is not a prerequisite for protection. French Copyright Law protects all intellectual works automatically, without any formal filling or other requirements, as long as they fulfill the two conditions of materiality and originality.

iii. How is it enforced?

Any representation or reproduction of the work, such as the copying, selling or performance of a copyrighted work without the authorization of the owner of the rights constitutes an act of infringement (Article L. 335-2 et seq. of the IP Code). The rules detailed in the above section a) iii) are applicable.

iv. How long is it protected?

Pursuant to Article L.123-1 of the IP Code, the author, or the party to whom the rights were transferred, may claim intellectual property rights to the work during the life of the author plus 70 years following the death of the author. Thereafter the work enters the public domain and may therefore be used freely. If more than one author collaborates to create a work, the 70-year deadline does not, in principle, begin running until the last joint author dies.

4. Designs

i. What is the nature of the right?

The owner of the rights in the design has an exclusive right to use it and to prevent any third party from using it without prior authorization (Article L 513-4 of the IP Code). The use covers namely the making, selling, importing, exporting or using of goods in which the design is incorporated or applied.

Articles L513-6 et seq. of the IP Code set some limitations to the rights in the design, such as the use of the design citations or for non commercial, educational and experimental purposes. However such reproductions must be compatible with fair trade practices and must not unduly prejudice to the normal exploitation of the design. Additionally, the registration and the name of the designer must be mentioned.

The owner of the design can assign the rights in the design. He/she can also grant license agreements concerning the design.

ii. How is it protected?

The designer has to file a design application with the INPI. Several designs can be included in the same application but all of the designs must be in the same “class” of designs. Here again the INPI does not review the “novelty” and “own character” requirements. Designs may benefit from a cumulative protection of both copyright law and design law and the owner may claim either copyright protection and/or the protection related to registered designs (Articles L 512-1et seq. of the IP Code)

iii. How is it enforced?

The protection by Copyright Law and Design Law can both be claimed before the Courts for the protection of a design. The rules detailed in the above section a) iii) are applicable.

iv. How long is it protected?

The protection duration is 5 years with 5-year renewal terms up to a maximum of 25 years (Article L 513-1 of the IP Code).

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

i. Agency;

The status of commercial agents and relationships with their principal are governed by articles L.134-1 et seq. of the Commercial Code.

Article L.134-4 of the Commercial Code sets forth a mutual obligation of loyalty and reciprocal duty of information, applicable to both the agent and the principal.

This common interest of the agency agreement justifies the payment of compensation to the agent by the principal when the latter terminates the agreement, unless such termination is based on a serious misconduct of the agent (articles L. 134-12 and L. 134-13 of the Commercial Code).

The provisions of the Commercial Code also govern the conditions of remuneration of the agent, the conditions in which the agent may represent other principals, and set forth an obligation of prior notice before termination, the duration of which depends on the duration of the agreement.

ii. Distribution;

There are no specific legal provisions applicable to distribution agreements under French law.

General contractual aspects are governed by the Civil Code and commercial aspects are governed by the Commercial Code.

In addition, competition law (see section (F) above) has a significant impact on the relationships between a supplier and its distributors, in particular in case of exclusive or

selective distribution networks. Competition law notably limits the possibility for the supplier to determine the resell prices applied by its distributor(s), to impose restrictions of the sales by the distributors, or to impose non-compete obligations to their distributors.

Distribution agreements which are likely to affect trade between EU member states are also governed by the European Regulation No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

iii. Franchising

There are no specific legal provisions applicable to franchising under French law.

However, some legal provisions may have an impact on franchise agreements, in particular articles L330-1 and L330-3 of the Commercial Code which apply to exclusivity or quasi-exclusivity commitments.

Article L330-3 of the Commercial Code provides for pre-contractual disclosure obligations. It is applicable to all agreements by which one person grants to another a trade name, a trademark or sign, and requires an exclusivity or quasi-exclusivity undertaking for the exercise of such other person's activity.

Pursuant to article L.330-1 of the Commercial Code, the duration of exclusive supply obligations may not exceed 10 years. It is nevertheless possible for the parties to enter into another agreement at the end of this 10-year period.

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

All European Directives regulating electronic commerce have been implemented into French Law.

Under French Law, consumer protection in the context of ecommerce is regulated by the *Trust in Digital Economy* Law of 2004. Additionally, rules on distance selling and distant selling of financial products have been implemented into the French Consumer Code. The Consumer Code sets rules on price information to be provided to the consumers, as well as on the publication of online content, advertising, labeling, e-contracting. Pursuant to Article L.121-18 of the Consumer Code, websites offering to supply products or services must provide the consumers with the following documentation: the terms of use, which define the conditions of use of the website and its content; the applicable terms and conditions of sales in a manner that allows for their preservation and reproduction and a privacy policy which informs the users of their rights in relation with their personal data and of the purpose of the processing.

Article 20 of the *Trust in Digital Economy* Law and Article L121-1 et seq. of the Consumer Code provide that advertising must never be false or misleading and must be in French language or, if in a foreign language, a translation in French must be provided. One of the most important rules regulating e-commerce in France is the principle of the automatic liability of e-commerce vendors for satisfactory performance of their obligations under the agreement pursuant to Article 15 of *Trust in Digital Economy* Law.

The vendor can be exempted upon demonstration that the non-performance or improper performance of the contract is due to the purchaser, an unforeseeable and unavoidable act of a third party to the supply of the goods or services under the contract or an event of *force majeure* (Article 15 of the Law).

French law imposes several requirements when a purchase is made on the Internet. The Law *in the Trust in Digital Economy* of 2004 regulates digital certificates. In 2000, the French Civil Code was amended to regulate electronic documents and digital signatures (Articles 1369-4 et seq. of the Civil Code). Pursuant to Article 1369-5 of the Civil Code, the buyer must have had the possibility to verify the details of his/her order and its total price. The buyer must be able to correct possible errors, before confirming its acceptance. The buyer must then confirm the order without unjustified delay.

The *Law on Privacy Protection in relation to the Processing of Personal Data* of 1978 establishes rules for the protection of consumers in respect of distance contracts (for details on Data Protection Legislation see paragraph (J) below). Article 7 of the Law and Article L.121-20-5 of the Consumer Code set an “opt-in” system for the processing of data on physical persons for marketing purposes where advertisements are targeting the person by email, calling machine or fax. According to the CNIL, the use of cookies is also considered as a personal data processing. The recipient must give prior consent to receive such advertising, which is defined by the CNIL as a manifestation of free, specific and informed will by which a person agrees that his personal data be used for marketing purposes.

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details.

The main law regulating data protection in France is *Law on Privacy Protection in relation to the Processing of Personal Data* of 1978. The EU Data Protection Directive 95/46/EC was implemented via Law of 6 August 2004 which amended the 1978 Law.

Pursuant to Article 2 of the French Data Protection Law, Personal data means “*any information relating to a natural person who is or can be identified, directly or indirectly, by reference to an identification number or to one or more factors specific to him/her*”. Personal data that reveals directly or indirectly, racial and ethnic origins, political, philosophical, religious opinions or trade union affiliation of persons, or that concerns health or sexual life is defined in Article 8 of the Law as sensitive personal data.

The National Data Processing and Liberties Commission (the CNIL) may proceed with verifications of any data processing. Except for limited and strictly defined exceptions, the processing of personal data requires a prior declaration to the CNIL. Pursuant to Article 24-I of the Law, the prior declaration to the CNIL must specify the recipients of the processed data, the time period for which the data will be stored, the department or person(s) in charge of implementing the data processing and the recipients or categories of recipients of the personal data.

The CNIL may exempt certain processes from prior declaration or require only a simplified prior declaration (Article 24-II). Pursuant to Article 70 of the Law, the CNIL must also be informed of a data transfer to a country outside of the EU regarded by the CNIL as not providing an adequate level of protection.

Consent of individuals is required before processing personal data pursuant to Article 38 of the Law. Pursuant to Article 40 of the Law, they have the right to freely access their personal data in clear language and to require their personal data to be corrected, completed or clarified, or erased.

The CNIL can also pronounce sanctions that range from warnings and notices to comply with the obligations to financial fines up to EUR 150,000 for the first violation, and in the case of a second violation in the following 5 years, up to EUR 300,000 or 5% of the company's turnover. The CNIL may also order to immediately cease the data processing (Article 47 of the Law).

Pursuant to Articles 68 et seq. of the Law, transfer of personal data outside the French Territory is allowed to countries where there is an equivalent level of data protection and United States companies covered by the US/EU Safe Harbor principles. Otherwise, transfer of data outside the EU is subject to restrictions (EU model clauses, etc.). The consent of the individuals shall be sought prior to the transfer if it had not been granted initially for that purpose.

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

The main provisions regarding product safety are set out in book II of the Consumer Code, entitled "*Conformity and security of products and services*".

Articles L.211-4 et seq. of the Consumer Code provide for a legal guarantee of conformity for the supply of goods. Article L.212-1 of the Consumer Code imposes an obligation to control the compliance of products with applicable requirements regarding the security and safety of individuals, the loyalty of commercial transactions and consumers protection.

Undertakings are also required to implement preventive measures pursuant to articles L.221-1 et seq. of the Consumer Code, which concern notably obligations of information to consumers, products tracing and risks reporting.

Manufacturers, distributors and service providers are liable for damages caused by the use of their products or services. They may be held civilly liable on several grounds, and in particular pursuant to: (i) the principle of liability for defective products (articles 1386-1 et seq. of the Civil Code), (ii) their contractual liability (article 1147 of the Civil Code), or (iii) if no agreement has been concluded, their civil liability (article 1382 of the Civil Code).

They may also be criminally liable in case of bodily injuries caused to individuals.