

DOING BUSINESS IN FRANCE

The commercial law groups presents
MAZINGUE & ASSOCIÉS



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I. The investment climate

France is governed by the Constitution of October 4th 1958, under which the president, François HOLLANDE, and the prime minister, Jean-Marc AYRAULT, share executive power.

A. Economic structure

France's strongest manufacturing sectors include motor vehicles, pharmaceuticals, transport equipment and aerospace (civil and military) and services.

While the services sector is getting larger over the past few decades, the agricultural sector's share of economic activity has fallen.

B. Banking and financing

In the banking sector, domestic players dominate retail banking while foreign banks are major players in wholesale banking and securities trading alongside French banks.

French banks have been expanding into Asia, Central and Eastern Europe (notably the countries that joined the EU in 2004), and the US.

The main financial centre is La Défense in Paris.

C. Foreign trade

France's largest export markets are Germany, Spain, the UK, Italy, Belgium, Luxembourg and the US (66% of commerce is made with UE's countries).

Major exports are vehicles, aeronautical and space products, pharmaceuticals, car equipment and steel products.

Germany is the largest source of imports, followed by Italy, Belgium, Luxembourg, Spain, the US and the UK. The leading imports are crude oil and natural gas, computers and information-technology equipment and equipment for the car automobile industry.

II. Business entities

According to their needs and demands, foreign investors can choose from a variety of the most important types of business entity in France, such as :

A. Principal forms of doing business

1. **Société à Responsabilité Limitée (SARL)**

A *SARL* must have between 1 (EURL) and 100 shareholders and a managing director, who's usually paid a salary.

Any losses of half or more of the stated capital must be formally acknowledged by a special shareholders meeting and resolution, which is registered with the *Registre National du Commerce et des Sociétés* and then the information appears on your *Kbis*.

Whatever amount of capital you choose to start with, this figure must be included on all your official documentation, e.g. letterhead, invoices and orders.

The managing director (MD) of a *SARL* can be a salaried employee of the company (but isn't eligible for unemployment benefit unless he buys private insurance).

2. **Société Anonyme (SA)**

An *SA* must have a minimum of seven shareholders (there's no maximum).

It must be run by a board of directors and have a PDG (*président directeur-général*), roughly equivalent to a chief executive.

The registration requirements are elaborate (because an *SA* can sell shares on the public stock exchange) and you must have a *commissaire aux comptes* to audit your accounts every year.

The biggest advantage of an *SA* over a *SARL* is that risks are limited to the extent of the investment and all executives can be regular salaried employees of the company.

The *PDG* can also be fired at any time by the board.

3. **Société par Actions Simplifiées (SAS)**

An *SAS* is a simplified form of *SA*, with at least one shareholder (SASU) and a free minimum capital. An *SAS* isn't allowed to trade shares publicly.

The form of the corporation is much more flexible than that of a *SARL*; for example, you can hold annual general meetings by email or telephone, which is strictly forbidden in a *SARL*.

The major disadvantage of an *SAS* is that you must have a *commissaire de comptes* to audit your accounts every year; he must also be present at your AGMs.

4. **Société civile Professionnelle**

An *SCP* is limited to certain regulated professions, such as medical personnel, lawyers, certain types of 'expert' (agricultural, forestry, etc.) providing a consultancy service, *commissaires aux comptes*, and industrial property consultants.

Precise requirements are controlled by the various professions.

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5. Société d'Exercice Libérale (SEL)

There are several types of *SEL*, which mimic the *SARL*, *SAS*, *SA* and *SCA*, for specific professions where practitioners are allowed to incorporate their practice; these include architects, dentists and accountants.

6. Société civile (SC)

An *SC* is a non-commercial partnership, commonly formed by members of the *professions libérales* (professionals) and those engaged in what are called 'intellectual activities', including writers, researchers and some types of consultant.

An *SC* can elect to pay corporation tax or not; if not, each shareholder includes his portion of the partnership's profit or loss on his personal income tax declaration.

7. Société en Nom collectif (SNC)

An *SNC* is a general partnership. There's no capital requirement, but there must be at least two partners/shareholders.

Profits and losses are passed on to the partners, who are liable for unlimited debts. All partners are considered to be traders.

All changes in partner shares must be unanimously approved and all decisions must be made collectively and documented (through minutes, which must be kept on file).

Social security contributions are based on each partner's total revenue.

8. Partnerships

Like a franchise, a partnership entitles you to use an established brand, but it allows you greater autonomy.

You aren't obliged to follow strict procedures, but can benefit from the knowledge and experience of other partners in order to adapt guidelines to personal and local needs.

As with a franchise, there's an 'entry fee', but it's usually lower. Business decisions are generally made on a democratic basis rather than simply being imposed upon you, as with a franchise operation.

A partnership contract is similar to a franchise contract, except that it isn't standardised, but can vary from case to case.

9. Associations

An association of the law of 1901 is a not-for-profit association (association's intentions must be social, cultural or informative), and there are many restrictions on the types of activity they can undertake. It may receive funds provided that the money is used for running the association and furthering its aims.

An association must have at least two founding members.

It may employ people, including the founding members, but there's a restriction on an association's 'managers' drawing a salary.

There are limits to how much an association can pay to any one officer. Employees of the association are subject to the general regime for social security.

B. Minimum share capital

Type of business entity	Minimum Share Capital
Individual enterprise (EIRL)	Free minimum capital
SARL, EURL, EARL	Free minimum capital Only 20% of a cash contribution must be fully paid up.
SA	€ 37.000 Only 50% of a cash contribution must be fully paid up.
SAS, SASU	Free minimum capital Only 50% of a cash contribution must be fully paid up.
SNC	Free minimum capital
SE (european society)	€ 120.000

C. Requirements to be observed

1. General filing

Creation formalities have been considerably simplified since the setting up of the *Centre de formalités des entreprises* (CFE).

Every enterprise, every individual doing business and every corporate body has to :

- Register its activity with *Sirene*, kept by the Insee (Institut national de la statistique et des études économiques) ;
- Register its commercial activity with *registre du commerce et des sociétés* (RCS), kept by the office of bankruptcy court ;
- Register its hand-crafted activity with *répertoire des métiers* (RM), kept by the various local Chamber of Commerce.
- Register with the Tax Authorities and social organims.

2. Regular filing

In addition, every enterprise, every individual doing business requires :

- Intervention of a Chartered accountant when partners bring differents goods than capital investment ;
- Drop off cash funds on a locked account during register time ;
- Filing ;
- Assigning at least one corporate executive ;
- Establishing a list of acts, accomplished on the behalf of a just newly formed company ;
- Register files with the Tax Authorities
- Publish a notice of constitution in a legal announcements journal.

D. Incorporation of a body corporate

A body corporate can only be incorporated by a notarial deed issued by a French civil law notary.

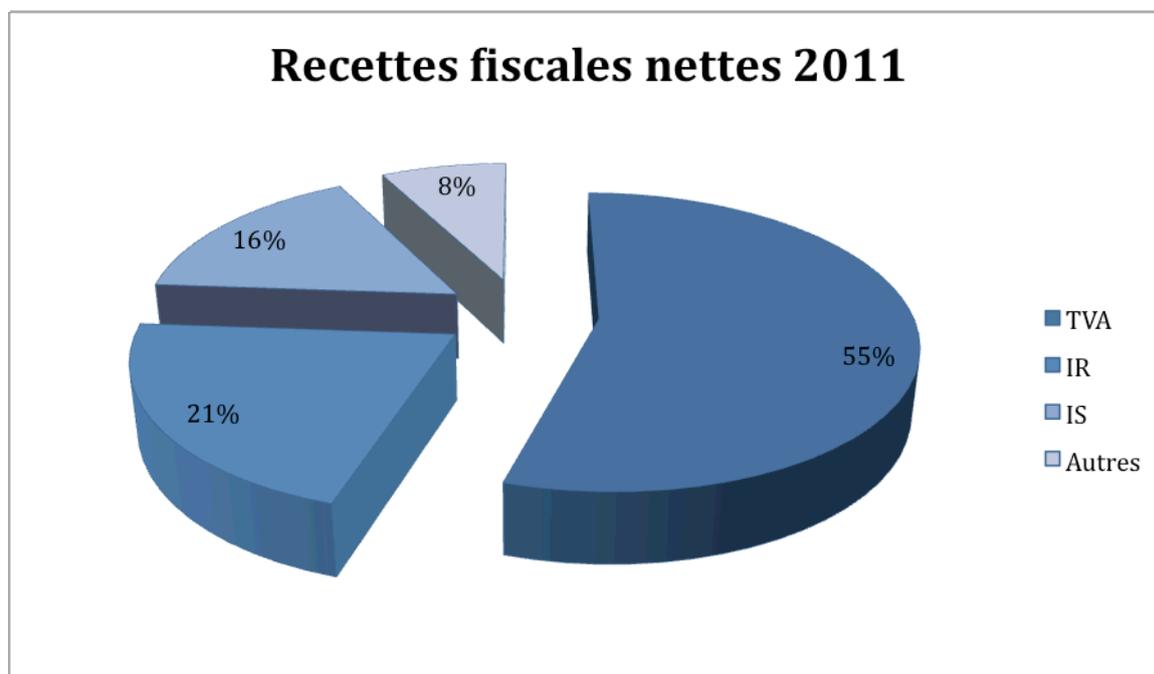
The notary, however, may only incorporate a SARL or a SA after, various requirements have been complied with, including having approved the articles of association as complying with the law as well as with the guidelines issued by the French Ministry of Justice, as well as having received proof of the share capital having been made available to and put at the disposal of the body corporate to be incorporated.

III. Tax matters

French's tax law offers a flexible and efficient tax system with moderate rates.

A. Tax system and administration

The *Direction Générale des Finances Publiques* (DGFIP), which is subordinate to the *Ministère du Budget, des comptes publics et de la réforme de l'Etat*, has overall responsibility for collecting state budget revenues and for setting tax policy.



B. Taxation of corporations

Tax in France is levied at both the national and local levels of government.

The primary taxes imposed on companies are the corporate income tax, withholding tax, the VAT and registration duties.

1. Taxable income and rates

France operates a territorial tax system, under which tax is imposed only on profits derived by a resident (company registered, managed and controlled in France) or nonresident enterprise that operates in France.

The corporate tax rate for most companies is 33 1/3%.

2. Withholding tax

Dividends

Dividends paid by a French company to a nonresident company are subject to a 25% withholding tax calculated on the gross dividends paid.

The withholding tax may be reduced or eliminated under an applicable tax treaty or the EC Parent-Subsidiary Directive.

Interest

A broad domestic exemption from the normal 18% domestic withholding tax is available for interest payments, although the precise circumstances must be carefully considered in each case. In addition, tax treaty provisions may reduce or eliminate the domestic withholding tax, and no tax will be withheld if the conditions for application of the EC Interest and Royalties Directive are satisfied.

Royalties

Royalties paid to a nonresident, commissions, consultancy fees and fees for services performed in France may be subject to a domestic withholding tax of 33.33%. This tax may be reduced or eliminated by relevant tax treaties provisions or application of the EC Interest and Royalties Directive.

Branch remittance tax

The after-tax income deriving from business carried out in France by a foreign company through a French branch is deemed distributed to non-French Shareholders and subject to a branch tax at the rate of 25%. The branch tax is not due if the foreign company is located in the EU and subject to income tax with no possibility of opting out or of being exempt.

Under French domestic law, the branch tax can be reduced if the taxpayer proves that the total income actually distributed to the foreign head office within the 12 months following the taxable year is less than the branch's net distributable profit and/or if part of the distribution made by the head office was benefited to French residents.

3. Value-added tax

French value added tax (VAT) is payable on the sales value of a product each time it changes hands.

The vendor deducts from its payment of the tax it has charged, the amount paid on its inputs, so that in practice tax is levied on the price increment at each stage in the chain.

Nevertheless, the charge is effectively borne by the last consumer and VAT is neutral for intermediary companies.

VAT on goods must be declared and paid in the month following that in which the customer is billed and the goods delivered. VAT on services is due in the month following that in which payment is received.

4. Registration duties

The tax year is generally the calendar year or the taxpayer's financial year.

Companies operating in France are required to make advance payments of their annual corporate taxes in quarterly instalments (15 March, 15 June, 15 September and 15 December).

Companies that posted losses in the previous year are not required to make advance payments, and those forecasting lower profits may apply for a reduction or suspension of prepayments. New companies need not make advance payments in their first year of operation.

The final calculation and settlement of tax for the year must be made within three and a half months after the close of the company's financial year.

C. Taxation of individuals

Individuals in France are subject to personal income tax, social security contributions, wealth tax, inheritance tax and local residence tax.

1. Residency

An individual is considered domiciled in France if his/her principal residence, main place of business or professional activity or centre of financial interests is in France.

2. Taxable income and rates

Residents are taxed on worldwide income, whereas nonresidents are taxed only on French-source income.

Taxable income generally includes income from employment, business income, professional income, investment income and capital gains. Personal income tax rates are progressive up to a maximum of 40%, with consideration given to family circumstances. Various deductions and personal allowances also are permitted.

Individual income tax is payable in the year after the income was earned. It may be paid in three or 10 instalments.

All individual taxpayers in France must file an annual declaration of income by February/March for the previous year. Individuals must also declare any foreign bank accounts on their tax forms.

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3. Capital Taxes

Households pay a wealth tax on net worth of more than € 790,000 (rather than per individual). Some types of assets designed to fund retirement income are exempt and small deductions for dependents are allowed. Various property holdings outside France are exempt, although other assets are not. Nonresidents must pay tax on their property in France unless exempted under a tax treaty.

Owner-occupants are liable for a tax on developed real property. This may be calculated by multiplying the rate set forth by the local authority on the property value of record.

D. Value-added tax (TVA)

	Tax rates 2012
Standard rate	19,6 %
Reduced rate	7 %
Reduced rate	5,5 % (foods, tools, disabled person's services, gas...)
Reduced rate	2,1 % (medication reimbursed by French national health insurance, TV licence, ...)

IV. Labour environment

A. Employees' rights and rémunération

The Labour Code sets out the minimum standards for working conditions in France including: working hours, overtime, paid vacation and time off, dismissal conditions and procedures and the framework for collective agreements. The Code also makes provisions for employee board representation while the Social Security Code regulates employee contributions.

French law makes it illegal to discriminate on the basis of sex, family orientation, morals, ethnicity, religion, age, health or handicaps for all matters relating to pay or employment.

The Labour Code provides for different types of employee representation depending on the size

of the business.

A works council must be elected for companies with at least 50 employees.

In most cases, works councils have no veto power over corporate affairs, but they have the right to obtain financial and strategic information on business operations and to question bidders in takeovers.

B. Wages and benefits

The statutory minimum wage is € 9.90 per hour, which increases in line with annual inflation.

Many French firms pay a 13th month salary at year-end to white collar and other salaried staff.

The total cost of fringe benefits as a percentage of base pay may vary significantly, since the list of non-mandatory fringe benefits to which an employee is entitled is determined by the applicable collective bargaining agreement and at the discretion of the particular company.

C. Termination of employment

French employers may dismiss employees where real and serious cause exists, such as legitimate disciplinary or economic reasons. Adherence to certain procedures, however, is required especially for mass redundancies.

Employers may dismiss workers for a variety of reasons, such as personal misconduct, breach of company regulations or a severe decline in business.

The employer must first inform the employee of the reason(s) for the dismissal in a preliminary meeting. Thereafter, the employer must direct a registered letter to the individual's home, confirming the dismissal and providing the grounds in full. The dismissal letter may not be mailed until after a specified number of days following the initial meeting. The employee has a right of appeal to a labour court.

Employees may not be made redundant until every possible effort (including retraining) has been made to find them alternate suitable employment elsewhere within the company or the group.

In such situations, the authorities may need to be notified. The authorities can put forward proposals, and they must be discussed between the works council and the employer.

D. Labour-management relations

The largest union in membership terms is the French Democratic Confederation of Labour.

Collective bargaining procedures vary depending on whether the agreement covers several sectors, a single sector or a company. Multiple procedures are available for various sectors and

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enterprises.

V. General trade and commercial information

The web-site of the French Chamber of Commerce provides basic information :

<http://www.ccip.fr/>

Various ministries provide information as well and these can be found on the web :

French ministry of finance : <http://www.economie.gouv.fr/>

French ministry of foreign affairs : <http://www.diplomatie.gouv.fr/fr/>

However, also various governmental or publicly funded agencies may be found as well :

Creation formalities : <http://www.entreprises.ccip.fr/web/formalites>

French Statistic Institute (INSEE) : <http://www.insee.fr/fr/>
