

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for February 2016.

Please note that French legal concepts are translated into English for information only and not as legal advice. The concepts expressed in English may not exactly reflect or correspond to similar concepts existing under the laws of the jurisdictions of the readers.

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For additional information, please speak to your usual contact.

#### Contact

##### **Bruno Knadjian**

Avocat à la Cour, Partner

Hogan Lovells (Paris) LLP  
17, Avenue Matignon  
CS 60021  
75008 Paris  
Tél. : +33 1 53 67 47 47  
Fax : +33 1 53 67 47 48

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#### Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law on class actions for discrimination and fight against inequalities**, n°1699, filed before the National Assembly on January 14, 2014 – Adopted in first reading by the National Assembly on June 10, 2015.
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014 – Adopted in first reading by the National Assembly on March 24, 2015 and by the Senate on January 26, 2016 – Under examination in new reading by the National Assembly from March 15, 2016.
- **Draft law relating to duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in first reading by the National Assembly on March 30, 2015 – Adopted by the Senate on November 18, 2015.
- **Draft law relating to the fight against discrimination at the rate of social precariousness**, n°378, filed at the Senate on March 31, 2015 – Adopted in first reading by the Senate on June 18, 2015.
- **Draft law relating to freedom of creation, architecture and heritage**, n°2954, filed at the National Assembly on July 8, 2015 – Adopted in first reading by the National Assembly on October 6, 2015 – Amended in first reading by the Senate on March 1, 2016.
- **Draft law relating to maritime related economy**, n°2964, filed on July 8, 2015 – Adopted in first reading by the National Assembly on February 3, 2016 – In discussion in first reading at the Senate during the March 10, 23 and 24, 2016 sessions.
- **Draft law relating to the cancellation of commercial advertising in public television youth programmes**, n°656, filed at the Senate on

July 24, 2015 – Adopted in first reading by the Senate on October 21, 2015 – Amended in first reading by the National Assembly on January 14, 2016.

- **Draft law which ratifies ordinance n°2015-378 dated April 2, 2015 that transposes directive 2009/138/CE on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), n°3005, filed at the National Assembly on July 22, 2015.**
- **Draft law for the enforcement of measures relating to the 21<sup>st</sup> century justice, n°661, filed at the Senate on July 31, 2015 – Adopted by the Senate on November 5, 2015.**
- **Draft law which ratifies ordinance n°2015-899 of July 23, 2015 relating to public procurement – filed before the Senate on October 21, 2015.**
- **Draft law for the integration of the principle of substitution to the legal regime of chemical products, n°3277, filed on November 25, 2015 – Adopted in first reading by the National Assembly on January 14, 2016.**
- **Draft law relating to the general status of independent administrative authorities and public independent authorities, n°225, filed on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016.**
- **Draft organic law relating to independent administrative authorities and public independent authorities, n°226, filed at the Senate on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016.**
- **The Digital Republic bill, n°3318, filed on December 9, 2015 – Adopted by the National Assembly in first reading on January 26, 2016.**
- **Draft law to reinforce fight against organised crime, terrorism and their financing and to improve the efficiency and the guarantees of criminal procedure, n°3473, filed on February 3, 2016 – Under examination in first reading by the National Assembly from March 1, 2016.**

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#### Enacted laws

- **Law n°2016-87 of February 2, 2016 which created new rights in favour of ill people and patients at the end of life – OJ of February 3, 2016.**
- **Ordinance n°2016-131 of February 10, 2016 which reforms contract law, general regime and proofs of obligations – OJ of February 11, 2016.**
- **Ordinance n°2016-130 of February 10, 2016 which adapts Books I and III of the Energy Code to EU law and relating to national electricity and gas markets – OJ of February 11, 2016.**
- **Ordinance n°2016-126 of February 10, 2016 for a continuity of supply following up the end of transitional markets of gas and electricity – OJ of February 11, 2016.**
- **Ordinance n°2016-128 of February 10, 2016 relating to various provisions in connection with nuclear matters – OJ of February 11, 2016.**
- **Law n°2016-138 of February 11, 2016 relating to fight against food waste – OJ of February 12, 2016.**

- **Ordinance n°2016-157 of February 18, 2016 relating to the construction of a rail infrastructure between Paris and the Charles de Gaulle airport** – OJ of February 19, 2016.
  - **Law n°2016-162 of February 19, 2016 which extends the enforcement of law n°55-385 of April 3, 1955 relating to state of emergency** – OJ of February 20, 2016.
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## 1. Banking

### France - Reform of contracts, the general regime and the proof of obligations

The order (*ordonnance*) n°2016-131 dated 10 February 2016 (J.O n°0035 dated 11 February 2016) relating to the reform of contracts, the general regime and the proof of obligations modifies the provisions of the *Livre III* of the French *Code civil*.

The ministerial order provides, inter alia, the following innovations:

The assignment of receivables set out in articles 1321 and seq. of the French *Code civil* is simplified. The requirement of service by bailiff provided for in the current article 1690 is removed. To be valid, the assignment of claims shall be evidenced in writing. The assignment is enforceable against the debtor if the debtor has been notified of the assignment or if the debtor has acknowledged the assignment.

The order introduces the assignment of debts in articles 1327 and seq. of the French *Code civil*. A debtor is allowed to assign his debt with the consent of the assigned creditor. The original debtor is discharged for the future if the creditor gives its express consent to the discharge.

Most of the provisions set out in the ministerial order n°2016-131 dated 10 February 2016 will enter into force on 1 October 2016.

Further developments on the ministerial order n°2016-131 are made in the commercial law section of this update (please see the Commercial law section).

### France - Modification of the centralization system of the *livret A* and the *livret de développement durable*

The decree n°2016-163 dated 18 February 2016 (J.O n°0043 dated 20 February 2016) modifies the conditions of the centralization system of the *livret A* and *livret de développement durable*. Pursuant to article L221-5 of the French *Code monétaire et financier*, a percentage of the deposits collected via the *livret A* and the *livret de développement durable* is centralized by the *Caisse des dépôts et consignations*. The decree n°2016-163 provides that credit institutions are allowed to choose the over-centralization of these deposits only up to one hundred percent of the collected deposits (before that, credit institutions could freely set out the percentage of the over-centralization of these deposits).

The decree n°2016-163 entered into force on 21 February 2016.

### France - Modification of the centralization system of the *livret d'épargne populaire*

The decree n°2016-164 dated 18 February 2016 (J.O n°0043 dated 20 February 2016) modifies the system of centralization of the *Livret d'épargne populaire*. The decree removes the option offered to credit institutions to choose the centralization by the *Caisse des dépôts et consignations* of a percentage of more than fifty percent of the aggregate deposits collected via the *livret d'épargne populaire*.

The decree n°2016-164 entered into force on 21 February 2016.

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## 2. Capital Markets

### **France - AMF - Decision dated 16 February 2016 in relation to amendments to the rules governing how Euroclear France functions as central depository of securities, and relating to the appointment of a referent central depository**

The rules related to the appointment of the referent central depository have been amended and approved by the board of the *AMF* on 16 February 2016.

### **France - AMF - Decision of 16 February 2016 regarding the amendment of the rules of the clearing house and the settlement-delivery system of financial instruments LCH. Clearnet SA, particularly in relation to the calculation method of the final net balance in the event of default of a clearing member**

The rules of clearing of LCH. Clearnet SA have been amended and approved by the board of the *AMF* on 16 February 2016. The amendments relate, in particular, to a new definition of TARGET settlement date, an amendment of the definition of termination date and a modification of the calculation method of the final net balance in the event of default of a clearing member.

### **France -AMF - Decision dated 2 February 2016 related to the amendment of harmonised rules of Euronext Paris (book I), introducing a specific size of block for trading of structured products**

The harmonised rules of Euronext Paris (Book I) have been modified on 2 February 2016 in order to introduce a trading threshold of block for structured products amounting to € 200,000.

### **France - ESMA - Update of the Emir Q&A**

ESMA updated its EMIR Q&A on 16 February 2016.

The Q&A can be found here: [https://www.esma.europa.eu/sites/default/files/library/2016-293\\_qa\\_xvi\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-293_qa_xvi_on_emir_implementation.pdf)

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## 3. Commercial law

### **France - Much-anticipated French contract law reform finally enacted**

On 10 February 2016, the government enacted Ordinance n°2016-131 (*J.O* of 11 February 2016, text n°26) reforming contract law and the general regime of obligations and proof of obligations. The Ordinance introduces substantial amendments to the provisions of the French Civil Code relating to contracts in order to make French contract law 'more accessible' and 'more foreseeable', according to the Minister of Justice.

Most of the amendments aim at consecrating major legal principles established by case law into the French Civil Code. Some of the new developments may be divided in the two following categories:

- Contract formation

Three principles are now enforceable during contract formation: freedom to contract (art. 1102), binding effect of the contract (art. 1103) and good faith (art. 1104). Seven definitions of contracts are then provided.

The requirement of a lawful 'cause' and the reference to good morals is deleted and instead, the content of the contract shall be lawful and indisputable (art. 1128) and its purpose shall comply with public order (art. 1162).

Economic violence now constitutes a ground for defect of consent (art. 1143).

When the consideration of a contract for pecuniary interest is too low – 'illusory or ludicrous' (art. 1169), the contract is deemed void. In a consistent manner, a clause which generates 'significant imbalance' between the parties is deemed unwritten (art. 1171).

Revocation now has its place in the French Civil Code: withdrawal from a unilateral promise to contract will not prevent the parties from entering into the contract (art. 1124, al 2).

Another new concept is the possibility to send an inquiry requesting the recipient to be transparent about his decision on a contemplated contract (*interpellation interrogatoire*, art. 1123, al 3 and 4; art. 1158 and 1183).

- Effects of the contract

Hardship (*imprévision*, art. 1195) is defined as an unforeseeable change in circumstances which renders performance of the contract excessively onerous and allows recourse to the following remedies: renegotiation of the contract – which does not have the effect of suspending performance of obligations under the contract; if parties fail or refuse renegotiation, they may choose between termination under provisions of the contract or filing a joint request before a judge for 'adaptation' of the contract. After a reasonable period of time and on request from either party, the judge may 'amend or terminate the contract'.

Defense of non-performance (art. 1219 and 1220) may be exercised as a precautionary measure by a party when it becomes clear that the other party will not perform his obligations under the contract and that non-performance is sufficiently severe. The party in question shall notify the co-contracting party of his decision to suspend performance of his own obligations.

Incomplete performance may be accepted in consideration for a proportionate price reduction (art. 1223), requested before payment or notified after payment.

The new provisions will enter into force on 1<sup>st</sup> October 2016 and shall apply to contracts entered into from this date, except in what regards interrogatory interpellations which will apply to contracts effective at this date.

#### **France - Minimum amount for agreements to fall within scope of Article L441-9 of the French Commercial Code**

Article L441-9 of the French Commercial Code – created by the Hamon Law – lists the validity requirements for purchase agreements of manufactured goods, produced according to order of the buyer for incorporation into his own production. Those provisions apply solely to agreements exceeding a given amount, which was defined by Decree n°2016-237 of 1<sup>st</sup> March 2016. Thus, purchase agreements whose amount exceeds 500,000 Euros and regard the goods above-mentioned shall be made in writing and mentions mandatory particulars.

The Decree entered into force the day following its publication (J.O of 3 March 2016, text n°52).

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## **4. Competition**

### **France - Macron Law: new regulatory measures affecting regulated professions' tariffs**

The Decree n°2016-230 lists services concerned by regulated legal professions tariffs' and outlines the method used to set these tariffs. On this basis, several decrees setting out regulated legal professions' ministerial decisions (notaries, court bailiffs, legal auctioneers and clerks of Commercial Courts) were published on 28 February 2016 and entered into force on 1 March 2016. These decrees provide that tariffs will decrease

by 5% for clerks of Commercial Courts and by 2,5% for notaries and court bailiffs. For the first time, notaries and court bailiffs' tariffs may be subject to rebates, up to 10% of their fees.

#### **France - Macron Law: two new decrees on the freedom of establishment of regulated professions**

First, the [Decree n°2016-216 of 26 February 2016](#) related to the creation of new notaries, court bailiff and legal auctioneers offices sets out criteria to be used by the French Competition Authority (the "FCA") to define a map identifying areas where the establishment of offices seems necessary. Second, the [Decree n°2016-215 of 26 February 2016](#) on the establishment of State Council and Supreme Court lawyers outlines criteria to be used by the FCA to identify the number of offices necessary to ensure a satisfactory offer. Following these publications, the FCA launched two public consultations which should result in two opinions on the freedom of establishment of these professions.

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### **5. Corporate**

#### **France - Update of the recommendation of the AMF DOC-2012-18 on equity lines and step-up equity financing (PACEO) programs**

AMF updated its [recommendation DOC-2012-18](#) on the information to be disclosed to the market in case of creation or implementation of equity lines and step-up equity financing (PACEO) programs.

The updated version specifies the role of the issuer and the financial intermediary in creating and implementing equity lines and step-up equity financing (PACEO) programs and indicates the information to be disclosed. The updated version also includes the recommendation of the AMF DOC-2007-16 on the same subject.

This updated version of the recommendation of the AMF DOC-2012-18 was published on the AMF website on February 10, 2016.

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### **6. Employment**

#### **France - Possibility for employers to settle with French Social Security Fund (URSSAF)**

The [Decree n°2016-1545 dated February 15, 2016](#), published in the Official Journal dated February 17, 2016, establishes the procedure for employers to settle with the URSSAF, as provided by article 24 of the Social Security Finance Act (LFSS) for 2015.

This procedure allows to conclude a settlement agreement to end a dispute arising or prevent future litigation, regarding contributions or social security contributions.

#### **France - New simplified pay slip model**

The [Decree n°2016-190 dated February 25, 2016](#), published in the Official Journal February 6, 2016, fixed the modalities of implementation of the new pay slip template. This template is applicable to companies with more than 300 employees as from January 1, 2017 and to undertakings with less than 300 employees, as from 1 January 2018. However, since March 1, 2016 employers can voluntarily implement the new pay slip template.

The [Order dated February 25, 2016](#), published in the Official Journal February 26, 2016, establishes the labels, the order and grouping of information to be included on the new pay slip model.

#### **France - Precisions on how to use the extra pension due to difficult working conditions**

The French old-age pension fund (CNAV) [Circular n°2016-10 dated February 5, 2016](#) clarifies the terms of use of the personal account for prevention of difficult working conditions, implemented by Law n°2014-40, dated 20 January 2014.

The CNAV elaborates on how to use, regarding retirement, the personal account for prevention of difficult working conditions. The CNAV also specifies under which conditions the retirement age can be anticipated by converting the accrued points recorded on this personal account.

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## **7. Energy**

### **France - Methods of determining public service energy charges**

Decree n°2016-158 dated 18 February 2016, published in the Official Journal on 19 February 2016, amends the Energy Code.

Pursuant to Articles L.121-1 to L.121-44 of the Energy Code ( created by Law n°2015-992 dated 17 August 2015), the decree defines in Articles R. 121-22 to R. 121-33 methods for determining public service charges assigned to electricity and gas companies.

Decree entered into force on 20 February 2016.

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## **8. Environment**

### **France - Public utility easements system against exposure to radioactive substances**

Ordinance n°2016-128 dated 10 February 2016, published in the Official Journal on 11 February 2016, contains various provisions on nuclear activities.

In particular, the Ordinance creates a new Article L.1333-26 in the French Health Code which provides establishment of public utility easements on land, structures and works by which the presence of radioactive substances of anthropogenic origin may cause people to be exposed to radiation.

Public utility easements may provide restrictions and prohibitions for use. They are annexed to local town planning documents and must be indicated to tenants and farmers by landlords.

This creates entitlement to compensation under the conditions referred to in Article L. 1333-26.

These measures will enter into force on a date that will be fixed by decree and by 1 July 2017 at the latest.

### **France - Obligation for sellers and landlords to inform regarding the risk associated with radon**

Ordinance n°2016-128 dated 10 February 2016, published in the Official Journal on 11 February 2016, contains, as already mentioned, various provisions on nuclear activities.

In particular, it amends Article L.125-5, I of the Environment Code in order to include the risk associated with radon in the information that the seller or lessor is obliged to give to landlords or tenants in areas where radon may be identified. These areas will be defined later by regulation.

These measures will enter into force on a date that will be fixed by decree and by 1 July 2017 at the latest.

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## 9. Insurance

### France - Construction Insurance: Sample of certificate

Order of 5 January 2016 (the "**Order**") sets out the content of the mandatory information that must be included in the certificate of insurance required by Article L. 243-2 of the French Insurance Code and relating to decennial civil liability insurance contracts. This information concerns, on one hand, decennial civil liability insurance contracts subscribed by an individual and, on the other hand, collective insurance contract on decennial civil liability subscribed as a complement of an individual insurance contract ensuring the decennial civil liability of each constructor.

Among this information, the certificate must include the identification of the insurer and the insured, the nature and the duration of the guarantee. The Order also prohibits any deviation or distortion of those listed information. These provisions apply to certificates issued after 1<sup>st</sup> July 2016 and for construction operations starting after 1<sup>st</sup> July 2016.

### European Law - Solvency II: technical information for the calculation of technical provisions and basic own funds

The European Commission Implementing Regulation (UE) 2016/165 dated 5 February 2016 (the "**Regulation**") lays down technical information for the calculation of technical provisions and basic owned funds for reporting with reference dates from 1 January until 30 March 2016. The Regulation entered into force on 10 February 2016 but applies as from 1<sup>st</sup> January 2016.

For each relevant currency, the technical information to calculate the best estimate, the matching adjustment and the volatility adjustment, in accordance with Articles 77, 77c and 77d of the Solvency II Directive respectively, will be: (i) the relevant risk-free rate term structures set out in Annex I, (ii) the fundamental spreads for the calculation of the matching adjustment set out in Annex II and (iii) for each relevant national insurance market, the volatility adjustments set out in Annex III.

### European Law - MIFID II: extension by one year of the deadline for the application of the Directive

On 11 February 2016, the European Commission proposed to extend by one year the deadline for the application of the Directive on markets in financial instruments ("**MIFID II**"). Originally scheduled for 3 January 2017, the MIFID II has now been postponed to 3 January 2018.

The one-year extension was decided on the basis of the recommendations of the European financial markets regulator (ESMA) in view of the complexity of the technical infrastructure to put in place to allow the provisions to produce full effect.

### European Law -Terrorist financing: European Commission action plan

On 2 February 2016, the European Commission announced in its action plan its intention to publish by the second quarter of 2016 at the latest, a legislative proposal with amendments to the Fourth Money Laundering Directive ("**MLD4**"), with a view notably to enhancing (i) due diligence measures for high-risk third countries and (ii) powers of European Union ("**EU**") Financial Intelligence Units and facilitating their cooperation.

It also calls on Member States to agree to bring forward the date for effective transition and entry into application of MLD4 to the fourth quarter of 2016 at the latest. Furthermore, the European Commission sets a number of measures such as (i) criminalizing money laundering, (ii) additional measures to track terrorism financing and (iii) improving the efficiency of the EU's transposition of United Nations asset freezing measures. Some measures will be put into practice immediately, others will follow in the months to come. All the actions should be carried out by the end of 2017.

### European Law - EIOPA: consultation paper on guidelines on dialogue between insurance supervisors and auditors

On 3 February 2016, EIOPA published a consultation paper on the proposal for the guidelines on facilitating an effective dialogue between insurance



supervisors and auditors that carry out statutory audit of insurance and reinsurance companies.

The objective of the guidelines is to develop an effective, consistent and proportionate supervisory approach towards a regular dialogue between supervisors and auditors. Therefore, the draft guidelines put forward relevant principles such as the nature of the information to be exchanged, the form, frequency and timing as well as the representatives involved in such dialogues with auditors.

Comments are requested by 28 April 2016.

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## 10. Intellectual Property

### **European Law - New Regulation on the EU trademark: clarification of the OHIM on the designation and classification of goods and services**

Communication n°1/2016 of the President of OHIM of 8 February 2016 clarifies the implementation of Article 28 of the new Regulation (EU) n°2015/2424 of 16 December 2015 relating to the designation and classification of goods and services of EU trademarks.

Pursuant to Article 28(5) of this Regulation, EU trademarks registered for one or more class headings for goods or services or other general terms shall be interpreted as including all the goods or services clearly covered by the literal meaning of their specification. The Communication provides that Article 28 applies on the one hand, to the trademark applications filed after 21 June 2012 and, on another hand, to the trademark applications filed up to 21 June 2012 inclusive and not registered by 23 March 2016.

Pursuant to Article 28(8) of this Regulation, the proprietor of a EU trademark filed before 22 June 2012 for an entire class heading can clarify his intention to cover not only goods and services covered by the literal meaning of this heading, but also for other goods or services listed in the alphabetic list of the relevant class effective at the date of filing of the trademark application. To this end, the proprietor must submit a declaration to the European Union Intellectual Property Office (EUIPO) ex-OHIM, between the 23 March and 24 September 2016. The Communication specifies that this free-of-charge declaration may be completed online, and will take effect as soon as the EU Trademarks Register is subsequently amended. Appendix I to this Communication draws up a non-exhaustive list of goods and services which are not clearly covered by the literal meaning of the class headings. Proprietors of international registrations designating the European Union effective before 22 June 2012 can also file a declaration.

Finally, according to the Q&A published by the OHIM on 25 February 2016, the filing of a unique declaration to clarify several specifications of a single trademark is possible.

This Communication will enter into force on 23 March 2016.

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## 11. Life Sciences

### **France - Simplification of several procedures before the ANSM**

The Decree n°2016-183 of 23 February 2016 relating to the simplification of administrative procedures before the French National Agency for Medicines and Health Products Safety (ANSM) in the field of health products has been published (J.O n°0047 of 25 February 2016, text n°18).

Amongst other provisions, the Decree simplifies procedures for import into customs territory of medicines intended for export to third countries.

Moreover, Article 3 provides that the ANSM will publish several decisions directly on its website, and no longer through publication in the OJ, concerning, notably:

- the marketing authorizations, withdrawals and suspensions;

- the catalogue of generic medicines;
- the authorizations for parallel import;
- the list of medicines parallel-distributed in France;
- the list of medicines sold over the counter;
- the schedule for submitting advertising authorization requests for medicines (to general public and professionals);
- the accreditation of bodies in charge of medical devices control.

The Decree entered into force on 26 February 2016.

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## 12. Procedures

### France - Civil procedure

Website for consumer mediation

Article L.152-1 of the French Consumer Code created by an Order n°2015-1033 of 20 August 2015, transposing Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes and Directive 2009/22/EC of 23 April 2009 on injunctions for the protection of consumer's interests, which entered into force on 1<sup>st</sup> January 2016, provides that *"every consumer has the right to seize a consumer mediator free of charge in order to find an amicable resolution to his dispute with a professional. To this end, the professional guarantees to the consumer an effective remedy to a system of consumer mediation"*.

Martine Pinville, Secretary of State for Trade, announced on 15 February 2016 the opening of a website for consumer mediation.

### France - Commercial procedure

Implementation of a new communication system for the commercial courts

On 9 February 2016, a Ministerial order n°JUST1603716A was enacted pursuant to the provisions of Title XXI of Book I of the French Code of Civil Procedure regarding the clerks of the commercial courts (*J.O.*, 24 February 2016). It implements a new communication system via electronic means, SECURIGREFFE, between the clerks of the commercial courts and the public concerned by commercial courts' activities: professionals (court administrators, judicial representatives, public prosecutor, auctioneers, tax administration, Security and Family Allowance Contribution Collection Offices (URSSAF)) and litigants. This system adds up to the RPVATC system, being underlined that the present Ministerial order does not apply to electronic communications carried out between lawyers and commercial courts. The Ministerial order provides that the first identification to the SECURIGREFFE system by the parties *"will be regarded as an agreement to the use of the electronic communication"* (Ministerial order, 9 February 2016, Art. 8). Besides, the procedural acts communicated between the litigants and the jurisdiction, or between the litigants, through SECURIGREFFE, will have the status of issuance, delivery and notification under Article 748-1 of the French Code of Civil Procedure.

Publication of the list and the jurisdiction of the commercial courts specialized in insolvency proceedings

Law n°2015-990 ("Macron law") of 6 August 2015 has implemented the specialization of a few numbers of commercial courts by granting them exclusive jurisdiction on insolvency proceedings involving large companies. An [implementing Decree n°2016-217 of 26 February 2016](#) lists the specialized commercial courts and their jurisdiction (*J.O.*, 28 February 2016).

### **European Law - Consumption: new European online dispute resolution system**

By a [Press Release n°IP/16/297 of 15 February 2016](#), as part of its strategy for a single digital market, the European Commission launched a new online system which aims at resolving disputes regarding the online purchase of products and/or services.

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## **13. New technologies**

### **European Law - "Privacy Shield"**

The European Commission issued on 29 February 2016 the legal texts that will put in place the EU-U.S "Privacy Shield", a new framework for transatlantic data flows, following the Safe Harbor invalidation ([see Legal and Regulatory Update – October 2015](#)). The WP29 (the Article 29 Working Party, established by Article 29 of the 1995 Data Protection Directive, composed of the 28 European Union data protection authorities) will issue its opinion on the level of protection afforded by the future mechanism during the next plenary meeting on 12 and 13 April 2016.

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## **14. Profession and ethics of the profession**

### **PROFESSION AND ETHICS OF THE PROFESSION**

#### **France - The private deed by lawyer enters the French Civil Code**

The French reform of contract law, implemented by [Order n°2016-131 dated 1 February 2016](#), created a new Article 1374, which provides that "*a private deed countersigned by a lawyer is deemed authentic regarding the drafting and the signature of the parties. The proceeding for forgery provided by the Civil Procedure Code is applicable to it. The handwritten terms required by law do not have to be mentioned in this act*" (*J.O.*, 11 February 2016). The private deed by lawyer ("*acte sous seing privé d'avocat*"), created by Law n°2011-331 of 28 March 2011, now formally appears in the French Civil Code. In a [Press Release dated 11 February 2016](#), the French National Council of Bars ("*Conseil national des barreaux*") welcomed this recognition.

#### **France - Modification of Articles 10 and 11 of the National Regulations of the lawyer's profession**

A [Decision of 14 January 2016](#) of the French National Council of Bars amending the National Regulations of the lawyers' profession was published in the Official Journal on 16 February 2016.

This Decision creates a new Article 10.6.3 regarding the denomination (including the commercial name, the trade name, the brand, the corporate name or any term identifying a lawyer or a law firm), which provides that the denomination of a structure, whatever its form, is a form of communication. Consequently, it is prohibited to use designations suggesting in a generic manner the status of lawyer, an area of law, a specialization or an activity within the field of competence of a lawyer. The Decision also amends Article 11 about lawyer's fees. The Article now opens on the duty of the lawyer to provide information about the determination of its fees as well as the costs, disbursements and emoluments that could be incurred. Finally, Article 11.2 provides that a written fee agreement is mandatory, except in cases of emergency, *force majeure* or full legal aid.

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## 15. Public Law

### France - Remedies for unsuccessful competitors to public tenders

By decision n°383149 dated February 5, 2016 (*Syndicat mixte des transports en commun Hérault Transport*), the *Conseil d'Etat* (the French highest administrative court) brings two important clarifications with regard to the implementation of the new remedy for third parties to contest the validity of an administrative contract created by case law "*Tarn-et-Garonne*" (CE, Ass, 04.04.2014, Department of Tarn-et-Garonne, Appl. n°358994), regarding unsuccessful bidders. On the one hand, the *Conseil d'Etat* confirms that "*Tarn-et-Garonne*" case law does not apply to law suits brought by unsuccessful competitors regarding administrative contracts concluded before 4 April 2014. On the other hand, the *Conseil d'Etat* limits the legal means that can be raised by unsuccessful competitors to public order breaches and breaches relating to public procurement rules which directly resulted in the disputed eviction.

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## 16. Real estate

### France - Obligation for real estate professionals to undergo continuous training

Decree n°2016-173 dated 18 February 2016, published in the Official Journal on 21 February 2016, modifies the conditions of the compulsory continuous training of the real-estate professionals. In accordance with the provisions of the Law n°2014-366 (called "Alur") dated 24 March 2014, this Decree determines the nature of the compulsory continuous training, the professionals subject to it, its duration, the activities which may be validated under this training, the organisms with whom the real estate professional may complete their obligation.

The provisions of this Decree will enter into force as at 1 April 2016.

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## 17. Tax

### France - Limitation of the deduction of the losses realized upon the sale of equity within two years of issuance

The French tax authorities updated their guidelines in order to take into account the provisions of the Amended Finance Law for 2012 n°2012-958 dated 16 August 2012 which limited the deductibility of losses resulting from the sale, within two years of their issuance, of equity acquired in exchange of a contribution (*when the fair market value of such equity at the date of issuance is lesser than their accounting value*).

This provision applies to equity received in exchange for contributions realized since 19 July 2012 ([BOI-BNC-BASE-30-30-10-20160203](#), [BOI-BIC-PVMV-30-30-20160203](#), [BOI-BIC-PVMV-30-30-120-20160203](#), [BOI-IS-BASE-20-20-10-20-20160203](#)).

### France - Failure to submit transfer pricing documentation: changes in the calculation of the applicable penalty

The French tax authorities updated their guidelines in order to modify the calculation of the tax penalty provided by Article 1735 ter of the French Tax Code which applies in case of failure by the taxpayer to provide its transfer pricing documentation (*or partial provision of transfer pricing documentation*) further to a formal notice issued by the French tax authorities ([BOI-BIC-BASE-80-10-20-20160203](#); [BOI-CF-INF-20-10-20160203](#); [BOI-CF-INF-20-10-40-20160203](#)).

As a reminder, this penalty, which is applicable to tax audits performed by the French tax authorities since 1 January 2015, is equal to the higher of the two following amounts:

- 0,5% of the amount of the transactions covered by the documentation/information that has not been provided to the French tax authorities;  
or
- 5% of the tax reassessments notified by the French tax authorities with respect to the transactions mentioned under point (i) above.

## **France - Updates to the maximum rate of deductible interest from a tax standpoint**

The French tax authorities updated their guidelines by modifying the reference rate for the twelve month periods ending from 31 December 2015 to 30 March 2016 used to calculate the limit of deductible interest in accordance with the provision Article 39 of French Tax Code.

The rates for this period are respectively 2.15%, 2.14% and 2.13% for exercises of twelve months ended between 31 December 2015 and 30 January 2016, between 31 January 2016 and 28 February 2016, and between 29 February 2016 and 30 March 2016 (BOI-BIC-CHG-50-50-30-20160203, n°40).

## **France - Special tax in order to finance the support fund for local authorities which contracted "toxic loans": increase of tax rate**

Following the adoption of Article 31 of the Finance Law for 2016 n°2015-1785 dated 29 December 2015, the French tax authorities updated their guidelines and modified the rate of the special tax aiming to finance the support fund for local authorities which contracted "toxic loan" provided by Article 235 ter ZE bis of French Tax Code.

The rate of this special tax, which was previously 0.026%, is now increased to (i) 0.0642% from 2016 to 2025, and (ii) 0,0505% from 2026 to 2028 (BOI-TFP-TFSC-20160203, BOI-TFP-RSB-20160203).

## **France - Tax on office premises: what about unused or vacant premises?**

The French tax authorities updated their guidelines drawing the consequences of a recent ruling from the French administrative supreme court (*CE, 5 March 2014, n°362283*) which held that office premises temporarily unfit for use (*because of works being carried out*), are still subject to the tax on office premises when the works carried out do not aim to change the destination/nature of such office premises (BOI-IF-AUT-50-20160203, n°20).

## **European Law - Application of the European Union legislation to Saint-Barthelemy**

The Decree n°2016-105 dated 3 February 2016 published the agreement signed between France and the European Union on 17 February 2014 aiming to implement the European Union legislation on the taxation of savings and administrative cooperation in the field of taxation to Saint-Barthelemy.

## **International - Amendments to the tax convention between France and Switzerland**

The Law n°2016-232 dated 1<sup>st</sup> March 2016 authorized the approval of the amendments agreed on 25 June 2014 between France and Switzerland modifying the additional protocol to the tax convention between France and Switzerland dated 9 September 1966.

## **International - Approval of the tax convention between France and Singapore**

The Law n°2016-233 dated 1 March 2016 authorized the approval of the tax convention signed between France and Singapore on 15 January 2015 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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## **18. Telecoms**

### **France - New decree listing traffic data accessible to French surveillance services**

In order to implement the Law n°2015-912 of 24 July 2015 regarding intelligence, the Decree n°2016-67 of 29 January 2016 regarding intelligence gathering techniques has been published. This Decree sets forth the legal scheme for intercepting telecommunications and administrative access to traffic data.

According to the Decree, access may be granted to information such as:

- data for identification of a person who has contributed to the production of an online content;
- traffic data allowing the location of terminal equipment, or related to access of terminal equipment to networks or online public communication services;
- characteristics of terminal equipment;
- identification and authentication of a user, a connection, or an online public communication service.

New Articles R873-1 and R873-2 of the French National Security Code state that the operators shall be compensated by the French State for expenses incurred in order to provide the requested data.

The Decree entered into force the day after it was published (*J.O* n°0026 of 31 January 2016, text n°2).

#### **France - Warning to telecommunication operators Bouygues and SFR from French Telecommunication Authority (Arcep) for low deployment of 4G**

As consideration for the authorizations granted by the Arcep in January 2012 to Bouygues, Orange and SFR to use 800 MHz band, the three operators committed to cover 40% of the population in "priority deployment" areas – sparsely populated areas representing a large surface of the French territory – by January 2017. Following the Arcep's inquiries as to the development of coverage, it turned out that as of 1<sup>st</sup> January 2016, Bouygues has covered 12.4% of the designated population and SFR covered 7.68%, while Orange is far ahead of the curve with 33%.

In its Decisions [n°2016-0244-RDPI](#) and [n°2016-0243-RDPI](#) of 18 February 2016, the Arcep argues that this slow deployment cannot be caused by unavailability of the necessary equipment because the installation of new towers is not required. Only an adaptation of existing sites needs to be conducted.

As a reminder that they have only one year left to abide by their obligations, the [Arcep issued formal notices](#) to comply with their objectives by 1<sup>st</sup> January 2017 to both operators.

#### **France - The Arcep caps prices on unbundling and copper products**

Following its strategic review in November 2015, the Arcep has issued 3 [Decisions](#) on 16 February 2016 which introduce price caps on unbundling tariffs, Orange's bitstream offer, the phone subscription wholesale offer and for associated call origination for the year 2016-2017.

Some tariffs such as the monthly recurring tariff for full access to the copper local loop and sub-loop from Orange, apply starting 1<sup>st</sup> March 2016.

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