

The Paris office of Hogan Lovells LLP 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 December 2010.

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Summary of miscellaneous French draft legislation

- **Bill to maintain and create jobs** - adopted on first reading by the *Assemblée nationale* on 9 June 2009
- **Bill to reform representation before the courts of appeal** - filed on 3 June 2009 - adopted on second reading by the *Assemblée nationale* on 13 October 2010
- **Bill aiming for greater transparency and fairness in remuneration policies for business managers and market operators** - filed on 2 September 2009 - adopted on first reading by the *Assemblée Nationale* on 20 October 2009
- **Bill aiming to reinforce consumer protection in distance selling**, n°1940 - filed on 29 September 2009 - adopted on first reading by the *Assemblée Nationale* on 20 January 2010.
- **Bill relating to equal representation of woman and men on boards of directors and supervisory boards and to professional equality**, n°2140, filed on 3 December 2009 - adopted on first reading on 27 October 2010
- **Bill to modernise the regulated judicial and legal professions**, n°2383, filed on 17 March 2010 - adopted on first reading by the *Assemblée Nationale* on 30 June 2010
- **Bill on commercial planning**, n° 2490, filed on 3 May 2010 - adopted on first reading by the *Assemblée Nationale* on 15 June 2010

Enacted laws

- **Law n°2010-1488 of 7 December 2010 to reorganise the electricity market** - OJ of 8 December 2010
- **Law n°2010-1563 of 16 December 2010 reforming local authorities** - OJ of 17 December 2010
- **Law n°2010-1594 of 20 December 2010 on financing social security for 2011**- OJ of 21 December 2010
- **Law n°2010-1609 of 22 December 2010 on execution of court decisions, the conditions of exercise of certain regulated professions and court experts** - OJ of 23 December 2010
- **Finance law for 2011, n°2010-1657 of 29 December 2010** - OJ of 30 December 2010
- **Amended Finance law for 2010, n°2010-1658 of 29 December 2010** - OJ of 30 December 2010

1. Banking

France - Usury rates

The French Ministry of Economy, Finance and Industry has provided usury rates applicable for the first quarter of 2011, in an Opinion published in the [OJ of 24 December 2010](#).

The rates provided by this opinion will come into force from 1 January 2011.

International - Basel 3 regulation

The Basel Committee published on 16 December 2010 [the final version of the new rules on capital and liquidity requirements](#) applicable to banks. Under these rules, a bank must (i) hold 3.5% of common equity by 1 January 2013 and 7% by 1 January 2019 and (ii) maintain an adequate level of unencumbered, high quality liquid assets that can be converted into cash to meet 100% of its liquidity needs, by 1 January 2015 for the Liquidity Coverage Ratio (30 calendar day time horizon) and by 1 January 2018 for the Net Stable Funding Ratio (one year time horizon). These rules must be implemented in Europe in early 2011 ([please refer to the Legal and regulatory update - July 2010](#)).

2. Capital Markets

France - Supervision of the remuneration policies of investment services providers

An order of 13 December 2010 amends CRBF regulation n° 97-02 on the internal control of credit institutions and investment firms, in order to specify the remuneration policy for employees whose activities may affect the risk profile of the credit institution or investment firm. The employees concerned are individuals taking a risk on behalf of the company, persons exercising a supervisory function and any employee whose activities may have a significant impact on the risk profile of the company.

The order provides *inter alia* for (i) a prohibition on a guaranteed variable component to salary, except possibly for the first year of employment, (ii) a fixed percentage of 40% and 60% of the variable component to be paid subject to an obligation to achieve a given result and deferred for at least three years, and (iii) at least 50% of the variable component to be paid in shares or equivalent. These provisions came into force on 1 January 2011.

France - Supervision of the remuneration policies of management companies

The *Autorité des marchés financiers* (AMF) has approved as professional rules applying to management companies the common provisions on remuneration policies issued by the *association française de la gestion financière* (AFG), the *association française des investisseurs en capital* (AFIC) and the *association française des sociétés de placement immobilier* (ASPIM).

The general provisions include requirements to account for risk in setting remuneration policy and to ensure that the fixed component of salaries is sufficiently large, and a prohibition on guaranteed variable remuneration, except possibly for the first year of employment. In terms of specific provisions, it is for each management company to identify the persons whose activities are likely to have a significant impact on the risk exposure of the company and introduce deferred payment if the variable component of remuneration substantially exceeds the fixed component.

These provisions came into force on 1 January 2011.

France - Principles for organising and publishing AMF policy

In a document entitled "[Principles for organising and publishing AMF policy](#)", the AMF defines and distinguishes the different means it can use to inform the public of its policy. Thus, the purpose of an "*instruction*" is to specify the interpretation of the AMF General Regulation; a "*position*" is an interpretation of laws and regulations falling within the AMF's jurisdiction, and a "*recommendation*" is a proposal to adopt an approach or to comply with a provision.

In 2011, the AMF's policy will be published on a specific page of the new AMF website and organised by topic in order to facilitate searches and improve ease of use by the general public.

France - Revision of the "Prospectus" directive

Directive 2010/73/UE amends the "Prospectus" directive (2003/71/CE). The new directive must be implemented in French law no later than 1 July 2012.

The new directive extends the scope of operations that can be performed without a prospectus. Thus, the thresholds for benefiting from the exemptions to the public offer regime are increased (the threshold of 50 000 Euros is increased to 100 000 Euros; the threshold of 100 investors increased to 150, the threshold of 2 500 000 Euros is increased to 5 000 000 Euros) and the prospectus exemption for mergers is extended to spin-offs.

In addition, the role of the summary of the prospectus is enhanced, with minimum required content required. Failing this, a company may find itself liable (today, a liability suit is only possible if the summary is misleading, inaccurate or misleading with respect to the rest of the prospectus).

3. Competition

France - Organization of the fight against prohibited gambling

Decree n°2010-1504 of 7 December 2010 for the application of Law n°2010-476 of 12 May 2010 specifies the conditions under which actions against prohibited gambling are carried out. It introduces new provisions into Articles R. 563-1 et seq. of the French Monetary and Financial Code.

European Law - Exemption of research and development agreements

Regulation n°1217/2010 of 14 December 2010 on the application of Article 101(3) TFEU to certain categories of research and development agreements was published in the OJ of the EU on 18 December 2010.

The Regulation came into force on 1 January 2011.

European Law - Exemption of specialisation agreements

Regulation n°1218/2010 of 14 December 2010 on the application of Article 101(3) TFEU to certain categories of specialisation agreements was published in the OJ of the EU on 18 December 2010.

The Regulation came into force on 1 January 2011.

4. Consumer law

France - Limit on the value of free gifts attached to consumer loans

The Order of 30 November 2010 for the application of Law n°2010-737 of 1 July 2010 relating to the reform of consumer credit sets the maximum value of free gifts for persons taking out a consumer loan at 80 Euros as from 1 May 2011.

5. Corporate

France - Exercise of shareholders' rights in listed companies

Ordinance n°2010-1511 of 9 December 2010 on implementation of the 2007/36/CE directive of 11 July 2007 on the exercise of their rights by certain shareholders in listed companies was published in the OJ of 10 December 2010.

The Ordinance removes the main obstacles to exercise of the rights of shareholders in companies that have their registered office in a member State and whose shares are traded on a regulated market established or operating within the European Union. It encourages effective participation in shareholders' meetings by shareholders, particularly those not resident in the member State where the meetings take place. Article L. 225-105 of the

Commercial Code, as amended, now allows shareholders to add items to the general meeting agenda without simultaneously filing a draft resolution. The Ordinance's provisions, which apply to general meetings held from 1 January 2011 on, were completed by implementation decree n°2010-1619 of 23 December 2010, published in the OJ on 26 December 2010.

France - AMF Recommendation on social and environmental responsibility of companies

The AMF published on 2 December 2010 recommendation n°2010-13 to assist listed companies with their disclosure obligations regarding social and environmental responsibility. The social and environmental responsibility of companies has increased a lot, and more and more investors are taking these criteria directly or indirectly into account when they decide to invest.

The recommendations invite companies to show how they collect and consolidate non-financial information, and to state whether or not they apply a standard for collecting and consolidating such data. The information set out in the "Risk factors" paragraph in reference documents and internal control procedures put in place also include non-financial risks, including social and environmental risks.

European Law - Revision of the Prospectus and Transparency directives

The 2010/73/EU directive of 24 November 2010 amends the 2003/73/EC Prospectus directive and the 2004/109/EC Transparency directive, in order to remove some obligations representing an excessive burden for companies.

The directive addresses the target set by the European Council on 8 and 9 March 2007 of reducing by 25% administrative charges imposed on companies by 2012, so as to increase their competitiveness within the Union without compromising investor protection or market functioning. The directive will come into force on 31 December 2010 and Member States must comply with it by 1 July 2012 at the latest.

6. Employment

France - Indemnities paid for voluntary departures under a collective strategic workforce planning agreement ("GPEC agreement") will be subject to social security contributions

Article 199 III of the Finance Law for 2011 removes the exemption from social security contributions for indemnities paid for voluntary departures under a GPEC agreement.

Indemnities paid for a voluntary departure as of 1 January 2011 will be subject to social security contributions, to CSG and to CRDS (after application of a fixed deduction of 3% for professional charges applied up to a limit of four times the social security ceiling).

France - Budget legislation and Social Security legislation: salaries and social contributions - what will change in 2011

The Finance Law for 2011 n° 2010-1657 dated 29 December 2010 and the Social Security Financing Law for 2011 n° 2010-1594 dated 20 December 2011 have introduced the following changes:

- The minimum wage is increased by 1.6% to 9 Euros gross per hour, i.e. 1,365 Euros gross per month on the basis of a 35 hour working week;
- The social security ceiling is increased by 2.1% to 2,946 Euros per month;
- The fixed deduction for professional charges of 3% applicable to salaries for calculating CSG and CRDS only applies up to 4 times the social security ceiling;
- The contribution to the FNAL (National Fund for Housing Assistance) is increased to 0.5% for employers of at least 20 employees for portions of salaries above the social security ceiling. It remains unchanged at 0.5% for portions of salaries below this ceiling;
- Employers' Work accident contributions are increased by 0.1 point;
- The contribution on employees' savings scheme (mandatory and voluntary profit-sharing) is increased from 4% to 6%. However, companies that in 2011 pay voluntary profit-shares for the first time, or pay more than the previous year, will benefit from a tax credit of 30% instead of 20%;
- Amounts paid by employers to finance supplementary retirement schemes with defined benefits are from now on subject to the specific employer contribution of 16% on annuities paid, with no minimum threshold. An employee's contribution has also been created. For annuities paid to employees retiring after 1 January 2011, the contribution rate is 7% of the annuities between 400 Euros and 600 Euros per month and 14% above 600 Euros;
- The employer contribution rate on stock-options and allocations of free shares is increased from 10% to 14%. The employee contribution is

increased from 2.5% to 8%. However, only allocations of free shares whose value is equal to or greater than half of the annual social security ceiling are taxed at the rates of 14% and 8%;

- The 8% contingency insurance tax is extended to employers' contingency insurance contributions paid to insure former employees under the 'continuation' of rights system.

European Law - The annual working days system ("*forfait jours*") does not guarantee a reasonable "weekly working time and does not comply with the European social charter

The European Committee of Social Rights (CEDS) has just confirmed in a report issued in December 2010 that French regulations annualising working hours breach the European social charter.

CEDS once again recalls that the French rules, which arose from the law of 20 August 2008, do not comply with:

- article 2 § 1 of the European social charter, because the maximum working time (78 hours per week taking into account mandatory rest periods) for employees subject to the annual working days regime, is clearly excessive and consequently cannot be considered reasonable as required by this article. Furthermore, the possibility of fixing the hours cap in a collective bargaining agreement does not sufficiently guarantee that article 2 § 1 will be respected since the law of 20 August 2008 does not require collective bargaining agreements to set a maximum daily or weekly duration, and

- article 4 § 2 of the charter, because employees do not enjoy a salary uplift, despite working abnormally long hours.

As the European social charter is directly enforceable in French courts, it is possible for employees who consider that their annual working days agreement does not comply with the rules set out in the charter to base their claims on it if they decide to go to court.

7. Energy

France - Publication of the NOME Law

Law n°2010-1488 of 7 December 2010 on a New Organization of the Market for Electricity was published in the OJ of 8 December 2010. The law's content was described in the Legal and Regulatory update of November 2010. By way of reminder, the law opens the electricity market up to competition, as EDF will be obliged to assign up to 25% of its nuclear power energy to its competitors.

France - Suspension of feed-in tariff contracts for solar electricity

Decree n°2010-1510 of 9 December 2010 was published in the OJ on 10 December 2010 and suspends, for a three-month period starting on 11 December 2010, the feed-in tariff applicable to solar installations of 12 megawatts or less. No applications may be filed during this suspension period. During the period, a public consultation is being organised by the government to prepare a new regulation framework.

This suspension does not apply to (i) solar installations when total peak power on the same roof or plot is 3 kW or less or (ii) solar installations for which the producer's acceptance of the technical and financial proposal for connection to the grid was notified before 2 December 2010.

France - Cooperation agreement between the AMF and the CRE on carbon and energy markets

The Financial Markets Authority (*Autorité des Marchés Financiers* or *AMF*) and the Energy Regulation Commission (*Commission de Régulation de l'Énergie* or *CRE*) signed on 10 December 2010 a memorandum of understanding regarding the exchange of information on the energy and carbon markets.

This cooperation will involve the AMF and the CRE exchanging information and expertise as part of their supervision and surveillance responsibilities. The cooperation applies to the surveillance of (i) greenhouse gas allowances and derivatives (ii) electricity and derivatives and (iii) natural gas and derivatives.

The memorandum of understanding came into force on 10 December 2010 for an indefinite period.

France - AMF Recommendation on social and environmental responsibility of companies

The AMF published on 2 December 2010 recommendation n°2010-13 to help listed companies meet their disclosure obligations regarding social and environmental responsibility (please refer to the Corporate section).

8. Insolvency proceedings

France - Individual business with limited liability (EIRL)

The Ordinance of 9 December 2010 ([OJ of 10 December 2010](#)) adapting insolvency and over-indebtedness legal provisions to the newly created EIRL company form came into force on 11 December 2010. The Ordinance introduces a mechanism to coordinate insolvency proceedings (affecting EIRLs) and the treatment of over-indebtedness (affecting individuals). In addition, the law relating to EIRLs of 15 June 2010 ([OJ of 16 June 2010](#)) has recently been completed by a Decree and an Order, both dated 29 December 2010 ([OJ of 31 December 2010](#)) ([please refer to the Legal and regulatory update - June 2010](#)).

9. Insurance

France - Packaged Retail Investment Products - Public consultation

On 26 November 2010 the European Commission launched a public consultation, at the European level, relating to packaged retail investment products ("PRIIPS"), which include unit-linked life insurance products. All investors, public authorities and organisations are welcome to contribute to this consultation until 31 January 2011. The purpose of the consultation is to determine the next steps to be taken in order to improve European regulation of the retail investment market.

France - Reform of the directive on intermediation in the field of insurance - Public consultation

A public consultation at European level relating to the revision of directive 2002/92/CE on intermediation in the field of insurance has been launched further to the public hearing of 10 December 2010 in Brussels ([please refer to the Legal and regulatory update - November 2010](#)). The aim of the consultation is to assess the possible impact of a review of the directive. Organisations representing insurance intermediaries, insurance companies and consumer associations are invited to take part in this public consultation until 31 January 2011. Areas of improvement include a revision of professional capacity requirements and transparency vis-à-vis customers regarding the remuneration of intermediaries or the management of conflicts of interest. The draft directive, which will be a harmonisation directive, is expected by the end of 2011.

10. Life sciences

European Law - Pharmacovigilance

- Publication in the OJEU of [Regulation no. 1235/2010 of 15 December 2010](#) amending regulations n°726/2004 and n°1394/2007. This regulation notably creates a "EudraVigilance" database to collect pharmacovigilance information regarding medicinal products authorised in the European Union and a web portal for the dissemination of this information. The regulation also enables the European Medicines Agency to require a marketing authorization holder to conduct post-authorisation safety or efficacy studies. The regulation will apply from 2 July 2012.

- Publication in the OJEU of [Directive 2010/84/EU of 15 December 2010](#) amending Directive 2001/83/EC. The Directive notably amends the definition of the notion of adverse reaction to cover any noxious and unintended effect of a medicinal product including as a result of medication errors and uses outside the terms of the marketing authorisation. The Directive must be implemented by 21 July 2012.

11. New technologies

France - Labelling of security methods

The decree relating to the procedure for evaluating and labelling security methods intended to prevent illegal use of access to an "online service for communication to the public" was published in the OJ on 26 December 2010. The decree allows labelling of software blocking the sharing of files

counterfeiting protected works and thus prevents use of users' Internet connections for illegal downloading ([please refer to the Legal and regulatory update - June 2010](#)). Use of such software could be used as a defence in illegal downloading proceedings before HADOPI.

France - LOPPSI 2

The bill on orientation and programming of internal security, also known as LOPPSI 2, was adopted by the *Assemblée Nationale* on 21 December 2010 ([please refer to the Legal and regulatory update - August / September 2010](#)). The bill is soon to be reviewed by the Senate on second reading.

France -Whistle-blowing - Update of the CNIL general authorization

On 14 October 2010 the French data protection authority (CNIL) decided to amend the single authorization n°AU-004 relating to whistle-blowing systems further to a decision of the *Cour de cassation* in December 2009 which noted that some articles of the authorization could be misconstrued. As a result of one of the main amendments, the single authorization now covers whistle-blowing systems allowing for the reporting of potential serious breaches of competition rules and no longer refers to the possibility of reporting potential harm to the "vital interests" of the business.

International - New gTLDs

The board of directors of the Internet Corporation for Assigned Names and Numbers (ICANN) decided on 5 November 2010 no longer to restrict connections between registries and registrars in the new gTLDs program. This decision will allow registries - registrars cross-ownership agreements and potential vertical integration in relation to the ownership and exploitation of new gTLDs.

12. Public law

France - Consultative committees for the out-of-court settlement of contract disputes

Decree n°2010-1525 dated 8 December 2010, published in the OJ of 11 December 2010, establishes the composition, organisation and operational procedures of the consultative committees for out-of-court settlement of disputes relating to contracts. The national and local committees are joint bodies that public entities and contractors may have recourse to without any procedural requirement. They issue their opinion within six months.

13. Real estate

France - Real estate professionals: business permits

[Decree n°2010-1707](#) dated 30 December 2010 published in the OJ of 31 December 2010 specifies the conditions for gaining an exemption from the requirement to provide evidence of financial security in the context of the issue of business permits and simplifies the conditions for obtaining business permits for EU nationals.

France - Planning law: Tax

[Law n°2010-1658](#) dated 29 December 2010 published in the OJ of 30 December 2010 provides for the creation of a planning tax on planning applications and prior declarations filed from 1 March 2012. This planning tax also applies to amending planning applications generating additional tax filed from 1 March 2012.

On the other hand, the law provides for the repeal on 1 January 2015 of the tax for sewer connection, the tax for construction of public parking and the tax relating to road systems and networks.

The law also creates a tax for sub-density applying to planning applications filed from 1 March 2012.

14. Tax

France - Wealth tax (ISF) and investment in small companies (PME)

The French tax authorities (FTA) issued a statement of practice on 10 December 2010 (**statement of practice n° 7 S-8-10**) regarding the change to the wealth tax rebate available for investments in PME included in statement of practice n° 7 S-7-10.

France - Value added tax (VAT)

The FTA issued two statements of practice dated 6 December 2010 (**statement of practice n° 3 A-8-10**) and 30 December 2010 (**statement of practice n° 3 A-9-10**) regarding (i) VAT applicable to real estate rentals taxable upon election and (ii) the new VAT rules applicable following the reform of the French real estate VAT regime in March 2010.

France - Finance Bill for 2011

The Finance Bill for 2011 enacted on 30 December 2010 provides, among other things, for:

- Repeal of the cap on the 5% add-back to be realized within the framework of the French participation exemption;
- Loans made by third parties (bank loans) to fall within the scope of thin capitalization rules when are guaranteed by a related company;
- The provisions of the French tax code (**FTC**) on payment of the tax on capital gains realized on lease-backs of real estate in several instalments to be extended until 31 December 2012;
- A bank tax of 0.25% of the minimum equity required the preceding year to be created for 2011;
- The global cap applicable to tax loopholes to be reduced to EUR 16,000 plus 6% of taxable income;
- The maximum rate of personal income tax to increase from 40 to 41%;
- An increase in the lump sum tax ("*prélèvement forfaitaire libératoire*") and in the taxation rate on capital gains realized upon disposal of securities from 18% to 19%;
- Repeal of the taxation threshold of EUR 25,830 for 2010 applicable to capital gains realized upon disposal of securities;
- An increase in the taxation rate applicable to real estate capital gains from 16% to 19%;
- An increase in social security charges from 12.1 to 12.3%;
- An increase in the taxation rate applicable to acquisition capital gains realized by beneficiaries of stock-options from 40% to 41% for the portion exceeding EUR 152,500.
- A wealth tax taxation threshold of EUR 800,000 for 2011.

France - 4th Amended Finance Bill for 2010

The 4th Amended Finance Bill for 2010 enacted on 30 December 2010 provides, among other things, for:

- The so-called "*théorie du bilan*" to be repealed as of 1 January 2012;
- The provisions of section 210 E of the FTC regarding the tax treatment of sales and contributions of real estate to real estate companies to be extended for 2011;
- Upon election, a VAT group to be able to be constituted between a company and its subsidiaries (direct or indirect holding of at least 50%) (section 1693 ter of the FTC);
- A new withholding tax applicable to the gains realized in connection with stock-options, free shares and entrepreneurial investment bonds by individuals non resident in France for tax purposes (section 182 A ter of the FTC);
- Tax matters between France and Taiwan to be governed by a "quasi tax treaty" which should be enacted by 1 January 2012.

International - Decree dated 2 December 2010: Tax bilateral agreement regarding exchange of information in tax matters between France and Bermuda signed in Paris on 2 October 2009;

International - Decree dated 8 December 2010: Tax bilateral agreement regarding exchange of information in tax matters between France and the Bahamas signed in Paris on 7 December 2009;

International- Decree dated 10 December 2010: Addendum to the tax treaty between France and Switzerland signed in Bern on 27 August 2009;

International - Decree dated 10 December 2010: Tax bilateral agreement regarding exchange of information in tax matters between France and Liechtenstein signed in Vaduz on 22 September 2009;

International - Decree dated 14 December 2010: Tax bilateral agreement regarding exchange of information in tax matters between France and Cayman Islands signed in Paris on 16 September 2009.

15. Telecoms

France - Decision n°2010-1312 of 14 December 2010 adopted by ARCEP setting the regulatory framework for FttH rollouts across France outside high-density areas

Decision n°2010-1312 adopted by ARCEP sets the regulatory framework for Fibre-to-the-home (FttH) rollouts across France, outside high-density areas. It was passed on 14 December 2010 in accordance with law n°2008-776 on modernising the economy and law n°2009-1572 concerning efforts to bridge the digital divide.

A first decision issued on 22 December 2009 set the general rules that apply to the entire country for the rollout of FttH, as well as specific regulations for high-density areas only.

The decision of 14 December 2010 adds detail concerning the terms and decisions governing access to ultra-fast broadband optical fibre electronic communications lines in national territory outside high-density areas.

France - Decision n°2010-1314 of 14 December 2010 establishing the terms of eligibility for receiving financial aid from the digital regional development fund (FANT)

On 14 December 2010, ARCEP passed decision n°2010-1314 concerning conditions of eligibility and openness that infrastructure and networks must satisfy to be eligible to receive financial aid from the digital regional development fund. Created by law n°2009-1572 concerning efforts to bridge the digital divide, the fund is intended to help finance the deployment of ultra-fast broadband networks. The law also gives ARCEP the task of defining the terms of accessibility and openness to aid from this fund.

Decision n°2010-1314 is based on the fundamental principle of technological neutrality. An infrastructure is deemed accessible and open if it is provisioned in such a way as to enable deployment of at least one ultra-fast broadband network serving all users in the area. A network is deemed accessible and open if it allows operators to provide their customers with true end-to-end access to ultra-fast broadband, and if there is an effective passive access solution attached to that network.

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