

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 March 2012

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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Summary of miscellaneous French draft legislation

- **Proposed legislation to strengthen consumer protection in distance selling, n°1940, filed September 29, 2009** - adopted on first reading by the National Assembly 20 January 2010
- **Proposed law relating to commercial zoning, n°2490, filed May 3, 2010** - adopted on first reading by the National Assembly June 15, 2010 - adopted on first reading by the Senate March 31, 2011
- **Bill strengthening the rights, protection and consumer information, n°3508, filed June 1, 2011** - first reading by the National Assembly 11 October 2011 and by the Senate December 22, 2011
- **Proposed legislation to strengthen consumer rights regarding telephone solicitation, n°354, filed March 11, 2011** - adopted on first reading by the Senate April 28, 2011
- **Draft Law on Financing of Works, n°4090, filed December 14, 2011** - adopted on first reading by the National Assembly 26 January 2012

Enacted laws

- **Act n°2012-300 of 5 March 2012 relating to research involving humans** – OJ of 6 March 2012
- **Act n°2012-301 of 5 March 2012 regarding the tracking of children at risk of transmission of information** - OJ of 6 March 2012
- **Act n°2012-346 of 12 March 2012 on measures regarding backup procedures, receivership or liquidation of which property is the**

subject – OJ of 13 March 2012

- **Act n°2012-355 of 14 March 2012 on the governance of social security and mutuality** - OJ of 15 March 2012
- **Act n°2012-354 of 14 March 2012 supplementary budget for 2012** - OJ of 15 March 2012
- **Act n°2012-375 of 19 March 2012 on the organization of the service and information given to passengers in airlines and passengers in various other forms of transport** - OJ of 20 March 2012
- **Act n°2012-376 of 20 March 2012 concerning the increase of building rights** – OJ of 21 March 2012
- **Act n°2012-387 of 22 March 2012 on the simplification of the law and the easing administrative procedures** - OJ of 23 March 2012
- **Act n°2012-409 of 27 March 2012 concerning the execution of sentences** - OJ of 28 March 2012
- **Act n°2012-410 of 27 March 2012 on the protection of the identity** – OJ of 28 March 2012

1. Banking

France - Usury rates

The Order dated 20 March 2012 relating to the implementation of Articles L. 313-3 of French consumer code and L. 313-5-1 of French monetary code ([OJ n°0072 dated 24 March 2012](#)) sets various usury rates which are applicable to certain categories of consumer loans. This Order which implements the Order dated 22 March 2011 determines the applicable usury rates based on the average global effective rates charged by credit institutions during the first quarter of 2012.

These rates will apply for one quarter from 1st April 2012.

France - "FIBEN" file of *Banque de France*

The Decree n°2012-405 dated 23 March 2012 amends Article D. 144-12 of the French monetary and financial code ([OJ n°0073 dated 25 March 2012](#)) and states that information contained in the "FIBEN" file of the *Banque de France* relating to company managers may be disclosed in cases of safeguarding or receivership as long as the proceedings concerned are mentioned on the French commercial registers. The Decree also specifies that information is restricted to "credit institutions" and "economic or financial administration".

This Decree comes into force on 1st April 2012.

France - IOBSP

Please refer to the [Insurance section](#).

2. Capital Markets

France - Law n°2012-387 dated 22 March 2012

The law relating to the simplification of the legal and administrative procedures provides:

The extension of the share buy-back options on Alternext to align their regime to the system which applies to shares listed on the regulated market (NYSE EURONEXT);

The abolition of the requirement for a document summarising information supplied during the year for companies listed on a regulated market;

In connection with the cooperation between the French Market Authority (AMF) and the European Market Authority (ESMA); for this purpose, a new article L.632-6-1 is created in the French Monetary and Financial Code which provides for the exchange of information between the French and European Authorities.

France - European Regulation n°236/2012 dated 14 March 2012 on short selling and certain aspects of credit default swaps

The regulation provides for the supervision of short selling, by establishing transparency measures, in particular the requirement to notify the competent authorities about important net short positions on shares, on sovereign debt, on credit default swaps on sovereign debt, and the establishment of limitations which apply to short selling not covered by shares and by sovereign debt as well as to CDS on sovereign debt.

France - Coming into force of law n°2012-354 dated 14 march 2012 corrective finance act

[Please see the Tax section.](#)

3. Competition

France - Combating late payment

The Law n°2012-378 of 22 March 2012 relating to the simplification of the law and a reduction of administrative proceedings, was published in the O.J. on 23 March 2012. It transposes into French law the Directive 2011/7/UE dated 16 February 2011 on combating late payment in commercial transactions (Article 121 of the Law modifies Article L.441-6 of the Commercial Code).

European Law - Commission's Guidelines on how to establish non-confidential versions of documents

The European Commission has published two documents which complete the existing texts on how to establish non-confidential versions of documents and reports submitted to the Commission in the framework of competition procedures. The first document outlines what a business secret is defined as, and which information contains business secrets and which does not, and specifies the terms and the procedure that must be followed to request the protection of confidential information. The second document provides guidance on practical elements and illustrates the above mentioned points with a fictional example.

4. Consumer law

France - Usury rates

[Please refer to the Banking section.](#)

5. Corporate

France - Amending Finance Law 2012

An amendment of Finance Law 2012 n°2012-354 dated 14 March 2012, was published in the Official Journal on March 15, 2012, and includes several provisions concerning corporate law, including:

- Article 6 of the Law implemented a new article L.225-209-2 in the French Commercial Code, and permits ordinary general meetings of unlisted companies to authorize the board of directors to purchase the shares of the company in order to offer or to allocate them:

- Within one year following the purchase, to beneficiaries of an operation mentioned in Article L.225-208 or intervening in the framework of Article L3332-1 and in accordance with the French Labour Code, or
- within two years following the purchase, for payment or exchange of assets acquired by the company in the context of an external growth operation, a merger, a split transaction or a capital contribution operation, or
- within five years following the purchase, to shareholders who wish to buy the shares in the event of a sale organised by the company itself in the three months following any ordinary annual meeting

The number of shares purchased by the company cannot exceed 10% of the capital in cases of allocation to employees or repurchase-disposal to other shareholders. The threshold is limited to 5% in cases of an external growth operation.

- Setting up tax on financial transactions

[Please refer to the Tax section.](#)

- Proportional taxation at the rate of 0,1% as registration duty of the sale of shares

[Please refer to the Tax section.](#)

These provisions came into force on the 16th March, 2012.

France - Simplification of the statutory obligations of a company

Act n°2012-387 dated 22 March 2012 relates to a simplification of the law and a reduction of administrative procedures and was published in the Official Journal on March 23, 2012. It has provided several provisions relating to companies law, mainly in chapter I which is dedicated to the simplification of the statutory obligations of companies, including:

- Governance: modernisation of the rules applicable governing directors in a limited company. Henceforth, the duration of their position is governed by the Articles of Association and cannot exceed six years (Article 6),
- Accounts of the company: there is no longer a requirement to deposit a management report and a second copy of the company accounts at the registry ("*greffe*") of the tribunal for companies and the introduction of a facility allowing companies to deposit their annual accounts electronically (Article 9),
- Capital increase:
 - The requirement to nominate an approved registrar who has been approved unanimously by the shareholders in the event of a capital increase by a contribution in kind (Article 7),
 - A softening of the requirements for the extraordinary general assembly of limited companies to meet. Henceforth the 3 year period for the convocation of an extraordinary general assembly for the purpose of giving a decision on a capital increase project has been extended to 5 years in instances when an extraordinary general assembly was held in the 3 previous years for the purpose of giving a decision on a capital increase project (Article 13),
 - An alignment of the regime applicable to the increase of capital for limited liability companies (SARL) and the regime applicable for increase in the capital of limited companies (SA) (Article 10),

- Exemption from the need to report to the registrar for certain categories of contributions in kind for limited -companies (Article 8).
- Sale of shares, partial transfer of assets and mergers: the possibility to submit a partial transfer of assets between companies of different legal forms under the regime that is applicable to splits (Article 16),
- Sale of business: an improvement in the information that is communicated to the purchaser by the seller and a reduction in the period required for the deposit to be held by means of a decrease of the various periods attached to the conditions of sale. The amendment keeps the requirement of the 15 day period between the sale of the business and the publication of the sale notice in a journal of legal notices, but removes the 15 day period requirement between the publication of the sale notice in a journal of legal notices and its publication in the official bulletin of civil and commercial announcements (*BODACC*). These modifications were introduced by Articles L. 141-12 and L. 143-21 of the Commercial Code and Article 201 of the General Tax Code and they are applicable to sales of businesses that have taken place since the publication of the law.

The provisions of the Act came into force on the 24th March, 2012.

6. Employment

France - Labour law provisions on the simplification of the "Warsmann" law

The Law n°2012-387 of March 22, 2012 on the simplification and reduction of administrative procedures entered into force on March 24, 2012. There are around twenty Articles on Labour and Social Security laws. They notably provide for the implementation of teleworking within the French Labour Code, the termination of an employment contract from the notification date of the dismissal of an employee who is dismissed due to non-occupational physical inability (and not at the end of the term of the notice period) and the simplification of payslips.

France - Shortening of working hours: prior administrative authorization is no longer required

The Decree n°2012-341 of March 9, 2012 states that since March 11, 2012, the compensation request that the employer had to claim from the Prefect of the department where the entity is situated, before they could reduce an employees' working time, is no longer necessary. The employers shall now send their request for special compensation after he/she has reduced the employees' working time.

France - The social security central agency ("Acos") clarifies the new terms for the application of professional fees' allowance

The "Acos" Circular n°2012-32 of March 19, 2012 explains, in a Q&A format, the consequences of:

-Article 20 of the law n°2010-1594 dated December 20, 2010 on the funding for the Social Security for 2011, limits the claims for professional fees to 4 times the amount of the social security ceiling.

-Article 17 of the law n°2011-1906 dated December 21, 2011 on the funding for the Social Security for 2012, reduces the allowance rate from 3% to 1.75%.

7. Insolvency proceedings

France - Safeguard and accelerated financial safeguard

Article 28 of Law n°2012-387 dated 22 March 2012 relating to simplification of the law (OJ n°0071 dated 23 March 2012) states that a safeguard plan must "*take into account the subordination agreements between creditors concluded before the commencement of proceedings*" (Article L. 626-32 of the French commercial code). Moreover, the scope of the accelerated financial safeguard has been extended by the creation of a new specific threshold. Thus, if any thresholds of Article L. 626-29 of the French commercial code, common to safeguard and accelerated financial safeguard, can

be reached, a debtor will remain eligible for the accelerated financial safeguard if its "*total assets*" exceeds the threshold fixed by Decree (Article L. 628-1 of French commercial code).

These provisions came into force on 24 March 2012.

France - Provisional measures

The Law n°2012-346 dated 12 March 2012 ([OJ n°0062 dated 13 March 2012](#)) allows, within the framework of any insolvency proceedings, to order any provisional measure on property of managers subject to a claim in "extension for of merger of assets" or "fictivity" (Art. L. 621-2 of French commercial code for safeguard, Art. L.631-8 of French commercial code for receivership and Art. L. 641-1 of French commercial code for liquidation). It also allows to order provisional measures in case of a manager's fault contributing to cessation of payments under the receivership (Art. 631-10-1 of French commercial code).

These provisions came into force on 13 March 2012.

8. Insurance

France - Anti-money laundering ("AML") – exemption for non-life insurers relating to their AML due diligence obligations on their customers

[Law n°2012-387 dated 22 March 2012](#) on simplification of law and alleviation of administrative procedure has modified Article L. 561-9 of the French Monetary and Financial Code which relates to the insurance companies AML due diligence obligations. This Article provides an exemption for persons subject to AML obligations. In case where there is no suspicion of money laundering or of financing terrorism, the insurers no longer have to comply with the due diligence obligations as stated in articles L. 561-5 and L. 561-6 of the French Monetary and Financial Code. This only applies when they offer insurance which is (i) not related to life-mortality or to marriage-or birth, (ii) not linked to investment funds and which does not fall within the scope of collective or assimilated operations. With regards to entities which provide online payment services, the new regulation provides an exemption from the obligation to identify customers and their effective beneficial owner. Article L. 561-21 of the same Code related to the exchange of information regarding the existence and content of suspicion declarations has also been amended.

France - Anti-money laundering – revised recommendation by the Financial Action Task Force ("FATF")

The FATF has amended its [recommendations](#) relating to the fight against money laundering, terrorism financing and the proliferation of weapons of mass destruction. The amendments relate in particular to the risk-based approach of these regulations by the States which are applying the recommendations, the strengthening of transparency obligations regarding effective beneficial owners, and the strengthening of international cooperation.

France - Intermediaries – Registration

The [Order dated 1 March 2012](#) defines the contents of the application file that must be provided in cases where there is a request for registration or a renewal of the registration with the intermediaries single register ("*registre unique des intermédiaires*") referred to in Article L. 546-1 of the French Monetary and Financial Code by intermediaries in banking operations and payment services, financial investment advisers and tied agents. The Order also defines the register of information that shall be publicly available. Finally, this regulation provides coordination measures with the French Insurance Code relating to the insurance intermediaries registration. This Order shall come into force the same day that the intermediaries register is implemented. The French insurance Code provisions relating to insurance intermediaries shall come into force on 1 April 2012.

France - Intermediaries in banking operations and payment services ("IOBSP") – A definition of thresholds

The [Order dated 1 March 2012](#) relating to the thresholds established by article R. 519-2 of the French Monetary and Financial Code regarding the IOBSP, determines the thresholds below which persons providing mediation services in banking operations and payment services that are complementary to the products or services provided as part of their professional activity, are not intermediaries in banking operations and payment

services as provided for under article L. 519-1 of the same Code and are not subject to the same applicable obligations. This order shall enter into force at the date of the implementation of the intermediaries single register ("*registre unique des intermédiaires*") referred to under Article L. 546-1 of the French Monetary and Financial Code.

9. Intellectual Property

France - Law on the Digital Exploitation of Unavailable Books of The 20th Century

Act n°2012-287 of 1 March 2012 on the digital exploitation of unavailable books from the 20th century, as amended by corrigendum published in the French Official Journal of 10 March 2012, introduced new provisions in the French Intellectual Property Code aiming to set up a collective management of the digital exploitation of books which are not published anymore in cases when they have entered into the public domain. Pursuant to the new articles L. 134-1 *et seq.* of the French Intellectual Property Code, the French National Library is responsible for listing those works in a public database. The system enables any interested persons to obtain the books included in the data base from a collecting society set up for the purpose the authorization to publish in a digital format, subject to there being no opposition from the authors or publishers who are entitled to the rights on these books.

France - Amendments to the legal regime of assignment for the journalists' rights resulting from the Act aiming to simplify the law and ease administrative formalities

Article 98 of "Warsmann" Act n°2012-387 of 22 March 2012 aims to simplify the law and ease the administrative formalities by adopting the amendments to the legal regime of assignment for the journalists' author's rights. In particular, the Law introduces a new article L. 132-42-1 in the French Intellectual Property Code which paves the way for the negotiation of collective agreements on the conditions of assignment of the journalists' author's rights within news organizations which employ less than eleven persons. The negotiation of companywide agreements or collective agreements on the conditions of assignment of the journalists' rights to news organizations was introduced by Act n°2009-669 on 12 June 2009 seeking to encourage broadcasting and protection of creativity on the Internet ("Hadopi" Act). Yet, such negotiation still remained impossible in practice within news organizations with less than eleven employees since, they lack elected staff representatives. Pursuant to the new article L. 132-42-1 of the French Intellectual Property Code, such collective agreements can now be passed directly with professional journalists which regularly work for the news organization and are appointed by one or several representative trade unions of professional journalists.

10. New technologies

France - Domain Names under .FR

As of 3 May 2012, AFNIC (the Registry for the .FR and other French extensions) will allow the registration of internationalised domain names ("IDNs") namely, domain names including accents or special characters (30 characters in total). Initially, during the period from 3 May to 3 July 2012; registrations will be open primarily for owners of corresponding traditional domain names. Moreover, registration of such domain names will be open under the .FR extension as well as under all other extensions managed by AFNIC (.PM, .RE, .YT, .WF, .TF).

11. Public law

France - Threshold for public contracts advertising and tendering rules

Law n°2012-387 dated 22 March 2012 regarding the simplification of the law and the reduction of administrative formalities, published in the OJ of 23 March 2012, raises the threshold above which public contracts must comply with advertising and tendering obligations to € 15.000 exclusive of VAT. This is also provided by the public procurement contracts code (please refer to the Legal and regulatory update - October 2011 and December 2011).

12. Real estate

France - Modification of the planning authorisations regime

Decree n°2012-274 dated 28 February 2012 published in the Official Journal of 29 February 2012 modified the rules applicable to allotments, the threshold of the works exempted from planning authorisations, certain instruction time periods for planning authorisations and the content of planning authorisation application files.

These provisions apply as from 1 March 2012.

France - Increase in rights to build

Law n°2012-376 dated 20 March 2012 published in the Official Journal of 21 March 2012 specifies the conditions under which an increase of 30 % of the rights to build may be authorised in case of erection or extension of a building for residential use.

These provisions apply to planning authorisation applications filed prior to 1 January 2016.

13. Tax

France - Amended finance bill for 2012

-The usual VAT rate will be increased from 19.6% to 21.2% as from 1 October 2012.

- Social security contributions (CSG/CRDS) have also increased from 13.5% to 15.5% as from 1 January 2012 for capital income (income from property, capital gains on sale of shares) and as from 1 July 2012 for investment income (interests, dividends, real estate's capital gains)

- Three financial related taxes are established as from 1 August 2012. They apply to (i) the acquisition of equity securities issued by listed companies which have their head office in France and whose market capitalization exceeds € 1 billion on 1 January of the year during which the transfer occurs, (ii) high frequency trading, and (iii) the acquisition of credit default swaps on European Union sovereign debt.

- Fines and penalties related to tax fraud are increased. Moreover, bank account or life-insurance contracts concealment is penalised by (i) a €1,500 fine for any concealed contracts, or (ii) by a 5% fine of the credit balance of each concealed account exceeding €50,000.

- Transfer taxes on disposal of shares have once again been modified. As from 1 August 2012, a unique 0,10% rate will replace the progressive scale established by the Finance bill for 2012 and will be applicable from 1 January 2012 to 31 July 2012.

France - French tax consolidation regime: a more flexible tax regime

- The Official Administrative Guidelines n°4 H-3-12 dated 2 March 2012 is based on the consequences of the French Administrative High Court's decision "Société Wolseley Centers France" which recognizes the principle of the free allocation of tax burden between the companies members of a French tax group and invalidates the French tax authorities' position. Member companies of a French tax group are free to agree by contract their own modalities of repartition of the tax burden or economy arising from the group taxation.

- The Official Administrative Guidelines n°4 H-4-12, published on 9 March 2012, draws the consequences of the EUCJ decision "Société Papillon" and develops the scope of the French tax consolidation group. French subsidiaries held up at 95% by an intermediary company located in a European Union member state and held up at 95% by the group's parent company, may be included in the scope of the French tax group.

France - Capital losses: reporting obligations

- The decree n°2012-359 dated 14 March 2012 develops reporting obligations applicable to capital losses arising from the sale between associated companies of participating shares held for less than two years.

Precisions on stock-options', bonus shares' and founder warrants' (BSPCE) tax regime

- The Official Administrative Guidelines n°5 B-10-12 dated 13 March 2012 develops the tax regime of the withholding tax paid by the employing company in connection with the exercise by non-resident holders of stock-options, bonus shares or founder warrants. The Official Administrative Guidelines n°14 A-3-12 dated 13 March 2012 develops the international tax treatment of these employee benefit schemes in the category of employment earnings (article 15 of the OECD tax model conventions).

- The ruling n°2012/17 develops the method that must be followed to adjust the number of bonus shares being awarded in connection with a distribution of reserves in order to assure the neutrality of the company's operation on capital during the granting phase of the bonus shares.

France - Real estate taxation

- Rental value subject to real estate contribution

The Official Administrative Guidelines n°6 C-4-12 and n°6 E-5-12 published on 20 March 2012 develop the valuation method of the rental value of industrial land and buildings subject to Company's real estate contribution when the real estate property is recorded on the owner's balance sheet.

- Tax on the sale of vacant land made buildable

The Official Administrative Guidelines n°8 M-2-12 published on 14 March 2012 comments on the taxation of the sale of vacant land made buildable. This tax (whose rates vary from 5% to 10%) is assessed on the sale price diminished by the acquisition price stipulated in the contract.

- Revaluation of shares in a company holding a real estate company (SCI)

The ruling n°2012/12 dated 28 February 2012 sets out that the revaluation of the shares in a company subject to corporate income tax and which holds a real estate company which was previously revaluated its real estate property is neutrally tax treated with respect to French Administrative High Court's decision "Quémener".

Dual tax regime for mutual insurance

The Official Administrative Guidelines n°4 H-5-12 published on 16 March 2012 develops the tax regime applicable to mutual insurance. These are subject to corporate taxes if their activities are regarded as lucrative.

Approbation of three amended double tax treaties

Three laws dated 7 March 2012 allow the approbation of the amended double tax treaties signed by France and Mauritius Island, Austria and Saudi-Arabia.

14. Transports

France - Bill on various provisions in the transport and maritime sectors

A Bill on various provisions in the transport and maritime fields has been passed by the French Council of ministers on 21st March 2012. This Bill (i) plans to simplify the procedure for ordering the detention of abandoned ships, (ii) clarifies the legal situation of road transports services implemented

by some regions and extends the possibility of implementing road passengers services of national interest, (iii) completes the Transportation Code in order to enable neighbouring areas of Member States or of a state outside European Union to take part in a European grouping of territorial cooperation which purpose is to organise cross-border regional rail transports and (iv) updates the liability regime in cases of oil spills.

France - Right to strike in air transport

The Law n°2012-375 of 19 March 2012 on the organisation of service and information to passengers in air transport companies and on various provisions in the transports field was published in the O.J. dated 20 March 2012. This Law aims to establish a mechanism of enhanced social dialogue in order to ensure the continuity of public service for passengers travelling by air and land during vacations and other busy periods (especially on holidays and the day before). It also reinforces the passenger's right to information who should be given free, precise and reliable information at least 24h before the beginning of the disturbance.

France - Reimbursement of overpayment of toll payments

An Order of 16 March 2012 about toll collecting for freight road transport vehicles and passenger road transport vehicles not equipped with an on-board piece of equipment for identification and toll collection was published in the O.J. dated 24 March 2012. This text specifies the list of documents needed to get the reimbursement of overpaid toll payment adjusted in regards with to the EURO emission class of the vehicle and the repayment terms.

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