

The Paris office of 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 June 2010.

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Summary of miscellaneous French draft legislation

Bill aiming to guarantee fair conditions of remuneration to employees concerned by a reclassification programme - passed on first reading by the French National Assembly (*Assemblée Nationale*) on 30 June 2009, examined by the French Senate on 4 May 2010

Bill for the creation of employment - passed on first reading by the National Assembly on 9 June 2009.

Bill reforming consumer credit - presented on 9 April 2009 and passed on first reading by the French Senate (*Sénat*) on 17 June 2009 - passed on first reading by the National Assembly on 27 April 2010 - passed without amendment by the Senate on 21 May 2010

Bill relating to the merger of the professions of advocate and solicitor in Courts of Appeal - presented on 3 June 2009 - passed on first reading by the National Assembly on 6 October 2009 and on 22 December 2009 by the Senate.

Bill aiming for greater transparency and fairness in remuneration policies of business managers and market operators - presented on 2 September 2009 and passed on first reading on 20 October 2009 by the National Assembly.

Bill aiming to reinforce consumer protection in distance selling, n°1940 - presented on 29 September 2009 - passed on first reading by the National Assembly on 21 January 2010.

Bill relating to an equal representation of woman and men in administrative and supervisory boards and to professional equality, n°2140, presented on 3 December 2008 - passed in first reading by the National Assembly on 21 January 2010.

Bill relating to the individual business with limited liability, n°2265, presented by the National Assembly on 27 January 2010 - passed on first reading on 8 April 2010 - discussion in Mixed Joint Commission on 12 May 2010 - referral of the matter to the Constitutional Council on 17 May 2010

Bill relating to the banking and financial regulation, n°2165, presented by the National Assembly on 16 December 2009 - passed by the National Assembly on 1st reading on 10 June 2010.

Bill relating to the new organisation of the electricity market, n°2451, presented on 14 April 2010 - passed on 1st reading by the National Assembly on 15 June 2010

Bill relating to the modernisation of regulated legal professions, n°2383, presented on 17 March 2010 - passed on 1st reading by the National Assembly on 30 June 2010

Bill relating to the national commitment to the environment, n°155, presented on 12 January 2009 - passed on 1st reading by the Parliament on 11 May 2010 - Mixed Joint Commission (approval) - Mixed Joint Commission reading on 29 June - pending

Enacted laws

Bill relating to the "Greater Paris", n°2010-597 of 3 June 2010 (O.J.of 5 June 2010)

1. Banking

France - Consumer credit

Law n°2010-737 of 1 July 2010 ([OJ of 2 July 2010](#)) reforming consumer credit regulates advertising and granting of credits, improves information to consumers and enable consumers to choose between several types of consumer credits.

The publication of the decrees and orders for the implementation of this Law is scheduled for the end of the year 2010.

France - Usury rates

The French Ministry of Economy, Finance and Industry has fixed usury thresholds for the second quarter of 2010, by an Opinion dated 27 June 2010 ([OJ of 27 June 2010](#)).

The rates provided by this Opinion will be applicable as of 1 July 2010.

2. Capital Markets

France - Update of the AMF policy on collective investment schemes

The AMF has updated the three documents below regarding collective investment schemes, in order to take into account the best practices it has identified:

- [guide to drafting collective investment scheme prospectuses](#);

- [summary of the observations resulting from an examination of collective investment schemes' behaviour](#);

- [best practice guide to drafting marketing](#).

France - Publication of the AMF's 2009 annual report

The AMF published its [2009 annual report](#) which highlights the following measures taken by the AMF:

- the setting up of a new Directorate of relationships with small investors, which brings together all the measures taken in relation to such small investors;
- the setting up of a new risks committee;
- promoting the recovery of the Paris bond market and the financing of small and medium-sized companies.

France - Reports and public consultations launched by the AMF

The AMF published the two following reports:

- the [report](#) of the AMF working group on audit committees;
- the [report](#) of the AMF working group on the review of the Financial Instruments Markets Directive.

Moreover, the AMF has launched a [public consultation](#) until 30 June 2010 in relation to the transposition of the UCITS IV directive.

3. Consumer law

France - Standard information forms

The [Order](#) dated 15 June 2010 setting the content of the standard information forms relating to timeshare contracts, long-term holiday contracts, resale contracts and exchange contracts, and the content of the standard retraction form aiming at facilitating the right to retract was published in the O.J. of 22 June 2010.

France - Sale of tobacco to minors

[Decree](#) n° 2010-545 of 15 May 2010 relating to sanctions provided for the sale and offer of tobacco products was published in the O.J. of the 27 May 2010. It amends Article 3152-3 of the French Public Health Code that now provides that selling or offering tobacco products for free to an underage person, in tobacconists, shops or public places shall be punished by a 4th class minor offence fine, unless the offender proves that it had been induced into thinking the buyer was over 18.

4. Corporate

France - Rights to information of shareholders in listed companies

[Decree n°2010-684 of 13 June 2010](#) relating to the rights of shareholders in listed companies (companies whose shares are traded on a regulated market) requires that such companies have an internet website for the purposes of posting a certain number of information intended for their shareholders.

Such companies will need to set up regulated and secured internet access to a website on which they will post information relating to shareholders' meetings.

The provisions of the Decree, inserted in the regulatory part of the French Commercial Code, will apply to shareholders' meetings to be held as of 1 October 2010. Companies whose shares are traded on a regulated market will therefore have to publish on their website, for instance, within 15 days following the holding of any shareholders' meeting, the result of the votes notably indicating the number of shareholders present or represented by proxy at the meeting, the number of voting rights held by the shareholders present or represented by proxy at the meeting and for each resolution, and the total number of votes cast.

5. Employment

France - Social Dialogue: union hearings in very small businesses

A Bill completing measures first dealt with by Act 2008-789 of 20 August 2008 and implementing social dialogue in very small businesses was passed by the Senate in first reading on 8 June 2010 pursuant to the accelerated legislative procedure.

According to the bill, joint employee-employer commissions would be constituted, by agreement, on a national, regional or departmental level in order to ensure the application of collective bargaining agreements and in order to provide assistance in facilitating social dialogue between employees and employers in business with less than eleven employees.

These commissions would not be given any role in the supervision of businesses. Their members would not have the authority to visit or investigate businesses without the employer's permission.

The text of the Act should be published during July 2010.

France - Retirement reform: Draft Bill transmitted to social partners

The Draft Bill on the retirement reform will be brought before the Cabinet (*Conseil des Ministres*) on 13 July.

The primary change brought about by the Draft Bill is the progressive increase of the legally-permitted retirement age from 60 to 62 by 2018 and the increase of the full pension retirement age from 65 to 67 by 2023. The terms and conditions of implementation, as well as the timetable by which four months will be added to the retirement age for each generation, will be fixed by decree.

The Draft Bill also provides for a progressive increase in the duration of affiliation based on increasing the required contribution period from 41 annuities to 41 annuities and one quarter between now and 2013 (this will, thus, concern individuals born between 1953 and 1954) in order to reach 41.5 years in 2020.

The "long career" provisions will be maintained but with two modifications for insured individuals born after 1 January 1956.

On the one hand, access to this programme will be limited to individuals aged 58 or 59 (and no longer aged between 56 and 58) having commenced their professional activities at age 14 or 15, or those aged 60 (and no longer 59) having started their professional activities at the age of 16.

On the other hand the retirement age for those having started their career at age 17 will remain 60.

The Draft Bill also provides that individuals suffering from a permanent disability resulting either from a work-place illness or a work accident will continue to benefit from the ability to retire with a full pension on account of "hardship" at the age of 60, regardless of the length of their insurance contributions.

A measure would also be implemented to assist employers in hiring job-seekers of 55 years of age or more. Employers will be offered a contribution equal to 14% of the employee's gross monthly salary, limited to one social security ceiling, for every new hiring in this age group with indefinite term contracts or definite terms contracts of more than six months.

Businesses would be expected to make a contribution to all anticipated retirements related to "hardship", through a "surcharge" on their workplace illness and work accident contributions based on "the number of employees occupying, beyond a certain period, a position with serious risk-factors".

A penalty of 1% of the aggregate of gross salaries will be levied against all companies with at least 300 employees that do not respect the obligation to carry out an evaluation of the gender equality situation (both in terms of salaries and professional composition) within the company. This financial penalty would help finance retirement funds as from 1 January 2012.

France - "Portage salarial": Latest proposal made by Prisme

An Agreement relating to "Portage Salarial" (scheme providing employee status for independent consultants) was entered into between Prisme (the French employers' organisation) and the CFDT, CFTC, CFE-CGC and CSFV-CFTC (French labour unions). The CGT-FO and the CGT are not, at the moment, signatories to this agreement.

Recourse to "portage salarial" schemes will be reserved to employees having an executive status and thus having a certain level of expertise or qualification that come with a certain autonomy with regard to client negotiations, as well as the provision of client services.

Client businesses may only avail themselves of such "portage salarial" schemes in order to accomplish occasional tasks that are not related to their normal or permanent activity or for urgent tasks requiring expertise which they do not possess internally.

The employee will be linked to a company providing the "portage salarial" framework ("entreprise de portage") by an indefinite term employment contract or by a standard definite term contract ("contrat de portage"). The "entreprise de portage" will, in turn, be required to enter into a provision of services agreement with the client business.

Such employees will have the choice between two ways of organising their working time: either by an all-inclusive agreement providing a certain number of hours and limited to 173 hours per month (1827 hours per year), or by an all-inclusive yearly agreement providing a fixed number of days limited to 218 days per calendar year.

The "Portage salarial" activity will be limited in its availability and may only be undertaken by companies that are specifically dedicated to providing such services and registered under an activity code ("code NAF") created specifically for such companies. Temporary employment agencies will not be allowed to provide "portage salarial" services.

Finally, the minimum gross salary of such consultants will be €2,900 per month (to which a 5% payment for business development will be added) for full time employment - an amount which is higher than the official social security ceiling.

6. Environment

France - General tax on polluting activities

[Decree n°2010-576](#) of 31 May 2010 published in the Official Journal of 2 June 2010 fixes the amounts of the general tax on polluting activities related to classified installations for the protection of the environment relating to waste.

This decree establishes the multiplier for waste treatment facilities. The ratio varies depending on the nature and volume of waste.

7. Insolvency proceedings

France - Individual business with limited liability (EIRL)

By a Decision dated 10 June 2010 ([Cons. const. déc. n°210-607](#)) the French *Conseil constitutionnel* (French constitutional court) has validated most of the provisions of the Law relating to the individual business with limited liability (*entreprise individuelle à responsabilité limitée*).

However, the *Conseil Constitutionnel* has expressed some doubts about the implementation of the Article L. 526-12 of the New French Commercial Code, pursuant to which the patrimony allocation statement is enforceable against creditors whose rights were created prior to this statement (please refer to the [Legal and regulatory update - May 2010](#)). The *Conseil Constitutionnel* deems that this Law complies with the French Constitution, provided that the former creditors are personally informed of the allocation statement and of their right to object to the enforceability of the allocation statement against them.

This law will come into force on 1 January 2011.

8. Insurance

France - Consumer Credit Reform Law

[Law n° 2010-737 of 1 July 2010](#) regarding the reform of consumer credit notably provides for the link between mortgages and loan insurances to be broken, i.e. the possibility for borrowers to take out their insurance contract with the professional of their choice. From now on it is forbidden for credit institutions to refuse to accept as a guarantee another insurance contract which has an equivalent level of cover.

9. New technologies

France - Publication of the second "HADOPI" decree

The Decree, relating to the HADOPI Law, creating the offence of negligence to protect copyrighted work on the Internet was published in the Official Journal on 26 June 2010. This Decree defines the offence of negligence as the failure for an Internet user to implement or to properly implement

security measures to prevent illegal downloading from its Internet connection. When finding this type of negligence, judges will be entitled to impose fines upon illegal downloaders.

France - LOPPSI 2

The Bill on the orientation and programming of internal security, also known as LOPPSI 2, was amended by the Law Commission of the Senate to notably take into account the amendments proposed by the French data protection authority (the CNIL) on 6 May 2010. The Law Commission suppressed the necessity to obtain a prior authorisation from the court before indicating to Internet service providers which pedopornographic websites must be blocked. It also gives the CNIL a mission to control the security devices.

France - The annual report of the CNIL

La CNIL presented its 30th annual report on 17 June 2010. The report highlights an increasingly growing activity. In a year, the number of decisions adopted by the CNIL increased by 23% and the controls conducted by the authority have increased by 24%. In addition to the audit of its past activity and other proposals for 2010, the CNIL offers a new online complaints service.

France - The CNIL authorises the collection of IP addresses to fight illegal downloading

On 10 June 2010, the CNIL authorised French collecting companies SCPP, SPPF, SACEM and SDRM to collect the IP addresses of users who make copyrighted files available without the rights holders' authorisation. The CNIL has given these authorisations as part of the implementation of the act relating to the criminal protection of copyrighted work, also known as the HADOPI Law, and will allow the eponymous administrative authority to send warning emails to illegal downloaders.

France - Google ordered to provide the CNIL with all data collected through Street View

Further to Google's statement that it had collected communications from unsecured Wi-Fi networks, the CNIL conducted a control during which it noted that the Google Street View service provided information to other Google services, thereby violating data protection legislation. On 26 May 2010, the CNIL has therefore ordered Google, Inc. to provide the CNIL with all information on the data collected through Street View.

European Law - Online behavioural advertising Opinion by WP29

On 22 June 2010, the European "CNIL" group Working Party (WP29) issued an opinion on online behavioural advertising specifying that online advertisers must obtain the informed consent of Internet users before offering behavioural advertising by asking them whether they wish to install tracking devices, such as "tracking" cookies, and indicating that consent "by default" cannot be accepted.

10. Public law

France - Grand Paris

Law n°2010-597 of 3 June 2010, published in the OJ of 5 June 2010, aims at the economic and urban development of the Ile-de-France region, based on the creation of a passenger public transport system. To this end, said Law institutes an industrial and commercial public body (EPIC) referred to as "Société du Grand Paris", and also provides for the applicable procedures and contracts for the implementation of this project.

11. Real estate

France - Tourist residences

Law n°2009-888 of 22 July 2009 on the development and modernisation of tourist services and Decree n°2009-1652 of 23 December 2009 both amended the legal regime applicable to tourist residences.

The Order of 4 June 2010 published in the Official Journal of 22 June 2010 establishes standards and procedures for the classification of tourist residences.

This Order will come into force on 1 July 2010.

France - Project of "Grand Paris"

Law n°2010-597 of 3 June 2010 published in the Official Journal of 5 June 2010 relating to the project of "Grand Paris" establishes an urban, social and economic project of national interest that unites strategic territories in the Ile de France region.

This project aims to reduce social, territorial and tax inequalities for the benefit of the whole territory.

This project aims in particular at the setting up of a network of public transport and building geographically and socially suited housing.

A new fixed tax on the proceeds of certain real estate valuations has notably been established.

France - Salary of the mortgage's recorders

Ordinance n°2010-638 of 10 June 2010 published in the Official Journal of 11 June 2010 removes the legal regime applicable to the mortgage's recorders.

The responsibility of the State is substituted for the responsibility of the mortgage's recorders.

The salary of the mortgage's recorders is replaced by the contribution of real property security. This contribution is subject to the same mode of assessment, tariff, control and recovery as the salary of mortgage's recorders.

This Ordinance shall come into force on 1 January 2013.

France - Tertiary activities rent index

Decision n°2010-607 DC of 10 June 2010 of the French Constitutional Council (Conseil Constitutionnel) censored Article 12 of the bill on the status of the individual entrepreneur with a limited liability establishing the tertiary activities rent index.

12. Tax

France - Corporate income tax ("*CIT*") exemption for listed real estate companies ("*SIICs*")

A statement of practice issued by the French tax authorities ("*FTA*") on 31 May 2010 (BOI 4 H-7-10) comments on the extension of the CIT exemption available for SIICs listed on a French regulated market to SIICs listed on any regulated market as long as certain conditions are met.

Indeed, Article 40 of the 2009 Amended Finance Act (n° 2009-1674 of 30 December 2009) modified the condition relating to the place where the SIIC is listed. As a consequence, companies wishing to benefit from the favourable tax treatment applicable to SIICs can now be listed on any regulated market with a statutory head office or a main administrative centre in the European Union ("*EU*") or in the European economic area ("*EEA*").

The aforementioned provisions also concerns SIICs listed on regulated markets outside the EEA as long as the requirements provided for by the EU directives are met.

France - Disposal of shares in real estate companies

The FTA issued a statement of practice on 31 May 2010 (BOI 7 D-2-10) related to the registration duties applicable upon disposal of shares in real estate companies.

Indeed, section 43 of the 2009 Amended Finance Act (n° 2009-1674 dated 30 December 2009) specified the scope (territoriality rules) of the 5% registration duty provided for by Article 726, I, 2° of the French tax code ("*FTC*").

As a consequence, the 5% registration duty set out in Article 726 of the FTC will apply to any disposal of shares in real estate companies. Neither the nationality of the real estate company nor the place where the sale is concluded is taken into account when applying Article 726 of the FTC.

France - 18% withholding tax ("*WHT*")

The FTA issued a Ruling on 8 June 2010 (Ruling n° 2010/34) regarding the 18% WHT levied on income distributed by French entities as of 1 January 2008 to individuals having their tax residence outside of France, in a EU member State or in a State that is a party to the agreement on the EEA which has entered into a tax treaty with France providing for administrative assistance in tax matters.

Ruling n° 2010/34 sets out the documents which must be supplied to the distributing entities who do not reside in France in order to benefit from the WHT application at the favourable rate of 18%.

The 18% rate will only apply if the beneficiary of the French source income provides the distributing entity, at the latest at the date of payment of the income, with any document certifying its tax residence outside of France, in a EU member State or in a State that is a party to the Agreement on the EEA which has entered into a tax treaty with France providing for administrative assistance in tax matters.

13. Telecoms

France - ARCEP's annual activity report

ARCEP published its activity report on 9 June 2010. The report describes ARCEP'S main areas of focus, including the transition to the very high speed broadband. The report also offers an assessment of 2009 and indicates for example that ARCEP issued 1095 decisions and initiated 32 procedures to sanction operators.

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