

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 September 2010.

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

**Bill to maintain and create jobs** - adopted on first reading by the Assemblée Nationale on 9 June 2009

**Bill relating to the merger of the professions of advocate and solicitor in Courts of Appeal** - filed on 3 June 2009 - adopted on first reading by the Assemblée Nationale on 6 October 2009 and by the Sénat on 22 December 2009

**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 21 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 by the Assemblée Nationale on 21 January 2010

**Bill on banking and financial regulation**, n°2165, filed with the Assemblée Nationale on 16 December 2009 - adopted by the Assemblée Nationale on first reading on 10 June 2010 - discussion in the Sénat on 30 September 2010

**Bill to reorganise the electricity market**, n°2451, filed on 14 April 2010 - adopted by the Assemblée Nationale on first reading on 15 June 2010 - discussion in the Sénat from 27 to 30 September 2010

**Bill to modernise the regulated judicial and legal professions**, n°2383, filed on 17 March 2010 - adopted by the Assemblée Nationale on first reading on 30 June 2010

**Bill to reform pensions**, n° 2760, filed on 13 July 2010 - adopted on first reading by the Assemblée Nationale on 15 September 2010

**Bill on commercial planning**, n° 2490, filed on 3 May 2010 - adopted on first reading by the Assemblée Nationale on 15 June 2010.

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## 1. Banking

### France - Transfers of funds

Decree [n°2010-1011 dated 30 August 2010](#) strengthens the investigative powers of the tax and customs authorities in the area of transfers of funds abroad or to a bank account held by a non-resident, as defined by tax law ([art. R. 152-10 Code monétaire et financier](#)). Banks must retain information relating to the transferor (or maker of the bank card payment), the beneficiary and the bank accounts concerned, as well as the date of the transaction and the sums involved.

The authorities can also request banks to provide information relating to transfers of funds (irrespective of the amount) and payments (bank card payments of EUR 15,000 or more) specifying the transaction amount, the period (up to 18 months), and the State where the beneficiaries are resident.

### France - Equity

An order dated 25 August 2010 ([OJ dated 24 September 2010](#)) implements the harmonised definition of equity and brings into force new measures for control of "major risks" arising from the European directives on capital requirements known as "CRD".

### France - Usury rates

The French *Ministère de l'économie, des finances et de l'industrie* has set the usury thresholds for the fourth quarter of 2010 in an opinion dated 26 September 2010 ([OJ dated 26 September 2010](#)).

The rates provided by this opinion come into force on 1st October 2010.

### France - Consumer credit

Decree [n°2010-1005 dated 30 August 2010](#) specifies conditions for implementation of new article [L. 311-4](#) 1st paragraph of the French *Code de la consommation*, amended by Law [n°2010-737 dated 1st July 2010](#) relating to consumer credit, which provides that any advertisement for a loan must include a standard example.

In the future, for all consumer loans, an example (designated as such) must describe the usual conditions of implementation if the advertisement relates to a promotional interest rate, or specific conditions of the loan, using a bigger font size.

The decree also makes specific provisions for the advertising of renewable loans and loans with optional insurance.

### France - Grouping of loans

Decree [n°2010-1004 dated 30 August 2010](#) specifies the law applicable to groupings of different types of loan (real estate loans and consumer loans). When real estate loans represent at least 60% of the grouping, the law of real estate loans will apply to the grouping.

## European Law - Financial regulation

The European Union creates three supervisory authorities in the banking, insurance and capital markets sectors. These new authorities will be created out of the existing technical committees of CEBS, Ceiops and CESR and will start their functions as from 1st January 2011. They will act (i) as mediators between two national regulatory authorities, (ii) in case of breach of Union regulations by a national entity in the absence of any action by the national authority and (iii) in urgent cases.

A European committee on systemic risk is also created.

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## 2. Capital Markets

### France - Amendment of the AMF's general regulations

An Order of 20 August 2010 approves the following amendments made to the AMF's general regulations:

Provisions of Book II relating to the rules governing buybacks of debt securities not convertible into equity are replaced by a simplified acquisition procedure (articles 238-1 à 238-5) implementation of which is initiated by the issuer with more flexible conditions than previously.

Provisions of Book III relating to the verification of knowledge by investment service providers are modified in order to introduce a system of financial contributions (payment of a handling fee) and to establish a three month deadline for the review of applications by the AMF.

### France - Q&A in relation to the transfer of securities from Euronext to Alternext

The AMF published a list of Q&A in relation to the transfer of securities of a company from Euronext to Alternext (being a regulated multilateral trading facility). This document mentions, among others, the conditions of such transfer as well as the disclosure obligations on Alternext.

The possibility of such transfer has been opened up by law No. 2009-1255 dated 19 October 2009 relating to opening up debt markets for small and medium sized companies and to improving financial market operation.

### France - Classification of (non money market) collective investment schemes, employee savings schemes and contractual collective investment schemes

The AMF has amended the classification of (non money market) collective investment schemes defined in instruction No. 2005-02, employee savings schemes defined in instruction No. 2005-05 and contractual collective investment schemes defined in instruction No. 2005-04, in order to clarify the notion of nationality of the issuer and the "debt securities" classifications and to take into account the underlying collective investment schemes and investment funds in assessing risk exposure.

The AMF has updated the above mentioned instructions and the amended provisions will come into effect on 1 July 2011.

### France - Reminder of the market sounding rules

In order to prevent insider dealing, the AMF reiterates the rules applicable to market sounding by investment service providers, as defined in article 216-1 of the AMF's General Regulations.

This article requires investment service providers to seek the prior agreement of the persons it intends to question, to inform their contacts that the exchanged information is insider information and to retain a record of the names of the persons who have agreed to respond and the times and dates on which they were contacted.

## **France - Opening of two new electronic platforms for trading corporate bonds**

On 26 July 2010 [NYSE Euronext](#) announced the opening of the first pan-European multilateral trading facility for corporate bonds. Shortly after, [TradingScreen](#) announced that it had opened a similar platform for corporate bonds in Euros.

## **France - Four tax instructions relating to Islamic finance**

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

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## **3. Competition**

### **France - Mergers in the retail sector in the DOM-COM**

[Law](#) n°2010-853 of 23 July 2010 relating to consular networks, trade, craft industry and services was published in the OJ of 24 July 2010. It sets the filing thresholds for mergers in the retail sector in French overseas departments and collectivities (DOM-COM) at 7.5 million Euros. The new threshold applies to transactions implemented after 25 July 2010.

### **France - Referral to the Competition Authority**

The aforementioned [Law](#) n°2010-853 of 23 July 2010 relating to consular networks, commerce, craft industry and services expands the scope of referrals to the Competition Authority by some organizations under article L. 462-1 of the Commercial Code, to the chairmen of the observatories on prices and incomes of Guadeloupe, Guyana, Martinique, Reunion, Mayotte and Saint Pierre and Miquelon.

### **France -Competent authorities for seizures and settlements**

[Decree](#) n°2010-1010 of 30 August 2010 on the designation of administrative authorities competent to reach settlements and make referrals to civil, criminal or administrative courts on consumer and competition matters and represent the Minister of the Economy for the application of articles L. 470-4-1 and L. 470-5 of the Commercial Code (DGCCRF, DIRECCTE or DDPP) was published in the OJ of 1st September 2010.

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## **4. Consumer law**

### **France - Bill dated 19 July 2010 on consumer protection regarding mobile services**

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

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## **5. Corporate**

### **France - Presentation of a Bill implementing various directives**

A Bill to implement various EU directives on civil and commercial matters was presented to the Council of Ministers and tabled in the Sénat on 22 September 2010.

The Bill aims in particular to adapt French legislation on mergers and demergers in accordance with the requirements of Directive 2009/107/CE of 16 September 2010, which established measures to simplify such transactions (diminution in disclosure obligations for participating companies, exemptions from obligations to prepare reports or convene shareholders' meeting under certain conditions).

The Bill also allows the government to implement, by ordinance, directive 2007/36/CE of 11 July 2007, which encourages the effective exercise by shareholders in listed companies of their rights at shareholders' meetings, in particular shareholders not domiciled in the Member State where the shareholders' meetings are held, by ensuring them better information and better representation at meetings. More precisely, the 2007 directive set the conditions for notices of shareholders' meetings, for the inclusion of matters in the agenda, for the introduction of draft resolutions, and for participation in shareholders' meetings (including by electronic means).

#### **France - AMF Recommendation on transfers of listed companies from Euronext to Alternext**

The 2010-03 AMF Recommendation on the transfer of a listed company from Euronext to Alternext was published on 16 September 2010 on the AMF website. The recommendation is actually a list of questions and answers detailing the conditions for the transfer, the information to be provided to shareholders and the public, and the methods of transition towards French accountancy standards, for companies that wish to transfer their shares from Euronext to Alternext.

Please refer to the Capital Markets section.

#### **France - AMF Press Release issuing a reminder about market sounding rules applicable to investment services providers**

Please refer to the Capital Markets section.

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## **6. Employment**

### **France - Pension reform**

The draft bill on pension reform was adopted by the Assemblée Nationale on 15 September 2010 and will be reviewed by the Sénat as from 5 October 2010.

The increases in the retirement age (from 60 to 62) and in the age at which the benefit of a full pension becomes available (from 65 to 67) are maintained.

However, the following improvements have been accepted by the government to take into account arduous work in the retirement scheme:

- The system of early retirement for persons engaged in physically strenuous work has been expanded and will benefit employees who suffer a permanent disability rate of between 10% and 20%, subject to the favorable opinion of a multidisciplinary committee.
- On an experimental basis, business sectors could negotiate collective agreements setting up systems to relieve the burden for employees carrying out physically strenuous work (part time working, tutoring, extra holiday etc ...).
- Employers of at least 50 employees who are not covered by an agreement or action plan to prevent physically strenuous work would be punished by a penalty of up to 1% of total salaries paid.

Provisions on retirement saving plans have also been added. These improve the provisions for payment into collective retirement saving plans (PERCO) and encourage industry-level negotiations to provide retirement saving plans. It is also provided that the introduction of a supplementary retirement scheme in a given company should be subject to the existence of a PERCO, a PERE or a retirement saving contract for all company employees.

### **France - Violence and harassment at work**

The Decree of 23 July 2010, published in the OJ of 31 July 2010, makes the provisions of the National Interprofessional Agreement (ANI) on harassment and violence at work mandatory for all employers and employees included in its scope.

Through the ANI, which complements the ANI on stress at work of 2 July 2008, employers and employees agree on the principle that no employee shall suffer acts of harassment or violence at work.

Harassment is defined as occurring "when one or more employees are subject to abuse, threats and/or repeated and deliberate humiliations in circumstances related to work, either at the workplace or in work-related situations".

Violence at work is defined as occurring "when one or more employees are assaulted in circumstances related to work. It goes from lack of respect to manifestation of the intention to harm or destroy, from incivility to physical aggression. Workplace violence may take the form of verbal aggression, aggressive behavior, notably sexist, physical aggression..."

The purpose of the Agreement is both to educate employers and employees about the issues and to propose an outline for a prevention policy.

### **France - Internships: Student internships not forming part of a curriculum are formally banned from 1st September 2010**

The Decree of 25 August 2010 No. 2010-956, specifies the conditions of application of the Law of 24 November 2009 concerning life-long professional orientation and training, which requires internships to be formalised in an agreement between the intern, the host institution and the educational institution describing how the internship forms part of the curriculum in accordance with the conditions determined by decree.

The Decree, published in the OJ of 26 August 2010, specifies that internships are only permitted when they are mandatory or optional for students of educational institutions providing higher education with or without a diploma.

The internship is said to be integrated into a curriculum on the double condition that its purpose and conditions of performance are defined when the internship is organised and that the educational institution assesses the internship on the basis of a report from the students.

This Decree applies to internships starting as from 1 September 2010.

### **France - Draft Bill on Financing Social Security in 2011**

The broad guidelines of the Draft Bill on Financing Social Security for 2011 (PLFSS) were presented to the press on 28 September 2010.

According to several press reports, the government intends to review social security contribution loopholes and in particular to impose social security contributions on severance payments exceeding a threshold between 70,000 euros (twice the Social Security ceiling) and 100,000 euros (three times the Social Security ceiling). This would affect only 4% of contracts. It is also considering increasing contributions (French "forfait social") on mandatory and voluntary profit-sharing from 4% to 6%.

The Law is expected to be published in the OJ by 20 December 2010.

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## **7. Energy**

### **France - Modernisation of agriculture and fishing**

Law 2010-874 of 27 July 2010 on the modernisation of agriculture and fishing alters the distribution of the tax on offshore wind farms, so that 35% of the sums collected are redirected to the fishing industry (article 91 of the Law). This new distribution amends the previous distribution rule which resulted from Law 2005-1720 of 30 December 2005. This amendment came into effect on 28 July 2010.

## **France - Regulated feed-in tariffs for electricity produced by installations using solar energy**

A [governmental Order of 31 August 2010](#) setting the feed-in tariffs for electricity produced by solar installations was published in the OJ on 1st September 2010. Pursuant to this Order, state-regulated feed-in tariffs for photovoltaic electricity have decreased by 12%. This decrease applies to all categories of photovoltaic electricity producers (ground-based solar power plants, integrated plants, etc), except for small residential producers, for whom the feed-in tariff will remain 58c€/per kWh.

This is the second time in eight months that the government has modified the tariffs. The reasons given are the desire to avoid speculation and the need to take into account reductions in the price of photovoltaic equipment. The new tariffs took effect on 2 September 2010.

## **France - Regulated feed-in tariffs for electricity produced by installations using solar energy**

The [Opinion of 31 August 2010](#) on the draft governmental order setting the regulated feed-in tariffs for electricity produced by installations using solar energy, delivered by the Committee for Energy Regulation (CRE), was published in the OJ on 1st September 2010. This Opinion was delivered in the context of the governmental order published the same day, which sets the new regulated feed-in tariffs for solar electricity.

## **France - Report on the Charpin Mission on photovoltaic energy**

On 3 September 2010, the French tax inspection body published online the Report of the Charpin mission on the future of the solar energy industry in France. The Report recommends controlling production volumes, focusing R&D on the main French industrial groups, and above all revising feed-in tariffs downwards.

It proposes in particular to set an annual target for volumes installed of between 300 and 500 MW per year and to spread it between the individual segments (between 100 and 150 MW per year), large roofs (100 to 200 MW per year) and ground-based solar power plants (from 0 to 150 MW per year).

## **France - Right of evocation by the regional prefect**

The [Circular of 20 July 2010](#) on exercise of the right of evocation by the regional prefect was published in the OJ of 13 August 2010. It details the conditions of exercise of regional prefects' evocation right concerning the delineation of wind farm development areas (these are determined by the regional prefect pursuant to Article 10-1 of the Law n°2000-108 of 10 February 2000), and use of the power of examination concerning the issue of building permits for wind turbines and solar panels (Article R. 422-2 of the Planning Code).

## **France - Guide to encourage the development of wind farm projects**

The "[Guide to studies on the impact on the environment surrounding wind farms - 2010 Update](#)" was released on 19 July 2010 on the Ministry of Ecology's website. It proposes a general code of conduct for impact studies concerning wind farm projects, by underlining the fundamental principles of a good impact study and providing methods adapted to wind farms.

It is aimed at all categories of players interested in wind farm projects and environmental assessment, in order to encourage dialogue on objective and shared bases. The guide contains recommendations, proposals for methods, and examples, in order to achieve wind farms that are more respectful of their surroundings.

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## **8. Environment**

### **France - Classified installations**

[Decree n°2010-875](#) dated 26 July 2010 published in the OJ of 28 July 2010 amends the nomenclature of classified installations.

The Decree clarifies the wording of entry 1310 (explosives). It introduces the system of registration and changes the thresholds for the classification of entries 1311 (storage of explosives), 2781 (installation of non-hazardous waste or raw vegetation biomass methanization) and 2910 (combustion).

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## 9. Insolvency proceedings

### France - Indebtedness of individuals

Law [n°2010-737 dated 1st July 2010](#) also reforms the provisions relating to indebtedness of individuals. A new sharing of competences between the judge and the indebtedness departments' commissions is put in place. The commissions will have wider powers and the judge will have a jurisdictional function only.

In the future, the indebtedness commissions will be able to request the suspension of eviction orders and will have independent powers as to debt rescheduling, recovery plans and reduction of interest. The judge will approve the recommendations made by the relevant indebtedness commission and supervise their orders.

### France - Accelerated financial safeguard

The [draft law on banking and financial regulation](#) currently under discussion by the *Sénat* comprises new provisions relating to insolvency proceedings and, in particular, to an accelerated financial safeguard procedure.

The main advantages of this procedure are the confidentiality and flexibility of the conciliation procedure for negotiating a plan and then converting it into a safeguard procedure in order to impose the plan if all financial creditors have not given their approval in the conciliation procedure.

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## 10. Insurance

### France - Consumer Credit and Insurance Reform

The possibility of a division between a mortgage and payment protection insurance provided for by [Law 2010-737 of 1 July 2010](#), that is to say, the option for a customer to purchase an insurance policy from the underwriter of its choice when applying for a mortgage, came into force on 1<sup>st</sup> September 2010. Consequently, credit institutions are now required to justify their refusal to accept the payment protection insurance cover purchased by the borrower, and they can no longer adjust the interest rate on the mortgage depending on the type of policy the borrower has taken out. These provisions are laid down in article L. 312-8 and subsequent articles of the French Consumer Code ([please refer to the Legal and regulatory update - June 2010](#)).

### France - Life insurance: reform of guaranteed rates

The [ministerial order of 7 July 2010 \(arrêté\)](#) limits the interest rates that insurance companies can pay to their insured who have subscribed for life insurance policies written in euros. From now on these rates must, in particular, be guaranteed for a minimum of six months and be limited in accordance with the current bond markets and average loan interest rates. These provisions came into force on 1<sup>st</sup> August ([please refer to the Legal and regulatory update – March 2010](#)).

### France - Life insurance: tax reform

The draft financial legislation for 2011 provides for new tax measures relating to insurance. Firstly, it introduces a tax rate of 3.5% on "joint and responsible" health insurance contracts (*contrats solidaires et responsables*). As regards multi-fund life insurance contracts, the social contribution on the interest generated by the compartment in euros will have to be paid every year and no longer only once the contract has ended. The draft law provides also for a 10% tax on insurers' capitalisation reserves.



## **France - A status for wealth management advisors**

A draft law of 13 July 2010 provides a status for wealth management advisors. The title of "wealth management advisor" would be protected. To this end a definition of the business of providing wealth management advice would be adopted and a supervising authority would be put in place to supervise the profession. A Higher Board of wealth management advisors would be established as of 1<sup>st</sup> January 2011.

## **France - Insurance undertakings: risk governance**

The draft legislation regarding banking and financial regulation, adopted by the *Assemblée nationale* on 10 June 2010 and currently being debated by the *Sénat*, would require financial institutions, banks and insurance companies to set up a committee within their board of directors or supervisory board to monitor risk. The committee would include at least one independent member with particular expertise in financial or accounting matters.

## **European Law - Reform of the supervision of financial entities in a financial conglomerate**

On 16 August 2010, the European Commission proposed amendments to existing European rules on the supervision of financial conglomerates. These amendments alter the definition of financial conglomerates by taking into account not only size but also the risk assessment of the company and bring asset management companies within the definition. The Commission proposes to equip national financial supervisors with new powers better to oversee conglomerates' parent entities, such as holding companies. The proposal now goes to Member States and the European Parliament for consideration and could come into force in 2011.

## **European Law - EU Financial Regulation**

Three new European Supervision Authorities ("**ESAs**") for banking, insurance and occupational pensions and securities, as well as a European Systemic Risk Board ("**ESRB**") which will be in charge of overseeing the stability of financial systems as a whole, will be created in January 2011. Principally the ESAs will have the power to settle disputes between national financial supervisors and to ban risky financial products and activities. If national authorities fail to act, then the ESAs may also impose decisions directly on financial institutions, so as to remedy breaches of EU law. This reform, the result of a compromise between EU institutions, should be approved by the European Parliament at the second session in September.

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## **11. Intellectual Property**

### **France - Commission on the remuneration of journalists**

Decree n°2010-994 of 26 August 2010 completes the reform on journalists' copyright following law n°2009-669 of 12 June 2009 (HADOPI I).

Contrary to the position in ordinary law, the 2009 law imposes the automatic assignment of a journalist's copyright via his/her employment contract to the publishing company for any exploitation of his/her work. The law establishes a joint commission to set the remuneration due as consideration for assignment of journalists' rights of exploitation.

The Decree thus completes these provisions by adding provisions to fix the composition, conditions of referral and functioning of the commission, as well as the ways of appealing against its decisions.

### **France - The price of digital books under debate**

A Sénat bill of 8 September 2010 proposes to fix a soft framework to regulate the price of digital books by fulfilling two objectives, namely:

- accompanying the technological change embodied by digital books, which allow a maximum of works to be made available thanks to a plentiful legal offer of digital books.
- proposing a framework to allow the change to take place without breaching copyright.

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## 12. New technologies

### France - LOPPSI 2

The draft statute on orientation and programming of internal security, also known as LOPPSI 2, was adopted by the Sénat on 10 September 2010. The draft statute as adopted would entrust an administrative authority rather than the courts with the blocking of child pornography websites. The statute is soon to be reviewed by the *Assemblée Nationale* on second reading.

### France - The *Conseil d'Etat* rejects the suspension of a HADOPI Decree

On 14 September 2010, the *Conseil d'Etat* (the French supreme administrative court) rejected the request for suspension of one of the Decrees relating to the HADOPI Law filed by French Data Network, a French non-profit Internet service provider. The Decree in question relates to the automated processing of personal data. The *Conseil d'Etat* considered that there was no serious doubt as to the legality of the Decree.

### France - HADOPI publishes its warning email

On 28 September 2010, the *Haute autorité pour la diffusion des œuvres et la protection des droits sur internet* ("HADOPI") made publicly available the standard email which will be sent to illegal downloaders. The warning email includes references to the relevant articles of the intellectual property code and to the risks incurred by infringing these provisions.

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## 13. Public law

### France - Rail transport regulation

Decree n°2010-932 dated 24 August 2010, published in the OJ of 25 August 2010, organises the liberalisation of international passenger transportation by railway. Decree n°2010-1023 dated 1st September 2010, published in the OJ of 2nd September 2010, deals with the organisation and operation of the Regulatory Authority for Rail Transport (ARAF).

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## 14. Real estate

### France - Furnished tourist accommodation and holiday villages

Law n°2009-888 of 22 July 2009 for development and modernisation of tourist services and Decree n°2009-1652 of 23 December 2009 modified the rules applicable to furnished tourist accommodation and holiday villages.

An Order dated 2 August 2010 published in the OJ of 17 August 2010 establishes standards and procedures for the classification of furnished tourist accommodation.

An Order dated 2 August 2010 published in the OJ of 18 August 2010 establishes standards and procedures for the classification of holiday villages.

### France - Inspections of domestic gas installations

An Order dated 24 August 2010 published in the OJ of 31 August 2010 amends the Order of 6 April 2007 defining the model and method for inspecting domestic gas installations.

Inspections of domestic gas installations must contain at least the information specified in the model but no longer need to be prepared in accordance with it. The new model contains additional information relating in particular to actions taken by the inspector in the case of immediate danger.

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## 15. Tax

### France - French abuse of law procedure and penalties

The French Tax Authorities issued three statements of practice on 20 September 2010 (**statements of practice n° 13 L-9-10 - 13 M-2-10 - 13 N-3-10**) regarding the reform of the French abuse of law procedure provided for by sections L. 64 and L. 64 A of the French Tax Procedure Code. The reform, introduced by section 35 of the Amended Finance Bill for 2008, specifies the French definition of abuse of law, introduces a new penalty of 40% (the only penalty available before the reform was an 80% penalty) and modifies the rules applicable to joint liability for penalties in cases of abuse of law.

### France - Real estate value added tax ("VAT") regime

Decree n° 2010-1075 dated 10 September 2010 modified several provisions of the French Tax Code as a consequence of the reform of the real estate VAT regime effected by section 16 of Amended Finance Bill for 2010 dated 9 March 2010. The Decree specified some requirements to be met by companies involved in real estate operations (elections, administrative forms and returns) and introduced new rules relating to VAT regularisation cases.

### France - French 3% real estate tax

The French Tax Authorities issued ruling n° 2010/56 (ENR) dated 14 September 2010 on the requirements to be met by foreign real estate investment funds in order to benefit from the 3% tax exemption provided for by section 990 E, 3°-c) of the French Tax Code.

### International - Double tax treaties

-**Statement of practice n° 14 A-3-10** dated 1 September 2010: Double tax treaty between France and Georgia signed in Paris on 7 March 2007;

-**Statement of practice n° 14 A-4-10** dated 8 September 2010: Double tax treaty between France and the United Kingdom signed in London on 19 June 2008;

-**Statement of practice n° 14 A-5-10** dated 14 September 2010: Addendum to the Double tax treaty between France and Belgium signed in Brussels on 12 December 2008;

-**Statement of practice n° 14 A-6-10** dated 14 September 2010: Addendum to the Double tax treaty between France and the United States signed in Paris on 13 January 2009.

### International - Islamic finance

The French Tax Authorities issued four statements of practice dated 24 August 2010 (**statements of practice n° 4 FE/S1/10 - 4 FE/S2/10 - 4 FE/S3/10 - 4 FE/S4/10**) regarding the tax treatment applicable to Islamic finance operations, i.e., *murabaha*, *sukuk*, *ijara* and *istisna*.

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## 16. Telecoms

### France - Consumer protection in the field of mobile telephony

A Bill tabled on 19 July 2010 aims to clarify directive 1999/5/CE of 9 March 1999 in order to remedy the lack of transparency in practices by manufacturers and operators of telecommunications networks, which can cause subscribers harm in terms of use of their mobile phones.

Article 1 and 2 of the Bill aim to prevent mobile phone operators from denying certain mobile manufacturers access to their networks, and, on the other hand, to prevent mobile phone manufacturers from denying mobile operators access to their devices (for instance, to prevent Apple from denying virtual operators access to its iPhone).

The second point addresses the issue of practices by telecoms networks operators that require the payment of a fee for unblocking a recently acquired phone, in the context of a subscription renewal of 12 months or more. The Bill aims to facilitate the unblocking of mobile phones by requiring unblocking to be free when the phone was acquired in the context of a subscription renewal for 12 months or more, under various conditions.

The Bill will be reviewed first by the committee on economy, sustainable development, and regional development, unless a committee is created specially to review it.

### France -Regulation of mobile voice call termination in France and in French overseas territories

On 9 September 2010, ARCEP notified the European Commission of its draft decision on the regulation of mobile voice call termination in France and in French overseas territories. The draft decision relates to the period from 1st January 2011 to 31 December 2013, which constitutes the third cycle of regulation.

The Authority plans in particular to declare the operators Bouygues Telecom, Orange France, and SFR (in France) SMP on the market for mobile voice call termination and to impose on them access, non-discrimination and transparency obligations, and the obligation to keep separate accounts. Moreover, these operators would be imposed a cost orientation obligation.

Once the notification and consultation phases are over, ARCEP will adopt its final decision.

### France - Improvement of broadband and deployment of high-speed broadband in rural areas.

The ARCEP Report of 24 September 2010 addressed to the Parliament and the Government and entitled "Towards ultra-fast broadband", was issued on 28 September 2010. It identifies ways of improving broadband and encouraging the deployment of very fast broadband in rural areas. It lists in particular the possible deployment scenarios, the best one being, according to ARCEP, the scenario of extending very fast broadband as far as possible within France, and using other technologies where this strategy is not possible for cost or time reasons. The Report also sets out the actions needed to deploy new, very fast networks, in particular using national financing. ARCEP also indicates that it will take regional development objectives into account in the conditions for assignment of 800 MHz frequencies for very fast broadband, which are to be proposed to the Government in the near future.

Additionally, ARCEP will before the end of 2010 issue several measures and proposals to improve relationships between operators and consumers.

### France - Launch of the national programme for "very fast broadband"

On 4 August 2010, the government launched the national "very fast broadband" programme. This will be financed by the Great Loan (Grand Emprunt) to the tune of 2 billion euros. The launch phase is divided into two chapters: a "call for pilot projects" (addressed to local authorities in partnership with national operators), and a "call for demonstration of investment intentions" (aimed at identifying deployment projects of operators and local authorities for the 5 years to come). The financing counters will open in the 1st half of 2011.

## **France - Improving the fluidity of the retail market for electronic communications**

The ARCEP Report on the implementation and impact of article 17 of the "Chatel" Law" for the development of competition for the benefit of consumers, aimed at improving the fluidity of the retail market for electronic communications, was presented to Parliament at the end of July 2010.

Two years after these new measures came into force, ARCEP notes that the provisions of the law have been only partially implemented by operators on the mobile phone market, and that competition remains limited. ARCEP therefore proposes several additional measures, namely: stating termination fees on subscribers' bills, controlling the conditions of terminations of subscriptions before twelve months have elapsed, including the unblocking procedure and code for mobile devices on bills, and, finally, deeming deferred activation fees to be termination fees.

## **European Law - Developing fast and very fast broadband in Europe**

The European Commission adopted on 20 September 2010 a package of three complementary measures aimed at encouraging the development of fast and very fast broadband in Europe.

This package comprises first a Commission Recommendation (MEMO/10/424) on regulated access to Next Generation Access (NGA) networks, which provides regulatory certainty to telecom operators by recommending that national regulatory authorities ensure an appropriate balance between encouraging investment and safeguarding competition. It also comprises a Commission proposal (MEMO/10/425) for a Decision by the European Parliament and Council establishing a 5 year policy programme to promote efficient radio spectrum management. Finally, a Broadband Communication (MEMO/10/427) outlines how best to encourage public and private investment in fast and very fast broadband networks, and calls on EU Member States to introduce operational broadband plans for fast and very fast networks, which could benefit from the financial support of the EU.

These measures were adopted in the context of the EU commitments concerning the Digital Agenda, i.e. ensuring by 2013 basic broadband access and, by 2020, fast and ultra-fast coverage, for all EU citizens.

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## **17. Transport**

### **European Law - Intelligent transport**

Directive 2010/40 of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in road transport and for interfaces with other modes of transport was published in the OJ of the EU of 6 August 2010.

The Directive came into force on 27 August 2010.

### **European Law - Transport of dangerous goods**

Directive 2010/61 of 2 September 2010 adapting for the first time the Annexes to Directive 2008/68 on the inland transport of dangerous goods to scientific and technical progress was published in the OJ of the EU of 3 September 2010.

The Directive came into force on 24 September 2010.

### **European Law - Guidelines on transmission charging**

Regulation No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging was published in the OJ of the EU of 3 September 2010.

The Regulation came into force on 24 September 2010.

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