

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 January 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, No. 1940, filed September 29, 2009 - adopted on first reading by the National Assembly 20 January 2010
- Proposed law relating to commercial zoning, No. 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 consumer rights, protection and information, No. 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, No. 354, filed Mar. 11, 2011 - adopted on first reading by the Senate April 28, 2011
- Proposed law on simplification of law and the easing of administrative procedures, No. 3706 - adopted on first reading by the National Assembly 18 October 2011 and the Senate January 10, 2012 - CMP (Disagree) - New first reading before the National Assembly from January 31 to February 2, 2012
- Draft Law on Financing of Works, No. 4090, filed December 14, 2011 - adopted on first reading by the National Assembly 26 January 2012
- Proposed law aimed at preventing over-indebtedness 4087, filed December 14, 2011 - rejected on first reading by the National Assembly 26 January 2012
- Proposed law on the protection of identity, No. 682, filed Jul. 27, 2010. - CMP adopted January 10, 2012 and rejected by CMP reading by the Senate on January 26 - New first reading before the National Assembly (text filed January 26, 2012)

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## Enacted laws

- Decree n°2012-11 of 5 January 2012 on the clarification and simplification of procedures for the development, modification and revision of planning documents - OJ of 6 January 2012
- Decree n°2012-6 of January 5, 2012 amending books I and V of the Environmental Code - OJ of 6 January 2012

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## 1. Banking

### France - Consumer credits

Decree n°2011-1871 dated 13 December 2011 relating to the minimum requirements for professional training referred to in the third paragraph of article L. 311-8 of the French consumer code ([OJ n°0290 dated 15 December 2011](#)) specifies the content of the training for professionals offering consumer credits. Such training includes knowledge of the major types of credits, the applicable regulations and the rights and obligations of the borrower and the broker. It also includes awareness of causes and prevention of over-indebtedness. Failure to comply with these provisions will result in forfeiture of the lender's right to loan interest in accordance with article L. 311-48 of the French consumer code.

This Decree came into force on 16 December 2011 and will be applicable to all new consumer credits entered into as from 1st July 2012.

### France - A new status for IOBSP

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

### France - Setting up an annual balance sheet threshold of 10 billion euros for the establishment of a remuneration committee in banking sector companies

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

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## 2. Competition

### France - Opening up rail transport to competition

[Decree n°2012-70](#) of 20 January 2012 on passenger stations and other facilities of the railway network has been published in the O.J. of 22 January 2012. As part of opening up rail transport to competition, it sets out the nature of services and benefits available to railway undertakings, which include, in particular passengers' reception and information, fuel or electricity supply and access to parking tracks.

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## 3. Corporate

### France - Setting up an annual balance sheet threshold of 10 billion euros for the establishment of a remuneration committee in banking sector companies

[Decree n°2012-67](#) dated 20 January 2012, implementing the Banking and Financial Regulation Act n° 2010-1249 dated 22 October 2010, published in the Official Journal on January 22, 2012, has set the limit above which credit institutions, investment firms and venture capital firms must establish a remuneration committee. This threshold has been set at a balance sheet value of 10 billion euros.

As a reminder, this specialized committee composed of independent members examines annually the company's remuneration policy and the

remuneration granted to employees whose activities could have an impact on exposure to company risks.

These provisions have immediate effect.

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## 4. Employment

### **France - Definition of the required collective and compulsory nature of complementary social protection guarantees in order to benefit from social exemptions**

The Decree for the social security financing law was published on 11th January 2012 (NOR: ETSS1130047D). It determines the objective criteria for the definition of the collective and compulsory nature of disability/incapacity/death and pension guarantees entitling employers to be exempt from social security contributions in companies which contribute to it.

### **France - Precisions and simplification of reporting obligations regarding stock options, bonus share allocations and share warrants for entrepreneurs**

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

### **France - Social security ceiling for 2012**

Decree (NOR: BCRS1134416A) dated December 30th 2011 sets the monthly social security ceiling for 2012 at 3.031 euros. The annual ceiling is thus set at 36.372 euros.

### **France - Details regarding the terms and conditions of the professional securing contract ("CSP") implementation**

In a Circular (n°2011-36) dated December 9th 2011, the UNEDIC (administration in charge of unemployment insurance) clarified the terms and conditions of the CSP implementation which came into force on September 1st 2011. As a reminder, this is a redeployment scheme for employees whose employment contract has been terminated for economic reasons in companies that employ less than 1000 employees.

### **France - Opening of asbestos early retirement to new beneficiaries**

The list of fabrication, flocking and insulation establishments likely to be eligible for the anticipated activity suspension allocation for asbestos workers has been modified by four Decrees dated December 6<sup>th</sup> (NOR: ETST1126980A, ETST1126990A, ETST1127111A, ETST1127125A) and five Decrees dated December 23<sup>rd</sup> 2011 (NOR: ETST1127159A, ETST1127168A, ETST1127173A, ETST1132545A, ETST1132613A). A fifth Decree dated December 6th 2011 (NOR: ETST1127137A) modifies and completes the decree dated July 7th 2000 which provides the list of professions involving construction and ship repair which are likely to give right to early retirement.

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## 5. Energy

### **France - Setting the amount of the indemnity due to energy producers in case of delay from the operator of the public distribution network**

Decree n°2012-38 of 10 January 2012 was published in the Official Journal on 12 January 2012. It sets the amount of indemnity due in case of a failure meet the deadline to send documents which relate to the connection facilities for renewable energy installations of a power lower than or equal to three kVA. In respect of renewable energy installations which have a power level lower than or equal to 3 kVA, the decree sets the amount of the indemnity due by the operator of the public distribution network, in case of non-compliance with:

-the one-month period for sending the connection agreement (30 Euros),

-the 2-month period for the completion of the connection (50 Euros, and 50 Euros for each further month of delay)

### **France - Exclusion of the formalities prescribed by the Town Planning Code for offshore renewable energy installations**

Decree n°2012-41 of 12 January 2012 relating to renewable energy installations was published in the Official Journal on 14 January 2012.

This Article provides that certain installations or constructions may not be subject to the formalities prescribed by the Town Planning Code, due among other things, to their nature and offshore location.

It also specifies that, during the instruction for any application for a construction permit in respect of a wind turbine located outside a wind energy development area, the towns and inter-town organisations which have to be consulted by the competent authority are those which are competent for local town planning or building permits and that border the land on which the project is located.

### **France - Specifications relating to guarantees of origin for electricity produced from renewable energy or by cogeneration**

Decree n°2012-62 of 20 January 2012 relating to guarantees of origin for electricity produced from renewable energy or by cogeneration was published in the Official Journal on 21 January 2012.

The Decree specifies that a guarantee of origin is an electronic document which proves to the final client that the energy has been produced from renewable sources or by cogeneration. It sets the conditions for the appointment of the organisation in charge of issuing and, as the case may be, transferring or cancelling the guarantees of origin, as well as the means and obligations of this organisation. It defines the regime for guarantees of origin as well as the procedures for keeping the register as well as the fees charged for this service.

### **France - Homologation of the coefficients SN and VN**

The Order of 28 December 2011 homologating the coefficients SN and VN was published in the Official Journal on 17 January 2012.

The coefficients SN and VN are set for the periods between 10 March and 30 June 2011, 1 July and 30 September 2011 as well as 1 October and 31 December 2011.

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## **6. Environment**

### **France - Diagnosis on waste derived from the demolition of certain buildings**

An Order dated 19 December 2011 published in the Official Journal of 14 January 2012 specifies the implementation procedures and the content of this diagnosis.

### **France - Reform of public enquiries**

Decree n°2011-2018 dated 29 December 2011 published in the Official Journal of 30 December 2011 modifies the procedure for public inquiries under the French environmental code, and lists the works, constructions and developments' projects which are subject to an impact assessment under the French environmental code.

These provisions apply to public inquiries which open and organization orders which are published on or after 1 June 2012 and authorisation applications for works, constructions and development projects filed on or after 1 June 2012.

### **France - Classified installations**

Ordinance n°2012-7 dated 5 January 2012 published in the Official Journal of 6 January 2012 transposes Directive n°2010/75/UE on industrial emissions.

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## 7. Insolvency proceedings

### France - Receivers and Court-appointed agents

Decree n° 2011-1908 dated 20 December 2011 has been passed implementing article 20 3° of the law n° 2011-331 dated 28 March 2011 on modernisation of the judiciary and legal professions and some regulated professions (OJ n°0296 dated 22 December 2011). It specifies, in articles D. 814-3-1 and D. 811-40-1 of the French commercial code, the content and procedure for treatment of the "financial situation" ("*situation financière*") that receivers and court-appointed agents shall establish, at the end of each financial year, and communicate to the National council of receivers and court-appointed agents (*Conseil national des administrateurs judiciaires et des mandataires judiciaires*). These situations are based on the accounting of receivers or court-appointed agents and are examined by a magistrate coordinator referred to in article R. 811-40.

The Decree applies to financial years beginning 1st January 2012.

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## 8. Insurance

### France - A new status for IOBSP

A ministerial Decree 2012-101 dated 26 January 2012 relating to intermediaries in banking operations and payment services ("**IOBSP**"), implementing the law on financial and banking regulations, was published in the Official Journal of 28 January. This text determines the regime applicable to IOBSP specifying the scope of the new regulations, conditions of access and exercise as well as of business rules they are subject to. The Decree specifies the various categories of IOBSP admitted to practice which are inspired by the existing categories for insurance intermediaries. This Decree shall become effective on the date of implementation of the single register of intermediaries, which shall be determined by order of Minister of the Economy.

### France - Single registration with the ORIAS

A ministerial Decree 2012-100 dated 26 January 2012 relating to the registration of IOBSP, financial investment advisors and tied agents was published in the Official Journal of 28 January. This Decree, implementing the law on financial and banking regulations, provides for the modalities of single registration of these intermediaries with the *Organisme pour le Registre des Intermédiaires en Assurance* ("**ORIAS**"). The Decree also amends certain provisions of the Insurance Code which are applicable to insurance intermediaries and in particular strengthens the control of good repute requirements. This Decree shall become effective on the date of implementation of the single register of intermediaries, except with regard to the provisions amending the Insurance Code which will come into force on 1<sup>st</sup> April 2012.

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## 9. New technologies

### France - Controlling and sanctioning powers of the CNIL

A decree of 29 December 2011, published in the *Journal Officiel* of 30 December 2011, sets out the procedures for exercising the controlling and sanctioning powers of the French data protection authority (the "CNIL"), and includes details relating to the conditions under which the French magistrate for individual liberties must rule on onsite controls conducted by the CNIL.

### France - Digital books

A decree of 30 January 2012 sets out the fines applicable for all infringements of French Law of 26 May 2011 relating to the price of digital books.

### France - Commercial advertising by electronic means

In a decision dated 12 January 2012, the CNIL imposed a 20,000 Euros fine on a company which was sending unsolicited commercial messages by text message (SMS). The CNIL used this opportunity to underline that the sending of commercial advertising by electronic means (email, fax, text messages...) may only be conducted with the prior express consent of the recipient.

## **International - New gTLD applications**

The Internet Corporation for Assigned Names and Numbers (ICANN), the corporation in charge of the management of the top-level domain name space (gTLD), opened its TLD Application System ("TAS") on 12 January 2012, through which it is now possible to apply for new gTLD(s). The application process will remain open until 12 April 2012.

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## **10. Procedure**

### **France - Entry into force of the new composition of French criminal courts**

The law dated August 10, 2011 on the participation of citizens in the functioning of the criminal justice came into force on January 1st, 2012. This law provides for a new composition of the French Criminal Courts having jurisdiction for less serious offences ("*Tribunaux Correctionnels*"). These Criminal Courts will henceforth be composed of randomly selected citizens, as well as professional judges. However, this has only been implemented on an experimental basis in few Courts until June 1<sup>st</sup>, 2014.

### **France - New provisions of the French Civil Code Procedure regarding alternative dispute resolution**

By means of a Decree n°2012-66 of 20 January 2012, implementing into French law the European Directive no 2008/52/EC on certain aspects of mediation in civil and commercial matters, a new chapter regarding alternative dispute resolution procedures has been inserted into the French Code of Civil Procedure (Articles 1528 and followings).

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

### **France - Reform of the appellate procedure with mandatory representation**

Lawyers before the Courts of Appeal named "Avoués" are no more the only persons authorised to act as representatives before these Courts. On January 1<sup>st</sup> 2012, the profession of "Avoués" merged with the profession of attorneys pursuant to the law n°2011-94 of 25 January 2011. From now on, any attorney is able to represent his/her clients before the Courts of Appeal in which jurisdiction he/she practices.

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## **12. Public law**

### **France - Public procurement procedure applicable to administrative long-term leases**

Decree n°2011-2065 dated 30 December 2011, published in the OJ of 31 December 2011, specifies the public procurement procedure applicable to the administrative long-term leases (BEA) of local authorities. It sets the thresholds above which local authorities must perform a preliminary evaluation to enter into administrative long-term leases for the needs of justice, police and gendarmerie (1M euros). These provisions apply to contracts for which a consultation is undertaken after 1st February 2012.

### **France - Public interest groups**

Decree n°2012-91 dated 26 January 2012, published in the OJ of 27 January 2012 specifies the legal framework for public interest groups (*groupements d'intérêt public* or *GIP*), pursuant to Law n°2011-525 dated 17 May 2011 for simplifying and improving the quality of law (please refer to

the [Legal and regulatory update - April 2011](#)).

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## 13. Real estate

### France - Rents: index

The cost of construction index (ICC) for the third quarter of 2011 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n°8, 6 January 2012](#)) amounts to 1624 which corresponds to a 6.84% increase over a year.

The commercial rents index (ILC) for the third quarter of 2011 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n°9, 6 January 2012](#)) amounts to 105.31 which represents an increase of 2.88 % over one year.

The tertiary activities rents index (ILAT) for the third quarter of 2011 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n°7, 6 January 2012](#)) amounts to 103,64 which corresponds to an increase of 2.78% over one year.

### France - Planning documents: modification of development, modification and revision procedures

[Ordinance n°2012-11 dated 5 January 2012](#) published in the Official Journal of 6 January 2012 clarifies and simplifies the development, modification and revision procedures of planning documents by clearly defining the scope of each procedure and the terms for such procedures.

These provisions will come into force on a date fixed by order and no later than 1 January 2013. However, these provisions do not apply to pending proceedings, with some exceptions.

### France - High-rise buildings: safety regulation against the risk of fire and panic

An [Order](#) dated 30 December 2011 published in the Official Journal of 18 January 2012 amends the safety regulation concerning the risk of fire and panic in high-rise buildings.

These provisions apply as from 1 April 2012.

### France - Modification to the outdoor advertisement regulation

[Decree n°2012-118](#) dated 30 January 2012 published in the Official Journal of 31 January 2012 amends the outdoor advertisement regulation.

The decree establishes rules for the density of advertisement devices, reduces their size, introduces an obligation of turning off illuminated advertisement devices and provisions for digital advertisement devices.

These provisions apply as from 1 July 2012, with exceptions.

### France - Planning taxes

Two Decrees [n°2012-87](#) and [n°2012-88](#) dated 25 January 2012 published in the Official Journal of 27 January 2012 set out the modes of implementation for the development tax and of the sub-density tax, as well as define the exemptions.

These provisions apply as from 1 March 2012.

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## 14. Tax

## **France - Employee benefits**

Two decrees of 30 January 2012 specify the reporting obligations on companies and beneficiaries of employee benefits schemes (bonus shares, stock options, BSPCE). This applies to declarations filed on or after 1 January 2013 relating to bonus shares vested, stock options and BSPCE exercised after 1 January 2012.

The Official Administrative Guidelines n°4 A-4-11, published on 11 January 2012, comments on the new provisions adjusting tax credits on profit sharing premiums for fiscal years beginning on or after 1 January 2011.

The Official Administrative Guidelines n°5 A-1-12, issued on 19 January 2012, presents the new rules applicable to tax reporting for the disposal of securities and capital gains.

## **France - International taxation**

The tax convention aimed at avoiding double taxation between France and Kenya was published in the Official Administrative Guidelines n°14 A-9-11 on 22 December 2011.

Three agreements in the form of an exchange of letters between France and the Governments of Anguilla, the Commonwealth of Dominica, and Costa Rica relating to exchange of information were also published by decree on 18 January 2012. In the same way, the agreement between France and the Isle of Man Government covers international navigation of ships and aircrafts.

## **France - Corporate taxation**

### **VAT**

As from 1 January 2012, imports or exports of goods for reparation purposes and temporary exchanges of goods for trade exhibitions are exempted from Intrastat records if (i) it lasts for less than 24 months, (ii) the goods are not modified, and (iii) such operations are not deemed to be deliveries/acquisitions within the meaning of the French tax code. Reporting methods are also modified.

### **Corporate income tax**

The Official Administrative Guidelines n°4 L-1-12, published on 24 January 2012, comments on the exceptional tax of 10% assessed on the amount of the mandatory capitalization reserve for insurance and reinsurance companies established by the 2011 Finance Act.

The Official Administrative Guidelines n°4 C-1-12, published on 12 January 2012, sets up the maximum rate of deductible interests from shareholders' current accounts. Referential rates applicable until 30 March 2012 are also published.

The Official Administrative Guidelines n°13 L-1-12, published on 30 January 2012 reproduces the opinions of the abuse of law Committee held during the second half of 2011 and essentially related to "parent-subsidiaries" tax planning schemes.

## **France - Real estate taxation**

The Official Administrative Guidelines n°4 H-1-12, published on 30 January 2012, comments on the extension of the CIT reduced tax rate, subject to detention of real estate property for 5 years, to capital gains on disposals made in favour of leasing companies which entered into a lease with SIIC or SCPI (listed real estate companies).

## **France - Individual taxation**

The Official Administrative Guidelines n°7 S-1-12, published on 13 January 2012, comments on the modifications made to the incentive scheme for investment in SME's capital (Article 885-0 V of the French tax code), namely (i) extending the scope of wealth tax' reduction for the donations to associations of public interest and (ii) the maximum amount deductible from the wealth tax when the beneficiary is seeking the benefit of both the



reduction for investment in SME's capital and for donations to associations of public interest.

The Official Administrative Guidelines n°5 B-1-12, published on 24 January 2012, draws on the consequences of the decision "Schumacker" held by the Court of Justice of the European Union. Non-residents who earn their income exclusively or quasi-exclusively in France, should be treated as French residents but remain subject to a limited tax liability under international conventions.

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## 15. Transport

### France – Road safety

Decree n°2012-3 of 3 January 2012 on various road safety measures has been published in the O.J. of 4 January 2012. It sets new measures aiming to ensure road safety and to tackle dangerous behaviour, by discouraging speeding and by fighting against alcohol and reduced vigilance while driving, in particular for two-wheeled motorized vehicles.

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