

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 July – August 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 Mar. 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
- **Draft law for creating jobs of the future, n° 146, filed August 29, 2012** - awaiting first reading

Enacted laws

- **Amended Finance Act for 2012 No 2012-958 for 2012** – OJ of 17 August 2012
- **Law n°2012-955 of 6 August 2012 aiming to repeal Act n°2012-376 of 20 March 2012 on the increase in building rights** – OJ of 7 August 2012

1. Banking

France - Credit by associations and public benefit foundations

The order dated 18 July 2012 ([JORF n°0172 dated 26 July 2012](#)) on associations and foundations authorised to grant certain loans and issued for the implementation of Articles R.518-59 and R.518-62 of the French Monetary and Financial Code (i) abrogates the order dated 3 July 2002 concerning the authorisation of the non-profit associations mentioned in the fifth paragraph of Article L.511-6 of the French Monetary and Financial Code, (ii) specifies the conditions for equity and sources required for the granting of loans by the public benefit foundations, (iii) sets up a minimum of fifty matters per year, and (iv) sets up that the average duration of the sources must be longer than or equal to the average duration of the loans granted under the issued authorisation.

This order has entered into force on 27 July 2012.

France - Centralisation of funds collected from banking books A and LDD

The Decree No. 2012-914 dated 25 July 2012 ([JORF n°0173 dated 27 July 2012](#)) on the relationships between networks of collectors of the banking books *livret A*, *livret de développement durable* and *livret d'épargne populaire*, on the one hand, and *Caisse des dépôts et consignations (CDC)*, on the other hand, creates a legislation allowing credit institutions to vary the amount of savings funds centralised four times per month by addressing four monthly statements. CDC calculates the amount of funds to be collected, which entails (i) a payment to CDC, or (ii) a payment to the credit institution of the excess collected. The option is effective as of 1st January of the year following the request by the credit institution, for a period of five years.

The Decree has entered into force on 28 July 2012.

2. Capital Markets

France - AMF publishes its 2011 annual report

On 29 June 2012, Jean-Pierre Jouyet presented the [AMF's 2011 activity report](#) to the press and reviewed the regulator's three priorities for the future.

Corporate governance

The AMF believes that regulation in this field to some extent lags behind European and international best practices. It will be advisable to review legislation on public offerings to ensure that minority shareholders are afforded the best protection. The corporate governance codes should be drawn up in a wide consultation process including investors and listed companies. In addition, the powers available to general meetings should be strengthened.

Marketing of investment products to retail investors

A review could lead to an overhaul of operating, compensation and regulation requirements for financial advisers. The AMF will also pay particularly close attention to work currently in progress at an European level on the marketing of financial products to retail investors (PRIPs).

Financing the economy

Reform of bank structures in particular should improve the financing of the economy, employment and companies. Particular attention should be paid to the asset management industry, which plays a decisive role in allocating retail and institutional investments. Tax arrangements should encourage long-term investment and capital injections, particularly in the SME sector.

France - The AMF clarifies the rules applicable to prospectuses

The order of the 14 June 2012 published in the Journal Officiel of 11 July 2012 approved modifications brought to Books II and III of the General Regulation of the AMF which aim at transposing Directive 2010/73/UE which modifies the "Prospectus" and "Transparency" directives. In this framework, the AMF has also published a practical document entitled "Presentation of the main provisions resulting from the revision of the Prospectus Directive and their entry into force dates".

The major changes brought by the revised Directive concern in particular (i) the exemptions to the requirement for publishing a Prospectus, (ii) the content of the Prospectus, its summary, its validity and its distribution, (iii) the passport and (iv) the abolition of the information document compiling the publications realised over the last twelve months by listed companies.

France - Positions of the AMF and the ACP related to the investment and the marketing of financial instruments

The AMF (position n°2012-08) and the ACP (position n°2012-P-02) have adopted a common viewpoint about the placing and marketing of financial instruments so as to clarify these two notions. These two authorities consider that placing requires two cumulative conditions to be fulfilled: (i) the existence of a service provided to an issuer/securities transferor and (ii) the direct or indirect search for subscribers. They also consider that the activity of searching for subscribers in connection with an authorised investment service provider does not require any authorisation for the placing since there is no commitment on a subscription amount. The AMF/ACP emphasise later that marketing these products generally goes hand in hand with the supply of an investment service of reception and transmission of orders for third parties and/or investment advice, for which compliance with specific rules is required.

France - AMF publishes its 2011 report related to rating agencies

On the occasion of the publication of its eighth report about rating agencies, the AMF drew attention to the new European system of supervision conferred on the European Securities and Markets Authority (ESMA) with the authority to register and to monitor rating agencies. Furthermore, the report states that at European level there is a will to reduce the dependence ratings provided by agencies by encouraging in particular financial institutions to set up their own internal credit analysis.

France - AMF publishes three guidelines organising rules related to asset management

In order to clarify certain rules applicable to asset management, the AMF published on 8 August 2012 three positions related to (i) company saving schemes (position n°2012-10 dealing with bridging funds, employee investment funds and leveraged employee investment funds), (ii) in the field of private equity investment (position n°2012-11 dealing with contractual venture capital funds and pre-liquidation and winding up of venture capital funds, real estate investment funds and other real estate funds) and (iii) the management fees (position n°2012-12 dealing with retrocessions of fees for funds of funds and variable management fees).

France - The AMF publishes its final report concerning the transposition of the AIFM Directive and the development of innovative management in France

In its report related to the implementation of the AIFM Directive, the AMF welcomes the clarification brought by Directive n°2011/61/EU of 8 June 2011 which had proposed a definition of alternative investment management funds as being all vehicles which do not come within the UCITS Directive for the purpose of defining their regulatory field. The AMF notes that France has an important network of alternative investment funds with significant funds under management. The AMF details 25 recommendations aiming at revitalising the sector and in particular dealing with the attractiveness of Paris, the reactivity of the regulator, the adaptability of the legislation and even the possibility of developing related activities.

France - Position of the AMF related to the marketing of bond issues towards non-professional customers

The AMF, which has noted an increase of bond issues intended for the general public, has updated the guide of best practices related to the marketing of bond issues to non-professional clients (position n°2009-15 updated on 1 August 2012) so that they may be better informed. The regulator wishes in particular that the various risks borne by the client appear explicitly and are repeated during all the marketing campaign other than by way of a simple cross-reference to the risk factors chapter of the prospectus.

France - The AMF adapts its rules following the implementation of the UCITS IV Directive

The transposition of the UCITS IV Directive into French law in 2011 represented an opportunity to overhaul the provisions of the Monetary and Financial Code and the AMF General Regulation. The transposition of the Directive served to improve investor information requirements by introducing the Key Investor Information Document (KIID) and to modernise the UCITS market.

In the framework of this implementation, the AMF has published the [instruction n°2012-06](#) related to registration, modifications, preparing the prospectus and periodic information of UCITS reserved for specific investors. The document merges five current instructions: instruction n°2005-3 related to contractual UCITS' procedures, instruction n°2005-4 related contractual UCITS' prospectuses, instruction n°2009-4 related to simplified-procedure venture capital funds and contractual venture capital funds' prospectuses, instruction n°2009-6 related to simplified-procedure venture capital funds' prospectuses and instruction n°2009-9 related to contractual venture capital funds' prospectuses. It also updates the statutory references and takes into account the legislative and statutory modifications resulting from the implementation of UCITS IV.

The AMF has also published on 6 August 2012 the update of [instruction n°2008-03](#) related to procedures, authorisations and business plans for portfolio management companies and investment service providers providing portfolio management services for third parties or investment advisors.

European Law - Short selling: Brussels adopts enforcement measures

The European Commission adopted on 5 July 2012 a delegated regulation which sets out important technical rules needed to ensure the uniform application and enforcement of the Short Selling Regulation (Regulation (EU) n°236/2012).

The delegated regulation specifies (i) the cases in which sovereign credit default swaps are considered covered and (ii) technical rules relating to the reporting of short positions in shares and sovereign debts, and the thresholds entitled to trigger a short-term suspension of short selling illiquid shares and other financial instruments.

3. Competition

France - Appeal before the Court of Appeal against decisions of the Competition Authority

The [Decree](#) No 2012-840 of 29 June 2012 on the appeal before the Paris Court of Appeal against the decisions of the Competition Authority was published in the O.J. dated 1 July 2012. This Decree amends the status of the Competition Authority before the Court of Appeal so that the Authority becomes a party to the proceedings in case of appeal against one of its decisions.

France -Payment of certain services provided by the French Competition Authority

The [Decree](#) No 2012-822 of 26 June 2012 on payment of certain services provided by the Competition Authority was published in O.J. dated 28 June 2012. This Decree provides that the Competition Authority can receive (i) fees from the users of the exchange platform of electronic documents insuring the exchange of documents between parties instead of the current physical exchange, (ii) a royalty for the documentation of the Competition Authority used by legal editors, (iii) entrance fees for conference and colloquies that the Authority organises and (iv) payment for the participation of the Authority beside French and foreign public organisms.

European Law - State aid: public consultation on the Regulation applying to small aid amounts ("*de minimis*" Regulation)

The European Commission has launched on 26 July 2012 a public consultation on the use of the Regulation applying to small aid amounts - "*de minimis*" Regulation. Interested persons are invited to answer to a [Questionnaire](#) by 18 October 2012.

European Law - State aid: public consultation on the review of Community Guidelines on State Aid for Environmental Protection

The European Commission has launched on 31 July 2012 a public consultation on the review of Community Guidelines on State Aid for Environmental Protection. Interested persons are invited to answer to a [Questionnaire](#) by 23 October 2012.

European Law - State aid: public consultation on the use of State aid rules for supporting risk capital investments

The European Commission has launched on 16 July 2012 a public consultation on the use of state aid rules for supporting risk capital investments of 2006, which expire on 31 December 2013. Interested persons are invited to answer to a [Questionnaire](#) by 5 October 2012.

European Law - State aid: public consultation on the application of procedural rules in State aid investigations

The European Commission has launched on 13 July 2012 a public consultation on the application of procedural rules in state aid investigations. Interested persons are invited to answer to a [Questionnaire](#) by 5 October 2012.

European Law - State aid: public consultation on draft communication on short-term export credit insurance

The European Commission has launched on 29 June 2012 a public consultation on the draft of a revised communication on the application of European Union state aid rules to short-term export credit insurance. The Commission proposes to clarify and simplify the current rules that expire on 31 December 2012. Interested persons are invited to submit their observations on the [Draft Communication](#) by 21 September 2012.

European Law Set of questions on application of competition rules in motor vehicle sector

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

4. Consumer law

European Law - Consumer protection in financial services

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

5. Corporate

France - Limitation of the remuneration of State-owned companies' executives

The [Decree No. 2012-915 dated 26 July 2012, relating to the control by the State of the remuneration of State-owned companies' executives](#), set a maximum gross annual income of EUR 450,000 which can be modified by simple decree.

The Minister of Economy is in charge, together with the Minister for the Budget when the company is a public enterprise with an industrial and commercial nature, of monitoring these executives' remunerations. Their decisions are made public.

The decree entered into force on 28 July 2012.

France - Simplification of the formalities with the Trade and Companies Registry

The [Decree No. 2012-928 dated 31 July 2012, relating to the Trade and Companies Registry](#), and an [order of the same day](#) simplified and rationalized the formalities to be carried out with the Trade and Companies Registry ("RCS").

The National Institute of Intellectual Property ("INPI") which keeps a central archive of the second originals of all documents filed with clerks can henceforth archive them electronically. Therefore, only one original of the filings and requests, instead of two, will be required from now on, concerning registrations with the RCS.

In addition, merchants and legal persons subject to registration with the RCS will be able to declare to the RCS the domain name of their website.

Other measures are provided for in these texts and, in particular, the procedure of removal from the registry without consultation is simplified, the modes of electronic transmission of documents between the clerks and the INPI are detailed, and the electronic filing of documents for the purpose of registration with the RCS is clarified.

These provisions entered into force on 1 September 2012.

France - Approval of the amendments to the General Regulation of the AMF: changes to the rules applicable to takeover bids, market surveys, complaint handling and prospectuses.

The amendments to the General Regulation of the AMF were approved by a ministerial order dated 14 June 2012. The main changes are the following:

-Takeover bids: several changes were approved in this regard, including the admission of the possibility to extend a condition precedent to cases of antitrust examination by a foreign agency, introduction of derogations to the mandatory filing of public offerings, and changes to the rules on the beginning of public offerings and on the transactions subject to daily declarations. These provisions entered into force on 1 July 2012.

-Market surveys: the legal framework of market surveys is reinforced and in particular specific rules will be applicable when the information transmitted to investors is privileged. These provisions will enter into force on 11 October 2012.

-Complaint handling: Investment services providers must implement a complaint handling system, proportionate to their size and with the necessary resources, enabling an "equal and harmonized treatment of non-professional clients" and including a procedure for the follow-up of claims in order to ensure the efficiency of the system. In addition, they must reply to these complaints within two months. Asset management companies and financial investment advisers are also subject to the mandatory implementation of a transparent system enabling the efficient handling of complaints. The AMF specified the terms of this complaint handling in its Instruction No. 2012-07. These provisions entered into force on 1 September 2012.

-Prospectuses: the AMF has finalized the implementation of the revised Prospectus directive, by introducing in particular certain prospectus exemptions, adapting the content of prospectuses and raising to EUR 5 million the threshold at which public offerings require a prospectus. Regarding this last point, the AMF specified in its press release dated 17 July 2012 that, at the request of the NYSE Euronext, this threshold will be set at EUR 2.5 million for initial public offerings on the public compartment of Alternext Paris. These rules entered into force on 1 July 2012.

Please refer to the Capital Markets section.

France - Increase in the taxes on stock-options and free shares allocation plans

The amending finance law for 2012 No. 2012-958 dated 16 August 2012 increased the rate of employers' and employees' contributions on stock-options and free shares allocation plans.

Please refer to the Employment section.

France - Rise in the tax on the acquisition of certain securities of public companies

The amending finance law for 2012 No. 2012-958 dated 16 August 2012 raised to 0.2% the tax on acquisitions of some securities issued by companies having their registered office in France when their market capitalization exceeds EUR 1 billion.

This provision applies retroactively as of 1 August 2012.

Please refer to the Tax section.

6. Employment

France - Law on sexual harassment

The Law (n°2012-954) dated August 6, 2012 concerning sexual harassment was published in the Official Journal on August 7, 2012 and came into effect the day after. It is completed by the Circular n° CRIM 2012 -15 / E8 - 07.08.2012 dated August 7, 2012 (NOR JUS D 1231944 C).

The new provisions give a definition of sexual harassment which is more precise but also broader than previous provisions, to cover all the situations in which people can be the victim of this kind of act.

Penalties incurred have been increased. A specific and broader criminal liability is adopted for discriminations committed against the victims of sexual harassment.

Finally, the text of Article 222-33-2 of the Penal Code should now be posted in the workplace and the text of Article 222-33 of the Penal Code should be posted in the workplace as well as in the entrance hall or on the door of the hiring place.

France - Amending Finance Law

The Amending Finance Law (n°2012-958) dated August 16, 2012 amends several rates and social contributions.

-The exemptions from social contribution (the "Tepa" Law) are abrogated in companies of 20 employees and more. Therefore the employers' deduction of social contributions only remains, as from September 1, 2012, in companies of less than 20 employees. Extra hours and complementary hours worked as from September 1, 2012 are subject to employee's social contributions. Those worked from August 1, 2012 are subject to the employee's income tax. This new regulation is specified in the Circular n° 2012-319 dated August 18, 2012 (NOR : AFSS1232590C).

-Severance payments are subject to social contributions, CSG and CRDS for the totality of their amount (from the first euro paid), if they reach 10 times the of Social Security ceiling (meaning if they reach 363.720 € for 2012). This provision concerns severance payment paid as from September 1, 2012

-Multiple rates of contributions are increased.

-The rate of employers' social contributions as regards stock-options passes from 14% to 30% and the rate concerning the free share allocations is increased from 8% to 10%. The new rate applies to stock-options and shares allocated or granted as from July 11, 2012. The rate of "*forfait social*" is raised from 8% to 20% since August 1, 2012. The employers' social contribution owed on top-up pensions is doubled as from January 1, 2013.

France - Increase of the hourly guaranteed minimum wage

As announced in the legislative news of June, 2012, the hourly rate of the "SMIC" is raised up to 9.40 € as from July 1, 2012 (previously 9.22 € since January) (Decree n° 2012-828 dated June 28, 2012).

7. Environment

France - Financial guaranties

Ministerial order dated 31 July 2012 published in the Official Journal of 8 August 2012 specifies the modalities for the incorporation of the foreseen financial guarantees, pursuant to articles R.516-1 and following of the environmental code relating to classified installations. This ministerial order provides, in its appendix, various templates corresponding to all the modes of incorporation of the financial guarantees as set out in the aforementioned articles.

8. Insurance

France - ACP – Instructions relating to information obligations in relation to AML

On 30 July 2012 the ACP published an [instruction](#) relating to information obligations in relation to the prevention of money laundering and terrorist financing for banking and insurance institutions subject to the Anti-Money Laundering ("AML") regulations. This instruction specifies the tables relating in particular to the identity of the person responsible of the AML, internal control or customer due diligence obligations that these entities must file with the ACP and details the modalities of elaboration and submission of these tables.

France - IOBSP – Amount of insurance coverage and financial guarantees

The [Order dated 26 June 2012](#) taken in application of Articles R. 519-16 and R. 519-17 of the French Monetary and Financial Code determines the minimum amounts of the guarantees of the insurance contracts covering the consequence of professional civil liability that intermediaries in banking operations and payment services ("IOBSP") have to subscribe when they are not covered by the person for whom they act or by whom they are appointed. The Order also determines the minimal amount of the financial guarantee that IOBSP are subject to if they are entrusted funds. 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.

France - IOBSP – Professional capacity requirements

The [Order dated 26 June 2012](#) taken in application of Article R. 519-11 of the French Monetary and Financial Code specifies that the degree required to exercise the activity of IOBSP must be of the speciality of training 313, namely "finance, banking, insurance". 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.

France - Transportation insurance - Aviation and aerospace

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

European Law - Legislative proposals for IMD 2

The European Commission has published on 3 July 2012 [proposal for a revision of the Insurance Mediation Directive 2002/92/EC \("IMD2"\)](#), as part of a legislation package to improve consumer protection in financial services. The aim of the proposal is to upgrade consumer protection in the insurance sector by creating common standards across insurance sales and ensuring proper advice. The legislative proposal will now pass to the European Parliament and the Council of the European Union for their consideration under the codecision procedure. This is likely to happen during 2013. Work on subsequent technical measures to give effect to a number of provisions would start soon after that, with an entry into force most likely in 2015.

European Law - Legislative proposals for PRIPs

The European Commission has published on 3 July 2012 a [proposal for a regulation on key information documents](#) (KID) for packaged retail investment products ("**PRIPs**"). KIDs will be short plain-speaking documents which will provide investors with answers to the key questions they have about the features, risks, and costs of investment products. The products for which a KID will be required include all types of investment funds, insurance-based investments and retail structured products, in addition to private pensions. The Commission's proposal will now go to the European Parliament and the Council of the European Union for their consideration under the codecision procedure. Once they reach agreement, detailed work would be done by the Commission with the input of experts, consumers and stakeholders on the implementing measures. The full proposal could be expected to be in place by the end of 2014.

European Law - Solvency II transposition and application dates

On 29 August 2012 the Council of the European Union published the text of the proposed Directive amending the transposition and application dates of the Solvency II Directive, which it adopted on 3 July 2012 (please refer to the Legal and regulatory update – May 2012).

9. Intellectual Property

France - European Resolution of the French Senate dated 31 July 2012 on Custom enforcement of Intellectual Property Rights

By voting the Resolution No. 136 of July 31, 2012, the French Senate has expressed its opinion with respect to the draft Regulation of the European Parliament on the Custom Enforcement of Intellectual Property Rights, which aims in particular at granting customs an extended field of action in the intellectual property area. While approving the necessity to enhance customs' prerogatives, the Senate underlines several lacks in the European's bill and considers that the text should, in particular, expand the definition of marketing acts, include criminal aspects as it is the case in France, and enable Member States to apply their national law, when more protective.

European Law - The European Parliament dismisses the ACTA

On 4 July 2012, the European Parliament dismissed the Anti-Counterfeiting Trade Agreement (ACTA), an international treaty negotiated between 2006 and 2010 and aim at harmonizing anti-counterfeiting legislations through a minimum level of protection and a greater level of criminal and civil measures, including in particular injunction measures against rights infringement through the Internet. The dismissal has been preceded by a strong popular opposition against the ACTA in Europe, such as demonstrations, and a petition signed by nearly 2.8 million people addressed to European Parliament. It is the first time that Parliament uses its power to dismiss the signature of international agreements that was granted by the Lisbon Treaty.

The ACTA is also in course of ratification in several countries, amongst which France and the United-States, and the consequences of the dismissal acted by the Parliament in this regard remain uncertain.

10. Procedures

France - Appeals lodged before the Paris Court of Appeal against the decisions handed down by the French Competition Authority

Decree no. 2012-840 of 29 June 2012 on the appeals lodged before the Paris Court of Appeal against the decisions handed down by the French Competition Authority was published in the Official Journal of 1st July 2012 and has come into force on 2 July 2012. This Decree modifies the conditions governing the examination of the decisions handed down by the French Competition Authority before the Paris Court of Appeal. With this Decree, the French Competition Authority shall now be made a party to the proceedings and shall thus have the possibility to make written and/or oral observations during the hearings at its request or at the request of the Presiding Judge or of the Court.

11. Real estate

France - Rents : index

The cost of construction index (ICC) for the first quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°170, 6 July 2012) amounts to 1617 which corresponds to a 4.05% increase over a year.

The commercial rents index (ILC) for the first quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°198, 2 August 2012) amounts to 107.01 which represents an increase of 3.25 % over one year.

The tertiary activities rents index (ILAT) for the first quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°172, 6 July 2012) amounts to 105.31 which corresponds to an increase of 3.29% over one year.

France - Increase in the rights to build

Law n°2012-955 dated 6 August 2012 published in the Official Journal of 7 August 2012 repeals Law n°2012-376 which, under specific conditions, authorised an increase of 30 % in the rights to build in the case of construction or extension of a building for residential use.

Any increase resulting from article L.123-1-11-1 of the French planning code and entered into force before 7 August 2012 applies to planning authorisation applications filed prior to 1 January 2016. At any time, the competent authority may adopt a resolution terminating the increase faculty.

Restriction on the rents of residential leases

Decree n°2012-894 dated 20 July 2012 published in the Official Journal of 21 July 2012 determines the maximum increase of residential lease rents entered into or renewed as from 1 August 2012 and until 31 July 2013 in certain municipalities.

12. Tax

France - The second Amended Finance Act for 2012 No 2012-958, adopted and published on 17 August 2012 (the "Law"), has increased the taxation of individuals and corporations.

Taxation of individuals

-Exceptional wealth tax "contribution" for individuals liable for French wealth tax in 2012

Taxpayers liable for French wealth tax will have to pay on 15 November 2012 an exceptional wealth tax "contribution" calculated according to the progressive scale that applied up to 2011.

-Restrictions on gift and inheritance taxes

Gift and inheritance taxes have been increased. In particular, the personal allowance applicable between parents and children is reduced from 159,325 € to 100,000€. Moreover, the allowance will only revive every 15 years instead of every 10 years.

-Social contributions on income and capital gains derived by non-resident individuals from property located in France

Prior to the Law, individuals not considered as French resident for tax purposes were subject to French income tax but were not liable for French social contributions.

Now, non-resident individuals are subject to French social contributions on real estate income they receive as from 2012 and on real estate capital gain they realize as from the publication of the law.

Taxation of corporations

-New 3% tax on dividend distributions

Distributions paid by French and foreign entities subject to corporate income tax are now subject to a new 3% surtax.

This surtax does not apply to distributions made by OPCVM and companies or entities that meet the EU small and medium enterprise criteria and does concern neither the distributions made between members of the same French tax group nor the dividends paid in the form of shares.

This surtax borne by the company making the distributions shall be paid together with the 1st corporation tax instalment, following the month of the income distribution. For the 2012 financial year, this surtax will have to be paid upon the corporation tax instalment of 15 December for distributions paid before 1st September.

This measure is applicable to distributions paid as from the date of publication of the Law.

France - Restrictions on the conditions to carry forward tax losses

-Upon restructurings (mergers or partial business transfers), the conditions for obtaining a ruling on tax loss transfers are tightened : they take into account additional criteria regarding the number of employees, customers, fixed assets and the nature and volume of activity.

-The concept of "profound change of activity" which triggers the loss of the right to carry forward tax losses is clarified and extended. Now, it is expressly provided that the disposal of the means of production constitutes a case of "profound change of activity". Moreover, the profound change of activity shall also be characterized by the addition of new activities or partial abandonment of existing activities, provided that such addition or abandonment is significant.

France - VAT rate remains at 19.6%

The increase of the VAT normal rate from 19.6% to 21.2% which was supposed to enter into force on October 1, 2012 is abandoned.

France - Other tax measures

-Dividends paid to foreign qualifying investment scheme (OPCVM, OPCI, Sicaf) are no longer subject to a withholding in France, except when they are paid in a non-cooperative state or in relation to distributions made by a SIIC out of profits which are exempt from corporate income tax under the SIIC regime.

-As from 1st August 2012, the rate of the financial transaction tax is increased up to 0.2%.

13. Telecoms

France - The ARCEP's reorganization of the ranges of mobile phone numbers starting by 06 and 07

Considering the significant increase in the amount of assigned phone numbers, in particular as a result of the development of M2M ("machine to machine") communications, a saturation of mobile phone numbers is expected within the next 4 to 11 years (only 24 million of numbers were still available in metropolitan France at the end of March 2012). In order to avoid such saturation and a general increase in the size of phone numbers, the ARCEP has, in decision No. 2012-0855 dated July 17, 2012, reorganized the ranges of numbers starting by 06 and 07. As a precautionary measure, the ranges starting by 073 and 074 are open for mobile phones in metropolitan France and the ranges starting by 0691 and 0697 are open for some French overseas departments. A new range with numbers composed of 14 figures is open for M2M communications and, as of January 1, 2016, these services will not be allowed to use the 10 figure numbers in metropolitan France anymore. Derogations are provided for connected terminals as well as for contracts signed before June 30, 2013.

France - Modernization by the ARCEP of the organization of the ranges of numbers starting by 08 and of short numbers

Following the ARCEP's studies and two public consultations in 2011 and 2012 on the modernization of value added services, the ARCEP has, in decision No. 2012-0856 dated July 17, 2012, reorganized the numbering plan relating to special numbers and short numbers. The main changes aim to homogenize the rates for calls from fixed and mobile operators, to explicitly distinguish the price of the services provided by editors from the cost of the phone calls, to simplify the ranges of time-based rates, to develop a range of rates per call and to reduce from 12 to 5 the number of categories of special numbers with 10 figures.

France - The ARCEP's definition of the relevant markets regarding the voice call termination of Free Mobile, Lycamobile and Oméa Télécoms and imposition of remedies for exercising a significant influence on these markets

The European Commission, in a decision dated July 22, 2012, withdrew its comments regarding the ARCEP's contemplated measures concerning the wholesale market for voice call termination on individual mobile networks. Consequently, in decision No. 2012-0997 dated July 24, 2012, the ARCEP has defined the relevant markets regarding voice call termination to mobile phone numbers of the new players on the wholesale market for mobile voice call termination (Free mobile, Lycamobile and Oméa Télécom) and has found that each of these operators exercise a significant influence on the wholesale market on its network. The ARCEP has therefore decided, in view of the competition concerns raised, to impose remedies applicable to them. In particular, the three operators are subject, among other obligations, to a non-discrimination obligation, transparency obligation, an obligation to meet any reasonable request for the provision of access and interconnection for mobile call termination on their networks as well as an obligation of cost-orientation. This decision will apply as of August 1, 2012 to December 31, 2013 and sets price caps allowing, until July 1, 2013, an asymmetry with call termination prices of the three incumbent mobile operators.

France - Setting by the ARCEP of the rate of return on capital used for accounting obligations and tariff framing concerning TDF's regulated services for 2012

In decision No. 2012-0998, dated July 26, 2012, the ARCEP set to 9.9% the rate of return on the nominal capital before tax, used for the accounting of costs and the tariff control of TDF's regulated activities for 2012.

As a reminder, in decision No. 2010-0003, the ARCEP had set the anticipated rate of return on capital to 11.7%, for 2010 and 2011.

14. Transport

France - Insurance regarding transports

The Decree No 2012-849 of 4 July 2012 on insurance regarding transport was published in the O.J. dated 6 July 2012. Resulting from the Guidance of 15 July 2011 this Decree specifies that the rules regarding information of insured people on the requirements for transport insurance contracts are those provided in Title VII of the French Insurance Code. It also sets the rules regarding, on one hand, insurance contracts on physical body and aviation and aeronautics liability and, on the other hand, rules regarding liability on a space operation. It specifically defines for these contracts the starting point of the limitation period for actions arising from the insurance contract and the mandatory terms of the insurance contract.

The Decree No2012-850 of 4 July 2012 regarding the application of Article L. 171-5 of the French Insurance Code was published in the O.J. dated 6 July 2012. This Decree specifies which air and aeronautic insurance contracts are subject to the provisions of Title I to III of Section 1 of the French Insurance Code, in application of Article L.171-5 of the French Insurance Code.

France - Regulation on the safety of civil aviation

The Decree No 2012-832 of 29 June 2012 on safety of civil aviation, published in the O.J. dated 30 June 2012, provides that from 1st July 2012 (i) the local safety measures applicable to aerodromes are taken by the préfet, who determines the provisions regarding the good order and safety of civil aviation and the provisions regarding sanitation, (ii) the access to airport areas is subject to authorisation, (iii) the safety approvals required from the operators of aerodromes, airlines companies, authorized agents, known consignors and authorized suppliers are unified and granted for a period of five years, after training from the civil aviation services, (iv) firms and organisations responsible for implementing these measures perform performance tests in operational conditions and (v) the security officers wear a national uniform.

France - Regulation on the training for the safety of airport zones

The Decree No 2012-833 of 29 June 2012 on training for the safety of airport zones was published in the O.J. dated 30 June 2012. This Decree provides that from 1 July 2013 the skills of the staff carrying out missions to ensure the safety of civil aviation as well as those of the persons who supervise them and those of the instructors who provide training, must be certified. The Minister for Transport (or bodies approved by him) provides

this certification. It also approves the content of the courses taught by instructors, any substantial change in content should be brought to his attention.

European Law - Set of questions on application of antitrust rules in motor vehicle sector

The European Commission has published on 27 August 2012 a [Set of frequently asked questions](#) on the application of antitrust rules (agreements and abuse of dominant position) in the motor vehicle sector. This Set of questions aims at complementing the Block Exemption Regulation in the motor vehicle sector as well as the supplementary guidelines, and at being a practical guide for firms and consumers. This Set of questions does not constitute a binding statement of law. It deals with the honouring of warranties, servicing in the context of leasing contracts, the supply of spare parts, the use/purchase of tools, access to technical information and access to authorised repairer networks.

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