



Doing Business Guide

FRANCE

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TABLE OF CONTENTS

1. FRANCE IN FIGURES

2. COMPANY LAW

2.1. COMPANY FORMS

2.2. COMPARISON OF THE PRINCIPAL CHARACTERISTICS OF SA, SARL, SNC AND SAS

3. TAX LAW

3.1. ORGANIZATION OF THE FRENCH TAX ADMINISTRATION

3.2. GENERAL PICTURE OF TAXES IN FRANCE

3.3. MAIN TAXES

3.3.1. Corporate taxation

3.3.2. Individual taxation

3.3.3. Value added tax

4. LAW OF COMMERCIAL RELATIONS

4.1. DISTRIBUTION

4.2. TRADE REGULATION

4.2.1. Antitrust

4.2.2. Unfair trade

5. SOCIAL LAW

5.1. LABOUR LAW

5.2. SOCIAL SECURITY PROTECTION

1. FRANCE IN FIGURES

In March 1999, metropolitan France had 58.5 millions inhabitants, making it the third most populated country in the European Union (EU) after Germany and United Kingdom, with a surface of 544,000 sqm. French territory also encompasses the Overseas Departments (DOM) and the Overseas Territories (TOM). Depending on the purpose of a particular law voted by Parliament, it may or may not fully apply to the DOMs and TOMs.

Gross domestic product (GDP) totaled ε 1,344 billion in 1999. Its growth rate of 2.9% in real (inflation adjusted) terms is below the US figure of 4.3% but exceeds the Eurozone average of 2.3% and ranks well ahead of Japan's 1%. Inflation remains subdued: consumer prices rose 0.5% in 1999.

France devoted 7% of its GDP to education, 9% to health care and 2% to research. It's the world's fourth-largest manufacturer and third-ranking exporter of automobiles, with 4 million units produced in 1999. The country's budget deficit was equivalent to 2.3% of the GDP. The unemployment rate is 9.6% in August 2000.

In 1999, France registered trade surpluses of ε 10 bn in merchandise and ε 24 bn in services. It remains the world's most popular tourist destination, having welcomed 71 million visitors from abroad –ahead of Spain (52 million) and the United States (47 million).

France has a highly active financial market. At year-end 1999, Paris ranked seventh among bourses with a stock-market capitalization of 1,496 bn.

2. COMPANY LAW

2.1. Company Forms

The fundamental law governing the commercial company forms in France was the Law of July 1966, 24th and its Decree of March 23, 1967. The 1966 Company Law, as amended, is incorporated since September 2000, in the Commercial Code which contains the majority of rules applicable to the incorporation, operation and liquidation. The harmonization efforts of the EU have created an additional important source of French corporate law rules.

French company law breaks out an extended list of different company types that have full juridical personality. Two broad categories can be distinguished based on their activities: civil companies (those whose transactions are exclusively “civil” and whose associates are jointly and severally liable for the company’s debts), and commercial companies. The category of commercial companies can itself be divided into two broad categories: “companies of persons” (whose associates are not covered by the limited liability of the full corporate form, such as the general partnership **SNC**), and “capital companies”.

Capital companies are defined as companies whose corporate purpose is not fulfilled essentially by the activities of the individuals who are associates; capital is a significant factor in fulfilling its corporate purpose. While such capital companies afford their owners limited liability for the company’s debts, this is at the cost of liability for company tax.

The most frequently used capital company forms in France are the **SA**, *société anonyme* (corporation) and the **SARL** (limited liability Company).

French company law does not have a specific form that exactly corresponds to an American or English lawyer’s notions of a joint ventures. To select a form for a joint undertaking in France, an economic interest grouping (**GIE**) can be used, a simple or limited partnership (**SNC** or **SCS**), a jointly owned company, or a form of unregistered company contract called a *société en participation*. For corporate joint ventures, a French lawyer might also recommend using the relatively new corporate joint venture form, the **SAS**, a simplified capital company.

2.2. Comparison of the principal characteristics of SA, SARL, SNC and SAS

	SA	SARL	SNC	SAS
Minimum Capital	FRF 250,000 (Euros 38,461.55)	FRF 50,000 (Euros 7,692.30)	No legal minimum	FRF 250,000 (Euros 38,461.55)
Par Value Per Share	No legal minimum	No legal minimum	No legal minimum	No legal minimum
Minimum Amount of Capital to be paid in on subscription	50 % (the balance to be paid within 5 years) (100 % for contribution in kind)	100 %	No legal minimum	50 % (the balance to be paid within 5 years) (100 % for contribution in kind)
Shareholders / Equity Holders				
Minimum	7	1	2	1
Maximum	No maximum	50	No maximum	No maximum
Capacity/Nationality	May be French or foreign individuals or legal entities.	May be French or foreign individuals or legal entities.	May be French or foreign individuals or legal entities.	May be French or foreign individuals or legal entities.

	SA	SARL	SNC	SAS
Management				
<i>Competent Entity</i>	<u>Board of Directors</u> composed of not less than 3 and not more than 24 members appointed by the shareholders.	<u>One or more managers</u> appointed by the equity holders.	<u>One or more managers</u> appointed by the equity holders.	<u>President</u> appointed by the shareholders or any other body determined in the by-laws.
<i>Capacity/Nationality</i>	Board members may be French or foreign individuals or legal entities (except for one who must be an individual - see below) and do not need a commercial card (except for the President - see below). Board members must be shareholders.	Managers may only be French or foreign individuals. If a manager is not a French or EU national or does not hold a resident permit, he must obtain a commercial card. Managers do not have to be equity holders.	Managers may be French or foreign individuals or legal entities. If a manager is of foreign nationality and is not a French/EU national nor holds a resident permit, he (or its legal representative for legal entities) must obtain a commercial card. Managers do not have to be equity holders.	The President may be an individual or a legal entity. If the President is an individual and is not a French/EU national or does not hold a resident permit, he must obtain a commercial card. The registration authorities differ in requiring the representative of a legal entity to have a commercial card. The President does not have to be a shareholder.

<p><i>Removal/Dismissal</i></p>	<p>Board members may be removed at any time by the shareholders. The President may be removed at any time by the Board. The General Manager(s) (see below) may be removed at any time by the Board, upon the proposal of the President.</p>	<p>Managers may be removed at any time for "good cause" by a majority equity holders' decision. If there is not "good cause", the manager is entitled to an indemnity, unless the by-laws provide to the contrary.</p>	<p>If the manager is an equity holder, his removal requires either (i) a unanimous decision of the equity holders - if he was appointed in the by-laws or if all the other equity holders are also managers - or (ii) the majority provided for in the by-laws - if he was not appointed in the by-laws. If the manager is not an equity holder, his removal will require the majority provided for in the by-laws. In some of the above cases, provisions in the by-laws may modify such legal principles.</p>	<p>The President may be removed at any time by the shareholders or any other entity determined in the by-laws.</p>
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	SA	SARL	SNC	SAS
<i>President of the Management Entity</i>	<p>The Board appoints, from amongst its members a President, who must be an individual. The Board may also appoint one or two General Managers.</p> <p>If the President (and/or General Manager) is/are not a French/EU national(s) or do(es) not hold a resident permit, he must obtain a commercial card.</p>	Not applicable	Not applicable	The shareholders are free to choose the type of management entity (e.g., board), in addition to the President. General Manager(s) may also be appointed.
<p>Transfer of Shares or Equity Interests</p> <p><i>Principle</i></p>	No restriction on transfers of shares, unless otherwise provided in the by-laws (preemption, prior approval).	Transfers to third parties must be approved by the equity holders. The by-laws may contain some exceptions especially as concerns the transfers to other equity holders.	Any share transfer, including transfers between equity holders, requires the unanimous approval of the equity holders.	Except in the case of a sole shareholder, the by-laws may contain provisions governing share transfers (e.g., inalienability, shareholder preemption or approval, or exclusionary clauses).

	SA	SARL	SNC	SAS
<i>Transfer Registration Tax</i>	A 1% tax is due on the fair market value of shares with a maximum aggregate amount of FRF 20,000 (Euros 3,076.92).	4.8% of the fair market value of shares.	4.8% of the fair market value of shares.	A 1% tax is due on the fair market value of shares with a maximum aggregate amount of FRF 20,000 (Euros 3,076.92).
Liability of Shareholders	Limited to their contribution to the capital.	Limited to their contribution to the capital.	Unlimited and they are jointly and severally liable for the debts of the company.	Limited to their contribution to the capital.
Subject to Corporate Income Tax	Yes	Yes	No, unless the company opts for corporate income tax.	Yes
Statutory Auditors	1 principal and 1 deputy statutory auditors. If the accounts are consolidated, 2 principal and 2 deputy statutory auditors.	1 principal and 1 deputy statutory auditors if two of the following conditions are fulfilled: <ul style="list-style-type: none"> the asset side of the balance sheet exceeds FRF 10,000,000 (Euros 1,538,461.53), more than 50 employees, gross sales exceed FRF 20,000,000 (Euros 3,076,923.07). 	1 principal and 1 deputy statutory auditors if two of the following conditions are fulfilled: <ul style="list-style-type: none"> the asset side of the balance sheet exceeds FRF 10,000,000 (Euros 1,538,461.53), more than 50 employees, gross sales exceed FRF 20,000,000 (Euros 3,076,923.07). 	1 principal and 1 deputy statutory auditors. If the accounts are consolidated, 2 principal and 2 deputy statutory auditors.

3. TAX LAW

3.1. ORGANIZATION OF THE FRENCH TAX ADMINISTRATION

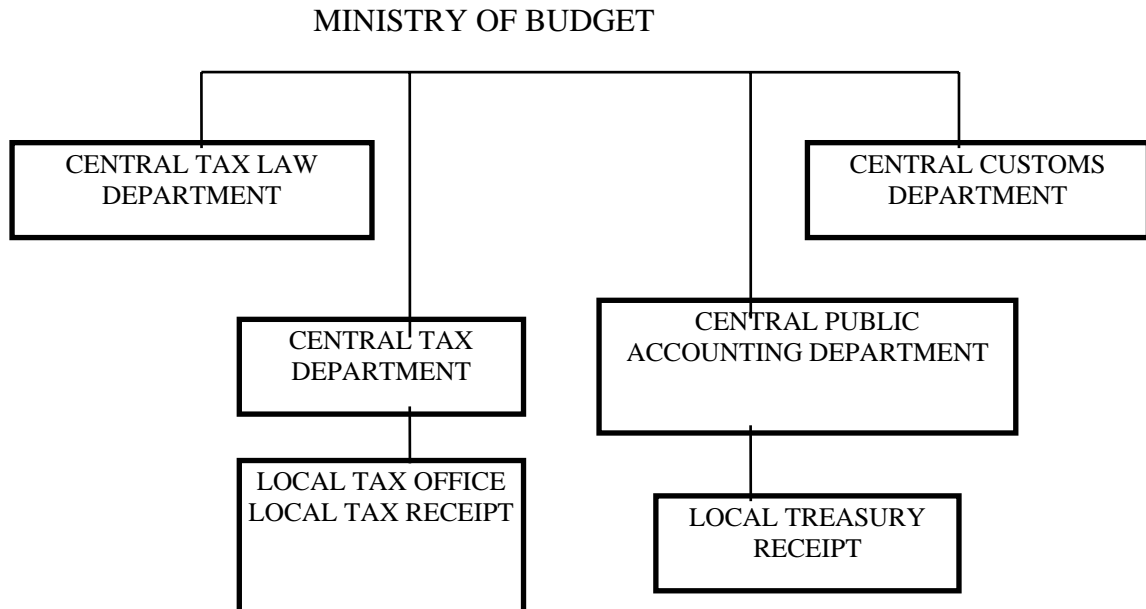
Under the authority of the Ministry of the Budget, the central tax administration includes:

- The *Direction Générale des Impôts*, which runs the imposition of all taxes other than customs duties and some minor indirect taxes,
- the *Direction Générale des Douanes et droits indirects*, which is the Central Customs Departments in charge of collecting customs duties and some minor indirect taxes,
- the central tax law service called *Service de la législation fiscale* which drafts tax laws and regulations.
- the *Direction Générale de la Comptabilité Publique*, which is the Central Public Accounting Department and centralises the receipt of direct taxes.

The tax payers find normally themselves in contact with the following local tax offices,

- *Centre des Impôts* where tax declarations are filed, and where taxes are assessed, audited and all but direct taxes are collected,
- *Recettes du trésor* that collects the direct taxes mentioned hereafter.

Organizational chart of the tax administration in France



3.2. GENERAL PICTURE OF TAXES IN FRANCE

The taxes levied in France are usually split into three main categories.

- Direct taxes, which are levied annually upon a specific taxpayer (individual or company) in consideration of his income, profits or some other indication of his ability to pay. The direct taxes are divided into two major groups:
 - . Taxes on income and profit, normally corporate tax and personal income tax,
 - . Other taxes including taxes collected on behalf of the state such as the various payroll taxes, withholding taxes collected on certain types of profits or income; taxes collected on behalf of local authorities such as business tax, property taxes and dwelling tax, taxes on real estate;

- Indirect taxes, so called because the customer and not the payer ultimately bears the incidence thereof, and which are for the most part turnover taxes: i.e. taxes charged on commercial transactions (and thus collected through out the year).
 - . The most important is by far the value-added tax,
 - . Other various taxes covering a wide range of specific taxes including local taxes, taxes on special products,
- Registration and stamp duties assessed on certain deeds and transactions, including taxation of incorporation, inheritances, and conveyances in particular; wealth tax.

3.3. MAIN TAXES

3.3.1. Corporate taxation

Corporate tax applies to all profits realised by an entity operating in France. Income derived from overseas operations through a permanent establishment of a resident company is not taxable in France. (Equally, losses are not deductible). Partnerships are generally treated as transparent for tax purposes although it may be possible to elect to pay the flat rate corporation tax.

- Determining taxable income

Taxable income is based on the difference between net assets at the beginning and end of the tax year, as shown by the accounts or the profits disclosed therein.

Expenditure which is not of a capital nature incurred in the direct interest of the business is generally deductible.

Book depreciation is generally allowable. Accelerated depreciation is possible under certain conditions. Interest is generally fully deductible. However, interest relief may be restricted on loans from direct foreign parent companies that exceed 150% of the subsidiary's capital. Dividends received by a company are in principle included in the parent company's taxable income, with the benefit of a tax credit (either the *avoir fiscal* for domestic dividends or withholding tax for foreign dividends).

Alternatively, a French parent company holding more than 10% of its 'subsidiary' (the holding may be less than 10% if the cost of the shares is at least FF. 150 million) may opt to include, in principle, just 5% of the gross dividend income received in its own taxable income. To qualify for this, the parent company must hold the subsidiary's shares from the subscription date or must declare that it will not dispose of them for at least two years.

Losses may be used against other income in the same year or carried forward for up to five years. They may also be carried back for three years under certain conditions. Losses attributable to depreciation may be carried forward indefinitely under certain conditions.

- Capital gains

Capital gains are subject to the ordinary corporation tax rate plus surcharges (actually: 33.33% plus 10% and 3.3% surcharges). However, capital gains on certain shareholding may, under certain circumstances, be taxed at the reduced effective rate of 21.53%.

- Groups of companies

Companies connected by 95% control links are allowed, under certain circumstances, to file a consolidated group tax return. A favourable tax regime exists with regard to restructuring operations, i.e. tax on capital gains realised on the transfer of assets in the course of mergers, partial contributions of assets and split-ups may be deferred.

- Returns and payments

Corporate tax returns should be filed within three months of the end of the tax period. For 31 December year-ends, the tax authorities generally postpone the deadline. For example, the deadline for 1999 is postponed to 3 May; Tax is payable under a system of self-assessment. Payment is due in four quarterly instalments.

3.3.2. Individual taxation

French residents are liable to tax on their world-wide income. Resident status applies to individuals who have their main residence or spend most of their time in France, undertake professional activities in the country or if France is the centre of the individual's economic interest. A non-resident individual is only liable to income tax on income from French sources or, if they have a house in France and are not protected by a treaty, on three times the property's rental value, whichever is the higher.

National income tax is levied at progressive rates up to a maximum of 54%. Social security contributions are also payable as well as a 2% social levy on certain income.

- Capital gains

Gains from the sale of land and buildings held for two years or less are taxed at normal income tax rates. Otherwise, such gains are adjusted for inflation and then reduced by 5% for every year of ownership over two years. Gains arising from the sales of securities held purely for investment purposes are usually taxed at a flat rate of 26% if proceeds for the year exceed FF. 50,000. Gains on sales of certain stocks and shares are taxable at 16% (plus 10% for French residents).

- Investment income

Residents can elect to have French-sourced interest from bonds, credits, bank deposits, security deposits and current accounts subject to a flat rate withholding tax which then exempts such income from further taxation. Otherwise, it is generally taxable at the individual's marginal rate of tax. This withholding is mandatory for payments to non-residents. Dividends are normally subject to income tax but benefit from the *avoir fiscal*.

- Special rules for foreign nationals

Exemption from French tax is granted to residents of treaty countries working in France for less than 183 days in the tax year, if the employer is resident in the treaty country and the remuneration is not ultimately borne by a permanent establishment in France.

- Returns and payments

The income of husband and wife is aggregated and joint returns must be submitted. The tax year is the calendar year and an annual return must be filed by 1 March following the end of the tax year. Non-residents may be permitted a later deadline. Generally, income tax must be paid in instalments, by 15 February and 15 May. The balance is payable in the following autumn.

- Other taxes

French residents pay wealth tax on the value of their world-wide assets and non-residents on assets situated in France up to maximum rate of 1.8%.

Gift and estate tax are payable at rates ranging from 5% to 60% depending on the relationship of the recipient to the deceased or donor.

3.3.3. Value added tax

TVA is levied at 19.6%. A reduced rate of 5.5% applies to water, non-alcoholic drinks, food, passenger transport, books, electricity and gas subscriptions, household waste treatment, certain equipment used by handicapped persons and private social housing improvement work. A further reduced rate of 1.2% applies to newspapers and certain other types of publication, certain cultural events, specific medical and pharmaceutical items as well as TV licence fees.

4. LAW OF COMMERCIAL RELATIONS

4.1. Distribution

French law distinguished between a variety of different categories of distribution arrangement. It is important to discern among them to ascertain the relative duties, responsibilities, rights, burdens, and indemnity upon termination placed on the parties.

The most frequently encountered of these types of marketing arrangements can be broken out into two categories: commercial agents (statutory sales representatives or general commercial agents) and distribution arrangements (franchising contracts and exclusive distribution agreements). The fundamental difference between the two categories is that commercial agents merely arrange for the sale of the relevant products and services and do not purchase them for resale. In a distribution arrangement, the franchisor or distributor actually furnishes the products or services.

4.2. Trade regulation

The Ordinance of December 1, 1986 totally reformed the price control rules by positing the freedom of economic players to set the prices they charge for their goods and services. With this free competition, antitrust and unfair trade laws became more significant means of maintaining reasonable price.

4.2.1. Antitrust

Some transactions may have a size or a scope sufficient that they will result in the simultaneous application of the EU (between Member States) and French antitrust rules.

- Ententes

French antitrust rules examined any concerted actions, agreements or ententes, whether expressed or tacit are prohibited when they have the purpose or effect of restraining, prohibiting, or interfering with free competition in a given market. Will be condemned behavior that divides a market or artificially attributes customers, tends towards price fixing (uniform price, margin, sales or purchases conditions), prevents a distributor from selling competing products, set resale prices,

- Abuses of dominant position

An enterprise or group will be deemed to have a dominant position on French market or a substantial part of French market, when it dominates another enterprise or when enterprises that are its clients or suppliers have no choice but to trade with it. Abuse will occur when the position is used to restrain competition or to manipulate markets (refusal to deal, compelling linked sales, and discriminatory sales conditions)

- Review of mergers and acquisitions

The purpose of these rules is not to prohibit mergers and acquisitions leading to the creation of larger enterprises but to prohibit mergers and acquisitions that have a serious anticompetitive effect on the French economy relative to the benefits of the transaction. Concentrations are defined to include any transfer of property, legal rights or obligations of an enterprise that has the purpose of permitting one enterprise or a group of enterprises to exercise a direct or indirect dominant influence on one or more other enterprises. French mergers and acquisitions control regulations do not apply unless the transaction exceeds a minimum size (measured by turnover and market share).

4.2.2. Unfair trade

The more damaging types of behavior that have been condemned by the courts are denigration, imitating trade names, exploiting know-how, refusal to deal, recommended or minimum price, discriminatory practices.

5. SOCIAL LAW

5.1. Labour Law

The employment contract is the source of French labor law. Once hired under an employment contract, the employee benefits from the panoply of French labor rules (the Labor Code which provides rules on the employment relationship, labor administrative regulations, collective conventions negotiated by employee unions in most economic sectors which apply when they are more favorable than the code and regulations, EU directives...).

The normative employment contract is the indeterminate term contract. Short term and temporary worker contracts can only be used under specific restricted conditions. Under an indeterminate period contract, the employee has a right to go on working for his employer unless and until he's fired for cause.

Each party to an indeterminate employment contract has a unilateral right to terminate the agreement. When the employee is dismissed, he will have right to a variety of indemnities if the dismissal is proper and damages if the dismissal is abusive.

EU directives, directly applicable in France and many collective conventions require a written employment contract. A contract that does not specify a fix term will be for an indefinite term.

While in principle the parties to an employment contract may freely set the employee's remuneration, the amount paid may not descend below a set national minimum wage, revise every year according the cost of living increase. Since July 2000, this *salaire minimum de croissance* is at FF. 42.02 per hour (6.40590 ε/h).

Monthly salary payment is the norm in France. The legal workweek is 39 hours per calendar week; it will be progressively reduced at 35 hours according firms size. French labor law accords any employee the right to a certain minimum amount of paid annual leave for vacations, without being less than the salary that the employee would have received if he had worked during the period of this vacation. For individuals working the typical five-day week during a full period of reference, this means that they will have 25 working days off for annual leave.

5.2. Social security protection

Contributions to the general social security system are due by private employers engaged in industrial or commercial activities and those involved in the exercise of a craft or liberal profession on behalf of all their salaried workers. The employee's share of contributions to the general social security regime is around 20 % on total salary. The employer's contribution part is about 40 %.

In addition to the general system, a number of specialized social insurance systems provide coverage to individuals working in particular economic sector, such as agriculture, merchant marine, etc.

A second group of institutions provides insurance and benefits that are in addition to the general social security system, such as the complementary retirement and disability system or the unemployment insurance system. A third level of institutions provides group insurance plans that file in a variety of gaps in coverage, such as the different *mutuelles*.

Payments to the general social security system finance three types of risks covered by the general system:

- Social insurance, which provides benefits covering the financial costs of sickness and maternity, disability, old age and death. In addition, a general social security pension benefit is funded by contributions on salary up to the social security ceiling.

- Family allowances.

- Occupational illness or accident.

In case of an employee's absence as a result of illness, the health part of the general social security systems pays the employee a daily benefit. Nevertheless, the salary of the employee is almost wholly or partially maintained pursuant collective conventions or Pay Accords.

An employee who suffers from an occupational illness or accident will have a special labor law coverage during his absence. He cannot be dismissed during this absence and his salary is maintained at a substantial level by the health part of the general social security fund. The social security fund also pays a daily benefit to mothers on maternity leave.

The general retirement age is 65 with 40 years of coverage under the general social security system. France has a system of complementary benefit plans for general employees (*non cadres*) and upper level employees (*cadres*) of most private sector employers. The *non cadre* system funds retirement pensions (and reversionary pensions) that complement social security pensions paid by the general system. The *cadre* system provides three types of benefit plan (a mandatory old-age retirement system, a mandatory death benefit plan and an optional supplementary plan).

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