Doing business in France

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Invest in France Agency

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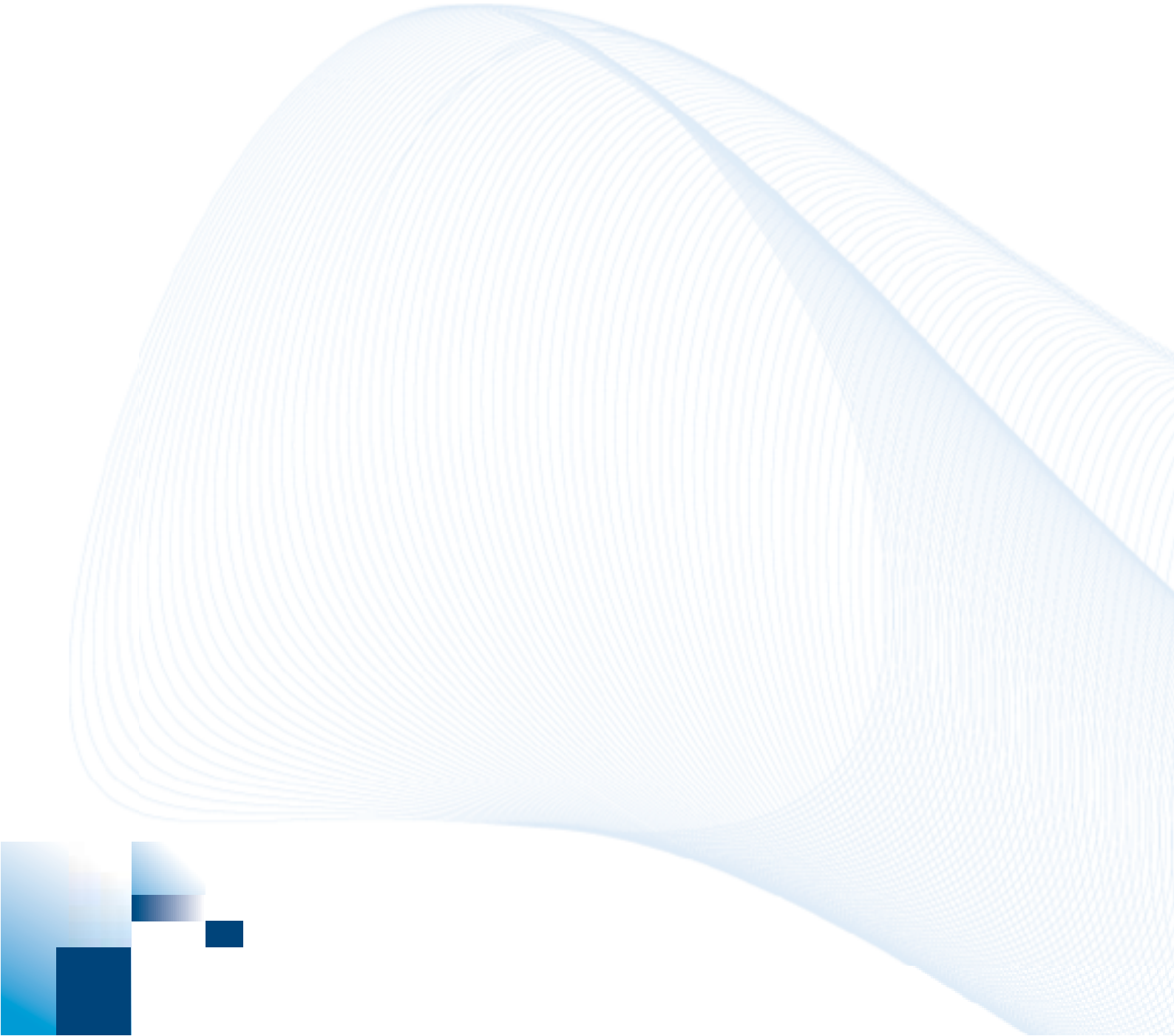

Message from the CEO

I am pleased to present “Doing Business 2009”.

This guide has been written by IFA experts in conjunction with recognized specialists (law firms, auditors, accountants and human resources consultants) especially for you, foreign company executives, who wish to set up business in France. More than 20,000 foreign companies are already established here, operating businesses under many different legal forms.

Reforms underway in France over the last two years are changing the legal environment in which companies can be set up and expanded: taxation on investment is being simplified and reduced, more flexibility is being introduced in the workplace, company law is being modernized and harmonized with European legislation, R&D and sustainable development are being promoted and the arrival in France of foreign skills and expertise is being encouraged.

This publication will provide you with an authoritative guide to this revised legal framework.

Please do not hesitate to contact the Invest in France Agency, which is ready to serve as your first point of contact as you plan your investment project in our country.

David Appia

Ambassador for International Investment,
Chairman and CEO of the Invest in France Agency

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SETTING UP BUSINESS IN FRANCE SUCCESSFULLY

There are no administrative restrictions on foreign investment in France, although mandatory declarations or permits are required in some cases (see "In detail" section below). Whatever your business development strategy, in France you will find an appropriate legal structure for the kind of business you wish to set up. Investors can set up a permanent or temporary structure and enjoy full legal peace of mind; they are then free to drive their project forward in an uncomplicated and inexpensive environment.

In detail

Simple steps for international investors to follow

→ A return to be filed with a credit institution for statistical reasons detailing transactions in which a nonresident acquires 10% or more of the equity or voting rights in a resident company.

→ A simple or administrative return to be filed with the Ministry for the Economy, Industry and Employment (Treasury and Economic Policy Directorate): 1) for investments that create new companies where the investment exceeds €1.5 million, and more generally, 2) operations (with no minimum amount) that result in the acquisition of all or part of a line of business, or the acquisition of a direct or indirect equity interest in (or any other transaction with) a French company amounting to more than a third of its shares or voting rights (unless the investor already has a majority interest in the French company).

Special cases:
As in many other countries, prior authorization is required for investments in certain business sectors.

Sectors concerned:
Gambling; private security services; the prevention of illicit use of biological or toxic agents; equipment designed to intercept communications; the evaluation and certification of systems used in information technology; the production of goods or provision of services relating to the security of information systems; goods and technology with dual applications; encryption and decryption systems for digital applications; businesses certified for national defense; trade in weapons, munitions and explosives for military applications or equipment used in warfare; businesses under contract to supply research or equipment to the Ministry of Defense or its subcontractors.

In these sectors, authorization is required to acquire a controlling interest (i.e. a majority of voting rights) and the direct or indirect acquisition of all or part of a business line. For investors from countries outside the EU and the European Economic Area, authorization is also required for the acquisition of direct or indirect interests exceeding 33.33% of equity or voting rights (unless the investor has already been authorized to acquire a controlling interest).

Authorization is given within two months (tacit agreement to be assumed if no reply is received).

For more information:
Articles L151-1 to L152-6 of the French Monetary and Financial Code.
Articles R151-4 and following of the French Monetary and Financial Code (codifying Decree 2005-1739 of December 30, 2005 on regulation of foreign financial relations)
Ministerial order of March 7, 2003, n° 2003-196 pursuant to the implementation of Ministerial order n°2003-196.

I. Multiple solutions for your business

Choosing a business structure in France depends on the investor's strategy and the degree of independence that the French operations are to have from the parent company.

I.1. Reducing administrative procedures: short-term solutions

A foreign company wishing to prospect for business in France can start by hiring a single employee or by opening a liaison office. This option involves a specific tax and company status.

I.1.1. Liaison offices: representation without commercial activity

A foreign company may recruit or send an employee to France to represent it through a local liaison or representative office.

Liaison offices may conduct only a very limited amount of non-commercial operations, such as prospecting, advertising, providing information, storing merchandise, or other operations of a preparatory or auxiliary nature. Such offices are not separate legal entities. Invoices must be issued by the parent company, which must also sign any contracts.

Liaison offices are not permanent establishments with respect to tax laws. They are not subject to corporate income tax or VAT, but must pay certain local taxes and payroll taxes. If, however, the office conducts commercial activities, in particular where an employee signs contracts on behalf of the foreign company employing him, or fulfils a complete manufacturing cycle, or acts as a fixed place of business through which the company conducts all or part of its trade, it may be reclassified as a branch or permanent establishment.

Companies wishing to safeguard their business may ask the tax authorities to rule in advance whether or not their establishment qualifies as a permanent establishment in France (the tax authorities are deemed to have given tacit consent if no reply is received within three months).

I.1.2. If you wish to develop a commercial activity: sales representatives

Sales representatives may either be employees of foreign companies (e.g. salespersons) or traveling sales representatives (VRP – *voyageur de commerce, représentant ou placier*).

Traveling sales representatives are intermediaries employed by one or more companies (*VRP exclusif ou multicarte*) to visit customers in the representative's sales territory. These representatives work independently, contacting prospective clients to offer goods and services. Their primary responsibilities are making sales calls, taking orders and submitting these to their employers.

Traveling sales representatives have a special legal status in France and receive special compensation should their contract be terminated.

These representatives, including those with "multi-card" status, are subject to personal income tax on salaried income. The business activity of a VRP may be considered as a permanent establishment of the foreign company employing the VRP if they sign contracts on behalf of the company.

I.1.3. Another solution: sales agents

Foreign companies may also use the services of a sales agent, i.e. a self-employed individual or a company that acts on their behalf.

Agents are responsible for negotiating and, in some cases, signing contracts for sales, purchases, leases and provision of services on behalf of their principals (i.e. not in their own name). They may work for one or more companies, and in most cases are responsible for a defined geographical area and/or sector of activity. They are paid in part or in full by commission on completed transactions.

Since sales agents are external suppliers and not salaried employees, specific rules apply when agreements with them are terminated. Except in the case of professional misconduct, the agent is entitled to compensation based on gross commissions received (in principle, this will be the equivalent of two years of the same).

Small companies often prefer to use sales agents as a flexible and inexpensive means of introducing their products to foreign markets.

I.2. Planning for the future - two key decisions

Companies can set up a branch or a subsidiary to conduct manufacturing or sales operations in France through a permanent principal or secondary establishment.

I.2.1. Branches - a basic option

Branches enable foreign companies to establish a foothold in France for a commercial activity.

Branches are headed by a legal representative, functioning like an agency and reporting to headquarters, and have no official restrictions on their decision-making powers. They may carry out all the operations of an industrial or commercial company, but are not separate legal entities and the parent companies are responsible for their initiatives. If they encounter financial problems, the parent company bears unlimited liability for their debts.

Branches are permanent establishments with regard to tax laws and must pay corporate income tax and VAT. The subsequent conversion of a branch into a separately incorporated subsidiary is possible, but must comply with rules governing the sale and transfer of business, and is subject to taxation.

I.2.2. Creating a subsidiary, a company incorporated under French law, offers certain advantages

Segregation of subsidiaries' and parent companies' assets means that foreign companies do not bear unlimited liability for the debts of their French structures. On the other hand, subsidiaries' losses cannot be offset against parent companies' profits;

IN DETAIL

The first key steps in creating a subsidiary

Creating a company involves carrying out a number of steps before the company can be registered. Investors who wish to create a separate legal entity rather than a subsidiary or a liaison office should anticipate the following steps:

- Seeking public or private investment (loans, venture capital, business angels, mutual investment funds in innovation etc.)
- Seeking business premises and a business address agreement for the company's registered office, a commercial lease or the acquisition of real estate;
- The type of legal form for the business (e.g. SAS / SARL or SA);
- Drafting and signing the company articles of incorporation (before a notary where the company owns property) which requires preliminary steps to be taken (address, directors, definition of business etc.)
- Planning the appointment of the company officers;
- Obtaining where appropriate (for a foreign director outside the European Economic Area) a long-stay visa and residence permit ("Business Activity" or "Skills and Expertise") or making a prior declaration for a foreign director not wishing to reside in France.
- Choosing a company name (and ensuring it can be used by conducting searches at the French Institute of Industrial Property (INPI) and the Commercial Court Registry – *Greffe du tribunal de commerce*), address and the appointment of directors
- Appointing the statutory auditor(s) where relevant;
- Evaluating capital contributions in kind by an official appraiser;
- Constituting the share capital;
- Opening a bank account in France and depositing the capital of the company being formed;
- Registering the articles of incorporation at the Tax Office of the registered office's location (free of charge);
- Publicizing the notification of establishment in a legal gazette.

Since some of these steps involve procedures in both the country of origin and in France and may take several weeks to complete.

- Subsidiaries are entitled to renewable commercial leases;
- Subsidiaries may apply for government assistance when starting up or expanding;
- Subsidiaries can enter into agreements on sales and technical royalties, commissions, management fees, etc.

The company becomes a separate legal entity when it is entered in the Company Register (*Registre du Commerce et des Sociétés* - RCS). The founders are personally liable for their legal commitments during the incorporation phase, and these are consequently assumed by the newly incorporated company. The subsidiary must pay all applicable taxes. Investors are advised to seek specialist legal advice when setting up a subsidiary. Bar associations can provide lists of lawyers in France.

II. Setting up your business rapidly

The timeframe required to set up a company in France is one of the shortest in the world. The formalities for setting up businesses have been greatly simplified and the whole procedure can be carried out over the internet.

II.1. A one-stop shop: the "*Centre de formalités des entreprises*" (CFE)

All the formalities for setting up a new company can be dealt with in one place: the "*Centre de formalités des entreprises*" (CFE). This center handles all the documents required to set up, change or close down companies and delivers them to the relevant authorities, including:

- The Commercial Court Registry, which first issues, free of charge, a Business Creation certificate (*récépissé de création d'entreprise*, allowing procedures to go ahead for companies being set up), and then, once the company has been registered, issues a "K-bis" registration certificate.
- The French National Institute for Statistics (INSEE) which allocates the APE code corresponding to the company's business and the SIREN and SIRET numbers (company registration numbers) required for hiring employees;
- The tax authorities (*Centre des impôts*) and social security agencies, including URSSAF (*Unions de Recouvrement des cotisations de Sécurité Sociale et d'Allocations Familiales*), which collects payroll taxes.

For more information:
Find out where your nearest CFE is located and complete your company registration procedures over the internet: www.cfenet.cci.fr/

II.1.1. Speedy registration process

The CFE provides the application form ("MO form") and list of documents to be submitted, which must be translated into French. The application must be filed by a duly empowered person with written authorization from the company.

It takes a few days for a company to be recorded in the Company Register (RCS). When a company is "pending registration", its legal representative can use the Business Creation certificate for dealings with the authorities and public and private-sector organizations (e.g. accessing the new company's bank account).

The cost of administrative formalities is approximately €85 (since June 1, 2007), plus the cost of publishing a notice in the legal gazette (approximately €230).

It is now possible to complete the formalities for setting up, changing or closing a company online. There are some formalities that the CFE does not handle:

- Applications for authorization to engage in regulated professions, licenses or registration with professional associations for lawyers, accountants, architects, doctors, etc.;
- Proof of address;
- Formalities to register trade names and brands with France's National Industrial Property Institute (INPI);
- Registering internet domain names ending in ".fr" with the French Internet Names and Cooperation Association (AFNIC);
- Registration of the company with an insurance center;

- Registration with an employee retirement plan (must be done within three months of registration). Formalities relating to hiring employees must be completed with URSSAF using a special form (*Déclaration Unique d'Embauche*).

II.I.2. Industrial property rights

French industrial property laws provide effective protection for patents, trademarks, models and designs. INPI is the core of the French protection system, and filings with it are the starting point for patent and trademark protection. Industrial property rights entitle patent holders to a monopoly on use for 20 years. Trademarks are valid for 10 years and can be renewed indefinitely. Models and designs are protected for 25 years.
Company names, trade names and logos are also protected and can be cited in unfair competition suits.

II.2. Registering your Liaison Office

In principle, registering your Liaison Office is not required. It becomes necessary for dormant companies where the office has its own premises or is to going be used to employ several employees in France.
Documents to be submitted concern the representative (proof of identity, police clearance record, specific documents for expatriates, including declaration to the prefecture or "Business Activity" residence permit if necessary), two copies of the company's articles of incorporation translated into French, as well as a document attesting tenancy or ownership of premises.

II.3. A single contact handling your administrative procedures

The representative of a foreign company with no business establishment in France but which employs salaried personnel covered by the French social security system must register with URSSAF directly using the "EO" form and submit a copy of their employment contracts, as well as the *Déclaration Unique d'Embauche*. URSSAF will assign a SIRET number to the representative and notify the authorities concerned. Such employees pay their own employer and employee social security contributions every quarter.
A sales agent is self-employed and must be registered with the special register of sales agents.

II.4. Registering your branch

Registration is mandatory for branches. The registration application must include (in addition to the MO form):

- Two copies of the parent company's articles of incorporation (two originals and two copies translated into French by a certified translator);
- Proof of address;
- Registration Certificate from the foreign company register;
- Documents relating to the person empowered to act on behalf of the company: identity cards and a police clearance record; a declaration to the prefecture (for directors from non-EEA countries) or residence permit as appropriate and documents certifying the required qualifications if the business is regulated.

II.5. Simplified registration formalities

The registration application for the new company must include (in addition to the MO form):

- Two originals of the articles of incorporation giving the names of the directors and, where appropriate, the names of the statutory auditors;
- Two copies of the official appraiser's report, if capital contributions in kind are involved;
- A copy of the lease or ownership deed to the business premises;
- A copy of the legal gazette containing notification of the company's establishment;
- Copies of the directors' birth certificates, identity cards or passports, along with a police clearance record and a representative's mandate;
- If appropriate, a copy of the professional license, degree or certificate required to exercise a regulated profession;

legal advice

Maître Julien Balensi, Attorney at Law, Salans International Law Firm

CREATING A JOINT VENTURE IN FRANCE

The partners of a joint venture ("JV") always have specific objectives. There is therefore no standard way of creating a JV; careful choices must be made and legal procedures may have to be adapted.

1. Certain JV can be created by establishing of a set of "simple" contracts (contracts for supplies, services, licenses, etc.) which do not require a corporate structure. However, this is not always the case: the partners will often decide to create a common *ad hoc* structure, in addition to the general agreement that defines the context and the conditions of the partnership as well as the annexed agreements that are to be executed.

2. If the JV is to be an autonomous and long-term profit center, the partners will opt to create a common subsidiary company and, to that end, will most often choose the simplified corporate form known as a "*société par actions simplifée*" ("SAS"). This corporate form offers a large degree of freedom to organize management and the conditions for the admission or withdrawal of a partner.

The articles of incorporation of an SAS can validly provide for (i) first refusal clauses, (ii) tag-along and drag-along rights, (iii) qualified voting majorities required to make certain decisions, (iv) *ad hoc* decision-making bodies, and (v) a right of withdrawal or a procedure to exclude partners.

The inclusion of such provisions in the articles of incorporation is important because it ensures their enforceability against third parties and their full legal effectiveness. The partners remain free, in order to preserve the confidentiality of such clauses, to include them in a shareholders' agreement separate and apart from the articles of incorporation.

3. If the JV has as its sole purpose the pooling of resources and/or the provision of services to the parties, the parties can instead create a "*groupement d'intérêt économique*" (GIE) (economic interest group).

While the GIE is a corporate entity, its purpose is not to generate profits but rather to make savings. In comparison to the SAS, its principal advantage is fiscal transparency. However, the members of the GIE remain jointly liable for the debts of the GIE to third parties.

4. Finally, and particularly when the JV is intended to be of limited duration or is established only to implement a specific project, the partners can create a "*société en participation*" (SEP), for which the operational rules can be freely defined.

This structure, while possessing the attributes of a genuine company (equity contributions, partners sharing profits and making decisions) is not a corporate entity and does not possess assets.

Furthermore, the SEP does not have to comply with any registration or publication requirements and in general it remains concealed from third parties (but not, however, from the tax authorities). The constitution and dissolution of an SEP are thus simplified.

The SEP is managed by one or several managers who conduct business in their own names with respect to third parties. The other members of the SEP are not bound with respect to these third parties.

The French judicial system thus offers a large range of adaptable and diversified structures that readily allow all manner of joint venture projects to be implemented.

- If appropriate, the declaration to the prefecture by any foreign director(s) (from non-EEA countries) not residing in France, or residence permit(s) of any foreign director(s) ("Business Activity" or "Skills and Expertise" type);
- A certificate of deposit from a bank for the new company's initial capital reserve;
- A summary of the formalities completed on behalf of the new company.

The K-Bis certificate issued by the Commercial Court Registry is proof that the company has been set up.

III. Multiple legal structures tailored to your needs

Choosing a legal structure will affect the company's legal status, taxes, assets and labor relations.

III.1. Limited liability companies: most common in France

In this case, financial liability is limited to the amount of owners' capital contributions. Such entities can easily be converted into other forms of companies with minimal tax consequences.

The rules governing companies have become much more flexible, with the introduction of simplified companies by shares (SAS), which have greater freedom to draft their articles of incorporation to suit their own purposes. The elimination of the minimum capital requirement for SARLs has also resulted in greater flexibility.

By the same token, French company law has kept in step with modern technology: meetings of boards of directors and supervisory boards may now be held remotely (by video-conference or other means) except in cases where company articles stipulate physical meetings or where annual or consolidated financial statements and management reports are to be validated.

III.1.1. The three main types of limited liability companies

The most popular company forms are the *société anonyme* (SA), the *société à responsabilité limitée* (SARL) and the *société par actions simplifiée* (SAS). SARLs and SASs can be formed with a single partner [one-person SAS Unipersonnelle (SASU) or one-person limited-liability company (EURL)], whereas seven partners are required for an SA. The SA is the most sophisticated type of French company and is able to launch a public offering. The SAS or SASU is the most recent form of French company and is well suited to holding companies and foreign companies wishing to maintain 100% control of one of their subsidiaries.

III.1.2. Approval of annual accounts

This decision is made by partners at the Annual General Meeting.

The decision to approve the accounts must be made no later than six months after closure of the accounts for the financial year. This is essential so that profits can be allocated and any dividends distributed.
Any limited liability company must file:
- their annual accounts, business report and where applicable their consolidated statement and auditors' reports.
- the motion or resolution regarding appropriation of the profits.

These must be filed in duplicate with the Commercial Court Registry within one month of the annual accounts being passed.

legal advice

Mr Antoine Martin and Mr Alain de Rougé, Eversheds LLP, Paris office

WHY SET UP AN SAS?

Since 1994, the *société par actions simplifiée* (**SAS**) has been the most common corporate structure in France: in 2008 there were 123,000 SAS companies in France, compared with approximately 116,000 *sociétés anonymes* (**SA**).

The popularity of the SAS resides mainly in the freedom left to shareholders concerning their corporate governance. A new law, applicable as of January 1, 2009, brings renewed flexibility to the SAS, which is now available to any investor wishing to set up an unlisted limited liability company.

Traditional advantages

The main advantage in setting up an SAS is that its structure and governance are determined by the articles of incorporation (**AoI**) rather than by the law (as is the case for an SA). Accordingly, shareholders can to a large extent set their own rules.

- The SAS can be set up by a **single shareholder**;
- **Shareholders' powers:** the AoI determine which decisions must be adopted by the shareholder(s). The number of decisions which, by law, must necessarily be taken by the shareholder(s) is far lower than in an SA and their preparation is simpler given that consultation can be performed by any means (formal meeting, written consent, conference call, etc.).
- **Management:** the SAS must have a president (individual or corporate entity). Beyond this requirement, shareholders have complete discretion to organize the management (i.e. a board of directors, supervision committee or any other management body with powers specifically tailored by the AoI can be set up).
- **Shares:** the AoI of an SAS may provide for different classes of shares: ordinary shares or preferred shares.
- **Control:** the AoI can contain special clauses normally found in shareholders' agreements which ensure control over equity ownership or management (temporary prohibitions on share transfers, pre-emption rights, exclusion of a shareholder, drag-along or tag-along rights, etc.). Inserting such clauses into the AoI allows a French judge, in case of a breach, to order enforcement of the clause rather than the payment of damages.

New advantages

- **Minimum share capital may now be set at €1.**
- The appointment of statutory auditors is only required if certain thresholds are exceeded (total balance sheet, turnover, number of employees), or if the SAS holds at least 5% of the share equity of and voting rights in another company.

In practice

Beyond the advantages described above, new legislation contains provisions that facilitate the incorporation of an SAS. From now on, the only fundamental step when creating an SAS consists in adopting articles of incorporation reflecting the investor's needs.

This freedom and flexibility allow foreign groups to create a French limited liability company holding an investment or operating a business in France, all the while reproducing the governance rules in force within their group.

Investors now have a cheap, efficient and flexible vehicle which significantly facilitates doing business in France: the SAS can be created for €1, by a single investor who can act as chief executive and sole shareholder.

In conclusion

France benefits from corporate structures which are as easy to set up and as flexible to operate as structures available in the rest of continental Europe.

This significantly contributes to making France a more attractive country to invest in.

IN DETAIL

Comparison of the main forms of limited liability companies in France

	***Société Anonyme à Responsabilité Limitée* (SARL)**	***Société anonyme* (SA) usual form (Board of directors)**	***Société par actions simplifiée* (SAS)**
Key advantages	Easy to set up and operate.	Structured for "monitored delegation". Organization of ownership.	At least one partner. Freedom of constitutional arrangements for relations with shareholders, management, structure and transfer of capital
Directors	One or more directors, who must not be corporate entities, but do not need to be partners.	One individual to be the Chairman of the Board and CEO or two individuals to be Chairman and CEO respectively. Deputy CEOs (up to 5) Board of directors with 3 to 18 members and a statutory auditor.	At least 1 Chairman (individual or corporate entity) and possibly a board with other members. The company can be represented by a person so empowered by the articles (CEO or deputies).
Director's status	A director/minority shareholder can also have an employment contract if certain conditions are met (work separate from company officer role, management hierarchy)	The Chairman can also have an employment contract if certain conditions are met (work separate from company officer role, management hierarchy)	Same as an SA as regards simultaneously holding both company officer position and employment contract
Appointment and Dismissal of Directors	Decision of partners representing more than half the company shares. Compensation payable for dismissals without due cause	Decided by the Board of Directors	Defined by choice in the articles of incorporation
Minimum capital	None: sufficient capital to finance long-term needs. The amount is defined in the articles of incorporation. Restrictions apply to issuing bonds. At least one fifth of contributions must be paid up capital and must remain so for a period of 5 years.	€37,000. Public offerings permitted if share capital is greater than €225,000. Half the capital must be paid up at the time of incorporation and must remain so for 5 years.	None: sufficient capital to finance long-term needs. The amount is defined in the articles of incorporation. No public offerings permitted. Half the capital must be paid up at the time of incorporation and must remain so for a period of 5 years.
Contributions	Sweat equity permitted: a partner offers the company his time, work and professional knowledge. Does not contribute to forming the capital but has right to shares in company (share of profits and participation in collective decisions)	No sweat equity permitted	Sweat equity permitted
Partners / shareholders	2 to 100 individuals or corporate entities. At least 1 meeting per year: annual approval of the accounts, review of contracts by simple majority at Ordinary General Meeting	At least 7 (with at least one individual). At least 1 meeting per year: annual approval of the accounts and ordinary decisions by simple majority at Ordinary General Meeting, changes to articles of incorporation require 2/3 majority at Extraordinary General Meeting.	At least 1 individual or corporate entity. Only certain decisions made by Ordinary General Meeting: approval of the accounts, mergers, changes in capital, liquidation.
Quorums for meetings	25% of voting rights on first notice and 20% on second notice of Extraordinary General Meeting (since August 2, 2005)	For an Extraordinary General Meeting, 25% of voting rights on first notice and 20% on second notice. For an Ordinary General Meeting, 20% on first notice and no quorum on second notice.	According to articles; no obligation to hold an annual meeting of shareholders
Blocking minority	Extraordinary General Meetings: 33% + 1 vote for amendments to the articles of incorporation (from Aug. 2, 2005). Ordinary General Meetings: 50% of voting rights + 1 (or majority of votes on second notice)	1/3 of votes at Extraordinary General Meeting. 50% of votes in Ordinary General Meeting	According to articles
Liability of partners / shareholders	Limited to contributions, except in civil or criminal suits	Limited to contributions, except in civil or criminal suits	Limited to contributions, except in civil or criminal suits
Transfers	Flat rate of 3% €5,000 ceiling for transfers of shares For share capital, it is lowered by an equal deduction for each share, as before, to the ratio between €23,000 and the total number of shares in the company.		
Auditors	Auditor necessary if company exceeds two of the three thresholds below: net sales over €3.1m; total balance sheet over €1.55m; more than 50 employees)	Statutory auditor required	Statutory auditor required for companies held by (or holding) another company OTHERWISE Statutory auditor required if company exceeds two of the following three thresholds: Turnover excl. tax > €2m, total balance sheet > €1m, over 20 employees.
Tax regime	Corporate tax or optionally income tax (if company is less than 5 years old)	Corporate tax or optionally income tax (if company is less than 5 years old)	Corporate tax or optionally income tax (if company is less than 5 years old)

legal advice

Jean-Fabrice Cauchy, Accounting Expert, Managing Director of Isobel Audit Consulting

ACCOUNTANCY IN FRANCE

Obligations

Trade and legal regulations make it compulsory for traders or commercial companies to:

- Make a chronological record of all the movements affecting their company's assets and liabilities.
- Conduct an audit by physical inventory at least every twelve months of the existence and value of these assets and liabilities.
- Make yearly accounts at the end of the accounting year according to the accounting books and the inventory. The yearly accounts include a balance, a profit and loss account and an annex.

Mandatory documents and books

It is also compulsory by business law in France for the above named, whatever their tax status, to keep an accounting daybook, an inventory book and a general ledger.

They must also establish a document containing a description of the accounting procedures and methods for their company.

• The Daybook

All movements affecting the assets and liabilities of the company are recorded, operation by operation, day by day, in the daybook.

This book is detailed through as many auxiliary daybooks as the business requires (sales, stationary costs, general costs, bank daybooks, etc.)

All accounting operations and all daybook entries (sales daybook, purchases daybook, bank records, etc.) must be accompanied by receipts, which are to be sorted as the company prefers and kept for at least ten years. This obligation has been lowered to the existence of one main daybook because with integrated programs (such as SAP or Oracle…) there are no auxiliary daybooks and only types of operations.

• The Inventory book

Every year the list of assets and liabilities are posted in the inventory book. They are to be listed with their quantity and value at the inventory date. The yearly accounts also are to be recorded in that book: Balance, Profit and Loss and the annexes.

• The General Ledger

The general ledger is a summary document listing in detail all the accounts being used.

Other obligations

The accounts should be drawn up in French, but in most cases accounts drawn up in foreign languages are accepted by the French tax authorities.

Annual accounts for all limited liability companies (or those owned by limited liability companies) must be published during the month following the AGM in the Commercial Court Registry.

Accounting numbers to be used for bookkeeping are defined by French law, and are classified as follows:

- 1: Capital provisions and loans
- 2: Fixed Assets
- 3: Stock
- 4: Other balance accounts (such as clients, vendors, accruals, etc.)
- 5: Bank and cash
- 6: Costs
- 7: Income

Sociétés anonymes (SA) are also obliged to name an auditor for 6 years while other companies must name an auditor if they exceed two of the three following criteria:

- Total balance: €1,550,000 (liabilities or assets),
- Turnover exc. VAT: €3,100,000
- Personnel: 50.

Taxpayers who compile their accounting records using accounting software can submit a copy of their records on CD or any other soft copy such as a USB key to the tax controller.

Conclusion

Strong regulation exists in France to ensure thorough business security, along with strong political will to simplify administrative formalities for smaller companies.

III.2. Additional, more flexible options are available

These are mainly general partnerships (*société en nom collectif*), non-trading partnerships (*société civile*) and economic interest groups (*groupement d'intérêt économique*). They are less common because they require a greater level of partner liability in the event of financial difficulties. However, there are no minimum capital requirements and these structures offer significant levels of flexibility and fiscal transparency that make them attractive as subsidiary companies.

A special form of company, the '*société en participation*', is used in the construction industry and in the performing arts and publishing sectors. These are very simple to set up (RCS registration not required) and no legal announcements are required

III.3. Incorporating as a European Company

Businesses present in at least two Member States of the European Union can opt for European Company status (SE for *société européenne*).

In this case, the company benefits from a unique set of regulations and a unified system of management and disclosure of financial details.

SEs have a minimum capital of €120,000. The company's head office is stated in the articles of incorporation, and its location determines the business law that applies to the company: the company is registered in the country where the head office is located. SEs are subject to taxation in all EU countries where they have a permanent business.

IV. Acquiring companies and equity interests

French law makes full provision for business partnerships and takeovers.

IV.1. Acquiring equity in a company

Acquiring an equity interest may be the result of an agreement between companies or an unsolicited bid to buy shares (hostile takeover bid).

IV.1.1. Administrative formalities: transparency required

Buyers are required to make certain disclosures when more than 5% of the shares or voting rights in a listed company are likely to change hands:

- A declaration must be filed with the financial market authority within 5 days;
- The target company must be notified within 15 days.

The same rules apply to transactions that exceed thresholds, up or down, of 10%, 15%, 20%, 25%, 33%, 50%, 66%, 90% and 95% of the shares or voting rights.

When buyers intend to acquire more than 33% of the shares in a listed company, they are required to make a bid for all of the outstanding shares so that minority shareholders have an opportunity to sell their shares.

IV.1.2. Prior notification to competition authorities of large-scale concentration transactions

A concentration transaction results from one of the following transactions:

- Mergers of two or more independent companies;
- Full or partial takeovers;
- Creation of joint ventures that conduct their business independently on a long-term basis.

In principle, concentration is authorized, however large-scale concentration transactions may require

prior authorization from national or European authorities. Restrictions on concentration are intended to ensure that market dominance by a single company does not distort competition.

• Concentration transactions require the authorization of the French Finance minister if:

- The aggregate sales of the companies concerned are more than €150 million, excluding tax, and
- The aggregate sales of at least two of the companies in France are more than €50 million, excluding tax, and
- Sales remain below EU thresholds.

As of 1 January 2009, the reformed Competition Authority in France is now notified of national concentration transactions.

- The notification procedure may take up to five weeks. However if the transaction is likely to distort competition, it may be referred to the Competition Authority, which has three months to give its ruling. Notification is now possible for proposals still in the preparatory stage on condition that work be sufficiently far along to allow the authorities to undertake a meaningful examination of the project.

• The European Commission in Brussels must be notified of concentrations if:

- The aggregate worldwide sales of the companies concerned are more than €5 billion, and
- Individual sales of at least two of the companies concerned in the European Union total more €250 million, except if sales within a single country account for more than two-thirds of each of the companies' total European Union sales.

The European Commission must also be notified of transactions that do not exceed the above thresholds if they concern three or more European Union countries. The procedure can take up to eight months and the transaction is frozen until authorization is granted.

IV.2. Management lease as a temporary takeover option

Under a management lease, the owner or operator of a business or a manufacturing establishment signs a contract with a lessee manager, who operates the leased company at his own risk and pays a lease payment. The lessor collects the lease payments. He has no say in the management of the leased business.

This arrangement enables the lessee manager to operate a company without having to buy it. It is a temporary solution that can be used to assess the viability of a business. At the end of the lease, the company may be sold or transferred to the lessee manager.

IV.3. Streamlined procedures for acquiring a company in difficulty

Legislation dated July 26, 2005 that entered into force on January 1, 2006 and which was recently amended by the order of December 18, 2008, modified bankruptcy law in France including in particular procedures for the takeover of an ailing company.

With the introduction of a procedure affording protection before insolvency (*procédure de sauvegarde*), measures can now be taken when a company's difficulties are such that they will most likely be insurmountable. This procedure does not provide for the sale of all or part of company assets, for which liquidation proceedings are necessary. Likewise, any partial insolvency is subject to bankruptcy law.

Receivership (*redressement judiciaire*) can only take place when the company is insolvent and when its assets are not enough to cover liabilities. Following the reform, the sole aim of this procedure is to facilitate the drafting of a plan that will enable the company to remain in operation, maintain jobs and reduce its liabilities. Any sale of assets must comply with liquidation procedures.

legal advice

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CREATING A BUSINESS IN FRANCE BY BUYING AN AILING COMPANY

The liquidity crisis which has been affecting global economies since Autumn 2008 has had the effect of destroying the face value of certain businesses and assets, despite sound operating fundamentals. As such, investment opportunities at discounted prices in ailing businesses may constitute one of the best ways to gain access to the French market while benefiting from a strong legal footing. In this way, investors can acquire readily operational assets by buying an existing business, rather than by creating a company *ab initio*.

1. The main objective of French bankruptcy legislation is to safeguard both employment and the ailing business as an ongoing concern. This objective is achieved:

- Through a "conciliation procedure" which grants a guarantee against the debtor's assets, which takes precedence over any other guarantee to creditors, and which provides the means to ensure the business continues as an ongoing concern.

- Through an automatic stay injunction, which halts actions by creditors to collect their debts, and by pursuing the debtor's operations under the supervision of the Commercial Court. Operations can be continued:

  - In the same legal entity ("continuation plan") in which equity can be partially or totally acquired by a new investor after the entity has been adjusted [1], discharging certain debts and restructuring others over an interest-free repayment period of up to 10 years, or which result in partial abandonment of debts, particularly by the State, in return for generally limited investment.

  - In a new legal entity created and controlled by the investor ("transfer plan") who acquires the assets of the discontinued business, obtains the continuation of the trade agreements and transfers only the part of the workforce required to operate the business against a fraction of the discontinued business debts, the remaining debt staying with the old entity.

  In both plans, the investor bears a clearly identified fixed liability – specific debts declared to and accepted by the Commercial Court in the context of a continuation plan or a lump-sum purchase price in a transfer plan – without having to face negotiations concerning warranties clauses.

2. While privately negotiated procedures do not require an investor to enter into any specific agreement with the debtor's employees unless they acquire control of the debtor, judicial procedures bear specific requirements on such matters.

French regulation considers three types of judicial procedures:

- Protection or safeguard procedure (before cessation of payments) with a view to permitting the debtor's liabilities to be restructured by the Commercial Court. In such procedures, the potential resizing of the workforce falls under French common law regulations. As such, redundancy costs can be financed by social security bodies with the debtor legally obliged to reimburse these costs in accordance with a repayment schedule.

- Receivership and judicial liquidation procedures: these procedures allow, under supervision of the Commercial Court, accelerated redundancy plans financed by social security bodies to be implemented.

[1] *Cf. § 2 on the structure of the workforce*

For more information:
Code de Commerce **– Article L611-1 and following.**

Once a protection or receivership procedure has been initiated, third parties may submit to the administrator offers to enable the company to remain in operation, through the total or partial sale of business; such sales take place in keeping with liquidation procedures.
Buyers must make their offers to the commercial court-appointed administrator before the deadline set in the court ruling initiating the proceedings (court rulings are published in the legal gazette, *Bulletin Officiel des Annonces Civiles et Commerciales*).

IV.4. The acquisition solution preferred by judges

During liquidation procedures, the courts prefer buyers offering the best prospects of keeping the company in business, saving jobs and repaying creditors.
Part or all of a company's assets may be sold to ensure that those operations that can be operated independently remain in business, to preserve all or part of the associated jobs, and to reduce liabilities.

Offers must include a detailed list of assets, rights and contracts included in the offer; a business recovery plan and financing forecasts; the purchase price and how this will be paid; information about the providers of funds and any guarantors (if the offer is based on loans, it must specify terms and duration), the date of sale, job numbers and outlook based on projected operations, financial guarantees underpinning execution, asset disposal plans for the next two years, and the duration of each commitment made by the buyer.

Offers cannot be amended or withdrawn once they have been filed with the Commercial Court Registry except for amendments that improve conditions for employees and creditors, which may be presented up to 48 hours prior to the hearing. The court then decides whether to make a partial or full sale of the business and gives the reasons for its decision.

Some contracts may be transferred to the new owner, including employment contracts, equipment and finance leases, supply contracts for goods and services necessary to keep the business going, stock pledge agreements, contracts with customers, etc.
If no solution can be found to keep a business going or if recovery is clearly impossible, the court will liquidate the ailing company and the assets will be sold to the highest bidders once the court proceedings have been completed.

V. Corporate real estate: meeting your needs

V.1. Short-term, low-cost solutions

V.1.1. Using the director's personal address for the company

As a general rule, a company is allowed to use its legal representative's personal residence for its registered office and to conduct its business there indefinitely. If the residence is rented, the landlord's written consent is required.

In towns with populations of more than 10,000 and in the Paris region, using the director's personal residence for the company's business is subject to three conditions. These restrictions stipulate that the premises must be: i) the director's principal place of residence; ii) business done there must be conducted by the director and the other occupants of the premises only and iii) no customers or merchandise can be received at the residence.

If legislative or contract provisions rule out the use of the director's personal residence as the company's registered office, it is still possible to use the address for administrative purposes for up to five years. In this case, it is illegal to conduct any business activities on the premises.

V.I.2. Using a business center
A business center can be used as the company's temporary registered office. Business centers are specialized service companies that provide registered office addresses for other companies and rent them rooms for holding periodic board meetings. These centers also provide other services, such as answering telephone calls and secretarial services. A contract must be signed between the company using the address for its registered office and the owner or tenant of the premises.

V.I.3. Temporary manufacturing facilities
Companies can use temporary manufacturing facilities to train new employees and even start up their business while their new plants are being built. Many local governments offer such facilities to companies locating in their area. The leases run for up to 23 months and, in some cases, they come with a purchase option, subject to certain conditions.

V.I.4. Business incubators
Business incubators provide premises (offices, workshops, laboratories, common areas) for start-ups and enable them to share the costs of faxes, secretarial services, photocopiers, switchboards, training and database access. Business incubators also advise new companies on business development.

V.I.5. Short-term leasing options for business premises
Sub-letting: In its early stages, a company can sub-let premises from another company. If the host company holds a commercial lease, the lease must explicitly authorize the sub-let and the lessor must be asked to be a party to the sub-letting contract.

Short-term leases: Short-term leases are available with terms up to 24 months. The advantage of such leases is that the term can be tailored to the tenant's needs; the drawback is that the tenant is not entitled to automatic renewal of the lease.

V.2. Long-term options

Several options are available, depending on the needs of investors.

V.2.I. A commercial lease is the most common option
Manufacturing and trading companies generally sign commercial leases, which are governed by strict legal provisions protecting the tenant's rights. The statutory term is nine years, but the tenant can terminate the lease at the end of the third or sixth year. The tenant is legally protected against non-renewal or eviction, and the lessor must pay eviction compensation proportionate to goodwill and the right to the lease. Rent increases are capped. The lease stipulates the commercial purpose of the premises ("*activité*"), but the parties to the lease can agree to amend the lease to change the initial purpose or add another activity ("*déspécialisation*").

The right to lease renewal extends to all companies subject to French law. It does not extend to non-EU branches of foreign companies, unless provided for by a reciprocity clause in an international agreement.

V.2.2. A more flexible but less secure option: the professional lease
Non-trading businesses may rent premises under the terms of "professional" leases which are contractually flexible but offering less protection for the tenant than commercial leases. The statutory term is six years with no early termination option.

V.3. Purchasing property - several options available

V.3.I. Full ownership offers the greatest legal security
Foreign companies are entitled to buy commercial and industrial land and buildings from private-sector

and public-sector owners. Real-estate agents can help them find suitable properties. The laws governing property purchases and the services of intermediaries such as notaries ensure the legal security of real-estate transactions.
Government assistance for real estate purchases may be available, subject to certain conditions.

V.3.2. Leasing to own is a common practice

Many companies acquire industrial and commercial buildings by signing a property finance lease. Such leases generally run for nine to 15 years and title to the property is transferred to the tenant at the end of the term. Local authorities may help companies obtain finance leases by arranging meetings with financing organizations. Government investment assistance in the form of discounts on finance lease payments is also available under certain conditions.

V.3.3. Construction of industrial buildings

Foreign investors can erect industrial and commercial buildings in France. Local zoning maps show where construction is allowed and mayors have the power to authorize construction by issuing zoning certificates and building permits. Municipalities offer land owners and other persons entitled to erect buildings a one-stop service for building permit applications.

V.3.4. Commercial buildings

The construction of a retail outlet or commercial premises with a surface area of more than 1,000m^2 requires an occupancy permit, in addition to a building permit. A Commercial Zoning Commission (*Commission d'Aménagement Commercial*) in the département concerned oversees the application procedures.
Since 1 January 2009, some business activities no longer require this special permit. These activities are hotels, service stations and automobile dealerships.

V.3.5. Acquiring premises through a real estate partnership (SCI)

A real-estate partnership (*société civile immobilière* – SCI) is a separate legal entity where the capital is contributed by companies or individuals. It is used to finance premises that can then be occupied by the company. This solution protects the real-estate assets from the company's creditors. It can also provide tax benefits, since the company can deduct rent and maintenance fees from its taxable income and the partnership can deduct acquisition costs for the buildings if it opts to pay corporate tax.
Investors should seek legal advice to work out the details of such an arrangement.

IN DETAIL

Building permits

Building permit applications consist of a printed form and a portfolio of drawings and written documents that will enable the authorities to ensure that the application is compliant with zoning rules. Applicants must use the services of an architect when preparing their applications. The relevant authority has one month in which to request further documents. The timescale for the procedure is between one and three months from the date of notification.

When planned construction work concerns a listed facility, the building permit application needs to include proof that an authorization application or a declaration has been filed with the prefecture.

VI. Simplified rules for listed facilities

Concern for preventing hazards, pollution and other environmental nuisances means that preliminary administrative formalities are required before operating certain types of manufacturing plants called "*installations classés*" ("listed facilities"). A classification specifies whether facilities must receive prior authorization or give prior notification, depending on the scale of the hazard or pollution that they cause.

VI.1. Simplified authorization procedure

Authorizations are required mainly for businesses falling within the scope of the European "Seveso" or "IPPC" directives (as well as the Waste Framework directive). The Seveso laws require supervision of high-risk establishments, such as petrochemical plants or storage facilities for toxic products and liquefied gas, where there are risks of fire, explosion or noxious gas leaks, etc. IPPC rules relating to the prevention and reduction of pollution impose the use of the most advanced technologies available at an economically acceptable price.
Manufacturers operating such facilities must conduct a safety report and identify hazards involved in their activities. In some cases, they must draw up internal emergency action plans. Local mayors are notified of potential risks.

Administrative formalities have been streamlined in two ways:

- A single environmental protection authorization is issued for each manufacturing site;
- The Prefect is the only authority with the power to enforce this legislation, with the assistance of the technical staff from the Regional Directorate for Industry, Research and the Environment (*Direction régionale de l'industrie, de la recherché et de l'environnement* - DRIRE).

The Prefect's decision is based on the findings of an enquiry, during which the public is notified and invited to comment (see local information and monitoring commissions and the permanent secretaries' offices for the prevention of industrial pollution - SPPPI). The same notification rules are already in force for "Seveso" facilities. Two key documents in the report on a facility's potential impact on a given area are the environmental impact study and safety report.
The Prefect's order authorizing operations at the facility also sets out the operating requirements. In principle, this order should be issued no more than 8 to 12 months after the application is filed.

The Prefect may ask their staff to advise and help investors during the earliest stages of preparing authorization applications to ensure the legal security of major manufacturing projects.

VI.2. Logistics facilities

Logistics facilities are used to store merchandise. Accident prevention rules for indoor storage facilities require prior authorization if the volume of the buildings exceeds 50,000 cubic meters.

VI.3. The "polluter pays" principle

The "polluter pays" principle is applied in France as in all the countries of the European Union. This rule ensures that polluters bear the cost of their emissions and waste. However, the taxes levied are much lower than the actual cost of damage. France has also introduced measures to help companies invest in technologies that are less harmful to the environment.