

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 September 2017.

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.

If you would like to consult this newsletter from past months, please click [here](#).

Please send an e-mail to communicationparis@hoganlovells.com if you wish to subscribe to this publication.

For additional information, please speak to your usual contact.

Contact

Bruno Knadjian

Avocat à la Cour, Partner

Hogan Lovells (Paris) LLP
17, Avenue Matignon
CS 60021
75008 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

Hoganlovells.com

Summary of miscellaneous French draft legislation

- **Draft law to reinforce home security and the fight against terrorism n°587, filed at the Senate on June 22, 2017 – adopted in first reading by the Senate on July 18, 2017** – Amended in first reading by the National Assembly on October 3, 2017. Joint Committee.
- **Draft law which ratifies ordinance n°2016-131 of February 10, 2016 for the reform of contract law, general regime and proof of obligations, n°578, filed at the Senate on June 9, 2017** – Under examination in first reading by the Senate from October 17, 2017.
- **Draft law which authorises the ratification of the protocol on privileges and immunities of the unified patent court, n°146, filed at the National Assembly on August 9, 2017** - Adopted in first reading by the National Assembly on October 4, 2017.
- **Draft law to end the research and the exploitation of conventional and non conventional hydrocarbons and with various provisions relating to energy and environment, n° 155**, filed at the National Assembly on September 6, 2017 – In debate in first reading at the National Assembly from October 3, 2017.
- **Draft finance law for 2018, n°235**, filed at the National Assembly on September 27, 2017 – In debate in first reading at the National Assembly from October 17, 2017.
- **Draft programming public finance law for the years 2018 to 2022, n°234, filed at the National Assembly on September 27, 2017** – In debate in first reading at the National Assembly from October 17, 2017.
- **Draft law which various ordinances on the basis of habilitation law n°2017-1340 of September 15, 2017 to take measures for the reinforcement of social dialogue**, n°237, filed at the National Assembly on September 27, 2017.

Enacted laws

- **Habilitation law n°2017-1340 of September 15, 2017 n°2017-1340 of September 15, 2017 to take measures for the reinforcement of social dialogue** – *J.O* of September 16, 2017.
- **Law n°2017-1339 of September 15, 2017 for confidence in political life** – *J.O* of September 16, 2017.

- **Organic law n°2017-1338 of September 15, 2017 for confidence in political life** – *J.O* of September 16, 2017.
- **Ordinance n°2017-1390 of September 22, 2017 relating to the postponement by one year of the entry into force of income tax withholding** – *J.O* of September 23, 2017.
- **Ordinance n°2017-1389 of September 22, 2017 on Preventing and Taking into Account of the Effects of Exposure to Certain Occupational Risk Factors and the Professional Prevention Account** – *J.O* of September 23, 2017.
- **Ordinance n°2017-1388 of September 22, 2017 for various measures relating to the framework of collective bargaining** – *J.O* of September 23, 2017.
- **Ordinance n°2017-1387 of September 22, 2017 relating to Predictability and Security of Employment Relations** – *J.O* of September 23, 2017.
- **Ordinance n°2017-1386 of September 22, 2017 relating to the new organisation of social and economic dialogue in businesses and in favour of trade unions' responsibilities** - *J.O* of September 23, 2017.
- **Ordinance n°2017-1385 of September 22, 2017 relating to the consolidating of collective bargaining** – *J.O* of September 23, 2017.

1. Banking

France - Security agents

An order (*ordonnance*) n°2017-748 dated 4 May 2017 ([JORF n°0106 of 5 May 2017](#)) adopted in application of the statute (*loi*) n°2016-1691 dated 9 December 2016 (known as "Sapin 2") entered into force on 1 October 2017.

The order is codified as new Articles 2488-6 to 2488-12 of the French Civil Code, and Article 2328-1 is abrogated.

The purpose of the order is to compete with security trustee of common law countries. To this end, the order extends the concept of security agent to guarantees as well as security interests, permits the designation of the security agent to be made in any document, not just in the document creating the secured obligation, and provides specifically that the security agent is the actual owner of such guarantees and security interests but that any assets or rights acquired thereby form distinct property (known in French as "*patrimoine d'affection*"). Consequently, it improves the attractiveness of French law syndicated financing and bond issues.

France – Reliability of electronic signature process

A decree (*décret*) n°2017-1416 dated 28 September 2017 ([JORF n°0229 dated 30 September 2017](#)) repeals and replaces the decree (*décret*) n°2001-272 dated 30 March 2001 relating to the reliability of electronic signature process. This decree is already applicable, the date of entry into force being the day after its publication (1 October 2017).

The decree provides the presumption of reliability of an electronic signature process when this process implements a qualified electronic signature.

To define the notion of qualified electronic signature, the decree refers to articles 26, 28 and 29 of regulation (*règlement*) n°910/2014 of the European Parliament and of the Council dated 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.

France – Separation of the legal regime of asset management companies from that of investment firms

This decree (*décret*) n° 2017-1324 dated 6 September 2017 ([JORF n°0210 dated 8 September 2017, text n°23](#)), deals with investment service providers, investment firms, asset management companies, the French prudential control authority (*ACPR*) and the French financial market authorities (*AMF*).

It aims to separate the legal regime of asset management companies from that of investment firms and complements the regulatory provisions relating to the transposition of Directive 2014/65/EU of the European Parliament and of the Council dated 14 May 2014 on financial markets and Directive 2011/61/EU (known as "MIF 2") and Regulation (EU) n°600/2014 of the European Parliament and of the Council dated 15 May 2014 on financial markets (known as "MIFIR").

These provisions will enter into force on 3 January 2018.

France – Usury thresholds

Notice published in the *Journal Officiel* dated 27 September 2017 ([JORL n°0226 dated 27 September 2017](#)) relating to the application of Articles L.314-6 of the French Consumer Code and L.313-5-1 of the French Monetary and Financial Code relating to average effective rates applied by financial institutions during the third quarter of 2017 to various facilities categories and relevant usury thresholds are applicable since 1 October 2017.

2. Capital Markets

France – ESMA finalises MiFID II's derivatives trading obligation

The European Securities and Markets Authority (ESMA) issued its final draft Regulatory Technical Standard (RTS) on 29 September 2017, implementing the trading obligation for derivatives under the Markets in Financial Instruments Regulation (MiFIR). ESMA's draft RTS provides the details for the implementation of for on-venue trading of interest rate swaps (IRS) and credit default swaps (CDS).

France – ESMA updates Q&As on the Benchmarks Regulation

The European Securities and Markets Authority (ESMA) published the updated Questions and Answers (Q&As) on 29 September 2017 regarding the implementation of the Benchmarks Regulation (BMR).

The Q&As include four new answers on the following topics relating to the BMR:

- The scope of the BMR: i.e. (i) the application of the BMR to EU and third country central banks; (ii) the exemption on single reference prices.
- Definitions within the BMR: namely (i) "family of benchmarks", (ii) "use of a benchmark".

France – Public consultation on the gold-plating of European law in financial services

Bruno Le Maire, minister of the Economy and Finance, announced on 2 October 2017 the start of a public consultation aiming to identify instances where European law has been 'over-implemented' in financial services regulation. Gold-plating occurs where legislators, while implementing a directive, extend the scope of the provisions actually implemented beyond that of the original directive. Market users have two months to submit their complaints of over-implementation to the consultation.

The aim of the consultation is twofold; the relaxation of the degree of regulation applicable to financial businesses based in France, when such deregulation is possible and relevant (i) will allow them to evolve subject to the same rules as are applicable to their European competitors, and (ii) will also result in easier access to funding sources for all business.

France – Ordinance no. 2017-1433 dated 4 October 2017 in relation to the digitisation of contractual relations in the financial sector

The ordinance sets out measures allowing the use of digitised means of communication in the management of pre-contractual and contractual relations in the financial sector, including under the insurance code, the consumer code (credit operations), the financial and monetary code, the code on mutual societies and the social security code.

The provisions of this ordinance combine two initiatives in an ambitious and balanced manner: firstly, the encouragement of the use of digital support platforms and digitisation tools which may increase, streamline and make easier flows between financial services institutions and their clients, and the simultaneous monitoring of the development of the rate of use of such digital tools, and secondly an assurance to consumers of a level of protection at least equivalent to the one set out in the current legal and regulatory framework.

France – Entry into force of the ordinance no. 2017-1432 dated 4 October 2017 in relation to the modernisation of the legal framework of asset management and debt financing

The ordinance no. 2017-1432 dated 4 October 2017 in relation to the modernisation of the asset management and debt financing legal framework was published in the Official Journal of the French Republic dated 5 October 2017. The aim of this ordinance is to add to the current category of securitisation entities a new legal category, the "specialised financing entities" and to define its applicable regime. In addition, this ordinance specifies

the applicable rules for the depositaries of securitisation vehicles.

Furthermore, this ordinance changes the provisions of article L.511-6 of the Monetary and Financial Code and specifies the conditions where a transferee bound by a foreign law can acquire non-matured receivables of a professional nature from entities bound by French law. Finally, the goal of this ordinance is also to modernise certain provisions related to the asset management sector.

France – The AMF updated its position on ETFs

The AMF updated its position-recommendation DOC-2011-25 "Guide du suivi des OPC3" on 29 September 2017, inserting two new recommendations.

The first one relates to the methods and retention of subscriptions and redemptions in the event where there is a reduction in the liquidity of the underlying assets of an index tracked by an ETF or severe difficulties in valuation. The second relates to actions to be carried out in case of default of one or several financial counterparties of the ETF.

3. Commercial Law

France – Details on the experimentation of gaming clubs in Paris

The opening of gaming clubs in Paris will be allowed from January 1st, 2018 for a period of three years, on an experimental basis. In application of the Decree n° 2017-913 of May 9th, 2017 relating to the conditions of this experimentation, an Order of September 13th, 2017 has been published in the Official Journal of September 19th 2017 to set this experimentation's terms of implementation.

This Order states the rules relating to applications for authorization to run a gaming club, to employees of games, to operating gaming clubs, to running and operating games, to the accounting of games as well as to controlling, monitoring and policing games.

4. Corporate

France – Amendment of the ANC's regulation on mergers and acquisition transactions

The French accounting standards authority (*Autorité des Normes Comptables* or the "**ANC**") published on its website the ANC regulation No. 2017-01 amending the regulation ANC 2014-03 (PCG) regarding the accounting treatment of mergers and acquisition transactions.

The main contributions of the new regulation are as follows:

- clarification of the concept of control and the direction of the transaction which shall be assessed solely at the level of legal entities;
- contributions aimed at creating joint ventures should be valued at their fair value;
- the regulation uses the fiscal definition of the autonomous branch of activity (*branche autonome d'activité*);
- contributions of securities conferring control of the beneficiary company are now deemed partial contributions of assets and are therefore valued at book value;
- the regulation confirms that the date of valuation of the securities to be indicated in the contribution agreement (*traité d'apport*) is the retroactive date of effect.
- in the event of a transaction between a foreign absorbing entity or a foreign contributor and a French entity absorbing or benefiting from contributions:
 - o the contribution agreement can be established by retaining values that do not comply with French valuation rules (thus it will be possible to retain the fair market value for a transaction carried out under common control);
 - o the absorbing company or the beneficiary of the French contributions will be able to account for the contributions without restatement of the values contained in the contribution agreement.
- where the aggregate value of the contributions is less than the sum of the assets and liabilities contributed, due in particular to the existence of

contingent liabilities, a badwill must appear in the contribution agreement for the difference between this aggregate value and the sum of individual values. In the accounts of the absorbing company or beneficiary of the contributions, this badwill will be recorded in equity (in a sub-account of the merger or contribution premium).

This regulation shall be approved by order to be applicable to transactions carried out as from January 1, 2018.

France – Publication of two orders completing the framework of the register of beneficial owners

Two orders were published on September 18, 2017 in addition to the framework of the register of beneficial owners established by Decree No. 2017-1094 of June 12, 2017 (see legal updates of June 2017):

- The first order dated September 18, 2017 relates to the technical modalities of the transmission to the French National Institute of Industrial Property (INPI) pursuant to Articles A123-30 and A123-31 of the French commercial Code.
 - The second order dated September 18, 2017 relates to the documents to be provided in order to access the beneficial owner information.
-

5. Data protection & IT

France - Revision of the CNIL labels "training" and "governance"

On 20 September 2017, the CNIL announced a revision of the training and governance labels to ensure compliance with the European regulation on personal data ("**GDPR**").

Companies which have already obtained these two labels must fill in a new application for labelling and must send documents to the CNIL proving their conformity to GDPR to keep benefiting from these labels by 25 May 2018.

However, holding these labels is not sufficient to ensure full compliance with the GDPR.

International – The International Conference of Data Protection and Privacy Commissioners ("ICDPPC") adopts a resolution on connected cars

On September 29, 2017, the ICDPPC adopted a Resolution on data protection and connected cars.

The ICDPPC called on stakeholders, such as car manufacturers and providers of data services, to respect users' privacy at each stage of development of new tools or services.

The ICDPPC insisted on the need for stakeholders to comply with the main data protection principles as developed in European Union law, and the importance of dialogue with the data protection authorities.

It should be noted that the Federal Trade Commission of the United States did not join the resolution.

European Law - Commission proposes a regulation to regulate the free movement of non-personal data

On 19 September 2017, Andrus Ansip, Vice-President of the Single Market, announced a new set of rules governing the free movement of non-personal data. This set of rules, once adopted, would complement the current rules applicable to personal data.

The objective of this proposal for regulation is nobly to remove obstacles to the localisation of data imposed by public authorities and to enhance the competitiveness of economic players.

6. Employment

France - Ministerial orders

Five ministerial orders were published in the *Journal Officiel* on 23 September 2017 and for now have regulatory effect. While certain measures have immediate effect, numerous measures are subject to the publication of implementing decrees, which are due to be enacted by 31 December 2017 at the latest.

Most significant changes: consolidating company-wide bargaining; demarcating the exclusive scope of the company-wide agreement; indemnity scale for dismissal without a real and serious cause; facilitating redundancies; increase of the severance pay; merging staff representative bodies.

Rethinking the branch/company distinction in collective bargaining

The first order (Order no. 2017-1385 dated 22 September 2017 on Consolidation of Collective Bargaining) relates to demarcating the exclusive scope of the branch-level agreement and the primacy of the company-wide agreement

Consolidating company-wide bargaining

- The second order (Order no. 2017-1388 dated 22 September 2017 on Various Measures Relating to the Framework for Collective Bargaining) provides that, with effect from 1 May 2018, all agreements must satisfy the majority agreement validity conditions, subject to signature by union representatives receiving more than 50% of votes cast.
- **Referendum at the initiative of the employer** – It is also provided that a non-majority agreement may be validated by referendum at the initiative of the employer. However, such a referendum may only be requested by the employer if the agreement has been signed by unions amassing more than 30% of the votes and if the unions do not oppose it.
- **Facilitating the conclusion of a company-level agreement without a union representative** – In companies with 20 employees and below which do not have staff representation bodies, employers may propose a draft agreement directly to employees. Such an agreement must be ratified by a two-thirds majority of the company's employees.

In larger companies without a union representative, negotiations will only be possible with a specially appointed employee or a member of the staff delegation on the Social and Economic Committee

Merging staff representative bodies

The third order (Order no. 2017-1386 dated 22 September 2017 on the New Organisation of Social and Economic Dialogue in Companies and Promoting the Exercise and Enhancement of Union Responsibilities) provides for the implementation of a mandatory Social and Economic Committee in companies with at least 11 employees.

Predictability and Security of Employment Relations

- **Voluntary departure plans** - The fourth order (Order no. 2017-1387 dated 22 September 2017 on the Predictability and Security of Employment Relations) distinctly codifies social plans and the implementation of voluntary departure plans.
- **Indemnity scale for dismissal without a real and serious cause** - The fourth order requires Employment tribunal judges to comply with an obligatory frame of reference to determine the value of severance pay for dismissals without a real and serious cause.

The scale provides for a minimum and a maximum amount, calculated upon the length of service and the size of the company.

However, this frame of reference does not apply in cases of discrimination, harassment or breach of fundamental freedoms. In these cases, the indemnity will be equal to a minimum of six months' salary.

- **Increase of the severance pay** – The Decree D. n°2017-1398 dated 25 September 2017 on the Predictability and Security of Employment Relations increased by 25% the statutory severance pay for the first 10 years of service. The severance pay shall not be less than a quarter of a month's salary per year of seniority up to ten years and one third of a month's salary per year of seniority from ten years.
- **Less stringent dismissal rules** - The fourth order (Order no. 2017-1387 dated 22 September 2017 on the Predictability and Security of Employment Relations) provides that employers will be authorised to state and determine the reason for the dismissal of an employee after notification of dismissal. Insufficiency of motivation is an irregularity that no longer systematically deprives the dismissal of real and serious cause.
- **Termination of employment contracts** - The fourth order (Order no. 2017-1387 dated 22 September 2017 on the Predictability and Security of Employment Relations) provides for a change in the period for challenging the termination of employment contracts, which will be 12 months from now on (compared to 2 years previously).

The conditions to benefit from legal severance pay have also been changed since the employee must now have at least eight months' length of

service within the company to receive severance pay (compared to one year previously).

- **Collective common-consent termination** – The Order no. 2017-1387 dated 22 September 2017 on the Predictability and Security of Employment Relations introduces a new collective common-consent termination procedure in order to secure voluntary departures. This measure will be subject to the publication of implementing decree.
- **Facilitating redundancies** - The fourth order (Order no. 2017-1387 dated 22 September 2017 on the Predictability and Security of Employment Relations) amends the scope for assessing the economic justification of a redundancy. The reality of the economic difficulties encountered by a company belonging to a group will now be considered at the level of the companies in the group belonging to the same business sector and located on French territory.

The order also provides with less stringent redeployment rules.

- **Telecommuting** - The fourth order (Order no. 2017-1387 dated 22 September 2017 on the Predictability and Security of Employment Relations) defines the new framework of telecommuting. Henceforth, the implementation of telecommuting in the company requires the conclusion of a collective agreement or, failing that, the drawing up of a charter by the employer after consultation with the Social and Economic Committee.

Furthermore, should an employee entitled for telecommuting, request to benefit from this measure; the employer who refuses his request must justify his refusal.

The order also provides that an accident occurring during the telecommuter's professional activity is presumed to be a work-related.

Professional Prevention Account

The fifth order (Order no. 2017-1389 dated 22 September 2017 on Preventing and Taking into Account of the Effects of Exposure to Certain Occupational Risk Factors and the Professional Prevention Account) modifies the *compte personnel de prévention de la pénibilité*, now called the *compte professionnel de prévention*. From now on, any criteria considered unquantifiable (i.e. manual handling of heavy loads, strenuous postures, mechanical vibrations, chemical risks) no longer allow points to be acquired for early retirement, part-time work or training. However, employees may benefit from more favourable measures if illness resulting from an these health factors is formally recognised as an occupational illness.

Tax withholding system

As planned, the Decree no. 2017-1390 dated September 2017 on the one-year postponement of the implementation of the general income tax withholding system, confirms the postponement of the tax withholding system to January 1st, 2019

Undeclared work

The "flagrance sociale" procedure allows the URSSAF to block the assets of a company which does not comply with its obligation regarding undeclared work. Decree No. 2017-1409 of 25 September 2017 on the improvement of collection tools for undeclared work defines the notion of "sufficient guarantees" that the contributor can provide in order to avoid provisional foreclosure.

The contributor must provide evidence, by any means, the existence of sufficient guarantees to cover the amount due.

7. Insurance

France – Dematerialisation of contractual relationships between insurers and insureds

The Ordinance n° 2017-1433 dated 4 October 2017 on the dematerialisation of contractual relationships in the financial sector ("Ordinance") specifies the rules applicable to the modalities of electronic communication between insurers and insureds, as provided under the Insurance Code, but also under the Consumers Code and the Mutuality Code. It notably defines the concept of durable medium in the context of insurance contracts. The Ordinance, which was published on 5 October 2017, will enter into force on 1st April 2018.

European Law - Insurance Distribution Directive – Adoption of Delegated Regulations and survey of the EIOPA for its Q&A on the IDD and the Delegated Regulations

The European Commission adopted on 21 September 2017 (i) the Commission Delegated Regulation supplementing the Directive (EU) 2016/97 of

the European Parliament and of the Council of 20 January 2016 on insurance distribution ("IDD") with regard to product oversight and governance requirements for insurance undertakings and insurance distributors and (ii) the Commission Delegated Regulation supplementing the IDD with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products ("Delegated Regulations"). If neither the European Parliament nor the Council of the European Union have any objection on the Delegated Regulations, they will enter into force on the twentieth day following the date of their publication in the Official Journal of the European Union, and should take effect starting on 23 February 2018.

The European Insurance and Occupational Pensions Authority ("EIOPA") also announced on 25 September 2017 the publication of a survey the purpose of which is to gather data from the market in order to supplement its work on developing a set of questions and answers on the interpretation and application of the IDD and its application measures, including the Delegated Regulations.

European Law - Solvency II – Calculation of regulatory capital requirements

The European Commission published on 14 September 2017 the Commission Delegated Regulation (EU) 2017/1542 ("Delegated Regulation"), which amended the Delegated Regulation (EU) 2015/35 regarding the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates). The Delegated Regulation entered into force on 15 September 2017.

European Law - Insurance and reinsurance in the United States of America ("USA") – European Union and USA bilateral agreement

The European Commission and the USA entered into a bilateral agreement on prudential measures regarding insurance and reinsurance ("Bilateral Agreement") on 22 September 2017. The Bilateral Agreement notably addresses prudential aspects of the operation of reinsurance business in the USA, group supervision and the exchange of information between EU and USA supervisors. A set of questions and answers in relation to the Bilateral Agreement has also been published.

8. Intellectual Property

European Law - Exceptions to copyright regarding published works for persons who are blind and visually impaired: publication of a Directive and a Regulation

The Directive of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print- disabled, and the Regulation dated the same day, on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled, have been published in the Official Journal of the European Union. They both implement the Marrakech Treaty (see Legislative and Regulatory Newsletter - July, August 2017).

The deadline for the transposition of the Directive is 11 October 2018. The Regulation shall apply from 12 October 2018.

9. Life Sciences

European Law – A new directive governing good manufacturing practices for medicinal products for human use

The Directive 2017/1572 dated 15 September 2017 supplements Directive 2001/83/EC as regards the principles and guidelines of good manufacturing practice for medicinal products for human use.

The Directive 2017/1572 takes into account recent updates to the well-established EU rules on safety of medicinal products and repeals Directive 2003/94/EC which laid down the principles and guidelines of good manufacturing practices for both medicinal products for human use and investigational medicinal products for human use.

It was published in the Official Journal of the European Union of 16 September 2017 and will enter into force twenty days after this date. Member States must transpose that Directive into their national law by 31 March 2018.

10. Procedures

France - Electronic signature

Decree no. 2017-1416 dated 28 September 2017 (published in the OJ of 30 September 2017) replaces the Decree no. 2001-272 dated 30 March 2001. It clarifies the technical characteristics of the process enabling to presume the trustworthiness of the electronic signature provided for in the new Article 1367 of the French Civil Code, replacing former Article 1316-4 of the French Civil Code.

According to this Decree, the trustworthiness of a process of electronic signature is presumed, until the contrary is proven, when the process implements a qualified electronic signature.

Referring to Regulation (EU) no. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, the Decree now provides that a qualified electronic signature is an advanced electronic signature, compliant with Article 26 of the Regulation (uniquely linked to the signatory; capable of identifying the signatory; created using electronic signature creation data that the signatory can, with a high level of confidence, use under its sole control; and linked to the data signed therewith in such a way that any subsequent change in the data is detectable) and created with the help of a qualified electronic signature creation device meeting the standards of Article 29 of the Regulation, which refers to a qualified certificate for electronic signature compliant with Article 28 of the Regulation.

11. Public law

France – Reform of the Labor Code and public procurement

Ordinance n°2017-1386 dated 22 September 2017 published in the O.J dated 23 September 2017, relating to the organization of social dialogue at a company-level and the enhancement of trade unions' responsibilities, contains some provisions relating to public procurement. Article L. 2312-27 of the Labor Code created by the Ordinance provides that the minutes of the meeting of the social and economic committee relating to the examination of the annual report on health, safety and working conditions within the company and the examination of the annual program on the prevention of occupational risks and the improvement of working conditions shall be attached to "*any application of the company to the award of a public contract, public subsidies or participation, bonuses of any kind or social and tax advantages*".

12. Tax

France - On 27 September 2017, the French Government published the Draft Finance Bill for 2018 (projet de loi de finances pour 2018 – "PLF 2018"). In this respect, please find below an overview of the key measures relating to individual and corporate taxation.

- **Taxation of investors and managers**

Repeal of the French wealth tax and implementation of a real estate wealth tax

Article 12 of the PLF provides for the repeal of the French wealth tax (*impôt sur la fortune*) as from 1 January 2018. Consequently, the French wealth tax will be replaced by a tax based on the value of the taxpayer's real estate assets on 1 January of each tax year (*l'impôt sur la fortune immobilière* – the "IFI Tax").

From a general perspective, the IFI Tax will be based on the same mechanisms as the French wealth tax (*e.g. same taxation thresholds and rates, application of a 30% rebate on the value of the taxpayer's residence, etc.*).

However, specific provisions with respect to (i) taxable assets (*real estate assets owned through an entity may fall out of the scope of the IFI Tax subject to certain conditions when they are used for professional purposes*), and (ii) deductible debt (*limited in certain circumstances*), will result in this new tax being quite sophisticated and will require a detailed analysis of the taxpayer's assets.

Flat tax on capital income

Article 11 of the PLF provides for the implementation of a flat tax (*prélèvement forfaitaire unique*) on capital income (*including interest payments, dividends and capital gains*) realized as from 1 January 2018.

This French flat tax at a global rate of 30% will include (i) French individual income tax at a rate of a 12.8%, and (ii) French social contributions (CSG/CRDS) at a global rate of 17.2% (see point c) below for further details on the social contributions expected increase).

In this respect, we draw your attention to the fact that:

- when the French flat tax applies, subject to certain exceptions, the taxpayer will not benefit from any tax rebate (i.e., current 40% tax rebate on dividend payments and tax rebates for holding period on capital gains); however
- taxpayers will be able to opt for the application of French individual income tax standard rules (and therefore benefit from specific rebates for holding period on capital gains realized on the sale of shares acquired before 1 January 2019).

Increase of the French social contributions

The PLF specifies that French social contributions rate (CSG) will be increased by 1.7 points as from 1 January 2018. In this respect, the global rate of French social contributions (CSG/CRDS) due (i) on salary income (*revenus d'activités*) will be 9.7%, and (ii) on capital income will be 17.2%.

This increase will be adopted as part of the social security financing act for 2018 (*loi de financement de la sécurité sociale pour 2018*). On the publication date of the present legal update, the draft social security financing bill has not been published yet.

• Corporate taxation

Progressive reduction of the corporate income tax rate

Further to the progressive reduction of the French corporate income tax rate from 33.1/3% to 28% by 2020 as provided by the French Finance Act for 2017 (*law n°2016-1917 dated 29 December 2016*), Article 41 of the PLF provides for an additional progressive reduction of the corporate income tax rate to 25% by 2022.

Repeal of the CICE tax credit and reduction of employers' social security contributions

Article 42 of the PLF provides for (i) a reduction of the tax credit for employment and competitiveness (*crédit d'impôt pour la compétitivité et l'emploi* – "CICE") rate from 7% to 6% from 1 January 2018, and (ii) the permanent repeal of the CICE as from 1 January 2019. Along with this repeal of the French CICE, Article 42 of the PLF provides for a reduction of employers' social contributions ranging between 6 to 9.9 points on wages lower than 2.5 times the French minimum wage (*salaire minimum de croissance*).

Miscellaneous tax measures

Amongst the other measures provided by the PLF related to corporate taxation, we draw your attention to:

- the repeal of the interest deduction limitation rule provided by Article 209, IX of the French Tax Code (*the so-called "amendement Carrez" rule*). This rule aimed to limit the deductibility of interest expenses incurred in respect of the acquisition of shares where the acquisition vehicle was unable to evidence that (i) decisions regarding the acquisition and ownership of the French target company shares were actually taken in France; and (ii) the management and control of the French target company was actually performed from France (Article 14 of the PLF);
 - the repeal of the marginal 20% rate of the French payroll tax (applicable to the portion of individual wages exceeding EUR 152.579 – Article 44 of the PLF);
 - the repeal of the 3% contribution on dividend payments provided by Article 235 ter ZCA of the French Tax Code (Article 13 du PLF); and
 - the repeal of the extension of the scope of the French financial transactions tax to include intraday transactions (i.e., *acquisition and sale of securities within the same day*) that was to become effective from 1 January 2018 (Article 15 of the PLF).
-
-

Disclaimer

This publication is for information only. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.

So that we can send you this email and other marketing material we believe may interest you, we keep your email address and other information supplied by you on a database. The database is accessible by all Hogan Lovells' offices, which includes offices both inside and outside the European Economic Area (EEA). The level of protection for personal data outside the EEA may not be as comprehensive as within the EEA. To stop receiving email communications from us please [click here](#).

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

© Hogan Lovells 2017. All rights reserved. Attorney advertising.