

HOW TO START A BUSINESS IN FRANCE

Our goal in this little guide of “How to start a business in France” is to underline how easy it has become to incorporate a company In France now and to start a business.

Need is to add that you may also find a great number of interesting new rules through recruitment and training aids, tax credits and research.

From a legal, tax and social standpoints, the creation and development of a company or a liaison office in France is therefore easier than it has ever been.

The purpose of this memo is not to provide overall and accurate information, but to introduce the issue clearly enough in case your company would anticipate an installation in France, in such case the need for a specific study would be required.

I – ESTABLISHMENT OF A FOREIGN COMPANY IN FRANCE: A QUICK AND SIMPLE PROCEDURE

Opening a commercial entity in France is nowadays fast and simple. Electronical online procedure allows a law firm such as ours – being entitled to do so - to incorporate your company within very few days and therefore to help you focus on the launching of your business, which leads us more than frequently to coordinate, on behalf of our foreign clients, the tasks between several interlocutors such as the bank, accountant, statutory auditor...

Let’s focus on the two more common existing ways to set up a business in France: i) a stable business structure such as a subsidiary or branch, or ii) a liaison or representative office.

A. Open a subsidiary:

There are many forms to incorporate a French company but the two more ordinary retained forms are the French “S.A.R.L” and “S.A.S”.

In both cases, you shall need to open a bank account that shall receive the issued share capital. Then, the chosen bank shall deliver a share capital certificate.

Both SARL and SAS may be incorporated with a 1€ share capital and with only one shareholder.

Then, the to be incorporated company shall need to have a head office located in France which can be done whether by providing the Registry of commerce with a business domiciliation or with a lease.

Finding a business domiciliation is routine work, the cost not exceeding 30/40€ per month. it requests the signing of a three/six months renewable contract with a business domiciliation specialized company.

Should you need to lease premises, there are two main kinds of leases in France: commercial leases and professional leases (applicable to the renting of offices only, without reception of customers).

Commercial leases are signed on a 3/6/9 years basis which implies you are bound to pay the lease for at least three years. Few commercial leases may however be obtained for a lesser period, the so-called “baux de courte durée” (short period lease).

Professional leases are signed for 3 or 6 years, and you may leave at any time with a 6 months prior notice.

Once these two documents are obtained (bank share capital certificate and business domiciliation or lease), the other main steps are as follows:

- Deciding upon who shall be appointed as the legal representant of the company which might be the reason why your company could easily choose the SAS form rather than the SARL form since the legal representant of a French SAS may be a company (even a foreign company which can appoint whether its own legal representant or any other person it chooses) whereas it is compulsory that it should be an individual in a French SARL. However, in both cases, the legal representant may be a foreigner;
- Choosing a legal auditor when applicable (see development hereunder).

Then, all may be signed, scanned and sent to us and we may proceed to the registration.

The mere legal obligation afterwards, as in many other countries, consist in being in conformity with the accounting rules and holding a yearly general meeting the purpose of which will be to approve the year end accounts.

In any case partners' liability is limited to their contribution in the share capital of the company.

Concerning the appointment of a statutory auditor, most of small companies have been exempted by the PACTE Act, adopted by the French Parliament on April 11, 2018. A company is required to appoint a statutory auditor when it reaches at least two of the following thresholds: 50 employees, a total balance sheet amount of more than 4 000 000 euros and a total turnover excluding taxes of more than 8 000 000 euros. (these thresholds are divided by two should the company be a subsidiary of a group which reaches them)

- SAS: the most popular form

A great flexibility is offered in the drafting of the bylaws of a French SAS concerning for instance governance, shareholder's meetings Consequently, the drafting of the bylaws will require special attention but it certainly offers a lot of possibilities that are likely to answer your own group's organization chart.

The president of the company can be a legal person (company) even a foreign one. President is dismissible *ad nutum* unless otherwise provided for by the bylaws. Normal payroll taxes shall apply to the manager of a SAS when he/she is an individual and receives a remuneration for his/her mandate.

Even if the legal representant of the French company - direct or indirect – is a foreign person not residing in France, most of the time the passport copy is the only document to be provided.

In case of transfer of shares, the tax registration is amounting to 0.1% of the purchase price to be paid by the purchaser.

It has to be mentioned that French SAS cannot be a listed company.

- S.A.R.L: the perfect small company

French S.A.R.L's manager can only be an individual who can only be dismissed based upon reasonable ground (whereas as mentioned above, he/she may be dismissed *ad nutum* within a French SAS). The manager may be a foreigner. In such case, the hereabove described conditions concerning the French SAS shall also be fulfilled.

In case of transfer of shares, the tax registration is amounting to 3% of the price exceeding 23.000 € for a transfer of 100% of the share capital (there is a prorata rule in case of transfer of less than 100 %).

Most of the clauses of the by laws are provided by law which implies a great security but offers less flexibility than within the French SAS

Other forms exist that may be applicable from time to time (French "Société Anonyme", "Société en Commandite par Actions", "Société Civile" ...), the choice of which depends upon the project at stake.

B. Branch or liaison office: a much simpler situation

a. Open a branch

In order to facilitate relationship with third parties in France, the opening of a branch ("*succursale*") can be an interesting solution.

The Branch is not a new legal entity, separate from the foreign company, then it has no legal personality, no separate assets, capital or property. Any liability arising against the Branch is automatically transferred to the parent company. It is a center of operations established for third parties at large as a permanent extension of the parent company and which has its own management.

The Branch shall have to be registered at the French trade registry located where the Branch is located (RCS). Having a commercial activity in France, the branch shall have to keep its own accounting books and shall be subject to Income tax and VAT in France as any other French company. It will be subject to the same social obligations as French companies when dealing with employees.

Need is to say that a Branch located in France may be contributed by its mother company to a new French company at any time should you decide to invest more specifically in France. However, such move is a bit more complicated than the mere incorporation of a French company as indicated hereabove.

Why choosing a Branch rather than a company in France? It all depends upon the concerned project (temporary or not, long-lasting project or first try, tax consequences etc.).

b. Open a liaison office

The liaison office is a legal structure different from the Branch hereabove discussed but it may also represent a foreign company in France. If the office is unable to enter into a contract in the name and on behalf of the parent company (because it must not carry out any commercial activity or function), it has rather a relay role, preparatory work for the negotiation of contracts between the customers contacted and the parent company. This structure can be considered as an observation post allowing the foreign parent company to assess its impact on the market before committing its capital.

The liaison office shall have no legal personality, no separate assets or separate social or commercial domiciliation, capital or property. It does not hold any accounts and is not subject to company tax or VAT. But it has to pay the wage tax. The parent company will be liable in case of litigation or debt. The liaison office is obliged to appoint a legal representative whose responsibility cannot, in any case, be engaged.

It will be subject to the same social obligations for its employees as French companies or Branch. If the office does not comply with this obligation, then it will be requalified as a branch and therefore will be subject to the same legal, tax and financial obligations as a branch. This procedure can trigger significant fiscal adjustments.

This solution allows you to observe, more easily, the French market but the latter is not intended to last long meaning that it will have to be closed after a 5 years' period in order to move to another form such as a branch or a subsidiary. Thus, the liaison office is a good alternative if your goal is to test, to observe the French market over a certain period of time before choosing to launch a branch or a subsidiary in France.

II- TAX MATTERS

French companies are subject to three main categories of taxes: profit tax, VAT and CET. Depending on the legal status of your company, the type of taxation and the method of determination of the taxable profit may change.

Corporate tax:

Willing to align the French tax rules with those applicable in other European countries, the 2018 Finance Act decreased profit tax rates as detailed hereunder:

Companies with a turnover of less than 7.63 million euros:

Benefits included	F/Y open 1/1/2019	F/Y open 1/1/2020	F/Y open 1/1/2021	F/Y open 1/1/2022
Between 0 € and 38 120 € (only if natural persons hold at least 75 % of the capital of the company or its holding)	15 %	15 %	15 %	15 %

Between 38 120 € and 500 000€	28 %	28 %	26,5 %	25 %
More than 500 000 €	31 %	28 %	26,5 %	25 %

Companies with a turnover of more than 7.63 million euros:

Benefits included	F/Y open 1/1/2019	F/Y open du 1/1/2020	F/Y open 1/1/2021	F/Y open 1/1/2022
Between 0 € and 500 000 €	28 %	28 %	26,5 %	25 %
More than 500 000 €	31 % (33,3% if turnover above 250.M€)	28 %	26,5 %	25 %

VAT :

In France, VAT is mostly of 20%.

CET :

CET (for Contribution Economique Territoriale) is made up of two taxes : CFE (for Contribution Foncière des Entreprises) and CVAE (for Contribution sur la Valeur Ajoutée des Entreprises).

- CFE is based on the rental value of the real estate that companies use in the course of their business. the tax rate is set by local authorities (municipalities, departments and regions).

- CVAE is base on added value of the company at the rate of 1,5%. However, companies with a turnover of less than 50,000,000 euros benefit from a progressive reduction of this tax.

Companies which CET) is higher than 3% of their added value can request a tax relief in the form of a tax cap.

A preferential regime is also provided for new businesses.

III- SOCIAL MATTERS

First of all, some efforts have been realized concerning the employees labor costs in France, even though said costs still remain higher than in Germany for instance.

Payroll taxes are the following in France:

- Employees' social security contribution is of 22% of the gross salary,
- Employers' social security contribution is of 42 % of the gross salary,
- Therefore, and to understand the vocabulary, the employees are talking about their net salary, i.e. what they really perceive whereas the employer talks about "gross salary" meaning the net salary plus the employee's social security contributions (which are withheld by the employer committed to pay them). And the last item is the global amount of the wages which implies the gross salary to which need is to add the employer's social security contributions.
- Need is also to precise that since January 1, 2018, the employer is also withholding on his employees' payroll their income tax that it pays directly to the French tax authorities, creating a new "net net" salary.

Among the new rules recently put in place and in order to ease termination of an employment agreement, a contractual termination mechanism based upon a common agreement between the employer and the employee has been set up, namely the contractual break-up ("*Rupture Conventionnelle*") which has facilitated the termination of labor relations.

Should the employer and the employee fail to find an agreement and a litigation be engaged, French labor jurisdictions must from now on allocate the employee's compensation pursuant to a fixed scale which has been set by law since 2018, which makes the consequences of the dismissal much more predictable than before.

Consequently, the period during which an employee may challenge his/her dismissal in court has also been restricted to merely one year as from his/her dismissal and should he/she decide to do so, the allowances he/she may be attributed have been capped. As a result, the employee shall receive up to 3 months of salary with a 2 years' seniority within the company's or group's staff. After this period, the compensation may increase up to 20 months of salary pursuant to a progressive scale up.

France has also modified its employees' representative bodies' thresholds. From now on, the new thresholds pursuant to which a French company must elect a representative body are the following ones:

- companies employing 11 or more employees for 12 consecutive months must put in place staff elections,
- for these companies, only one body will be appointed, the Social and Economic Committee, instead of three before the new law entered into force,
- the number of elected members of the Social and Economic Committee and the number of hours allocated to the elected representatives for the execution of their mandate is decreasing.

Lastly, since 2018, the number of subjects that employees and employers may collectively negotiate has significantly increased, which makes it possible to enact rules far more adapted to the company

and its activity, in particular as regards the duration of the work or the employees' compensations. The conditions for negotiating collective agreements have also been simplified.

IV ENTERING THE FRENCH MARKET

Whether you have incorporated a French company or opened a Branch or a liaison office or even if you have done none of this (should you be reluctant to open your company in France for instance), your business can be carried on in France with a distributorship network and through different contractual mechanisms.

Among these contractual mechanisms, the easiest way is the commercial agent agreement, which implies that the customers developed by the chosen commercial agent may belong to said commercial agent who, in case of early termination, may ask for a specific indemnification.

You may also decide to sign a distribution agreement, a franchise, an affiliation agreement, etc.

Any of such agreement is likely to be signed without opening a French company, Branch or whatsoever, but it requests a prior study to decide upon the best agreement applicable in each specific case, and raises other issues such as the governing law, etc.

*

* *

CLEACH AVOCATS team is at your disposal to help you investigate and/or create a French company, Branch and/or draft employees agreement, distribution agreement, etc.