



LPA-CGR avocats



France's legal reforms
reinforce its business
attractiveness for
foreign investors:

Overview of the
business practice and
legal updates.

TOKYO - 9 NOVEMBER 2017

CCI FRANCE JAPON

Presentation of our firm



- ▶ Law firm established 30 years ago
 - ✓ Lefèvre Pelletier + CGR legal
 - ✓ One of the largest firms in France
 - ✓ A leading business firm in Paris
- ▶ 180 lawyers in 10 offices
 - ✓ Paris / Munich / Brussels
 - ✓ Tokyo / Hong Kong / Shanghai
 - ✓ Dubai / Algiers / Casa / Douala
- ▶ 140 lawyers in Paris
 - ✓ Full service law firm
 - ✓ Japan desk in Paris
 - ✓ The only French firm established in Tokyo

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1 - Doing Business in France from Abroad

Contractual arrangements can allow you to have access to the French market:

▶ Distribution Agreements

- ✓ Exclusivity: limited geographical scope and duration
- ✓ Minimum resale price or margins cannot be imposed

▶ Commercial Agents

- ✓ Flexible and inexpensive way to test the French market
- ✓ Indemnity equal to 2 years of commissions upon termination

▶ Franchising

- ✓ Commonly used in France to build a distribution network
- ✓ Licensing of trademark, assistance against royalties

▶ Recommendations

- ✓ Use French law and French court to ensure enforcement
- ✓ Register your intellectual property

2 - Establishing a presence in France

Depending on the investment goal and strategy, several options are available:

▶ Representative / liaison office

- ✓ Easy to set-up (only a registration), prospection with employees
- ✓ No commercial activities: cannot sign contract or issue invoices

▶ Branch (“*succursale*”)

- ✓ Can carry-out operations and commercial activities
- ✓ Not a corporate entity, the parent company is fully responsible
- ✓ Subject to full taxation in France. Not easy to unwind.

▶ Subsidiaries

- ✓ Limited liability company (“SARL”): for small operations
- ✓ Joint stock company (“SA”): for large businesses
- ✓ Simplified joint stock company (“SAS”): modern and flexible, recommended

3 - Acquiring a business in France

Acquiring a business may be a quicker way to develop your operations in France:

- ▶ No governmental approval
 - ✓ As a principle, foreign investments are free in France
 - Mandatory foreign investment filing removed in 2017
 - ✓ Limited exceptions: weapons, national security, etc.
- ▶ Acquisition of a company
 - ✓ Fastest and easiest way, acquisition of 100% of the operations
 - ✓ Standard “international” process (SPA, disclosures, warranties)
 - ✓ Efficient due diligences, guarantee of indemnification (escrow)
- ▶ Acquisition of assets / business
 - ✓ Frequently used to acquire business units or specific businesses
 - ✓ Regulated by specific rules (“*cession de fonds de commerce*”)
 - ✓ Quite cumbersome, not fully efficient and costly (registration duties)

4 - Labor law issues and recent improvements (1/2)

Foreign investors are often concerned by the complexity of French labor law:

▶ Employees representations

- ✓ Works council, Health and Safety Committee, employee delegates and unions delegates.
 - Numerous number of representatives, roles overlapping and numerous meetings.

▶ Labor law contracts and termination of employees

- ✓ Complex CDI (permanent contract) and CDD (fixed-term contracts) rules
- ✓ Very formal process for terminating employees
 - Termination letter: lack of proper motivation = unfair dismissal
 - Mistakes in pre-dismissal meeting and letter = unfair dismissal
- ✓ High indemnity fees for “unfair” dismissal
 - Minimum 6 months salary for 2 years or more of seniority

Labor law issues and recent improvements (2/2)

The reforms introduced by **President Macron** make labor rules more reasonable:

- ▶ Unified employees representation and negotiation at company level
 - ✓ Employees representations merged into “Social and Economic Council”, a single representative body, applying as from 11 employees
 - ✓ Primacy of the company-wide collective bargaining agreements to industry-wide collective bargaining, as a general rule
- ▶ The termination process is simplified
 - ✓ Template letter of dismissal, regardless the ground for dismissal
 - ✓ Possibility to explain the ground for dismissal later in the process
 - ✓ Failure to comply with termination process = 1 month indemnity max
- ▶ Termination grounds for economic dismissal are now more reasonable
 - ✓ Economic difficulties and redeployment obligation: France only (previously internationally for multinational companies)
- ▶ Indemnification fees for unfair dismissal are reduced and predictable
 - ✓ Minimum and maximum indemnification amounts fixed following a scale depending on seniority of employee (for employment of 29 years or more, minimum 3 months salary and maximum limited to 20 months salary)
- ▶ Reduction of employees’ social contribution is anticipated in 2018, which will result in an increase of employees’ salaries

5 - Taxation issues and recent improvements (1/2)

France suffers from a complex taxation regime and high taxation rates:

- ▶ Corporate income tax (CIT)
 - ✓ All non tax transparent companies are subject to CIT at a 33.3% rate
 - ✓ Other taxes apply (VAT, CET + social charges borne by the company)

- ▶ Individual income tax
 - ✓ Up to 45% on household revenues – can reach 64% on capital gains
 - ✓ France's famous "*impôt sur la fortune*" (ISF)

Taxation issues and recent improvements (2/2)

▶ Macron improvements expected to be implemented in January 2018:

- CIT to be reduced to 25% by 2022
- Various tax credits are maintained or reinforced (“Credit d’impôt compétitivité emploi” - CICE , “Crédit d’impôt recherche” CIR)
- Taxation of capital gains reduced for entrepreneurs and managers (AGA)
- ISF based only on real estate, non longer on “productive” investments
- Flat tax of 30% on investment income (dividends, capital gains)
- The provisions of the France Japan tax treaty remain in force: no withholding tax for dividends distributed by a subsidiary based in France to its parents company based in Japan, holding directly or indirectly at least 15% of the subsidiary’s issued shares

6 - Focus on 3 hot topics

The “Sapin” law

- ▶ On 8 November 2016, the French Parliament passed a law targeting transparency, anti-corruption and the modernization of the economy, known as the Sapin II Law. This law entered into force on 11 December 2016.
- ▶ Its main objective is to set up a genuine anti-corruption mechanism in France, by requiring companies active in France, under penalty of financial sanction, to get involved in this fight.
- ▶ Although implementing decrees of the law remain to be released, companies and their directors should prepare for new requirements to create internal compliance programs and be aware of the sanctions that can be imposed for failure to implement such programs.

Focus on 3 hot topics - The “Sapin” law

The main contributions of the Sapin II Law include the following:

Compulsory implementation of an anti-corruption compliance program for French companies of a certain size (any company employing at least **500 people** in France with consolidated or non-consolidated sales of more than €100 million)

- ▶ Extension and protection of whistleblower status (any company based in France employing at least **50 people** in France)
- ▶ Various measures aimed at improving prevention and repression of acts of corruption
- ▶ Various measures aimed at modernizing the economy (no link with anti-corruption)

Focus on 3 hot topics – GDPR

1/ EU General Data Protection Regulation (GDPR)

▶ Who must apply GDPR?

- Each data treatment processor or subcontractors in a EU country
- Even if the business is not in EU, non-EU businesses processing the data of EU citizens

▶ **Enforcement:** directly applicable on May 25th, 2018, in all EU Members States.

▶ Key changes:

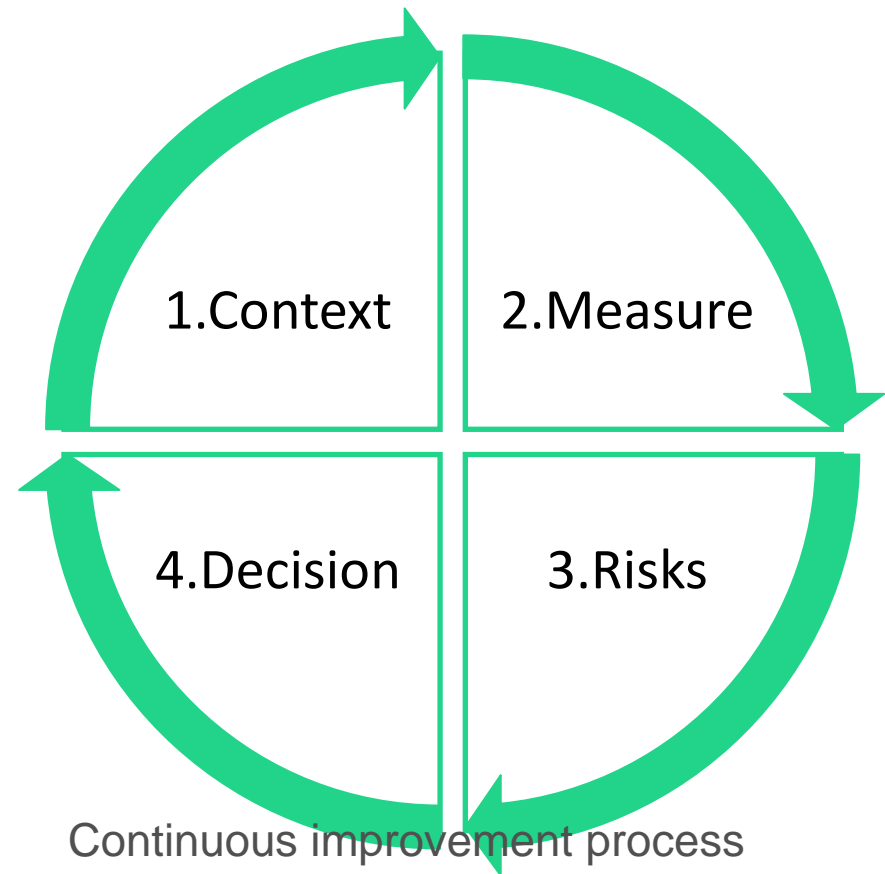
- Extra-territorial applicability, GDPR will also apply to non-EU businesses processing the data of EU citizens: they will have to appoint a representative in the EU.
- Consent: companies will no longer be able to use long illegible terms and conditions. The request for consent must be given in an intelligible and easily accessible form.
- Penalties:
 - organizations in breach of GDPR can be fined up to (maximum) 4% of annual global turnover or €20 Million for the most serious infringements (e.g. not having sufficient customer consent to process data);
 - it is important to note that these rules also apply to “clouds”.

Focus on 3 hot topics – GDPR

▶ 2/ Steps to compliance:

▶ How be compliant with the GDPR?

- 1. Delimit the **context** of data treatment and their issue
- 2. Identify existing **measures**
- 3. Appreciate the risks on privacy and determine if the measures are efficient
- 4. Take **decision** to respect the Regulation: consolidate measures or take new one(s)



Focus on 3 hot topics – Deregulation of some markets

▶ France launched a broad and deep movement to deregulate some markets (rail/bus transport, electricity/gas, gambling, health to some extent, optical devices, hearing aids and on-line sales of medicinal products), which may wake business opportunities for alternative players already in place, historical operators, and potential new entrants.



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M&A / Corporate Law

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Energy
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▼ AWARDS AND NOMINATIONS

- **Décideurs Stratégie Finance & Droit 2017:** Recognized in the M&A category Transactions between EUR 75M and EUR 500M and as Excellent in the category Transactions under EUR 75M
- **Legal 500 Paris 2016**
Recognized in Corporate / M&A transactions
- **Option Droit & Affaires 2016:** Recognized in M&A transactions (mid-market up)
- **Magazine des Affaires 2013**
Named as one of the 50 rising M&A lawyers in Paris

Raphaël Chantelot is a partner focusing on M&A transactions and joint ventures.

Raphael Chantelot is admitted to the Paris Bar and to the New York Bar, with more than fifteen years of experience in the fields of corporate transactions and international business law. Before joining the firm as a partner in 2011, Raphael spent five years in Shanghai working for French firm Gide and, before that, five years in the corporate and M&A department of the Paris office of US firm Cleary Gottlieb.

Based in the corporate and M&A department in Paris, Raphael advises French and Foreign clients on corporate and financial matters, including cross-border mergers and acquisitions, project finance and capital market transactions, in deals involving listed and unlisted companies, in Europe and in Asia.

Raphael received an LL.M. degree from Georgetown University (Washington DC), a master in business law from the Sorbonne University, and he graduated from the Paris Institute for Political Studies (*Sciences-Po*).



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▼ AWARDS AND NOMINATIONS

• Legal 500 Paris 2017:

Recognized in the category
European and Competition
Law.

• Le Magazine des Affaires:

Recognized among the 50
rising stars of the Paris Bar

Emmanuel Tricot is a Partner in Competition, Distribution and Consumer Law in Paris and Brussels

Emmanuel Tricot practices Competition law and covers numerous economic sectors (industry, internet retail, telecoms, energy, insurance or notably the banking sector). He assists large clients on strategic and complex cases.

He has experience of competition investigations, litigation and pre-litigation procedures before the French Competition Authority or the European Commission, the regulation of French and European mergers, private competition litigation, State aid, contracts and consumer law.

Having a doctorate in Law, Emmanuel holds a Master degree in Corporate Law (University Paris I-Panthéon Sorbonne) and a degree from the Institute of Higher Business Studies.



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Telecommunication, media & technology

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Catherine Gaillarde is an associate in the M&A / Corporate Law Department, in charge of the Japan Desk at the Paris office.

Catherine works in corporate law, commercial contracts, intellectual property and assists international clients in their investments in France or in Japan. She regularly advises French and Japanese clients in their cross-border operations and partnerships.

After a 4 years experience in consulting and litigation in a business law firm in Paris, Catherine was legal director at Universal Music France – Vivendi Group for 7 years, then Head of Legal & Business Affairs at the French Chamber of Commerce in Abu Dhabi, UAE.

She then joined the LPA Tokyo office where she assisted French companies in their projects of implantation in Japan and their partnerships with the Japanese companies for more than 3 years

Catherine graduated from the Universities of Paris II-Assas and Paris X-Nanterre.



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Airi is an associate in the M&A / Corporate Law Department. She is also a member of the Japan Desk at the Paris office.

Airi is an attorney admitted to the New York Bar and to the Paris Bar, and was previously admitted to the Tokyo Bar. Airi regularly provides advice to foreign investors in France, notably to Japanese companies.

Airi brings to the firm over ten years of international business law experience. Airi previously worked in the legal department of the International Energy Agency (an agency of the OECD) in Paris, and before that, as an associate at Amercian law firms (notably McGuireWoods LLP) in New York for five years, specializing in mergers and acquisitions and financial transactions. She started her career as an associate at a law firm in Tokyo where she gained broad general corporate law experience for five years.

Airi obtained an LL.M. in Corporate Law from New York University School of law, an LL.B. from Keio University, and a diploma from the Legal Research and Training Institute of the Supreme Court of Japan.

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Thank you for your attention

MERCI !

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