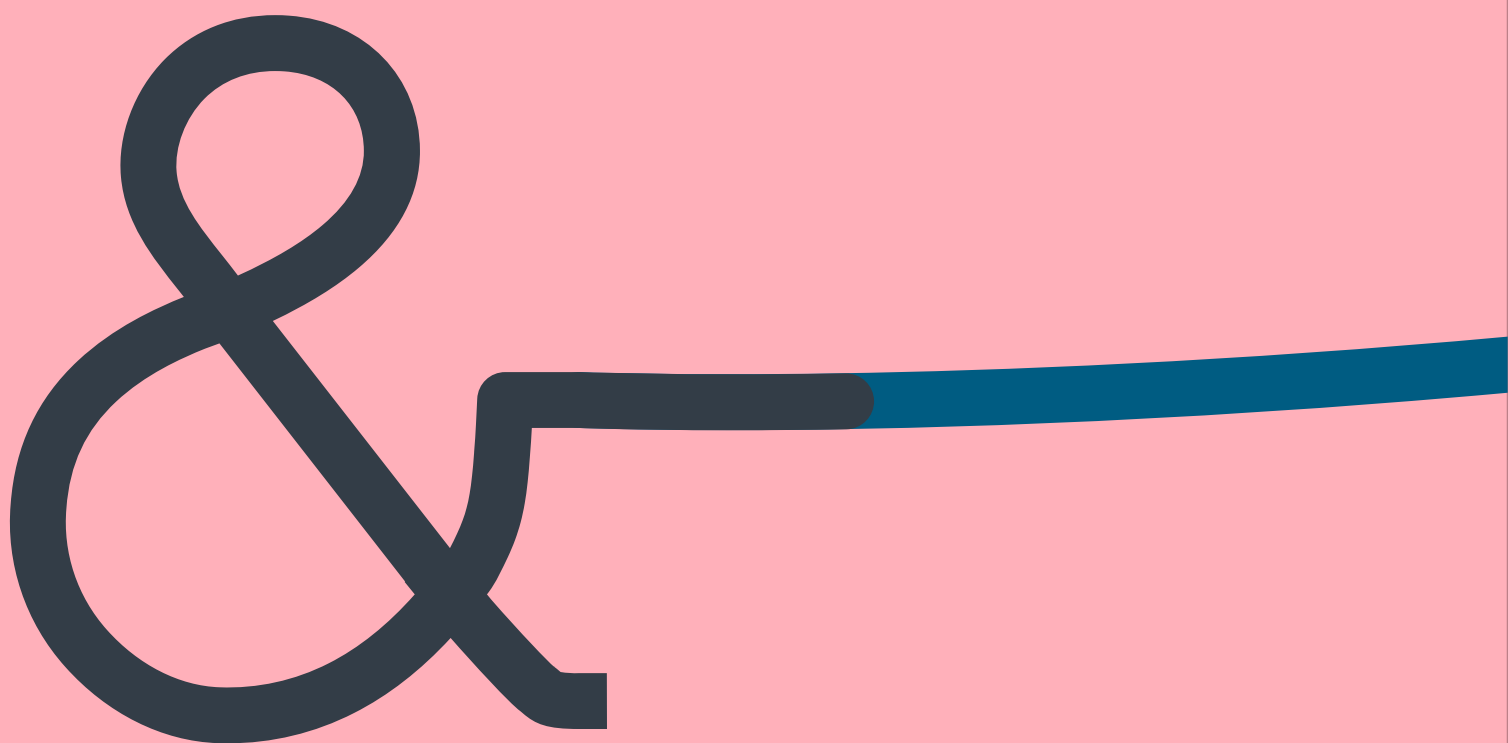


Bird & Bird

Setting up a business in France

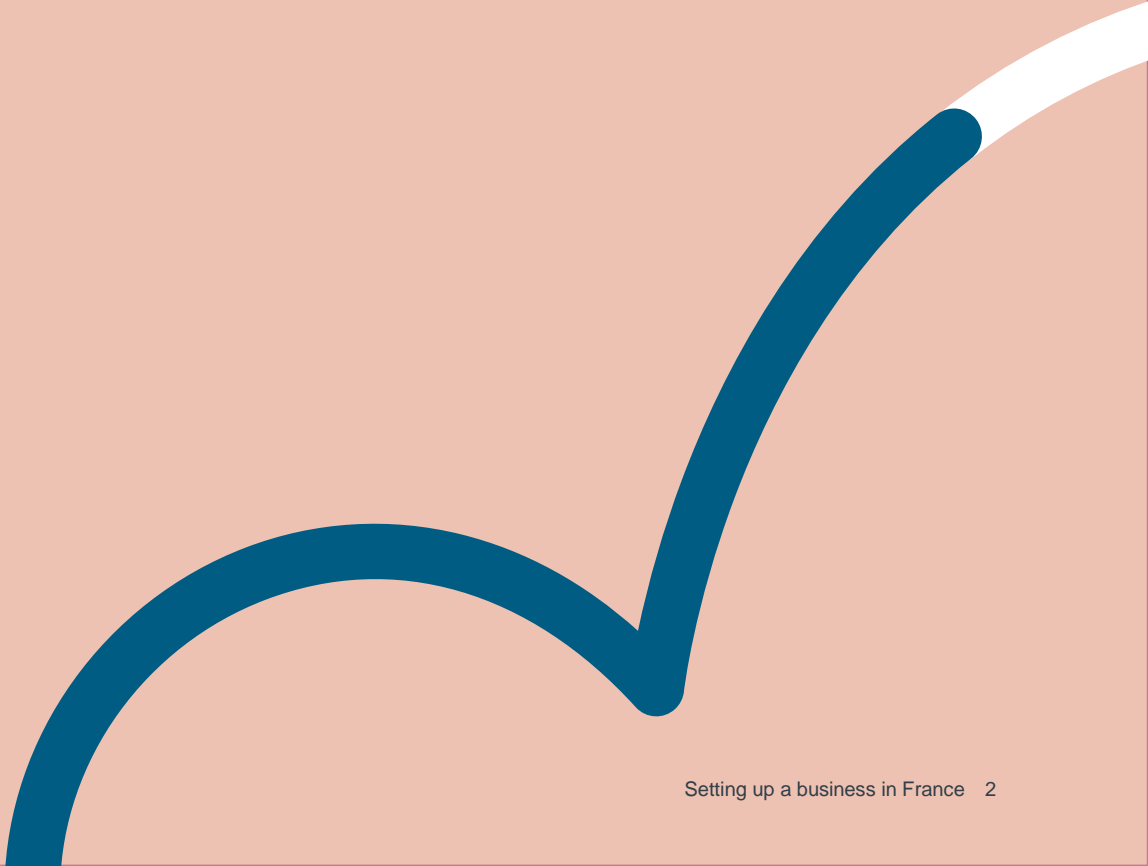
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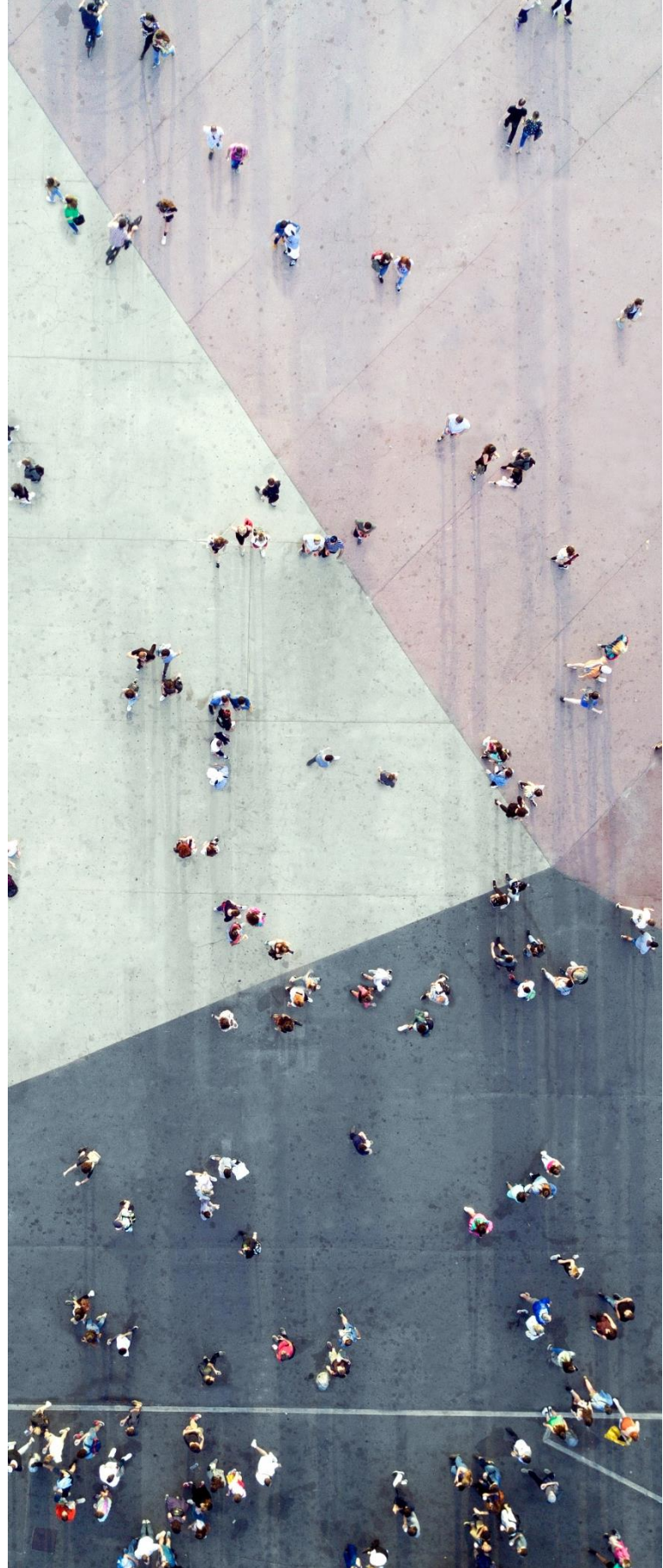
‘Excellent expertise for cross-border transactions with many complex issues associated.’

Legal 500 2022, EMEA, France



Setting up a business in France

France is a welcoming environment for foreign investors, provided that regulations concerning foreign investments, meant to prevent money laundering, are complied with. Foreign investors may benefit from incentive programs or subsidies granted by European, state and local authorities depending on the type of company involved and location of the project.





“We trust the firm's ability to provide expertise on a large range of legal questions,”.

Legal 500 2022, EMEA, France

Choice of legal entity

A foreign company can carry on business in France either by incorporating a French registered subsidiary company or by registering a French establishment (e.g., a branch), which is considered an extension of the foreign company.

| Subsidiary (<i>Limited Liability Company</i>) | Branch |
|--|--|
| Limited liability at subsidiary level. | Parent company retains direct liability – no separate legal entity. Activity of the branch may result in the opening of collective proceedings in France regarding the parent company. |
| Separate legal entity to contract in its own name and on its own behalf. | Revenues are earned by the parent company. |
| Incorporation takes one to two weeks, but subsidiary can operate in the meantime. | Registration must be done within 15 days from the opening of the branch. |
| Approximate cost to incorporate €500 (excl. legal fees). | Approximate cost to register €400 (fees not included). |
| Directors do not need to be French nationals. Non-EU citizens residing in France must have a regular residence permit. | A “branch representative” needs to be appointed who will represent the parent company vis-a-vis third parties through the branch. The branch representative does not need to be a French national. |
| Meetings do not need to be held in France (provided that this is specified in the bylaws). | Parent company accounts must be filed in France (if such filing is mandatory in its country of incorporation). |
| Higher annual filing and accounting costs. | Lower operational costs. The branch shall keep separate financial accounts even if it does not possess distinct goods or properties from the parent company. |

| Subsidiary (<i>Limited Liability Company</i>) | Branch |
|---|---|
| <p>Corporation tax on all profits generated in France and abroad, with a standard rate of 26.5% from 1st January 2021.</p> <p>Companies with a turnover exceeding EUR 250 million are subject to a 27.5% rate on the fraction of their profits exceeding EUR 500,000 for FY 2021.</p> <p>Corporation tax on all profits generated in France and abroad, with a standard rate of 25 % from 1st January 2022.</p> <p>Moreover, reduced rates are applicable in some cases.</p> | <p>Corporation tax on all profits generated in France and abroad, with a standard rate of 26.5% from 1st January 2021.</p> <p>Companies with a turnover exceeding EUR 250 million are subject to a 27.5% rate on the fraction of their profits exceeding EUR 500,000 for FY 2021.</p> <p>Corporation tax on all profits generated in France and abroad, with a standard rate of 25 % from 1st January 2022.</p> <p>Moreover, reduced rates are applicable in some cases.</p> <p>In addition to corporate income tax, French branches of non- resident companies may be subject to a branch remittance tax on their net-of-tax income (article 115 quinquies of the FTC), which is deemed distributed to the head office abroad. The standard rate of the branch tax is 30%.</p> <p>The branch remittance tax is not applicable to foreign companies that (i) have their place of effective management in an EU state or, in an EEA state (Iceland, Norway or Liechtenstein) and (ii) are subject therein to corporate income tax without the possibility of an option or of being exempt. Furthermore, treaties concluded by France with several non-EU states provide for a full exemption of the branch remittance tax.</p> |
| <p>A consolidated tax group regime is available, upon election, to affiliated French companies connected by 95%-ownership links, allowing the offset of losses of one group corporation against the profits of a related corporation.</p> <p>The parent company at the “head” of the group must be resident company that is not itself 95% or more owned by another French company. The parent can be owned by a foreign parent or held indirectly by another resident company subject to corporate income tax, through a foreign company (“intermediate company”).</p> | <p>French permanent establishment of a foreign company may, under certain conditions, join a consolidated tax group or qualify as an “intermediate company”.</p> |
| <p>Can benefit from double tax treaties.</p> | <p>Avoiding double taxation due to treaty provisions could be more difficult in the case of a branch.</p> |
| <p>Intra-group transactions require arm’s length terms.</p> | <p>Intra-group transactions involving a branch also require arm’s length terms.</p> |
| <p>Transfer pricing documentation and filing requirements applicable according to turnover thresholds (turnover realised at the level of the French entity but also by any other company that owns, or is owned by, directly or indirectly).</p> | |
| <p>There are specific accounting requirements to fulfil.</p> | |

| Subsidiary (<i>Limited Liability Company</i>) | Branch |
|---|--|
| <p>Losses can be off set against profits for the accounting period provided that losses / profits are generated in France and except for income arising from permanent establishment and subject to double tax treaty provisions. There are some exceptions for certain small and medium enterprises. However, as from FY 2012, for profits exceeding €1 million, companies are entitled to use tax losses to shelter only 50% of taxable profits (i.e., CIT would be payable on at least 50% of the taxable result). Those tax losses not used in a given year can be carried forward in their entirety. However, companies may opt to carry back the losses identified at the end of the year, held in the limit of €1 million, on the undistributed earnings of the previous year. This charge gives rise to a claim on the French Treasury corresponding to the amount of corporation tax previously paid amount.</p> | <p>Losses allocated to the permanent establishment can be offset against the permanent establishment's profits. However, as from FY 2012, for profits exceeding €1 million, the permanent establishment is entitled to use tax losses to shelter only 50% of taxable profits (i.e., CIT would be payable on at least 50% of the taxable result). Those tax losses not used in a given year can be carried forward in their entirety. However, companies may opt to carry back the losses identified at the end of the year, held in the limit of €1 million, on the undistributed earnings of the previous year. This charge gives rise to a claim on the French Treasury corresponding to the amount of corporation tax previously paid amount.</p> |
| <p>VAT rates are notably 20%, 10% and 5.5%. There are some specific VAT rates (for instance 2.1 %) for specific products as well as for the overseas departments.</p> | <p>VAT rates are notably 20%, 10% and 5.5%. There are some specific VAT rates (for instance 2.1 %) for specific products as well as for the overseas departments. In principle, transactions between head office and branch are not taxable as they are part of the same entity. However, please note that the existence of a VAT group has an impact on this principle. Please also note that in specific conditions, the branch can be seen as a VAT liable entity.</p> |
| <p>When companies are formed, they need to register for VAT purposes. It is important to estimate the nature of the activity and the amount of turnover that is expected to determine the VAT formalities that will be required.</p> | <p>Branch has to be registered for VAT purposes according to the nature of the transactions. It is important to estimate the nature of the activity and the amount of turnover that is expected to determine the VAT formalities that will be required from the branch.</p> |
| <p>In principle, companies collect VAT on their own sales and deduct the amount of VAT paid on purchases of goods or services. They need to report these transactions in a monthly, quarterly or yearly statement according to turnover threshold. There is a turnover threshold under which no filing return is required.</p> | <p>Branch collects VAT on their own sales and deducts the amount of VAT paid on purchases of goods or services. They need to report these transactions in a monthly, quarterly or yearly statement according to turnover threshold. There is a turnover threshold under which no filing return is required.</p> |
| <p>Invoices issued must contain VAT mandatory mentions. The invoice must also meet specific requirements for VAT deduction issues.</p> | <p>According to the VAT status of the branch, Invoices can be issued by the branch to the foreign head office or to third party and must contain VAT mandatory mentions. The invoice must also meet specific requirements for VAT deduction issues. Please also note that in case of a VAT group, there could be invoices issued with regards to the relation branch/foreign head office. It will be necessary to determine the VAT status of the branch on a case-by-case basis.</p> |

| Subsidiary (<i>Limited Liability Company</i>) | Branch |
|---|---|
| Where intra-EU operations are carried out, Intrastat for goods and/ or European sales list for cross-border services should be filed. Here again, the nature of the activity and the expected turnover can help in determining the formalities that will be required. | Where intra-EU operations are carried out, Intrastat for goods and/ or European sales list for cross-border services should be filed. Here again, the nature of the activity and the expected turnover can help in determining the formalities that will be required. * |

A 25% rate apply since 1st January 2022 for all enterprises.

* *VAT/INTRASTAT requirements*

Any company that is liable to VAT register in France has to comply with the French VAT filing/compliance regulations.

In general, companies file periodic French VAT returns. Companies must also comply with Intrastat compliance as soon as intracommunity acquisitions of goods (or deemed) and/or intracommunity deliveries of goods (or deemed) are carried out. In France, there is no EC listing that must be filed separately (as EC Sales list and Intrastat are merged in one sole document).

As from January 1st, 2010, taxable persons established in France should also file European sales listing (ESL) when they render services falling in the scope of the new “main rule” (i.e., services not covered by an exception) to a customer (VAT taxable person, acting as such) who is established in another EU Member State and required to self-assess VAT according to the reverse charge mechanism. Please also note that there are invoicing requirements to fulfil. We recommend a case-by-case study to determine the relevant filing VAT/Intrastat/invoicing obligations in France.



‘The firm is able to mobilise various skills to provide a global response to the clients’ needs.’

Chambers Europe, 2022, France

Setting up a business in France

Employment

French employees have minimum statutory rights including notice periods and a minimum monthly salary provided by the law (SMIC). The dismissal of employees is governed by statutory rules regarding the procedure and the grounds of the dismissal. Moreover, they benefit from severance payments. Statutory rights including notice period, minimum salaries, severance payment etc. are frequently enhanced by national industry sector collective bargaining agreements, which may apply simply on the basis of the company's business activity and location.

Unfair dismissal may give rise to a claim for damages, which are capped depending on length of service. Reinstatement may be ordered in limited situations where the dismissal is considered as null and void.

Employers cannot contract out of the statutory requirements or avoid them by categorising the employee as a consultant since the authorities will look at the reality of the relationship. Miscategorising employees can result in de facto employment claims resulting in damages, awards and potentially criminal penalties.

Non-compete covenants and other post-termination restrictions are enforceable in France provided that they are reasonable and protect clearly identified business interests. Certain other conditions apply, including the payment of consideration for the duration of the restrictive covenant.

Non-European nationals will generally require a visa or work permit delivered by the Labour authorities. Hiring an employee working in France is subject to registration formalities with French authorities and payment of social security contributions in addition to salaries. Such contributions include mandatory pension schemes. It is recommended that employers use payroll companies when they start up in France.

Commercial Contracts

France has a civil law system. Civil code provides for main principles including obligations depending on the type

of agreement and various rights of recourse which apply unless otherwise agreed between the parties, subject to certain mandatory provisions as a matter of public policy (e.g., maximum payment terms, minimal written notice of termination of business relations). The contract law reform of 2016 introduced certain new rights and obligations such as the right to seek contract renegotiation in case of unforeseeable and excessive hardship.

EU legislation applies in France and regulates consumer protection, sales agents, distance selling, government procurement, direct marketing and the privacy of personal data.

French law restricts certain consumer contract terms, including limits on liability and restricts the use of foreign language.

French consumers and commercial contracts should refrain from carrying on any commercial practices that could be considered abusive or disloyal to consumers within the meaning of EU Directive 2005/29/EC implemented into French legislation. Disloyal commercial practices also include misleading and aggressive commercial practices with a list of 22 misleading practices and 8 aggressive practices that are considered to be abusive under all circumstances. French and EU competition law prohibits anti-competitive behaviour (e.g., price fixing) where there is an appreciable effect on trade in France and/or between EU Member States.

Overseas companies should be aware of any industry-specific laws that apply to their businesses, e.g., WEEE Regulations (electrical goods), REACH Regulations (chemical products) and the Financial Services related directives (financial products). Often, these laws are based on EU legislation and are relatively consistent across the EU. However, certain fields of regulations entail specificities to France (retail distribution, industrial sub-contracting, construction, electronic auctions, online gaming and medical device oversight).

Setting up a business in France

Real Estate

Most companies setting up businesses in France will rent serviced offices or lease their premises rather than buy them. Serviced offices are more flexible, but sometimes more expensive. They are ready to go and can be rented for very short periods. There is no capital outlay.

Lease agreements for office-use fall under the French status of commercial lease (“*baux commerciaux*”); they have a minimum term of 9 years, often with break clauses after 3/6 years and an annual rent review is usually stipulated between the landlord and the tenant. Commercial leases are governed by the French commercial code and the main purpose of this legislation is to grant the commercial tenant the right to renew its lease in order to ensure the continuation of its business and the retention of its customers by staying in the same premises (security of tenure). As many stipulations of French commercial leases can easily go against public order in France, the tenant and the landlord also have to ensure that they are not breaking the law.

Leased premises usually require fitting-out by the tenant at its own cost although typically the landlord will contribute by allowing a rent-free period. The tenant will usually be responsible for reinstating the premises at the end of the lease.

The landlord will usually require collateral security, including a cash deposit of 3 months’ rent and/or a bank or parent company guarantee.

Data Protection/Privacy

Organisations processing personal data (which includes employee data, customer data, and business contact information) must comply with the General Data Protection Regulation (GDPR), which is applicable since May 25, 2018, and with the French Data Protection Act of January 6, 1978, as modified in June 2018.

Organisations must therefore ensure their use of personal data complies with these regulations applicable to personal data, imposing notably:

- to respect the principles relating to processing of personal data (lawfulness, fairness, transparency, purpose limitation, data minimization, storage limitation, etc.).
- obligations of information of data subjects (concise, transparent, intelligible, easily accessible, etc.).
- obligations to implement security measures (for example, pseudonymisation or encryption measures, ability to insure confidentiality, availability, integrity etc.).
- to respect rights of data subjects (for example, the right of access, the right to rectification, to erasure, to data portability etc.).
- to keep a record of their processing activities (describing the name and contact details of the controller, the purposes of the processing, the categories of data subjects, of personal data, etc.).
- where required, to carry out a Data Privacy Impact Assessment (DPIA) and, where required, consult the supervisory authority prior to processing.
- to document security incident/data breaches and, where required, to perform mandatory formalities (notification to the French supervisory authority/communication to the data subject).
- where required, to designate a Data Protection Officer (DPO).
- to ensure compliance of supplier/client/provider agreement, involving the processing of personal data, and the implementation of data protection procedures (privacy policy, cookie policy, data security management policy, etc.).
- when transfers of personal data are made to third countries or international organisations, to implement appropriate safeguards depending on the recipient country.
- to respect specific authorisations from the French Supervisory Authority (the “CNIL”), such as biometric data processing or health data for research.”

Intellectual Property

Intellectual Property rights occur from the stage of setting-up a French company, even before, to the effective implementation and development of its activity in France.

In that respect, in order to set up a business in France, a company has to deal with all legal formalities in order to protect its IP rights in France and would have to be able to determine a protective strategy for its corporate name, trademarks, domains names and eventual other IP rights.

Several key steps have to be kept in mind:

- Clearance trademark searches, in order to determine whether your sign used to develop your business has already been registered as a trademark or a corporate name for similar goods and services, as well as that it does not infringe the rights of third parties.
- Corporate and trade names have only a limited protection in France. Therefore, it is highly recommended to register any trade and corporate names as trademarks in force in France if the sign is used to designate your goods and services.
- Trademarks and/or Designs registration formalities before the administrative authorities, either in a French or Europe wide basis.
- Unregistered EU design rights can have a protection in France on a limited period; But Unregistered trademarks are not afforded any specific protection under French law.
- Litigation before the judicial and administrative Courts (INPI, EUIPO).
- Audit of IP portfolio.
- Management of IP portfolios

National French patents can also be obtained through domestic patent registration. Patents can be applied for through a European single process although the patents granted are national and are not centrally enforceable.

Copyrights does not require any registration if the conditions for protection are met.

IP rights have also to be thinking in the day-to-day activity of company.

Regarding employees, who are entitled to claim additional remuneration for patentable inventions devised within the course of their functions. As their artistic works are in principle their property,

express assignment of copyright to the employer is required. Such an express assignment is not necessary for copyright applicable to software created by employees.

Regarding relationship with trade partner, company have to dedicate particular care to the drafting and negotiating of any agreement in relation with IP rights and intangible assets arising at the incorporation phase and afterwards.

Finally, it is worth mentioning that France is a party to numerous international conventions in relation to IP including TRIPS, PCT, Berne Convention, Paris Convention and the Madrid Agreement.

Business Model Design

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?
- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer these questions and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

If you would like further information on setting up business in France, please e-mail our Set up Desk at new.company@twobirds.com and we will contact you within 24 hours.

This summary gives general information only as of June 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



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