
**HOW TO SUCCEED
IN SETTING UP YOUR BUSINESS
IN PARIS**

**REUSSIR
Votre Implantation
A PARIS**

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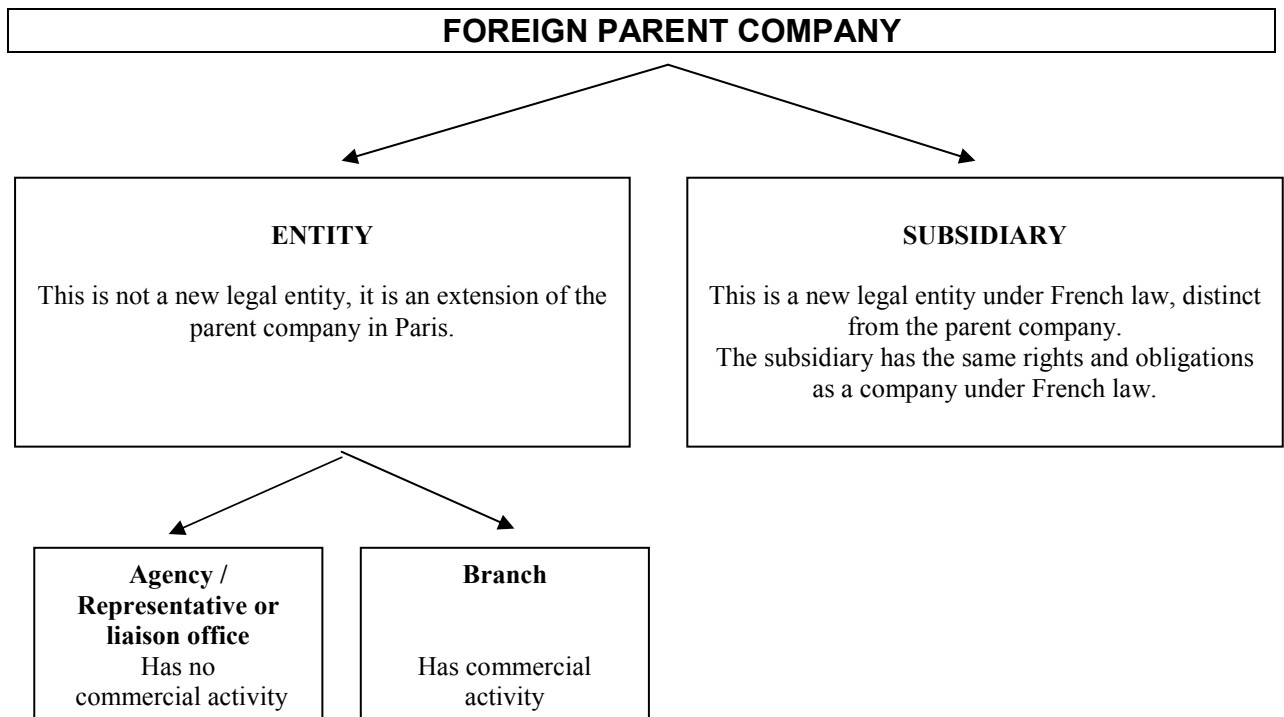
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1 – LEGAL FORMS OF BUSINESS

A foreign company seeking to set up operations in Paris can create either an entity (agency or branch) or a subsidiary. The foreign company must be established as a **company**, a foreign sole trader may not set up an entity or subsidiary.



A foreign investor may set up operations as a sole trader or as a company under French law (without any ties to the parent company abroad).

Before setting up any operations in France, it might be a good idea to "sound out" the market with the assistance of:

- **a commercial agent**
- **a sole representative of the foreign company** appointed by the parent company to represent it in Paris and in France. (See general annexes.)

1.1 – Setting up an entity

1.1.1. AGENCY OR LIAISON OFFICE

An agency is not a new legal entity; it is an extension of the foreign parent company in France. It is a light structure, easy to set up and inexpensive. The agency is a first step in sounding out the French market and making contacts. If business relations prove positive, it may be converted into a branch office or a subsidiary.

Activities

The agency can be used to represent the parent company's business. The agency basically serves to build up business relations with French and foreign partners (suppliers and customers), arrange advertising in various media to present products and services, take part in trade fairs and even open a showroom.

The agency cannot carry out any commercial deeds. Only the parent company can issue invoices and sign commercial contracts.

Accounting and tax procedures

No accounts are kept in France for an agency. However, it is recommended that all expenditure receipts be retained in case of a tax review, or to reclaim VAT, through a tax agent or by directly contacting the tax centre for non-residents. (*see tax representation*)

An agency may be subject to partial taxation: *taxe sur les salaires* [payroll tax] (in addition to social security contributions) is payable, if employees are hired.

Payment of the *taxe professionnelle* [business tax] is not due.

Legal representative

The legal representative may be paid (wage-earning person or non-wage-earning person), or not.

The legal representative is often both a resident and wage-earner in the following instances: French, dual nationality, foreigner with a 10-year resident permit, or EC national. The employment contract is drawn up in France, under the legislation in force, and signed by both parties, i.e., the legal representative and the foreign parent company. Recruitment and social security insurance, notably from the *URSSAF* [social security and family allowance collection agency], are strictly subject to French wage-earner regulations

In other cases, the legal representative is not a resident, may be paid or not, and must negotiate his or her French visa (Schengen Agreement, multiple entry, etc.) when not an EC national.

NB: *several legal representatives may be appointed*

Job creation

It is possible to create jobs: for French or equivalent, EC nationals, etc., and non-EC nationals (see chapter 2).

The obligations are as follows: a *Déclaration unique d'embauche-DUE* [individual recruitment declaration] filled in by the employer and sent to *URSSAF* (*Social security and family allowance contribution collection agency*), an employment contract drawn up in France and signed by both parties, i.e., the legal representative and the employee, monthly pay slips issued in France.

The agency may have access to certain job schemes offered by the French government, mainly *contrats de qualification* [qualification contracts] or *contrats en alternance* [work experience combined with study] for young people as part of their diploma or degree.

NB: *the employment contract and hiring procedure can be placed in the hands of a labour law legal expert or a chartered accountant.*

Registration of the Agency/Liaison Office

For the registration of a liaison office you have to contact

1) The CFE (Centre de Formalités des Entreprises-CFE) of the competent Chamber of Commerce and Industry if you wish to set up a **liaison office registered at the Commercial Court**. After the registration through the CFE at the Commercial Court, you will obtain an **Extrait K bis**: Certificate of incorporation with the *Registre du commerce et des sociétés-RCS* (Company registrar) given by the *Tribunal de Commerce de Paris* (Paris Commercial Court).

Because you don't have any commercial activities, you need not an extrait K bis. Anyway, in a lot of cases, you may need it

- to open a bank account (in a French bank or in a French Post office)
- to pick up recorded letters at the post office
- to open a new phone line or to buy a mobile

The documents you have to provide for the registration of a liaison office registered at the Commercial Court are the same as those required for the registration of a branch (see chapter : registration).

2) The URSSAF (administrative body responsible for collecting social security payments) if you wish to set up a liaison office with one or several employees.

You can contact the following reception Centres in Paris :

URSSAF Paris NORD

10, rue du Faubourg Montmartre.

10, rue du Faubourg Montmartre

75009 Paris

Tel.: +33 (0)1 53 34 75 75 or 08 2001 10 10

(Responsible for arrondissements: 8, 9, 10, 16, 17, 18, 19 and 20)

Opening hours : from 8.30 a.m to 4.30 p.m.

URSSAF Paris SUD

Immeuble le Palatino

17, avenue de Choisy

75013 Paris

Tel.: +33 (0)1 40 77 45 45

(Responsible for arrondissements: 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, and 15)

These centres will give you the necessary documents (forms) to fill out for the registration of a liaison office hiring one or several employees.

URSSAF head office (Paris/Ile-de-France)

3, rue Franklin

B.P.659

93104 MONTREUIL PRINCIPAL CEDEX

Tel.: +33 (0)1 49 20 10 10

Phone reception from 8 a.m to 5.30 p.m

3) THE CDI (Centres d'Impôts- TAX OFFICES) of the arrondissement where your liaison office will be located, if you wish to open a **liaison office without any registration at the Commercial Court and without any employees.**

NB: -Controlled activity does not apply to agencies/Liaison offices who have no commercial activity.

- The agency does not have a trading name. It is simply an office of the foreign parent company.

Opening a non-resident bank account or foreign account in the name of the parent company

The account is opened by a French or foreign bank. *It is easier to negotiate with the branches or correspondents of the foreign parent company's bank.* The legal representative will require an authorization in order to make payments for the agency, including wages and social security contributions.

The account, always opened in the name of the foreign parent company, may be credited by the parent company's customers in France, invoiced by the latter from the country of origin, thereby helping strengthen commercial relations, credibility and trust between the various parties.

Possibility of leasing premises

Leasing premises implies the notion of domiciliation of the agency. In practice, agencies are often domiciled in a business centre or in an office with a short-term lease (less than 24 months).

It is always possible to register using the legal representative's domicile if he or she resides in Paris.

1.1.2. BRANCH

The branch is considered a stable entity. It carries out all or part of the activities of the parent company without having its own specific legal identity. Its management has a degree of freedom in its actions, but is legally tied to the parent company.

An agency may be upgraded into a branch.

Activities

The branch's legal structure enables it to manufacture, design and sell in France and abroad. Commercial deeds, i.e., orders, invoices, delivery, export and customs clearance, are authorised. Commercial contracts are negotiated and signed by the legal representative.

Certain activities are controlled, such as the medical and paramedical, finance, security, consultancy (brokerage), transport, etc. professions (see list annexed): authorisation to practice, approval and/or security may be requested prior to registering a branch in these cases.

Accounting and tax procedures

Running a business and making sales implies that accounts must be kept in France in compliance with the accounting rules in force. A balance sheet and profit and loss account must be presented annually to the French tax authorities. Two other annual balance sheets must be submitted, i.e., that of the parent company, and the consolidated balance sheet, to the tax authorities in the country of origin.

The branch is thus subject in France to company corporate tax [*IS – impôt sur les sociétés*], VAT, and other taxes including the *Taxe professionnelle* (see chapter 5).

NB: It may not take advantage of the micro-company tax scale. It will be taxed under the standard scales [réel normal or réel simplifié]

Fiscal agreements signed between France and many foreign countries allow to avoid generally double taxation in France and in the country where is located the parent company.

Legal representative

The legal representative may be paid (wage-earning person or non-wage-earning person), or not.

He or she is generally a resident and wage earner in France, in the same way as the agency representative. His/her employment contract is subject to French legislation and is signed by both parties, i.e., the parent company and the legal representative.

If the legal representative is a non-EC national or not citizen from OECD member countries, he or she must hold an 'autorisation préalable d'exercer' [prior authorization to do business] whether he or she is resident or not

If the legal representative is a non-resident and non-EC national, he or she must nominate a **tax agency** (représentant fiscal) when registering the branch. The chartered accountant chosen by the company may file a request with the tax authorities to act as his client's tax agency.

Job creation

When creating jobs, the recruitment process must comply with the regulations in force: employment contract signed by the legal representative and the future employee, *DUE* for *URSSAF*, monthly pay slips, etc.

The branch may claim types of state employment assistance.

For non-EC nationals, 2 procedures are applicable :

- procedure for the entry of foreign workers in France;
- secondment of foreign employees to the French structure: social security insurance and income tax paid in the country of origin.

Registration of the branch

Branches must be registered with the RCS - *Registre du Commerce et des Sociétés* [French company register]. The procedure should be carried out directly by the legal representative or attorney at the CFE - *Centre de Formalités des Entreprises* [Centre for Corporate Procedures]

For the registration of a branch, you have to provide :

- ❖ fill out the formular MO (given by the CFE)
- ❖ 2 copies of the parent company's Articles of Association/Incorporation, certified true and exact by the legal representative in France (original signature on both copies) and identity of the manager of the parent company (copy of the passport).
- ❖ 2 translations of the parent company's Articles of Association/Incorporation in French certified true and exact by the legal representative in France.
- ❖ Parent company's incorporation number (certificate of incorporation) : original of less than 3 months, translated into French or a copy certified true and exact by the legal representative in France.
- ❖ Proof of domiciliation: lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
- ❖ present a Pouvoir (power) (document given by the CFE) indicating the name of the person entitled to register the branch if the legal representative doesn't register the branch himself.
- ❖ Fill out a declaration de non-condamnation (declaration of non-conviction) given by the CFE

NB: *If the legal representative is not resident in France and a non EC-national, it is desirable to give the details of his tax representative when registering through the CFE.*

Within about 10 working days, the *INSEE* [French institute of statistics and economic research] will issue a *SIRET* number, which enables the branch to recruit employees, and the *Tribunal de Commerce de Paris* [Paris Commercial Court] will issue an *Extrait K bis* [Certificate of incorporation] from the company register. Completion of this procedure enables the branch to begin operations in France.

NB: *The conversion of a branch into a subsidiary must respect certain legal formalities and will affect the entity's tax standing. In addition to closing the accounts and clearing all debt, the branch can be sold (this change is tantamount to the sale of goodwill and is subject to incorporation duties, capital gains tax, and duties on the liquidating dividend) or can be contributed to the subsidiary (this change is tantamount to a contribution in kind and is subject to a set incorporation fee and to capital gains tax).*

Opening a bank account in the branch's name

The account is opened in the branch's name in a French or foreign bank. It is easier to negotiate with the branches or correspondents of the foreign parent company's bank.

As soon as the branch is created, the parent company needs to "feed" its branch's account, so it can meet initial costs, notably set-up costs and payroll costs. This capital can be entered as a liability in the branch's balance sheet in an account called the "*compte de liaison*" ["Bridging account] as no capital is required to establish a branch in France.

Possibility of leasing premises

Premises are required to domicile the branch. You can either take a short-term lease (less than 24 months) or a standard lease (so-called 3-, 6-, or 9-year lease), or take offices in a business centre or similar

The elected domicile may also be at the legal representative's address providing he or she is resident in Paris (which also implies that he or she is a resident for taxation purposes in France; for non-EC nationals or non-nationals of OECD member countries, the legal representative must have obtained an '*Autorisation préalable d'exercer*' (a prior authorization to do business) together with a long term visa). The legal representative has to apply for this authorization to the French Consulate in his country of origin. Citizens of OECD member countries (see : [http:// populationdata.net](http://populationdata.net)) do not need '*the autorisation préalable d'exercer*', but have to apply for a long term visa if they wish to live in France and run a company.

Trading name

The branch generally uses the parent company's name with the word "France" added at the end. However, a search must be made through the *INPI - Institut National de la Propriété Industrielle* [French institute of copyright] to ensure that the name has not already been registered in the branch's category of business . If the name has already been registered, a different trading name will have to be selected and submitted for approval.

1.2. SUBSIDIARY

The subsidiary is a **new legal entity: it is a company under French law** whose parent company brings at least 50 % of the capital, whatever the nationality of the other partners. The aim is to pool production means or services with a view to making a profit (profit-making concern).

The subsidiary is generally a *Société Anonyme (SA)* [public limited company], or a *Société A Responsabilité Limitée (SARL)* [private limited company], or even an *Entreprise Unipersonnelle à Responsabilité Limitée (EURL)* [private limited company under sole ownership].

- **The *Société Anonyme (SA)*** is based on the notion of capital and not on the status of the associates. An SA must have at least 7 shareholders and a minimum share capital of 37 000 Euros minimum (50% of the capital must be immediately paid up and the rest within 5 years); under certain conditions, an SA may make a public call for investment and be listed on the stock market.
- **The *Société par Actions Simplifiée (SAS)*** [simplified company with share capital]: a July 1999 reform has opened the capital (37 000 Euros minimum, no public call for investment), to SME and natural persons. Un SAS must have a minimum share capital of 37 000 Euros (50% of the capital must be immediately paid up and the rest within 5 years) This change is of particular interest for innovative start-ups. The characteristics of the SAS are : A great flexibility of running and the possibility for the partners to lay out in the Articles of Association/Incorporation the conditions of their entry and exit of the company.
- One variation of the SAS is the creation of a ***Société par Actions Simplifiée Unipersonnelle - SASU*** [sole trader limited liability with share capital] in which a foreign or French group may be the sole associate. The advantages are: freedom of organisation and administration, and control over the distribution of internal powers. For a foreign group, this type of company is the “perfect” subsidiary with 100% ownership by the parent company. However, the Articles of Association/Incorporation need to be written carefully and rigorously because of the freedom with which they can be applied.
- **The *Société A Responsabilité Limitée (SARL)*** is a company in which the liability is limited to the contribution and is linked to the managers’ mandate. The SARL has from 2 to maximum 100 partners. The nominal capital is freely fixed by the partners ; its amount must be mentioned in the articles of association.
- **The *Entreprise Unipersonnelle à Responsabilité Limitée (EURL)*** is a company whose liability is limited to the contribution and is linked to the managers’ mandate. The EURL has only one partner, a natural person or legal entity, (e.g., the foreign parent company). It is considered as a SARL with a single partner. The nominal capital is freely fixed by the partner ; its amount must be mentioned in the articles of association.

Other legal forms exist in France for commercial companies, such as the *Société en Commandite Simple-SCS* [limited partnership], the *Société en Commandite par Actions - SCA* [limited partnership with share capital], or the *Société en Nom Collectif - SNC* [general partnership].

Certain activities are controlled, such as the medical and paramedical, finance, security, consultancy (brokerage), transport, tourism, etc. professions.

Activities

The subsidiary’s legal structure enables it to manufacture, design, and sell in France and abroad. Commercial deeds and contracts are authorised and are made by the legal representative as in all companies under French law.

Accounting and tax procedures

Operating a business and making sales implies accounts must be kept in France in compliance with French law, and the presentation of a balance sheet and profit and loss account. It is mandatory to use a firm of chartered accountants for all subsidiaries and also an auditor for SAs.

The subsidiary is thus subject to company income tax [*Impôt sur les sociétés-IS*], VAT, and other taxes including the *Taxe professionnelle*

Legal representative

In *SARLs* and *EURLs*, **the manager** (gérant) is appointed under the Articles of Association/Incorporation or by an ordinary meeting. Co-management is possible and these managers may be partners or not (third-party managers).

In the legal forms of *SA*, *SAS*, and *SASU*, **the CEO** (président directeur général) **is nominated by the board of directors** (the positions of Chairman and General Manager can also be occupied by two separate people).

If the legal representative is a non EC national or non-national of OECD member countries, either resident or non-resident, *an Autorisation préalable d'exercer* (prior authorization to do business) is mandatory with or without a visa respectively

Job creation

The subsidiary can benefit from all employment assistance offered by the government.

The obligations are the following: a *DUE* (déclaration unique d'embauche) filled out by the employer and addressed to the *URSSAF*, an employment contract drawn up in France and signed by both parties, i.e., the legal representative and the employee, monthly pay slips issued in France.

Incorporation of the subsidiary

Articles of Association/Incorporation must be written for a subsidiary to be incorporated.

It is recommended that you use the services of a company lawyer or firm of auditors.

By way of indication, registration fees are about 1 600 Euros to 2 300 Euros (including set registration fees). The VAT can be claimed back and the incorporation costs are entered as set-up costs in the balance sheet assets. All prior expenses directly incurred in setting up the subsidiary can be entered in the financial statements for the first financial year, providing invoices have been made out to "the company xxx being established".

Within about 10 working days, the *INSEE* will issue a *SIREN* number (which enables the branch to recruit employees), and the *Tribunal de Commerce de Paris* will issue an *extrait K bis* from the *Registre du Commerce et des Sociétés* which enables the branch to begin operations in France and abroad.

A search must be made through the *Institut National de la Propriété Industrielle - INPI* [French institute of copyright] to ensure that the name has not already been registered

Opening a resident's bank account

An account must be opened with a French or foreign bank prior to incorporation if a capital contribution is demanded under the Articles of Association/Incorporation, depending on the company's legal form. Because your parent company is appreciated abroad, your subsidiary won't be considered as a start up in France, so it is easier to negotiate with the branches or correspondents of the parent company's bank.

Nevertheless, French banks do open bank accounts when the file is well-argued: presentation of the provisional articles of incorporation of the subsidiary and of a business plan, presentation of the parent company and its results.

For registration with the *Centre de Formalités des Entreprises - CFE* [Corporate Formality Centre], two certificates from the bank where the funds are deposited will be required. The quality of the relations with the banker and the solidity of the company will be useful in negotiating overdraft facilities at a later stage.

The funds are blocked in the bank until the incorporation is complete and then released for use by the company. They constitute share capital entered as a liability in the balance sheet, and may be used to invest in production means or services.

Possibility of leasing premises

The company's domicile must be mentioned in the Articles of Association/Incorporation. It is preferable to take a medium-term view of the company's growth so as to avoid having to change location too often, as this also results in additional expenses (additional clauses to the Articles of Association/Incorporation, new publication in a bulletin of legal notices, changes to be notified to the *CFE*, etc.)

The choice of domicile is very broad: commercial lease (short-term, or 3-, 6-, or 9-year lease) for commercial premises, contract with a domiciliation company or business centre, domicile at the legal representative's address, providing he or she is resident in Paris, for a subsidiary seeking to locate in Paris *intra muros*.

2 – COMPANY MANAGEMENT AND RECRUITING FOREIGN EMPLOYEES

2.1 – PRIOR AUTHORIZATION TO DO BUSINESS

In order to manage an entity in France, the **Autorisation Préalable d'exercer** (*prior authorization to do business*) is necessary for : the manager of a limited liability company (SARL, EURL), the CEO (Président Directeur Général) and General Manager of a public limited company (SA,SAS), the legal representative of a branch or of a liaison office registered with the RCS - *Registre du Commerce et des Sociétés* [French company register].

But as long as the decree affecting the application of the new law concerning the 'Autorisation préalable d'exercer' is not published , the procedure applied is still the one of the 'Carte de commerçant étranger' (foreign trader's permit).

The legal representative is French, Swiss, European Area national, nationals of OECD member countries, has dual nationality, or holds a 10-year resident permit

No authorization is required, even for holders of a 10-year resident permit. Presentation of an identity paper or the resident permit is sufficient to register and manage the entity.

Are also exempted of having a foreign trader's permit : Nationals of the Andorra Valley, nationals of the Principality of Monaco, Algerians and refugees having the OFPRA card.

However, if they live in France, they have to present a copy on both sides of their valid identity card, residence permit, their passport or their long term visa (algerians, nationals of OECD member countries)

The new member state nationals who wish to live in France and do business as non-salaried persons, have to be in possession of an EC resident permit ('titre de séjour'). This is applicable during a transition period of at least 2 years

So, if you wish to live in France and run your company, you need this EC resident permit. The document entitled 'EUROPE ENLARGES –How France welcomes the new Member State nationals ?' gives you all necessary information on this point . You can download this document on the following website :

www.social.gouv.fr/htm/dossiers/accueil_ressort_ue/elargissement.pdf

The legal representative is a non-European Area national or non-national of OECD member countries

In this case, he has to apply for an 'AUTORISATION PREALABLE D'EXERCER' (prior authorization to do business). This authorization replaces the former Carte de commerçant étranger (foreign trader's permit)

Issue procedure and principles:

- To apply for an **'AUTORISATION PREALABLE D'EXERCER' (prior authorization to do business)**, the foreigner must approach the French Consulate in his country of origin or residence for an application which must be filled out and returned to the visa department at the Consulate, along with all supporting documents required.
- If the foreign manager wishes to come to France with his family, he also has to apply for a long term visa for each member of his family, either at the same time, or within six months at the latest. If the foreigner has a valid residence permit, he can deposit his file at the 'Service Commerçants étrangers of the Prefecture in France' where the head office of the company is located. *For Paris : Préfecture de Police de Paris / Service des cartes de Commerçants étrangers Bureau 1509 9 boulevard du Palais 75004 PARIS Tél : 01 53 71 53 71*

Once the application has been approved by the various authorities concerned – Consulate Economic Advisor, Ministry of Foreign Affairs, and relevant Prefecture (of the area where the entity is to be set

up) – the Consulate will issue a long-term visa and a certificate entitling the bearer to an *Autorisation préalable d'exercer*.

On arrival in France, the foreign manager has to go to the '*Service des Cartes de Commerçants étrangers*' at the Prefecture of his residence with his passport and proof of residence in order to get a residence permit with the statut 'commerçant' and his '*autorisation préalable d'exercer*'.

- If the legal representative will be non-resident, the application for the *Autorisation préalable d'exercer* has to be made in France.
The documents to be submitted in France are for the moment the same as those requested for the former *Carte de Commerçant* (except of course those for the actual visa). The application is examined by the Préfecture (in the case of Paris, by the *Préfecture de Police*), which solicits the opinion of the French Consulate of country of origin. So, it is necessary to appoint a local power of attorney (preferably lawyer specialised in immigration law or consultant) to monitor the application's progress and liaise with the Prefecture. Any requests for documents or additional information will only be sent by the Prefecture to the power of attorney. The power of attorney can be a private individual providing he or she speaks French and has intimate knowledge of the application and procedure.

Concerning information regarding visas, you can also consult the website of the Ministry of Foreign Affairs : www.diplomatie.gouv.fr/venir/visas

AS LONG AS THE DECREE AFFECTING THE APPLICATION OF THE NEW LAW CONCERNING THE 'AUTORISATION PREALABLE D'EXERCER' IS NOT PUBLISHED, THE PROCEDURE APPLIED IS STILL THE ONE OF THE CARTE DE COMMERÇANT ETRANGER (foreign trader's permit)

SEE BELOW :

CARTE DE COMMERÇANT ETRANGER
[FOREIGN TRADER'S PERMIT]
Decree dated 28 January 1998

List of documents to be submitted when filing in an application for a *Carte d'identité de commerçant étranger (foreign trader's permit)*:

Note : all documents in foreign language must be translated into French (certified translation might be requested in certain cases)

I – Personal documents

1. Application on plain paper to Monsieur le Prefet at the Prefecture where the head office of the company in France is located
2. CERFA questionnaire No 10779*01 completed in 3 exemplaries
3. Extract of police record (extrait de casier judiciaire) or similar document of less than 3 months issued by the authorities of his or her country of citizenship,
4. A solemn declaration stating that the applicant has not been convicted in any of the countries in which he or she has resided over the past 20 years;
5. Copy of the applicant's valid passport and Curriculum Vitae

In case of change (persons holding a residence permit with the mention 'étudiant'(student), 'non actif' (non working) 'salarié (employee) or 'visiteur' (visitor) :

Valid residence permit (6 months minimum) and perhaps the working permit + tax notice if the applicant is liable to income tax in France

II – Documents to be submitted for an application to operate a commercial business as a sole trader: *entreprise individuelle*

A – New commercial entity

1. Copy of an agreed commercial lease stating the type of business, or sub-lease contract stating the type of business, authorisation by the owner of the premises (if applicable), and any other documents relating to the premises to be occupied for the commercial activity.
2. Copy of the domiciliation contract (if applicable)
3. Provisional budget which lasts several years except for countries which benefit from conventions

B – When acquiring an existing business (goodwill)

1. Copy of the agreement to sell the existing business.
2. Provisional budget which lasts several years except for countries which benefit from conventions

C – In the case of a management agreement

1. Copy of the management agreement guarantee or contract.
2. Copy of the company registration in the *Registre du commerce et des sociétés* or the previous manager's registration with the *répertoire des métiers*.
3. Copy of the lease made out in the name of the owner of the business (if applicable).
4. Provisional budget which lasts several years except for countries which benefit from conventions

III – List of documents to be submitted for an application to run a company under French law (SARL, EURL, SA, SAS):

A – New commercial entity

1. Proof of appointment
2. Documents concerning the premises to be used for the business (lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
3. Draft of the company Articles of Association/Incorporation.
4. Provisional budget over a period of 3 years

B – When taking up a position in an existing company

1. Proof of appointment
2. Copy of the 'Extrait K bis' -company's registration with the *Registre du commerce et des sociétés* - dated less than three months.
3. Copy of the company Articles of Association/Incorporation.
4. Breakdown of the share capital (if applicable).
5. Written proof of URSSAF (administrative body responsible for collecting social security payments)
6. Last balance sheet
7. Written proof of the payment of corporate income tax (IS), business tax (taxe professionnelle) and VAT (TVA)

IV. List of documents to be submitted for an application to run a subsidiary (company under French law (SARL, EURL, SA, SAS) whose parent company brings at least 50 % of the capital, whatever the nationality of the other partners :

A – New commercial entity

1. Proof of appointment or letter of intention issued by the legal entity established under foreign law.
2. Documents concerning the premises to be used for the business (lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
3. Draft of the company Articles of Association/Incorporation.
4. Breakdown of share capital

B – When taking up a position in an existing company

1. Proof of appointment or letter of intention issued by the legal entity established under foreign law.
2. Copy of the 'Extrait K bis' -company's registration with the *Registre du commerce et des sociétés* - dated less than three months.
3. Copy of the company Articles of Association/Incorporation.
4. Breakdown of the share capital (if applicable).
5. Written proof of URSSAF (administrative body responsible for collecting social security payments)
6. Last balance sheet
7. Written proof of the payment of corporate income tax (IS), business tax (taxe professionnelle) and VAT (TVA)

C- In the event of appointment by a parent company established under foreign law to take up a managerial position in an subsidiary existing or to be created):

Please add to the documents requested in A & B :

1. Copy of the Articles of Association/Incorporation of the legal entity established under foreign law
2. Certificate of incorporation of the parent company
3. Copy of the balance sheet of the last two closed fiscal years or certificate of a bank located in the country where is located the parent company proving the existence of a bank account opened in the name of the parent company

V – List of documents to be submitted for an application to occupy a management position in a foreign legal entity: *branch*

A – New commercial entity:

1. Deed or draft drawn up by the legal entity established under foreign law stipulating the exact activity of the legal entity established under foreign law and the future activity of the branch.
2. Proof of appointment or letter of intention issued by the legal entity established under foreign law.
3. Copy of the Articles of Association/Incorporation of the legal entity established under foreign law.
4. Certificate of incorporation of the parent company
5. Documents concerning the premises to be used for the business (lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
6. Copy of the balance sheet of the last two closed fiscal years or certificate of a bank located in the country of the parent company proving the existence of a bank account opened in the name of the parent company

B – In the case of an existing concern:

1. Proof of appointment or letter of intention issued by the legal entity established under foreign law.
2. Copy of the '*Extrait K bis*'- the company's registration with the *Registre du commerce et des sociétés*- dated less than three months.
3. Documents concerning the premises to be used for the business (lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
4. Written proof of URSSAF (administrative body responsible for collecting social security payments) if the branch has employees.
5. Written proof of the payment of corporate income tax (IS), business tax (taxe professionnelle) and VAT (TVA)
6. Copy of the balance sheet of the last two closed fiscal years or certificate of a bank located in the country of the parent company proving the existence of a bank account opened in the name of the parent company

V – Change to the company's scope of activity, legal form or registered office

1. Minutes stipulating the change being made.
2. Copy of the K-BIS (registration with the *Registre du commerce et des sociétés*) dated less than three months.

**EUROPEANS: CARTE DE SEJOUR COMMUNAUTAIRE [EC RESIDENT PERMIT]
European Economic Area nationals
(Including nationals of the 15 Member countries of the European Union, Iceland, Norway and Liechtenstein) and Swiss nationals**

The Law n° 2003-1119 of November 26, 2003 modifying the article 9-1 of the ordinance dated November 2, 1945 concerning the conditions for the entry and stay of foreigners in France, indicates that the European Economic Area Nationals ((Including nationals of the 15 Member countries of the European Union, Iceland, Norway and Liechtenstein)and the Swiss nationals wishing to take up their regular residence in France, **do not need anymore an EC Resident permit .**

From now on, they can prove their nationality, identity and the legality of their stay in France, towards an employer or in all situation, by producing their valid passport or identity card .

The new member state nationals who wish to live in France and do business as non-salaried persons, have to be in possession of an EC resident permit ('titre de séjour'). This is applicable during a transition period of at least 2 years.

So, if you wish to live in France and run your company, you need this EC resident permit. The document entitled 'EUROPE ENLARGES –How France welcomes the new Member State nationals ?' gives you all necessary information on this point . You can download this document on the following website :

www.social.gouv.fr/htm/dossiers/accueil_ressort_ue/elargissement.pdf

2.2 – RECRUITING AND SECONDMENT OF FOREIGN EMPLOYEES

The main justification for bringing foreign employees into France must be that the foreign employee will provide the company with the benefit of his or her know-how and experience.

Recruitment of foreign salaries in France

Recruiting European Economic Area nationals (including nationals of the 15 Member countries of the European Union, Iceland, Norway and Liechtenstein) and Swiss Nationals

The Law n° 2003-1119 of November 26, 2003 modifying the article 9-1 of the ordinance dated November 2, 1945 concerning the conditions for the entry and stay of foreigners in France, indicates that the European Economic Area Nationals (including nationals of the 15 Member countries of the European Union, Iceland, Norway and Liechtenstein)and the Swiss Nationals wishing to take up their regular residence in France, **do not need anymore an EC Resident permit .**

From now on, they can prove their nationality, identity and the legality of their stay in France, towards an employer or in all situation, by producing their valid passport or identity card .

The new member state nationals are subjected to the French legislation about foreigners work. The formalities to respect are those concerning the recruiting of a non European Economic Area national (see hereunder) and this during a transition period of 5 years. The document entitled 'EUROPE ENLARGES –How France welcomes the new Member State nationals ?' gives you all necessary information on this point . You can download this document on the following website :

www.social.gouv.fr/htm/dossiers/accueil_ressort_ue/elargissement.pdf

For controlled activities and professions, qualification equivalences need to be obtained.

Recruiting non European Economic Area nationals

The French entity is responsible for the procedure to bring the foreign employee into France. An application should be requested from the company's local *Direction Départementale du travail et de l'emploi et de la Formation Professionnelle - DDTEFP* [Departmental Bureau of Labour and Professional Training].

The application should include details concerning:

- The company (address, RCS number, etc.),
- The employee (professional and marital status),
- Copy of the passport and of the curriculum vitae
- Copy of the diplomas with a certified translation
- A letter written by the employer motivating the recruitment
- The printed form 'Contrat de Travail' (which mentions the gross salary, the occupied position, the period of the labor contract)
- A job offer filed with the *ANPE - Agence nationale pour l'Emploi [French state employment agency]*, except for managerial positions with a minimum gross salary of about 3811,23 Euros (25 000 FF). The job offer is filed with the ANPE during 5 weeks, what will delay accordingly the processing of the file.

Once approval has been obtained from the *DDTEFP* and the *Office des Migrations Internationales (OMI)* [Bureau of international immigration], the French Consulate in the employee's country of origin will issue a long-term resident permit. On arrival in France, the employee must apply for a *Carte de Séjour* by mail, include a photocopy of the passport and visa sent to: Préfecture de Police de Paris, Direction de la Police Générale, 7^{ème} bureau, Cellule postale. 9, boulevard du Palais - 75195 Paris RP.

Time required to obtain a *Carte de Séjour*: about three weeks.

At the same time, the company has to contact OMI and ask for an appointment for the medical consultation which is obligatory.

If the employee lives out of Paris, he has to go the Prefecture of his residence and present his passport and proof of residence

If the employee has to leave France for professional or personal reasons within this period, he or she should contact his or her local *Centre des Etrangers* [Bureau of Foreign Nationals] (4 centres for the 20 Paris arrondissements). Temporary resident papers will be issued very promptly.

Entry of an employee's family

The employer must submit an application for the entry of the employee's family to the company or the employee's local *Direction des Affaires Sociales et Sanitaires (DASS)* [Department of Health and Welfare], including marriage certificate, children's birth certificates and a statement stipulating the position and salary of the future employee.

The application is processed by the *OMI* and the French Consulate in the same way as the employee's application. The same procedure is to be followed when applying for the accompanying spouse's *Carte de Séjour*.

Secondment of foreign employees

Secondment of a foreign employee

A foreign company may second an employee to its entity or subsidiary in France for a variable period in compliance with international conventions. In the absence of any corporate agreement, the period of detachment is 2 times 9 months. It is possible to obtain an extension to this period. The seconded employee must be paid by the foreign company and receive a salary commensurate with his or her level of qualifications.

The seconded employee continues to pay into social security funds in the country of origin. He or she is not deemed a resident in France for tax purposes, and so continues to pay income tax in his or her country of origin, unless the period of secondment turns out to be longer.

The host company must file papers with its local *DDTEFP* including all relevant details about the foreign company, its own structure and the future seconded employee. In particular, it must produce a certificate showing that the person is covered by the social security system in his or her home country.

If the seconded employee is unable to produce such a certificate, the French system will apply and the employee will have to be affiliated.

NB: The rest of the procedure for the entry of the seconded employee (and family) follows the same procedure as for a local employee. The same applies for the seconded employee's *Carte de Séjour* (and that of his or her accompanying spouse).

3 – SOCIAL MATTERS

Recruitment

Recruitment procedures:

You can contact various organisations, such as the network of *Agences Nationales Pour l'Emploi* (29 branches in Paris and 24 specialist branches – Executives, Tourism, International, Hotel Industry, etc.), the *Association pour l'Emploi des Cadres* [Executive Employment Agency], recruitment agencies (over 500 agencies in Paris) and temporary employment companies (over 130 companies in Paris which have one or more specialised agencies).

You can also contact the employment services run by universities and the *Grandes Ecoles*.

Education/Training

There are over 15,000 degrees conferred in various branches of education.

The various employment contracts

In France, there are **2 main employment contracts**.

The contrat à durée indéterminée (CDI)

The *CDI* is for a permanent full-time or part-time position. It is the standard employment contract.

When it is in written form (which is not necessarily the case as the pay slip can be considered a written contract), the employment contract must be drawn up in duplicate and dated and signed by both parties after writing the words "*lu et approuvé*" ["read and approved"].

In practice, certain clauses are included in most contracts: identity of the parties, place of work, type of contract, position, title, contract starting date, working hours, salary, applicable Collective Labour Agreement [*Convention Collective*], and length of trial period.

Specific clauses may be added: exclusivity, mobility, non-competition clause, employee profit-sharing (bonus, or commissions).

The contrat à durée déterminée (CDD)

The *CDD* is used for contracts that are limited in time (several months or several days), full-time or part-time. The *CDD* employment contract is strictly controlled by law. It must be in written form and given to the employee within 2 days of being recruited. It is agreed for a specific and temporary task for one of the following reasons:

- Replacement of an employee on leave,
- Temporary upturn in business,
- Seasonal or customary employment,
- Recruitment under cover of an employment plan.

Recruitment procedures

For all recruitments, a *DUE* (déclaration unique d'embauche) must be filled in by the company or entity in France. This declaration must be filed with the social security departments, i.e., the *URSSAF*. This formality may be completed before or after the employment contract is written, or, in conjunction with a pay slip (monthly and mandatory), may even replace the written employment contract (in the case of a *CDI*).

Payroll costs

The minimum hourly wage is 7,61Euros since July 1st 2004

The gross minimum monthly wage [*SMIC*] is equal to **1 154,20 Euros per month for 151,67 hours (35 hours per week)**.

This is the minimum applicable in all branches of professional activity and to all employees aged over 18.

Exceptions:

Young people on "contrats d'alternance" (work experience/study combined): Minimum wage = percentage of the *SMIC*

Young employees without experience:

20% reduction if under 17

10% reduction if aged 17 to 18

Handicapped employees, if professional output is decreased

Social security contributions for each of the different social systems

The employer is responsible for the payment to benefit departments of the entire contribution (employee and employer components)

Warning: the legal representatives of agencies and branches who receive a salary in France are responsible for paying all contributions due in France themselves. In this case, a wage needs to be negotiated with the parent company on the basis of a net salary + 20-22% for the employee contribution + 40% or more for the employer contribution, that the legal representatives will have to pay to the various benefit departments.

The 3 different systems

1 – Wage earners: The employee component is **20-22%**, and the employer component is **40% or more**. This system applies to employees, to legal representatives of agencies and branches, and sole representatives of foreign firms with no true corporate mandate.

2 – Assimilated wage earners: This is the same as the wage-earner system *less* payment for unemployment benefits (ASSEDIC, which is about 7%) to which company managers with a corporate mandate are not entitled.

This system applies to minority or co-managers of SARLs, and non-partner managers and CEOs of SAs.

NB: In the case of co-management, this system applies if the cumulative shares of the managers does not exceed 50% of share capital.

3 – Non-wage earners (sole traders): This system is for sole traders, majority managers or majority co-managers (for SARLs) and managers of partnerships. Non-wage earners (sole traders) have to pay social contributions to three institutions for their social protection.

CANAM (Caisse Nationale d'Assurance Maladie des Professions indépendantes : www.canam.fr (sickness-maternity)

URSSAF www.urssaf.fr (family allowance) and ORGANIC www.organic.fr (retirement)

How to reduce social security contributions

You can benefit from certain recruitment subsidies under certain precise conditions (see annexed table): they can mean either a total or partial reduction of the employer component or even financial assistance.

There are three types of measures:

General subsidies for job creation,

Subsidies for recruiting job seekers,

Subsidies for recruiting young people, with *contrats d'apprentissage* and *contrats de qualification*

Advantages for expatriate employees:

Special tax conditions apply to employees who come to work temporarily (less than 6 months) in France, or who work a lot abroad:

- Income tax exemption for many allowances paid in relation to their expatriation in France,
- A simplified tax scheme for the additional accommodation allowance and reimbursement of excess tax and social security contributions allocated to expatriate employees,
- Tax exemption on allowances for travel abroad if the cumulative absence is less than 3 months in the year.

Working times

The legal workweek is set at 35 hours for all companies.

In addition, the law specifies an annual work hour total that is equivalent to an average of 35 hours, based on the number of weeks worked. Theoretically, the total should not exceed 1,600 hours. This annual figure applies when work hours are calculated on a yearly basis.

For more information on the law on negotiated workweek reduction in France, you can consult the following website : www.35h.travail.gouv.fr/english/index.htm

Employee representatives

Employee delegate for companies with more than 10 employees (may also be a union representative for companies of less than 50 employees): negotiation with the company manager for all individual or collective claims regarding wages, and the application of laws and Collective Agreements (monthly meetings with the company manager).

Union delegate(s) for companies with more than 50 employees: represent the union branch(es) in negotiations with the company manager and defend union members and all employees.

Works committee [*Comité d'entreprise-CE*] for companies with over 50 employees: organised structure to represent the employees; a joint legal entity which meets monthly, it includes the employer or his or her representative (Committee chairman), elected employee members and union representatives. Its role is to manage the company's labour and social activities, it is consulted on employment management and kept informed of the general state of the business. In an *SA à directoire* [with a Board of Directors], 2 Committee members sit on the Supervisory Board.

CHSCT: Comité à l'Hygiène, la Sécurité et les Conditions de Travail monitors safety and working conditions, issues opinions, and makes proposals.

Unions (recognised since 1884) are grouped into large national confederations and company unions: they defend employees' rights in companies through the union branches represented by union representatives. They have a right of expression (notice board, meetings, etc.), and defend employees through their representatives.

SOLE REPRESENTATIVE OF A FOREIGN FIRM

The sole representative of a foreign firm is generally French, EC-National, holds dual nationality, or a 10-year resident permit.

He/she may be a non-EC national and will have to apply to the French Consulate in his country of origin for a resident permit with a permit to work in a salaried position.

Registration procedure

He/she must apply to the *URSSAF* for registration in France as the sole representative in France of a foreign parent company. He will have to provide the following:

- Bilingual employment contract, in French (in compliance with French legislation), translated into the language of the parent company's country, and signed by both parties;
- His/her letter of appointment from the parent company.

As the representative of a foreign firm, he/she must fill out an "M0" application and a *DUE (déclaration unique d'embauche)*, provided by the *URSSAF*. The *DUE* has to be filled out 8 or 2 days prior the date of recruitment. The *URSSAF* must allocate a *SIRET* number, that is the *registration* number in the national registry of companies issued by *INSEE* and which is required before this person can be recruited.

The article of the law N° 2003-1199 dated December 18, 2003 concerning the financing of the French Social Security System stipulates that the foreign employer (the parent company abroad) who has no company but employees in France, has to pay the social contributions in France to a single collecting organism. This organism will be the *URSSAF* in Strasbourg. But the parent company can nominate a representative in France who will be personally responsible for the payment of these contributions. This representative can be the employee, a chartered accountant or a service company for employee administration and payroll processing.

For Paris, you can contact the *URSSAF* reception centres :

URSSAF Paris NORD

10, rue du Faubourg Montmartre.

10, rue du Faubourg Montmartre
75009 Paris

Tel.: +33 (0)1 53 34 75 75 or 08 2001 10 10

(Responsible for arrondissements: 8, 9, 10, 16, 17, 18, 19 and 20)

Opening hours : from 8.30 a.m to 4.30 p.m.

URSSAF Paris SUD

Immeuble le Palatino
17, avenue de Choisy
75013 Paris

Tel.: +33 (0)1 40 77 45 45

(Responsible for arrondissements: 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, and 15)

URSSAF head office (Paris/Ile-de-France)

3, rue Franklin
B.P.659
93104 MONTREUIL PRINCIPAL CEDEX
Tel.: +33 (0)1 49 20 10 10
Phone reception from 8 a.m to 5.30 p.m

Or consult their website : <http://www.urssaf.fr> at the heading 'Points de réglementation' (Représentant en France d'une firme étrangère)

COMMERCIAL AGENCY

The commercial agent is self-employed and paid a commission by the foreign parent company (agent's contract establishing relations between potential customers and the parent company). He/she is a representative with permanent and independent responsibility for negotiating and, if applicable, signing sales, purchase, lease or service contracts in the name and on behalf of other companies.

The formalities required for creating a commercial agency are carried out through the relevant *Centre de Formalité des Entreprises (CFE)*, that is:

- *Greffe du Tribunal de Commerce* [Office of the Clerk of the Commercial Court] if the agent is a sole trader (*incorporation* in the *Registre spécial des agents commerciaux* – RCAC, 1 Quai de Corse, 75004 Paris. Tel.: +33 (0)1 44 41 54 54).
- The *Chambre de Commerce et d'Industrie*, if he/she has created a company. However, once he/she has obtained an RCS number, the company manager must apply to the *Greffe du Tribunal de Commerce* to have the company registered in the *Registre spécial des agents commerciaux*.

There are two professional federations that represent commercial agents:

La Fédération Nationale des Agents Commerciaux (FNAC)

[French federation of commercial agents]

30, avenue de l'Opéra

75001 Paris

Tel.: +33 (0)1 44 94 05 05– Fax: +33 (0)1 44 94 05 10

Web site : www.comagent.com

e-mail : fnac@comagent.com

If you seek a commercial agent you can make an advertisement through Internet by sending an e-mail to this federation e-mail : fnac@comagent.com (for the attention to Miss Sahraoui).

Le Conseil National des Forces de Vente (CNFV)

[French council of salespeople]

2, rue d'Hauteville

75480 Paris Cedex 10

Tel.: +33 (0)1 48 24 97 59 – Fax: +33 (0)1 45 23 19 48 web site : www.csn.fr

The non-member service can direct your inquiry (same telephone number). The CNFV publishes a monthly magazine *La Tribune Libre* [Free Tribune] in which you can place an advertisement.

4 – COMPANY TAX

4.1 –CORPORATE INCOME TAX

4.1.1 – DIRECT TAXATION

Corporate income tax (Impôt sur les sociétés-IS)

The corporate income tax represents 33,33% on a company's annual profits. The tax rate is reduced to 15% (for french entities) on company's profit not exceeding 38 120 Euros; **conditions required: annual sales lower than 7 630 000 Euros and share capital owned by natural persons up to 75%. In order to benefit of this tax measure the company commits itself not to distribute the profits made.**

Corporate income tax is levied on branches, *Sociétés à Responsabilité Limitée*, *Entreprises Unipersonnelles à Responsabilité Limitée*, *Sociétés Anonymes*, *Sociétés par Actions Simplifiées* and, if the option is taken, on companies which pay income tax [*Impôt sur le Revenu (IR)*] such as partnerships, *EURLs* whose sole partner is a natural person, and family companies.

Corporate income tax is paid in four instalments on set dates (20 February, 20 May, 20 August and 20 November). The tax authorities grant a penalty-free extension to the 15th of the following month.

For companies being set up, the first instalment is made as soon as the balance sheet of the first fiscal year has been submitted to the tax authorities, i.e., between 12 and 15 months, and sometimes even more after the date the company was established (it all depends on the closing date of the fiscal year which is not necessarily set at 31 December).

In the case of a loss or breakeven, companies are subject to the minimum tax (payable according to a sliding scale based on sales): this is known as the *Imposition Forfaitaire Annuelle (IFA)***; however, new companies subject to corporate income tax and established with at least 50% of their capital contributed in cash are exempt from income tax for 3 years. It is not payable for companies with annual sales of less than 76 000 Euros

French companies recently set up are exempt to pay corporate tax on account during their first twelve months of activity.

NB: France has signed about 100 international tax conventions with its trading partners thus applying the principle of **non dual taxation**. Also, within the EC, dividends from branches and subsidiaries of foreign EC companies are taxed at a low rate or not all.

A copy of international tax conventions can be obtained from Embassies or the from the *Journal Officiel* 26, rue Desaix, 75015 Paris. Tel: +33 (0)1 40 58 75 00.

Specific tax system for logistic centres and headquarters

A special, particularly attractive, tax system applies to logistics centres and headquarters (HQ) that are generally set up by international groups to co-ordinate various functions on behalf of Group companies: warehousing, packaging etc. or management and co-ordination of Group activities.

It is difficult for the tax authorities to assess the market value of the services provided by logistics centres and HQ. The authorities thus apply the "cost-plus" method as the taxation base. (The Instruction dated 21 January 1997 has made Paris very competitive in comparison to other European capitals.) The taxable profit is calculated from the current operating expenses to which a single margin rate is applied (between 5 and 10% negotiable with the tax authorities), which is then used as the base to calculate the tax payable.

This special tax system is extremely simple and ensures tax safety.

NB: Logistics centres and HQ can be stable entities (branches) or companies established under French law.

HQ can be set up either within companies that often carry out other business, notably commercial, or holding companies. On the other hand, this is not allowed for logistics centres to prevent any potential confusion with industrial and commercial activities.

Other taxes and duties

Taxe professionnelle [business tax]

The *taxe professionnelle* is payable at the end of the year by companies and entities (branches). It is calculated on the lease value of premises, fixed assets and total payroll. The *taxe professionnelle* in Paris is one of the most competitive in France.

NB: Over the next 5 years, total payroll is due to be phased out of the base for this tax, so as not to penalise employment and service companies.

Other taxes based on total payroll

For employers, these taxes refer to:

* apprenticeships (0.50%) work experience for young people during their initial training (0.10%); in exchange companies are able to benefit from these types of contracts when recruiting under training (*qualification*) or apprenticeship (*apprentissage*) contracts (low salaries at a percentage of the *SMIC*, low social security contributions, and State subsidies).

** in-service training (for adults): 0.15% for companies with less than 10 employees but 1.50% for those with more than 10 employees.

*** construction: 0.45%, from 10 employees upwards.

4.1.2 – INDIRECT TAXATION

Value added tax [TVA]

VAT payments to the *Trésor Public* are made monthly or quarterly depending on the tax system adopted by the company.

The same principle applies throughout the EC although the rates differ: the VAT declaration corresponds to the difference between the VAT levied on sales (VAT collected) and the VAT on purchases (recoverable VAT).

NB: VAT is now recoverable on expenses such as restaurants, entertainments, dwellings and receptions, engaged to third parties (clients...)

Normal rate: 19.6%

Reduced rate: 5.5% (food products and service providers in the building trades)

Extra low rate: 2.1% (medication, press, etc.)

NB: At the end of the first fiscal year, new companies whose business is to export products of French origin, will have a VAT credit that they can claim back from the tax authorities within several months (they buy with VAT levied but export exempt of VAT). This handicap can be cleared starting in the second fiscal year by negotiating with the local tax authorities a **VAT-exempt quota** enabling them to buy VAT-exempt in France and export these products.

Role of the tax agency in claiming VAT (see annex) notably for foreign companies that are not yet established in France but have to pay invoices to French companies that levy VAT.

4.2 – RESEARCH TAX CREDIT

Companies that have to carry out research and development can benefit from a research tax credit that is deducted from their corporate income tax. The research tax credit is allocated for the year in which the expenses are incurred: it is equal to 50% of the increase in research expenditure in relation to the average expenditure for the two previous years. The maximum amount that can be considered is FRF 40 million.

NB: Newly established companies may request a tax credit equal to 50% of their research expenditure right from the first year of activity.

Patent or patentable invention concessions are taxed at the lower rate of 19% (to which must be added the additional taxes).

4.3 – CHOICE OF TAX SYSTEM

There are three tax systems based on the total sales per fiscal year. They define the accounting requirements, frequency of tax declarations and the base on which profit is taxed.

REEL NORMAL

Applicable to companies with annual sales of more than 763 000 Euros (in product sales) or 230 000 euros (in services).

VAT declaration: monthly

Full and regular accounting (possibility of rapidly producing provisional balance sheet and P&L account during the year); presentation of annual financial statements: balance sheet, P&L account and annexes.

REEL SIMPLIFIE

Applicable to companies with annual sales of between FRF 76 300 euros HT and 763 000 euros HT (in product sales) and between 27 000 Euros HT and 230 000 euros HT (in services)

VAT declaration: quarterly

“Lighter” accounting procedures than for the “*réel normal*” system; presentation of annual financial statements: balance sheet and P&L account.

MICRO COMPANY

For sole traders with annual sales below 76 300 Euros HT (in product sales) and below 27 000 euros HT (in services).

Exempted from making a VAT declaration. The company does not invoice any VAT on its sales, but it cannot claim VAT on its purchases.

Very simple accounting procedures: journal of income (sales) and purchases. All invoices must be retained.

The taxable base is equal to the annual sales less 70% for sales of products and 50% for services.

NB: *It is possible to change tax systems and to switch from micro-company to réel simplifié and réel normal.*

Companies must keep all accounting documents for 10 years.

Subsidiaries of foreign parent companies, like all French companies, must report their annual results to the Greffe du Tribunal de Commerce de Paris.

IMPOSITION FORFAITAIRE ANNUELLE (IFA)

EUROS TAX PER YEAR (IMPOSITION)

ANNUAL SALES (EUROS)

750	76 000 à 150 000
1 125	150 000 à 300 000
1 575	300 000 à 750 000
2 175	750 000 à 1 500 000
3 750	1 500 000 à 7 500 000

This tax is due, once a year : 15 March (only in case of loss and breakeven).

TAX REPRESENTATIVE: THE ROLE OF THE TAX REPRESENTATIVE

When is it necessary to use a tax representative?

All foreign companies from non EC countries that are not legally established in France must appoint a tax representative in the following cases:

3 general cases:

- They want to buy products in France and sell them in France or outside France
- They want to deliver in France products sourced abroad (EU or non-EU countries)
- They need to have stock in France to sell their products in France or in other EU countries.

3 sector cases:

- Sector: assembly and/or start-up of machines or complex installations.
The assembly or start-up must take place in an EU country where the company is not legally established.
- Sector: building and public works.
The company must manage a construction site in an EU country other than its own.
- Sector: mail order sales to consumers from a catalogue or via the Internet.
Whether French or foreign, the company wants to expand its field of action to other EU countries, and it exceeds a certain sales threshold.

When is it simply recommended to use a tax representative?

The appointment of a tax representative is of distinct interest from a purely commercial point of view.

A few examples:

- A foreign company wants to sell in France without being penalised in relation to its French competitors. By obtaining a VAT number through a tax representative, the company can make out invoices including VAT. Its customers will no longer have to make any tedious, complicated declarations (e.g., customs, declaration of exchange of goods, etc.).
- A foreign company wants to enter the French market without having to bear the expense of setting up a subsidiary or branch, nor having to share its margin with a distributor.
The tax representative enables the company to buy and sell in France as if it was actually established there.

The exact role of the tax representative

The tax representative is a moral person or legal entity (depending on the EU country concerned), established in the country where the company wants to be incorporated, and authorised by this company to act in its name in dealings with the tax authorities.

In France, the tax representative must be certified by the tax authorities.

The tax representative's role involves:

- Applying for a VAT number in the name of the company being represented
- Filing VAT statements so that French VAT is paid or claimed back
- Checking documents
- Managing a bank account so that payments and/or reimbursements can be made
- Being the company's representative in dealings with the tax authorities
- Representing the company if a tax inspection is ordered

The tax representative provides companies with the possibility of claiming back Value-Added Tax (VAT) in any EU country, subject to the companies being liable to VAT in their own country and to their not having any professional activity liable to VAT in the country where the claim is being made.

Abbreviations used to designate VAT in the various countries in Europe:

- MWST: Germany, Switzerland and Austria
- BTW or TVA: Belgium
- MOMS: Denmark and Sweden
- ALV: Finland
- VAT: UK and Ireland
- IVA: Italy, Spain and Portugal
- TVA: France and Luxembourg
- BTW: Netherlands

Who is concerned?

- Foreign companies, EU nationals or not, that wish to claim back VAT in France.
- French and foreign companies (EC nationals or not) that wish to claim back VAT in an EU country other than France.

NB : Tax representation has been abolished since 1 January 2002 for businesses established in a Member State of the European Community other than France that are liable for payment of VAT in France and have to make tax returns there.

For more information, you can consult the website of the Ministry of the Economy, Finance and Industry at : www.minefi.gouv.fr

On what type of expenditure can VAT be claimed back?

On professional expenses incurred in EU countries. All companies meeting the conditions mentioned above, be they SMEs or large groups, can claim back VAT. The amounts involved can be quite considerable.

However, it should be remembered that:

- The type of professional expenses on which VAT can be claimed varies from one country to another. For example: some reimburse VAT on hotel expenses or car rental, but others don't.
- VAT rates vary from one country to another.
- Claim procedures and the time required for the reimbursement to be made by the tax authorities can also differ (the original invoice is always required in France).

5 – REGISTRATION OF ENTITIES AND SUBSIDIARIES OR COMPANIES ESTABLISHED UNDER FRENCH LAW

All registration procedures for installation in Paris *intra muros* are carried out in a single place and in a single operation at the:

Centre de Formalités des Entreprises (CFE)

For industrial and commercial concerns, contact:

Chambre de Commerce et d'Industrie de Paris, Bourse de Commerce, 2 rue de Viarmes, 75001 Paris.

For craftsmen, contact:

Chambre de Métiers, 72 rue de Reuilly, 75012 Paris/ Phone: 33 (0)1 53 33 53 33

The CFE will help you make all the necessary declarations to establish, change or close a business. It is recommended that you do not fill out the papers yourself: the CFE agent with whom you have an appointment will fill them out with you, and using the documents you bring.

The application will then be sent to the relevant organisations, such as:

- Tax authorities, social security services, *INSEE* (for issue of a **SIRET** number for entities or **SIREN** number for companies: subsidiaries and companies established under French law),
- The *Greffe du Tribunal de Commerce de Paris* for registration in the company register after which you are issued with a document called **Extrait K bis**, 5 days after your application has been filed at the *Centre de Formalités des Entreprises*. Your certificate of incorporation (*K bis*) will be sent to the company's domiciliation address in Paris.

List of documents required for an incorporation application

You must bring certain documents depending on your personal status as the manager of the entity that you wish to create in Paris.

The documents required for the incorporation application concern both the manager and the entity itself.

Documents to be provided by the manager (legal representative, manager, CEO, etc.)

Two potential cases:

- 1 – For French nationals, EC and European Economic Area nationals, dual nationals or foreigners with a 10-year resident permit and for the Swiss, the following must be submitted:
 - copy of your passport or identity card or resident permit,
 - a solemn declaration stating that the manager has not been convicted of an offence (supplied and completed during the appointment at the CFE).
- 2 – Non-EC nationals and non-OECD nationals must present the following:
 - *Autorisation préalable d'exercer (prior authorization to do business)*, with visa for residents or without visa for non-residents

NB: If the creation of the branch or subsidiary is urgent, it is always possible to operate in transition management mode, i.e., provisionally appoint a manager whose nationality or identity does not require a *carte de commerçant étranger*. In the case of a subsidiary, a statement is annexed to the Articles of Association/Incorporation listing the current manager(s) and the replacement(s) once the *carte de commerçant étranger* has been issued.

Documents to be provided for the entity to be created

***For a agency/ liaison office, registered through the CFE at the Commercial Court :
Same documents than those required for a branch (see below)***

For a branch (warning: the documents provided will be retained at the Commercial Court) the following must be presented:

- 2 originals or 2 copies of the parent company's Articles of Association/Incorporation, certified true and exact by the responsible in France (original signature on both copies) and identity of the manager of the parent company (copy of his passport).
- 2 translations of the Articles of Association/Incorporation in French. The translation is certified if it is impossible to provide the parent company's original Articles of Association/Incorporation.
- Parent company's incorporation number : original less than 3 months, translated or a copy certified true and exact by the responsible in France
- Proof of domiciliation: lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
- a Pouvoir (document given by the CFE) filled out by the manager of the parent company indicating the name of the person entitled to register the branch. This 'pouvoir' is necessary if the legal representative doesn't register himself the branch .
- a Declaration de non-condamnation given by the CFE (declaration of non-convicting) filled out by the legal representative
- **NB:** *If the legal representative is not resident in France and a non EC-national, he has to give the details of his tax representative when registering through the CFE*

For a subsidiary or company under French law, the following must be presented:

- 2 originals of the subsidiary's new Articles of Association/Incorporation initialed, dated and signed by the partners
- 2 statements that funds are deposited with a bank
- Proof of domiciliation: lease for the commercial premises (office, warehouse, industrial centre, etc.), or domiciliation contract with a business centre or domiciliation company, or proof of the legal representative's domicile (lease, rent receipt, or utility bill, in the name of the legal representative).
- Publication in a journal of legal notices (provide the notice text and the invoice).
- a Declaration de 'non-condamnation' given by the CFE (declaration of non-convicting) filled out by the manager (gérant)

NB: it is recommended the services of a legal firm or chartered accountant be used. The investor will then have to handle the following two points: find a bank and when setting up a subsidiary, open an account in which to deposit the capital required to register the subsidiary, and find a domiciliation. See annex "Establishing an entity in Paris: chronology of steps".

For a certain number of controlled activities, guarantees, permits, authorisations or licences will have to be presented before the branch or the subsidiary can be registered.

As soon as the subsidiary has started up, have the books and mandatory registers numbered and signed by the *Greffe du Tribunal de Commerce*, 1 Quai de Corse, 75004 Paris. Tel.: +33 (0)8 91 01 75 75.

ESTABLISHING AN ENTITY IN PARIS: CHRONOLOGY OF STEPS

Preliminary remark: it is difficult to give a chronology of the steps for the creation of a company because in many cases the formalities need to be carried out concurrently.

FOR AN ENTITY (agency/liaison office or branch)

- 1 Find a domiciliation
- 2 Register with the *CFE* (procedure generally carried out by the legal representative or his attorney), providing non EC-Nationales their *autorisation préalable d'exercer* (for a branch) (applications to be made 4 to 6 months prior to the incorporation)
- 3 Open an account with a French or foreign bank
- 4 Recruit personnel as soon as the *SIRET* number has been issued.

FOR A SUBSIDIARY

It is recommended you first have an informal meeting with a legal firm or chartered accountant.

- 1 Find a domiciliation and negotiate the opening of a bank account
Domiciliation contracts are made out without any particular constraints. On the other hand, to negotiate a commercial lease (premises or goodwill), the agency or owner of the walls will require a bank guarantee that is generally the equivalent of one year's rent. Also, when the contract is signed, a deposit equal to 3 months' rent, plus 3 months' rent in advance must be paid.
So, **looking for premises** often also implies **having opened a bank account** (French or foreign), by submitting a business plan and the detailed project for setting up business in France (if applicable the subsidiary's provisional Articles of Association/Incorporation).
NB: The bank in France will contact the parent company's bank to complete its financial analysis of the application (in addition to the documents to be provided by the parent company, a computerised data sheet will be sent to the bank in France).
- 2 Author the Articles of Association/Incorporation with the assistance of a chartered accountant or legal firm
Preferably choose a French or international firm (for a large entity) that will be responsible for taking into account all components required to set up the business: legal form, scope of business, lifespan, number of partners, breakdown of capital, domiciliation, appointment of managers, remuneration, minutes, etc.
- 3 Open a bank account (in a french or foreign bank)
Deposit in the account the capital required to create the company, several days prior to registering the company with the *CFE*: ask the bank for 2 fund deposit receipts, which are essential if a minimum deposit of funds is required for the incorporation.
The bank will ask for the future company's Articles of Association/Incorporation, which means that there will have already been contact with a chartered accountant or lawyer.
- 4 Registering the company
The selected firm must:
 - Publish a notice in a journal of legal notices
 - Register the company with the *CFE*.

CONTROLLED PROFESSIONS

Certain professions are controlled. **To exercise these professions, you will need to give proof, depending on the case, of a diploma, permit, licence, professional card or authorisation issued by various administrative services.**

The *Centre de Formalités des Entreprises*, *Points Chances* and professional bodies will be able to advise whether the planned business is subject to particular regulations, and what procedure should be adopted.

Several examples of controlled professions (non-exhaustive list):

- Artistic professions
- Model agency
- Arts management
- Free artist
- Designer
- Mobile disco
- Dance school
- Operation of a cinema
- Cinema production
- Art gallery
- Production house
- Video

- Banking professions
- Exchange agency / Stockbroker
- Interbanking market agency
- Banking operations intermediary
- Intermediate broker and portfolio manager

- Communications and press professions
- Publication of periodicals
- Press distributor
- Hawker of printed matter
- Local radio
- Exhibitions, trade fairs
- Information retrieval services

- Consultants
- Lawyer
- Accountant
- Notary/Solicitor

- Trade and service intermediaries
- Real estate agency
- Marriage agency
- Wine broker
- Insurance broker and agency
- Markets of national scope / Wholesaler
- Property agency
- Furniture dealers
- Temporary employment agency

- Medical and paramedical professions
- Private clinic
- Crèche / Day nursery
- Dietician
- Child minding centre / Kindergarten
- Medical analysis laboratory
- Retirement home
- Optician / Spectacles manufacturer
- Pharmacy / Dispensary

- Security
- Security company
- Private detective agency

- Tourism and leisure
- Travel agencies
- Camping grounds
- Casinos
- Taverns, bars & restaurants
- Discotheques
- Specialist & rural homestays / B&B
- Hotels
- Restaurants
- Gyms
- Equestrian centres / Horse clubs

- Transport and driver training
- Driving school
- Vehicle testing station
- Forwarding agent
- Chauffeur-driven vehicle rental (passenger transport)
- Self-drive vehicle rental (goods transport)
- Taxis
- Transport of dangerous goods
- Transport of goods
- Transport of passengers

- Other professions
- Peddler/ Stall-holder
- Antique dealer / Bric-a-Brac dealer
- Gunsmith
- Auto wrecker / scrap metal dealer
- Training centre
- Hairdressers
- Tobacconist
- Lotto
- Beautician
- Jeweller / Gold and silversmith
- Undertaker
- Door-to-door selling
- Mail order selling
- River navigation

Warning: although it is possible in some cases where the projected activity is controlled, to request registration before submitting proof or making a declaration to the relevant authorities, it is recommended that you enquire about the applicable regulations as soon as possible.

FORMALITIES RELATED TO THE COMPANY'S LOCATION AND PREMISES

- In the case of the company's registered office being domiciled in residential premises, notify by registered mail the owner or the property management co-ownership body ["syndic"].
- In the case of domiciliation with a "domiciliation company", draw up the domiciliation contract.
- To convert residential premises for a different use, enquire about the possibility of authorisation from the *Préfecture de Paris, Bureau de la Construction, Section des changements d'affectation de locaux*, 17, boulevard Morland, 75004 Paris – Tel.: +33 (0)1 49 28 45 44 or 01 49 28 45 47.
- For entities open to the public, three months prior to the opening date, send details of the fitout in triplicate for approval to the *Commission de Sécurité de la Préfecture de Police auprès de la Préfecture de Police, Direction de la Protection du Public*, 8^{ème} bureau, 12 Quai de Gesvres, 75004 Paris. Tel.: +33 (0)1 53 71 31 78 or 01 53 71 39 24.

Warning: Entities from category 1 to 4 – classed as a function of the numbers received – may not open to the public before obtaining authorisation following a visit from the *Commission de Sécurité* [Public safety department].

- If the premises are restricted (factory, workshop, warehouse or quarry representing danger for the environment), a declaration must be made two months prior to the start-up date or, for installation subject to the issue of a permit, submit an application at least nine months before the scheduled start-up date to the *Préfecture de Police, Direction de la Protection du Public*, 5^{ème} Bureau, Service des installations classées, 12/14 Quai des Gesvres, 75004 Paris – Tel.: +33 (0)1 53 71 32 00 or 01 53 71 34 89.

COMPANY NAME AND PRODUCT BRAND

- The company may not use a brand or name already registered. To carry out a search on existing brand and company names as well as to file an application for a brand name, contact the *Institut National de la Propriété Industrielle – INPI*, 26bis, rue de Saint-Pétersbourg, 75800 Paris Cedex 08 – Tel.: +33 (0)1 53 04 58 44 web site : www.inpi.fr
- Product and process inventions, designs or new industrial models may be protected by contacting the *Institut National de la Propriété Industrielle – INPI*, 26bis, rue de Saint-Pétersbourg, 75800 Paris Cedex 08 – Tel.: +33 (0)1 53 04 53 04.