

FRANCE¹

I. Overview of France

France is a democratic Republic and a unitary state with a civil law system. French law is mainly but not exclusively codified. French laws are laid down in numerous codes, uncoded statutes and in an important body of jurisprudence and legal doctrine, as well as in the laws of the European Union (the “EU”). As a member state of the EU, France is subject to the jurisdiction of the Court of Justice of the EU² and other EU lower courts and, as a member of the Council of Europe, France is also subject to the jurisdiction of the European Court of Human Rights³.

The French court system is divided into judiciary courts – which include criminal courts and civil courts that have jurisdiction over disputes between private individuals – and administrative courts which are competent only if a public person or body is involved. The Supreme Court for the judiciary system is the *Cour de cassation* and the Supreme administrative Court is the *Conseil d’Etat*. Apart from this division between judiciary and administrative courts, the Constitutional Council (*Conseil Constitutionnel*) examines the constitutionality of laws with the French Constitution of 1958, either before or after their enactment. France recognizes both for-profit organizations and not-for-profit organizations. Freedom of associations is enshrined within the French Constitution and a particular protection is provided by French courts with respect to this right.

France recognizes different forms of organizations. For-profit organizations may be civil companies or commercial companies, the most common forms of commercial company being joint stock companies, simplified joint stock companies, limited liability companies, general commercial partnerships, partnerships limited by shares and limited partnerships. France also recognizes associations, foundations and unions as not-for profit organizations governed by specific rules. This note will analyze, for each of these types of organizations, (II) registration procedures, (III) tax laws, (IV) financial transaction laws, (V) auditing/reporting requirements, (VI) penalties for non-

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² The Court of Justice of the European Union interprets EU laws to ensure that EU member states apply EU laws in the same way. The Court reviews the legality of the EU institutions’ acts, ensures that EU member states comply with the obligations laid down in the EU treaties, and interprets EU laws upon request of the national courts. The Court is also the judicial authority of the EU and, as such, it settles legal disputes between EU member states and EU institutions. Individuals, companies and organizations are also entitled to bring cases before the Court for alleged infringement to their rights by any EU institution.

³ The European Court of Human Rights is an international created in 1959 which is based in Strasbourg. It rules on applications from individuals or states which allege violations of any civil and political rights set out in the European Convention on Human Rights.

compliance, and an overview chart highlighting the main differences and similarities between the rules applying to for-profit organizations and not-for profit organizations.

II. Registration Procedures

A. For-Profit Organizations

a. Registration Process

The French Commercial Code, the Civil Code and the Monetary and Financial Code are the main sources of French company law. The core concept of French company law is the concept of *fonds de commerce*, which refers to a group of various tangible and intangible assets used to conduct a business, to attract customers and therefore to create goodwill. French law mainly classifies for-profit organizations as either civil companies (*sociétés civiles*) or commercial companies (*sociétés commerciales*). Civil companies carry out non-commercial activities and commercial companies are aimed at carrying out a commercial activity. The most common forms of commercial companies are joint stock companies, simplified joint stock companies, limited liability companies, general commercial partnerships, partnerships limited by shares and limited partnerships. The European limited liability company (*Societas Europaea* – SE)⁴ and the European Cooperative Society are also available in France to commercial entities with operations in more than one member state of the EU. This note will not deal with these types of companies.

French law allows unregistered companies in the form of *de facto* corporations which are subject to specific rules⁵. *De facto* corporations are the result of the behavior of persons who act as if they were part of a company, even if they have apparently no legal relationship with it. One of the most important features is the absence of legal personality of *de facto* corporations. *De facto* corporation therefore cannot take legal action and cannot be subject to insolvency proceedings. *De facto* corporations can be either civil or commercial depending on their activity. Each partner can participate in collective decisions. Income or loss is allocated according to the rules set up by partners. If there is no such repartition, it will be done according to their contributions to the company. There is a joint liability for commercial *de facto* companies, and separate liability for civil ones.

A number of specific formalities are required to set up a French company. France has facilitated the creation of businesses by reducing the time of registration of a company at the one-stop shop, the Center of Business Formalities (*Centre de Formalités des Entreprises* - CFE). The entire process is

⁴ Article L. 229-1 et seq. of the French Commercial Code.

⁵ Articles 1871 et seq. of the French Civil Code.

managed by the CFE, which conveys to the appropriate services all documents necessary for the creation of the company. The average time for setting up a company in France is five days⁶.

French law distinguishes between (i) civil and non-commercial companies on one hand, and (ii) commercial companies on the other hand.

i. Civil Companies

A civil partnership (*société civile*) refers to any company which aims to provide a civil activity and which is not commercial, either by its form or by its object⁷. The *société civile* form is actually the most commonly used corporate form, either to allow the joint practice of a profession, or the management of private wealth. However, there is no uniform model of *sociétés civiles* since, in addition to the ordinary *société civile*, there are specific forms of *sociétés civiles* regulated by specific laws, in particular in the liberal, intellectual, agricultural and real estate sectors.

Sociétés civiles enjoying legal personality⁸ are characterized by an *intuitu personae* nature and they are governed by the French Civil Code. The characteristic feature of a *société civile* is the unlimited liability of the shareholders and the lightness of the structure.

There must be at least two partners (with no limit on the maximum number of partners) to create a *société civile*. Unlike commercial companies, no public offer of financial titles can be made for civil companies. Each partner of a civil company contributes to the company's share capital. The civil company's corporate purpose must be determined, possible, lawful, and non-commercial. The articles of incorporation must be drawn up in writing and must specify the contributions of each partner, as well as the form, the object, the name, the registered place of business, the share capital, the duration of the partnership, and the rules and mechanisms of its functioning⁹. The creation of the company must be advertised in a legal notice newspaper and the partners of *sociétés civiles* must be declared to the competent Trade and Companies Registrar (*Registre du Commerce et des Sociétés - RCS*).

⁶ World Bank's analysis *Doing Business* available here.

⁷ This definition results from a combination of the following provisions:

- article 1845 of the French Civil Code, which provides a general definition of civil partnerships: “*have civil (non-commercial) character all partnerships to which statutory law does not attribute another character by reason of their form, nature or object*”; and
- article L. 210-1 of the French Commercial Code, which lays down a general definition of commercial companies: “*The commercial nature of a company shall be determined by its form or by its object. Sociétés en nom collectif, sociétés en commandite simple, sociétés à responsabilité limitée and sociétés par actions are commercial companies by virtue of their form, irrespective of their object*”.

⁸ Since its decision of 23 February 1891, the *Cour de cassation* has consistently held that *sociétés civiles* have legal personality. This principle was then enshrined in article 1842 of the Civil Code, under which “*partnerships other than undeclared partnerships referred to in Chapter III enjoy legal personality from their registration*”.

⁹ Article 1835 of the French Civil Code.

ii. Commercial companies

There are several forms of commercial companies in France. While sharing some characteristics, each corporate form of commercial companies is governed by specific conditions and has its own operating process, as provided in the French Commercial Code.

Any commercial company must be registered in the Commercial and Companies Register in order to have legal capacity¹⁰. Such registration takes about one week. For purposes of registration, the following documents must be filed with the local trade and companies registrar: (i) a proof of the address of the company's registered office; (ii) a report from an auditor on all contributions in kind, or certificates delivered by the bank for contributions in cash; (iii) copies of the articles of incorporation, including the appointment of the company's president and, if required, the appointment of the statutory auditors; (iv) a list of the shareholders including the number of shares and the amount invested by each shareholder; and (v) if required, copies of the acceptance letters of the statutory auditors¹¹.

French company law provides for several corporate forms of commercial company. The most commonly used forms are companies with limited liability, as described below.

Commercial companies with limited liability

The liability of the shareholders or equity holders in commercial companies with limited liability is limited to the amount of their contributions¹². However, directors can incur civil or criminal liabilities. Directors are legally liable to the company, the shareholders and the equity holders for non-compliance with the law or the company's articles of incorporation. Directors may also be liable to third parties if their fault is not related to their professional activity. Directors also incur criminal liability beyond the general criminal law offences.

The joint stock company (*Société Anonyme* - SA) is a commercial company that has legal personality and the liability of its members (at least seven shareholders and there is no maximum on the number of shareholders) is limited to the contributions made¹³. The SA form is commonly used for large companies. The minimum share capital is EUR 37,000. SAs are permitted to gain capital by public offerings of securities. If there is no public offer, funds must be deposited, the company must be registered with the RCS, and publicity must be made. However, articles of incorporation are not

¹⁰ Article L. 210-6 of the French Commercial Code: "*commercial companies have legal personality with effect from their registration in the commercial and companies register*".

¹¹ Articles R. 123-53 et seq. of the French Commercial Code.

¹² Article L. 223-1 of the French Commercial Code.

¹³ Articles L.225-1 et seq. of the French Commercial Code.

mandatory if there is no public offer, but they are usually drafted to justify the deposit of funds by the shareholders. In case of public offer, there are preliminary steps consisting in the deposit of the draft articles of incorporation at the registry of the competent Commercial court, the publication of a description of the project in the official bulletin for legal announcements (*Bulletin des Annonces Légales Obligatoires* - BALO), an information notice provided to the French Financial Market Authority (*Autorité des Marchés Financiers* - AMF), and the setting up of a consultative general assembly. Registration and legal notice are also required in case of public offer. There are no restrictions on nationality or residence to create an SA.

The simplified joint stock company (*Société par Actions Simplifiée* - SAS) is a commercial company that has legal personality and the liability of the shareholders is limited to the contributions made¹⁴. The SAS form is the most commonly used corporate form for small and medium-sized businesses since it provides more control, security and large contractual flexibility. For example, there is no minimum share capital requirement. The management structure may be set up freely by the articles of incorporation. SASs combine the legal status of a corporation with the flexibility of a partnership. SASs can be set up by a sole shareholder creating a simplified joint stock company with a sole shareholder¹⁵ (*SAS Unipersonnelle* - SASU) or by several shareholders with no limit on the maximum number of shareholders. SASs may not issue debt or equity to the public. The SAS's articles of incorporation, which acknowledge the partners' will, govern the organization and the operation of the company. The registration procedures for an SAS are mainly the same as for an SA, as described above.

Smaller companies generally use the limited liability form (*Société à Responsabilité Limitée* - SARL)¹⁶. SARLs can be created by at least two shareholders, with a maximum of 100 shareholders¹⁷ and there is no share capital minimum¹⁸. Articles of incorporation must be made in writing and registered. The transfer of shares in SARL is limited if the beneficiary is a third party¹⁹: in this case, transfers of shares require the agreement of a majority of the shareholders holding at least half of the share capital.

Unlimited liability commercial companies

¹⁴ Articles L.227-1 et seq. of the French Commercial Code.

¹⁵ Article L. 227-1 of the French Commercial Code.

¹⁶ Articles L.223-1 et seq. of the French Commercial Code.

¹⁷ Article L. 223-3 of the French Commercial Code.

¹⁸ Article L. 223-2 of the French Commercial Code.

¹⁹ Article L. 223-14 of the French Commercial Code.

In addition to undeclared partnerships and *de facto* corporations that may be of commercial nature, there are also several commercial unlimited liability companies. The general commercial partnership²⁰ (*Société en Nom Collectif* – SNC), which is a commercial company having legal personality and whose partners are jointly and severally liable for the debts, is among such unlimited liability companies, as well as the partnership limited by shares²¹ (*Société en Commandite par Actions* – SCA allowing public offers) and the limited partnership²² (*Société en Commandite Simple* - SCS) that is rarely used. SCSs and SCAs have two types of partners: the managing partners (*commandités*) manage the company and do not benefit from any limitation of liability, and the limited partners (*commanditaires*), who are not entitled to participate in the company's management and whose liability is limited to their capital contributions.

Branch of a foreign company

French law enables foreign companies to create branches with permanent representatives authorized to represent the foreign company in France in legal proceedings and in its relations with third parties. The branch is conceived as an extension in France of the foreign company since the foreign company will be liable for the branch's debts. Branches differ from subsidiaries since they have no legal personality. Registration is mandatory for branches.

The registration application for a branch of a foreign company must include (i) one copy of the parent company's articles of incorporation (the original and, if necessary, one copy translated into French and certified by the legal representative), (ii) an original registration certificate issued by the foreign company register in the last three months and translated into French, (iii) documents regarding the person empowered to act on behalf of the company (identity card and a police clearance record), (iv) residence permit for non-European directors, (v) documents certifying the required qualifications if the business is regulated, and (vi) proof of address²³.

b. Redress mechanisms

Under French law, a company - either civil or commercial – that has been irregularly created may be declared invalid²⁴. The invalidity must be pronounced by the judge and leads to the dissolution of the company²⁵. However, French law favors direct regulations by the partners of a

²⁰ Articles L.221-1 et seq. of the French Commercial Code.

²¹ Articles L.221-1 et seq. of the French Commercial Code.

²² Articles L.222-1 et seq. of the French Commercial Code.

²³ Articles R. 123-112 to R.123-14 of the French Commercial Code. See Invest In France Agency, *Doing business in France*, 2014.

²⁴ Article 1844-10 of the French Civil Code and article L.235-1 of the French Commercial Code.

²⁵ Article 1884-15 of the French Civil Code.

company²⁶: if the regulation has been made, the court will not pronounce this sanction. The court cannot pronounce the dissolution within two months after the summons in order to allow such regulation. An appeal of the court decision is possible.

In case of suspicion of criminal activity of a company, there might be investigations by the prosecutor which can lead to search and seizure proceedings of assets of a company (article 56 et seq. of the French Criminal code). This procedure is strictly regulated by the French Criminal code. Non compliance with the legal requirements could lead to the annulment of the procedure.

B. Not-For Profit Organizations

France recognizes different forms of not-for profit organizations, including (a) associations, (b) foundations, and (c) unions.

a. Registration Process

i. Registration Process for Associations

Associations are defined as “*an agreement by which one or more persons bring together, in a permanent manner, their knowledge or their activities for a non-profit purpose. It is governed, as to its validity, by the general principles of law applicable to contracts and obligations*”²⁷. Associations are mainly regulated by French law of 1 July 1901 on the contract of association²⁸ (the “Law of 1901”). Any association founded on a cause or with unlawful purposes, contrary to the law, morality, or which aims to interfere with the interests of national territory and the republican form of government, is null and void²⁹.

Freedom of association is strongly protected, both on a French and European level. The current French Constitution of 4 October 1958 indirectly protects the freedom of association by referring to the former Constitution of the 27 October 1946. The French Constitutional Council fully recognized freedom of association as a fundamental principle in an important decision of 1971³⁰. French case law³¹ has since then defined the framework of the freedom of association. From a

²⁶ Article 1844-13 of the French Civil Code.

²⁷ Article 1 of the Law of 1901.

²⁸ Link to the current version of the Law of 1 July 1901 on the contract of association.

²⁹ Article 3 of the Law of 1901.

³⁰ Constitutional Council, decision No. 71-44 DC of 16 July 1971.

³¹ In decisions from 1980 and 1988 (*Conseil d'Etat, 25 June 1980, Ministre de l'intérieur c/ Eglise Evangéliste Baptiste*; 22 janvier 1988), the French *Conseil d'Etat* asserted that the prefect may refuse the inscription of a religious/socio-political association only for “overriding reasons of public order” (*motifs impérieux d'ordre public*). French law No. 2003-709 of 1 August 2003 finally removed this competence of the prefect.

European standpoint, article 11 of the European Convention on Human Rights³² gave pride of place to freedom of association. The European Court of Human Rights (ECHR) regularly reminds the importance of freedom of association, specifying that freedom of association benefits both its members and the entity itself³³. The Court also asserted the freedom to choose the members of the association³⁴.

Associations of persons may be freely formed in France, without any authorization or prior declaration. However, associations may only obtain legal capacity provided that they comply with the declaration procedure as laid down in the Law of 1901³⁵. The conditions of the declaration procedure vary according to the type of association. In any case, any prior verification of the association by a public body is prohibited pursuant to the principle of freedom of association.

The founders of an association may freely draft the articles of association, unless it is a state-approved association, in which case the articles of association must contain certain mandatory indications. If the entity plans to obtain specific public subventions, the articles of association must contain a specific provision allowing public authorities to verify the association's accounts.

There are three different types of associations in France:

- **ordinary associations**³⁶ are not declared and do not benefit from a legal personality;
- **declared associations**³⁷ (*associations déclarées*) have legal personality. The preliminary declaration shall be made at the department's prefecture or at the *sous-prefecture* of the district where the association has its registered office. The declaration must specify the title and the object of the association, its registered offices, the names, professions, residences and citizenships of those who are responsible for the administration of the association. One copy of the articles of association must be filed with the declaration. The creation of the association

³² Article 11 of the European Court of Human Rights on Freedom of assembly and association:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. [...]"

³³ ECHR, 17 February 2004, *Gorzalik and others v. Poland*.

³⁴ ECHR, 27 February 2007, *Associated Society of Locomotive Engineers and Firemen v. UK*.

³⁵ Articles 2 and 5 of the Law of 1901.

³⁶ Article 2 of the Law of 1901.

³⁷ Articles 5 and 6 of the Law of 1901.

will be made public after publication of an article in the Official Journal³⁸. False declarations may be punished with a fine of fifth class of up to EUR 1,500 for the first infringement³⁹; and

- **state-approved associations**⁴⁰ (*associations d'utilité publique*) have legal personality. These associations may be state-approved by decree from the *Conseil d'Etat*, after a probationary period of operation of at least three years (unless the association has sufficient resources available to assure its financial stability for the period of three years) provided that the articles of association contain certain mandatory indications and a certain number of documents are filed with the demand. The demand must contain notably the origin, the development and the public utility aim of the association.

Anyone who fulfills the requirements to enter into an agreement under French contract law, including minors of 16 years old or above, may create or join an association. Minors under 16 years old are entitled to join an association only with the approval of their legal representative. New members may join the association if all members accept their membership, unless otherwise provided for in the articles of association. There are no nationality requirements for creating an association⁴¹.

ii. Registration Process for Foundations

Foundations are defined as “*a deed by which one or several individuals or legal entities decide to assign irrevocably some goods, rights or resources to the fulfillment of a public interest and not-for-profit purpose*”⁴². Foundations are not ruled by the Civil Code and are governed instead by the law No. 87-571 of 23 July 1987 on the development of philanthropy act as modified by the law No. 90-559 of 4 July 1990 on corporate foundations (the “Law of 1987”). These laws define the three following main types of foundations:

- **public utility foundations** (*fondations reconnues d'utilité publique*): such foundations require an endowment sufficient to fulfill its purpose. Although the law does not specify a minimum endowment amount, it is generally required in practice to raise a minimum amount of EUR 1 million. A public utility foundation requires an approval from the *Conseil d'Etat* and the Ministry of the Interior. The application must contain a description of the purpose, the resources, the objectives, and the actions it intends to promote, the authentic act stating the initial endowment, the budget of the first year and a plan of the budget for the next three

³⁸ The Official Journal is a “*daily official publication which aims to ensure the publicity of laws, decrees and administrative documents of the Government, further to a report of the French Parliament*” (*Legal Vocabulary*, Gerard Cornu).

³⁹ Article 8 of the Law of 1901.

⁴⁰ Articles 10, 11 and 12 of the Law of 1901.

⁴¹ Article 1 of the law No. 81-909 of the 9 October 1981.

⁴² Article 18 of the Law of 1987.

years, articles of the foundation, names, addresses, of the member of the board of directors. Once the *Conseil d'Etat* has reviewed the application for public utility status, it sends an opinion to the Prime Minister. The Prime Minister then signs a decree acknowledging the public utility character of the foundation. The analysis of the public utility feature of the foundation is essential and decisive, which explains all the process above. It generally takes between one and three years, depending on the complexity of the entity;

- **sheltered foundations** (*foundations abritées ou fondations sous égide*): such foundations with no legal status of their own, consist of the “*irrevocable transfer of goods, rights or resources for the accomplishment of a not-for-profit endeavor of public interest to a public utility foundation whose bylaws have been approved for that purpose*”⁴³. Sheltered foundations operate under the auspices of a public utility foundation and, as such. There is no minimum endowment and annual funding commitments requirements. Sheltered foundations manage their assets depending on their host institution, and they have their own board which includes a minority of representatives of the host institution. The prefectural authority must grant/refuse this authorization within four months; without response after this delay, it is deemed granted; and
- **corporate foundations**: civil or commercial companies, public industrial and commercial undertakings, cooperatives, provident institutions and mutuals are entitled to create corporate foundations⁴⁴. Corporate foundations are established for a minimum period of five years. Corporate foundations receive resources from the company in order to achieve a public benefit purpose laid down in a multi-year action program and they can bear the name of such company. They are not eligible for status as public utility foundations. In order to create a company foundation, founders have to file an application with the prefect of the department in which the corporate head office is located in order to seek a preliminary authorization. Founders must provide the following information: the name, the address, the duration of the foundation, the name, professions, residences and citizenships of the representatives of the foundation, the draft of articles, the installments of the endowment (*plan d'action pluriannuel*), the distribution between founders and a guarantee for the installments. The prefectural authority shall reply to such requests within four months by granting or denying the authorization. In case the prefectural authority lacks to notify its denial within this time period, the authorization is deemed granted⁴⁵.

iii. Registration Process for Unions

⁴³ Article 20 of the Law of 1987.

⁴⁴ Article 19 of the Law of 1987.

⁴⁵ See a summary document on corporate foundations issued by the French government.

Trade union freedom is enshrined in the law of 21 March 1884⁴⁶ and is currently regulated by the French Labor Code. Only natural or legal persons carrying on the practice of a profession – defined as a regular remunerated activity – can form or belong to unions. The founders' professions must be similar or related. Some professions – including ministerial officers, military personnel, and members of the prefectural body – have no right to unionize.

There is no requirement of preliminary authorization to create unions. The founders of unions must draft articles of association to be approved by the constituent assembly. The union's articles of association and the names of those who are responsible for the administrative of the union must be deposited with the city hall of the place of establishment of the union⁴⁷. France also recognizes groups of unions.

a. Redress mechanisms

The same rules as for For-Profit Organizations apply to Not-For Profit Organizations. In particular, an association ceases to exist when its deregistration is voluntary, or made pursuant to the articles of association, or pursuant to a judiciary or an administrative decision. The articles of association may be declared void⁴⁸. An appeal is possible before administrative courts. There may be search and seizure proceedings in case of suspected criminal activity.

C. Analytical comparison of the legal process of registration

The process of registration of For-Profit Organizations appears quite simple and not discouraging for professionals. The registration process has been highly simplified since it is carried out by the CFE, which centralizes the process and helps throughout the entire business registration procedure in France. In addition, there are no preliminary authorizations required to set up For-Profit Organizations in France. The French agency for business creation⁴⁹ (*Agence pour la Création d'Entreprises* – APCE) also helps entrepreneurs to create their companies.

The process of registration for Not-For Profit Organizations varies according to the type of organization. While it is particularly easy to create and declare an association – except maybe for public utility associations – or a union, it appears much more difficult to create and operate a foundation since a preliminary authorization is needed and the process takes more time.

⁴⁶ The so-called “Waldeck Rousseau law” of 21 March 1884.

⁴⁷ Article L.2131-3 of the Labor Code.

⁴⁸ Article 3 of the Law of 1901.

⁴⁹ Link to the APCE's official website.

III. Tax Laws

France has a territorial tax system: companies and other legal entities on the French territory may be subject to taxation. France recognizes mainly three types of taxes that may apply to organizations:

- value-added tax (“VAT”, which is mainly regulated under European Union laws);
- taxes on income; and
- registration fees.

A. For-Profit Organizations

Civil companies are taxed on the basis of the income tax of their partners (progressive taxation), except if they opt for the corporate tax system.

In principle, commercial companies, except *sociétés en nom collectif*, are subject to corporate tax (*impôt sur les sociétés* - IS). Commercial companies, except *sociétés en commandite par actions*, may opt for income tax under certain conditions. After taxation is made at the level of the company, distribution of dividends is taxed for each shareholder on its own income tax. The corporate tax rate is 33.33%⁵⁰. A lower rate tax band of 15% for the first EUR 38,120 earned profit per year⁵¹ may apply to small and medium companies, due quarterly. Companies generating turnover in excess of EUR 250 million are liable for a 10.7% increase applied to the normal corporate rate of 33.33%⁵².

French law provides for specific features, such as tax credits. The most used tax credit in France is the research tax credit⁵³. The tax credit is a tax incentive intended to support companies in their research and development process. It reduces the amount of tax liabilities of companies through a deduction of part of the expenses incurred in connection with its research activities. Companies falling into the scope of research tax credit may benefit from a tax credit at a rate of 30% for the portion of research and development expenses of up to EUR 100 million (this rate may be increased in specific cases) and at a rate of 5% for the portion of research and development expenses exceeding this amount⁵⁴. The sale of intellectual property rights, such as patents, may benefit from a lower tax rate equal to 15%⁵⁵. French law provides for a special tax regime applying to parent-daughter companies

⁵⁰ Article 219 of the French General Tax Code.

⁵¹ Article 219-I-b of the French General Tax Code.

⁵² Article 235 ter ZAA of the General Tax Code: this increase rate applies for financial years ending between 31 December 2013 and 31 December 2015.

⁵³ See the summary document *Research tax credit*, issued by the APCE.

⁵⁴ Article 244 quater B of the French General Tax Code.

⁵⁵ Article 39 terdecies of the French General Tax Code.

that allows a tax exemption on dividends received from subsidiaries⁵⁶. This mechanism aims at avoiding the double taxation of the subsidiary's profits. France has also entered into tax treaties⁵⁷ with other countries to avoid double taxation.

B. Not-For Profit Organizations

In principle, associations are not subject to corporate tax. However, if an association runs a lucrative business, it may be subject to corporate tax⁵⁸. There might be tax exemptions for some activities of the association⁵⁹. Donations to non-lucrative associations are tax deductible at a rate of 66% up to 20% of the donor's taxable income⁶⁰. Certain associations providing assistance (meals, accommodation, free medical and dental services) for needy people, overseas or in France, are eligible for a 75% tax relief until EUR 529⁶¹.

French tax law also provides tax incentives for donations to foundations and donations to foundations are therefore particularly interesting for donors for tax purposes. Donors may benefit from a tax reduction equal to 66% of the value of the donation, up to 20% of the donor's taxable income⁶². Foundations providing assistance (meals, accommodation, free medical and dental services) for needy people, overseas or in France, are also eligible for a 75% tax relief under the same conditions.

Donations made to unions qualify for income tax credits of 66% of contributions up to 1% of the taxable income⁶³.

C. Analytical comparison

The tax systems applying to For-Profit Organizations and to Not-For Profit Organizations differ. While For-Profit Organizations' income is subject to relatively high taxation, French law lays down tax incentives. Not-For Profit Organizations' "income" is specific since it mainly results from donations. French law therefore organizes significant tax incentives regarding Not-For Profit

⁵⁶ Articles 145 and 216 of the French General Tax Code.

⁵⁷ See this page of the official website impots.gouv.fr listing all tax treaties that France entered into.

⁵⁸ Article 206 of the French General Tax Code.

⁵⁹ For a list of beneficiaries of tax exemptions, see article 238 bis of the French General Tax Code.

⁶⁰ Article 200-1 of the French General Tax Code.

⁶¹ *Bofip - Impôts n° BOI-IR-RICI-250-20 concerning donations offered to associations and expenses incurred by volunteers giving rise to tax reductions.*

⁶² Article 200 of the French General Tax Code.

⁶³ Article 199 quater C of the French General Tax Code.

Organizations. Not-For Profit Organizations such as associations may be subject to the corporate tax if they have a lucrative purpose.

There are some slight differences between tax rules applying to each type of Not-For Profit Organizations. If the Not-For Profit Organization has a public utility purpose, it will benefit from specific tax incentives. Foundations benefit from the most favorable tax system thanks to their necessary public utility nature.

In any case, Not-For Profit Organizations benefit from a more favorable tax system than that applicable to For-Profit Organizations. The main reason for this preferential regime is the general interest purpose of Not-For Profit Organizations.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Foreign Investment/Foreign Funding Laws

In principle, foreign investments in France are free and are not submitted to any restrictions or preliminary authorizations⁶⁴. However, three admission procedures exist, depending on the type of foreign investments considered.

Monthly statistical declarations must be made to the *Banque de France*, providing the necessary elements for the *Banque de France* to understand the position of the investor outside France, if its assets and outstanding debts reach EUR 12,500⁶⁵. The investors falling into the scope of these declarations are finance companies, banks, investment companies and any other entity or individual releasing profits outside of France.

Indirect foreign investments made in France may be subject to an **administrative declaration**⁶⁶ if listed in the appropriate provision. However, certain operations are exempted from this administrative declaration, such as the creation or business extension of French companies owned by foreign entities, the share increase in French companies owned by foreign entities if the foreign investor owns more than 50% of the company, the capital increase if such increase does not affect their participation in the company, investments between companies in the same group (owned by more than 50%), loans and guarantees, real estate investment made to French companies owned by

⁶⁴ Article L.151-1 of the French Monetary and Financial Code.

⁶⁵ Article R.152-1 of the French Monetary and Financial Code.

⁶⁶ Article R.152-5 of the French Monetary and Financial Code.

foreign entities except for construction companies, direct investments in French artisanal, hostel industry, proximity services companies within the limit of EUR 1.5 million.

A **prior authorization** of the French Minister of the Economy is required for investments made in one of the following sectors⁶⁷:

- activities which are likely to prejudice its public policy, its public security or its national defense interests; and
- activities of research, production, commercialization of weapons, munitions, powders and explosive substances.

In order to ensure the defense of national interests, the French government may also subject other foreign investments to declaration, prior authorization or control⁶⁸:

- currency transactions, capital flows and payments of all kinds between France and foreign countries;
- the constitution, the change of form and the liquidation of French assets overseas;
- the constitution and liquidation of foreign investments in France; and
- the import and export of gold and all flows of value between France and abroad.

When a foreign investment is subject to prior authorization, the transaction cannot be completed prior to authorization and the foreign investor must submit a formal application for prior authorization to the French Minister of the Economy who should render a decision within two months from the date of receipt of the complete application. Any transaction completed without this prior authorization in breach of French law is null and void. Criminal sanctions, including imprisonment of up to five years and a fine of up to twice the amount of the transaction⁶⁹, also apply.

b. Political Contribution Laws

Contributions to political campaigns or political activities are mainly regulated under French law by several laws of 11 March 1988, 15 January 1990, 19 January 1995 and 11 April 1993. Since 1995, legal persons are prohibited from making political donations⁷⁰.

B. Not-For Profit Organizations

⁶⁷ Article L.151-3 of the French Monetary and Financial Code.

⁶⁸ Article L. 151-2 of the French Monetary and Financial Code.

⁶⁹ Article L.165-1 of the French Monetary and Financial Code.

⁷⁰ Article L. 52-8 of the French Electoral Code.

a. Foreign Investment/Foreign Funding Laws

There are no specific restrictions regarding foreign funding of associations and foundations. However, if there is a lucrative purpose, they may be subject to the rules applicable to companies exposed above.

There are specific rules on the funding of unions because of their political purpose⁷¹. They can be founded by companies, and the law does not distinguish between foreign and national investments.

b. Political Contribution Laws

Contributions to political campaigns or political activities are mainly regulated under French law by several laws of 11 March 1988, 15 January 1990, 19 January 1995 and 11 April 1993. Since 1995, legal persons are prohibited to make political donations⁷².

C. Analytical Comparison

For-profit and not-for profit organizations are treated differently regarding the possibility to receive foreign investments. Foreign investment made in relation to for-profit organizations may be subject to declarations and preliminary authorizations. In particular, these declarations and authorizations can be observed in sectors where France considers that the national interest requires regulation. On the other hand, Not-For Profit Organizations may only be subject to these regulations if they have a lucrative purpose or are concerned by the sectors covered by the law. Regarding political contribution, contrary to many countries, French law does not allow investments of political parties by companies, either local or foreign. There is no distinction between for-profit and not-for profit organizations.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Commercial companies

The French Commercial Code provides for several reporting requirements, such as the filing of⁷³:

- the approval of the annual accounts;

⁷¹ Articles L. 2135-9 et seq. of the French Labor Code.

⁷² Article L. 52-8 of the French Electoral Code.

⁷³ Article L. 232-21 et seq. of the French Commercial Code.

- financial statements; and
- auditors' reports on the financial statements if necessary.

Commercial companies must report their annual accounts to the Commercial and Companies Register (including balance sheet, business reports for listed companies, company's income, report of the auditor if necessary, minutes of accounts approval). In particular, all SAs must publish annual financial data and deposit two copies of the approved balance sheet and profit and loss statements with the local commercial courts within seven months of the end of the financial year and within one month of approval of the accounts⁷⁴.

It costs between EUR 50 and 100 depending on the types of company and the documents required. There could be a fine in case of non declaration⁷⁵.

Some commercial companies must also publish a report regarding Corporate Social Responsibility (*Responsabilité Sociale des Entreprises* - RSE)⁷⁶. This obligation mainly depends on the type of company and its size, taking into account its annual turnover.

The French Market Authority (*Autorité des Marchés Financiers* - AMF) requires a specific financial report for listed companies. The AMF requires an annual publication within four months of the end of the financial year, as well as a semester report within two months after the end of the semester⁷⁷. More generally, listed companies must comply with their obligation of "permanent information", in order to ensure good information of the public. The obligation of transparency is also enshrined at a European level⁷⁸.

Any major change to a commercial company (e.g. modification of articles, directors) must be immediately reported to the French Company Register in order to be accessible to anyone.

Acquisitions of shares of a company shall be declared, mainly for tax purposes, and may be published in the French Official Journal (JO)⁷⁹.

b. Civil partnerships

⁷⁴ Article L. 232-23 et seq. of the French Commercial Code.

⁷⁵ Article R. 247-3 – for more details, see section below relating to criminal sanctions.

⁷⁶ Article L. 225-102-1 of the French Commercial Code.

⁷⁷ Article 221-1 et seq. of the French AMF Regulation.

⁷⁸ Directive 2013/50/EU of 22 October 2013 and directive 2014/95/EU of 22 October 2014.

⁷⁹ Article R. 228-31 of the French Commercial Code.

In principle, *sociétés civiles* are under no obligation to file their accounts with the registry of the authorized court. However, a *société civile* taking up an economic activity must comply with a posteriori examination procedures for certain conventions.

B. Not-For Profit Organizations

In principle, associations do not have to publish any report. However, if they have an economic activity, associations must publish such report. If their turnover is in excess of EUR 3,100,000 and the association has more than 50 employees, the association must nominate an auditor who carries out an annual financial report⁸⁰. Association must file and publish their accounts in the French Official Journal if they receive contributions amounting of more than EUR 153,000 during the current accounting year⁸¹. If the association receives more than EUR 60,000 during the concerned current accounting year, a specific declaration to the competent French tax services must be made⁸².

Foundations only have to publish annual reports if they receive more than EUR 153,000 during the concerned accounting year⁸³.

Unions must publish annual financial reports, whose content differs regarding the amount they receive⁸⁴:

- amount in excess of EUR 230,000: publication of balance sheet, income account, annex;
- amount between EUR 230,000 and EUR 2,000: same content but simplified annex; and
- less than EUR 2,000: publication of a book mentioning the origin and the amount of resources.

Publication must be made either to the Official Journal (*Journal Officiel* - JO) or to the competent General Directorate for companies, competition, consumption, work and employment (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi – DIRECCTE*).

C. Analytical Comparison

Organizations, either for-profit or not-for profit, may have an obligation to audit or report their financial accounts.

⁸⁰ Article R.612-1 of the French Commercial Code.

⁸¹ Article L. 612-4 and article D. 612-5 of the French Commercial Code.

⁸² Article 206 of the French Tax Code.

⁸³ Article D. 612-5 of the French Commercial Code.

⁸⁴ Articles L.2135-1 to 2335-6 of the French Labor Code and provisions of the decree of the 28 December 2009.

For-Profit Organizations are logically subject to more auditing and reporting obligations because of their economical purpose. However, Not-For Profit Organizations are also subject to these obligations.

Even if the rules differ from one type of organization to another, the general idea remains the same: the bigger the organization is, the more it will have to publish reports. For-Profit Organizations are subject to additional reports if they are of a certain size and if they are listed, especially the AMF and the RSE reports. Not-for profit associations are required to publish reports if they receive a substantial amount of money.

Both types of organizations have a common obligation of reporting any change in the way they operate (e.g. statutes, partners, managers).

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Civil

- Non-compliance with registration procedure: impossibility to create the company, or invalidity of the company which may be dissolved by the French Commercial competent court⁸⁵. However, regulations are highly possible under French law⁸⁶.
- Non-payment of taxes: French Administration may order a tax redress, after notice to the person concerned on the purpose of the redress. An appeal is possible before the French administrative court.
- Non-compliance with foreign investment rules: the French Minister may direct the company to put an end to such investments⁸⁷. If the investor does not comply with these rules, he might be financially sanctioned, proportionally to the amount and the gravity of the infringement.
- Non-compliance with political contribution rules: the political party may have to refund the money it received.
- Non-compliance with auditing/reporting requirements: report to the criminal sanctions part below.

b. Criminal

⁸⁵ Articles 1844-7 to 1844-12 of the French Commercial Code.

⁸⁶ E.g. Article 1844-13 of the French Commercial Code.

⁸⁷ Article L.151-3 of the French Monetary and Financial Code.

- Non-compliance with registration procedure: no criminal sanction, unless registration of a criminal activity.
- Non-payment of taxes: might be criminal in case of fraud (e.g. VAT fraud).
- Non-compliance with foreign investment rules: There may be a criminal sanction. Article L.165-1 of the French Monetary Code, referring to article 459 of the Customs Code, states that violation of articles L. 151-2 and L. 151-3 is punishable by imprisonment of up to 5 years and a fine up to double the amount of the offence.
- Non-compliance with political contribution rules: may be sanctioned through bribery or influence peddling⁸⁸ (imprisonment up to 10 years and a fine up to EUR 150,000).
- Non-compliance with auditing/reporting requirements: fine of up to EUR 1,500⁸⁹ and other financial sanctions (e.g. sanctions imposed by the French Market Authorities for listed companies). There is also a specific criminal offence consisting in the “presentation of accounts which do not give a faithful vision of the company”⁹⁰ punishable by a fine of up to EUR 375,000 and five years of imprisonment.

B. Not-For Profit Organizations

a. Civil

The sanctions are similar as those for For-Profit organizations.

- Associations, foundations and unions wrongly created may be dissolved⁹¹.
- Non-payment of taxes may lead to a tax redress.
- Non-compliance with investment rules may lead to financial sanctions in case of lucrative activity⁹².

b. Criminal

The sanctions are similar to For-Profit organizations. There is also a specific fine of up to EUR 1,500 for the illegal creation of an association⁹³. The pursuance of an association after its

⁸⁸ Article 433-1 French Criminal Code.

⁸⁹ Article R. 247-3 French Commercial Code.

⁹⁰ Article L. 242-6 of the French Commercial Code.

⁹¹ Article 7 of the Law of 1901.

⁹² See above for sanctions relating to non compliance with investment rules.

⁹³ Article 8 of the Law of 1901.

dissolution is criminally sanctioned by a fine of up to EUR 45,000 and by an imprisonment of up to three years⁹⁴.

C. Analytical comparison

Under French law, penalties for non-compliance for either profit organizations or non-profit organizations follow similar rules. Prosecution authorities are the same, and the risk they face is equivalent. In practice, most procedures logically concern For-Profit organizations.

D. Statistics on actual penalties for each group (if, available)

No statistics regarding penalties for non-compliance were found.

⁹⁴ Article 8 of the Law of 1901.

OVERVIEW CHART

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	<ul style="list-style-type: none"> - For-Profit Organizations need to be registered - Registration is simple and does not require many formalities, unless for listed companies 	<ul style="list-style-type: none"> - Some Not-For Profit Organizations do not need to be registered (simple associations) - Some Not-For Profit Organizations require quite complex formalities (foundations, associations of public utility) - Control of public aids for organizations which receive donations 	<ul style="list-style-type: none"> - Mechanism of registration for both for-profit and not-for profit organizations
Tax Laws	<ul style="list-style-type: none"> - Taxation on the revenue: corporate tax (fixed) or income tax (progressive) 	<ul style="list-style-type: none"> - Taxation on donations 	<ul style="list-style-type: none"> - Taxation on revenue for both types if the not-for profit organization has a lucrative purpose.
Financial Transaction Laws	<ul style="list-style-type: none"> - Foreign investment: possibly preliminary authorization or administrative declaration - Political contribution: not possible (both French and foreign companies) 	<ul style="list-style-type: none"> - Foreign investment: in principle not concerned, but might be if lucrative purpose - Political contribution: not possible (both French and foreign companies) 	<ul style="list-style-type: none"> - Same rules regarding political contribution; different rules for foreign investment.
Auditing/Reporting Requirements	<ul style="list-style-type: none"> - Auditing and reporting obligations, increasing with the size of the company 	<ul style="list-style-type: none"> - Reporting obligations for not-for profit organization which receive a certain amount of donations 	<ul style="list-style-type: none"> - Possible reporting obligations for both types of organizations.
Penalties	<ul style="list-style-type: none"> - Possible civil and criminal sanctions 	<ul style="list-style-type: none"> - similar as for-profit organizations 	<ul style="list-style-type: none"> - Similarities regarding the sanctions, except for those only applicable to commercial companies.