

France

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1. GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of the corporate governance principles? Is your legal system based on common law, civil law, Islamic law or something else?

The French legal system is based on civil law.

The following are some of the key general corporate governance principles prevailing under French law:

- Corporate interest: directors and officers must act in the best interest of the company.
- Duty of loyalty: directors must be diligent in carrying out their duties.
- Equal treatment of shareholders: special procedures apply to any benefits offered to some, but not all, of the shareholders. In addition, transparency is a key principle for companies whose shares are listed on a French stock market. These companies must comply with strict financial communication rules and must make other information, including on corporate governance, available to the public (see paragraph 6 below).

1.2 Have there been any recent developments in the law, codes and rules of corporate governance?

On July 26, 2012, the French government issued a Decree that capped the salaries of corporate officers in state-owned companies at EUR450,000 a year.

The corporate governance code (the Afep-Medef code) (see paragraph 2.2 below), was amended on 16 June 2013 to introduce a voluntary “say on pay” mechanism in public companies (as described in paragraph 9.1 below).

Finally, a law dated March 29, 2014 (the *Florange* law) introduced an automatic double voting right system to the benefit of long-term shareholders in public companies (see paragraph 3.1 below for further details).

1.3 Outline recent court cases and incidents involving corporate governance issues. Were there any significant corporate scandals or large unlawful corporate cases?

The issue of executive compensation was again a hot topic in 2014. Among the most talked-about cases were those of the former CEO of Organce and the current chairman and CEO of GDF SUEZ, who were granted a significant golden parachute by their companies. In the case of GDF SUEZ the French government publicly criticized the decision but could not prevent it (the French State still owns approximately 33% of GDF SUEZ' share capital).

As a reaction to this and other cases, a bill adopted by the French National Assembly in February 2015 aims to regulate supplementary retirement allocations (see paragraph 9.1 below). The bill still needs to be formally adopted by the Senate before it is passed into law.

1.4 Which law enforcement agency is in charge of enforcing corporate governance? May a criminal sanction be levied upon infringement of the corporate governance rules?

The French financial markets authority (Autorité des Marchés Financiers) (AMF) is in charge of enforcing the rules of corporate governance applicable to companies whose shares are listed on NYSE Euronext Paris and Alternext.

Each year, the AMF publishes a report on corporate governance highlighting the good and bad practices of public companies. In 2012, for the first time, the AMF named those companies that do not fully comply with corporate governance rules.

The AMF comprises a sanctions commission (Commission des Sanctions) that can impose penalties upon infringement of the corporate governance rules laid down in the AMF General Regulations (*Règlement Général de l'AMF*). However, the AMF cannot levy criminal sanctions (for example, an insider-trading claim would be reviewed by the criminal courts).

The Afep-Medef Code, as amended in June 2013, established a new committee (Haut Comité de suivi de l'application du code) to monitor compliance with said code. It is entitled to issue non-binding recommendations for defaulting companies. If such companies decide not to follow the committee's recommendations, they should explain the reason for such deviation (so-called "comply or explain" principle).

2. SOURCES OF LAW

2.1 Which laws, codes or statutes govern company structures and organisations? Are there statutes like the Companies Act or other forms of law? Is there much relevant case law?

Company structures and organisations are mainly governed by the French Commercial Code, the French Civil Code and the companies' articles of association. French courts play a role in so far as they interpret and complete those rules when necessary.

The above legal sources set out the rules applicable to all forms of companies existing under French law. However, in the rest of this questionnaire, we will focus on the rules applicable to joint stock companies (*sociétés anonymes*), which is by far the most common corporate form for public companies.

2.2 Which laws, codes or statutes regulate capital markets in your jurisdiction?

Regulation of capital markets is mainly found in the French Monetary and Financial Code and in the AMF General Regulations.

In recent years, the regulation of corporate governance and capital markets has increasingly been developing by reference to soft law. Professional

organisations have developed non-binding corporate governance codes, which are today widely applied by French public companies:

- The corporate governance code for public companies dated December 2008 (last review on 16 June 2013) usually referred to as the Afep-Medef code provides a set of recommendations relating to board of directors, the role of independent directors, specialised committees and the remuneration of directors and managers.
- The Middlednext corporate governance code (Middlednext code) for small and medium sized companies dated December 2009 applies to companies with a market capitalisation of less than EUR1 billion; the structure and scope of the document are similar to that of the Afep-Medef code.

Any company (public or private) can choose to voluntarily comply with the provisions of a governance code. Those companies whose shares are listed on NYSE Euronext Paris must specify in the management report submitted by the board of directors to the shareholders, the terms of the corporate governance code that they have not complied with, if any, and explain the reason for such deviation (so-called “comply or explain” principle). Should such companies decide not to comply with a governance code, they must explain the rationale for not doing so and also describe what rules they apply in relation to corporate governance. Almost all French companies whose shares are listed on the SBF120 Index (the 120 largest companies on NYSE Euronext Paris in terms of market capitalisation) have adopted the Afep-Medef code of corporate governance.

2.3 Are there any public interest laws which apply to or influence corporate governance?

Companies whose shares are listed on NYSE Euronext Paris (as well as large private companies exceeding certain thresholds in terms of employees and revenue) must ensure that they reach a balance between men and women in their board of directors.

Under the law of 27 January 2011, public companies will need to have at least 20 per cent of directors of each gender on the day of the ordinary shareholders’ meeting held in 2014 and at least 40 per cent of directors of each gender on the day of the ordinary shareholders’ meeting held in 2017. In addition, by 2017, if the board of directors consists of no more than eight members, the difference between the number of directors of each gender should be no higher than two.

Similarly, as of 1 January 2017, private companies with revenues or a balance sheet of more than EUR 50 million and employing at least 500 persons for three consecutive years (that is from 2017 to 2020), will need to have at least 40 per cent of directors of each gender on the board. The provision relating to the difference between the number of directors of each gender is also applicable to these companies.

2.4 Have there been any recent developments in any of the above laws? What are the recent changes to the above laws or rules and the reasons for them?

See paragraph 1.2 above.

3. SHAREHOLDERS AND THE SHAREHOLDERS' MEETING

3.1 How are shareholders' interests represented in the company? How are the shareholders assured exercise of their rights? What is the highest governing body within the company structure if it is not the shareholders' meeting?

The shareholders' meeting is the sovereign body of the company. It has the authority to resolve on some of the most important decisions affecting the company, including appointing and dismissing members of the board of directors or supervisory board and amending the company's articles of association.

There are two kinds of shareholders' meetings under French law:

- The ordinary shareholders' meeting: it must meet at least once a year in order to approve the annual financial statements and is also competent to appoint or dismiss the members of the board of directors or supervisory board; the adoption of decisions requires a majority of 50 per cent of the shares present or represented at the meeting.
- The extraordinary shareholders' meeting: it is competent to adopt decisions triggering an amendment to the company's articles of association (for example, capital increase, change in the corporate governance structure and change of registered office); the adoption of decisions requires a majority of two-thirds of the shares present or represented at the meeting.

The main right of a shareholder is the right to attend and vote at the shareholders' meeting, such right being secured as follows:

- Each shareholder must be convened to the shareholders' meeting.
- Each shareholder is entitled to receive or consult certain documents and information prior to the meeting.
- Each shareholder is entitled to (i) attend the meeting in person or by videoconference, (ii) vote by mail (or by email if the company's articles of association allow) or (iii) be represented by its spouse or by another shareholder, unless the company's shares are listed on NYSE Euronext Paris or on Alternext, in which case the shareholder can be represented by any person of its choice.
- A shareholders' meeting cannot be validly held unless the following quorum is met: (i) for an ordinary shareholders' meeting, one-fifth of the voting rights (and no quorum if the meeting is convened on second notice); and (ii) for an extraordinary shareholders' meeting, one-quarter of the voting rights (and one-fifth if the meeting is convened on second notice).
- Except for preferred shares and for shares with double voting rights, each share confers the right to one vote. A law dated 29 March 2014 provides that shareholders who have been holding their shares for more than

two years automatically receive double voting rights, unless provided otherwise in the companies' bylaws.

3.2 How is the shareholders' meeting conducted? Who may chair the meeting? May attendance (not voting) at the meeting be restricted only to the shareholders? Are the shareholders allowed to be accompanied by legal or other counsel?

The shareholders' meeting is conducted by a chairman, who is usually the chairman of the board of directors or management board.

A bureau also ensures that the meeting is conducted in accordance with applicable rules, that is (i) that the quorum is met, (ii) that the agenda is complied with and (iii) that the shareholders can freely exercise their voting rights. It also settles any conflicts arising during the meeting. The bureau is composed of the chairman and the two shareholders holding the highest number of voting rights (or if they refuse, the shareholders coming immediately after). The bureau appoints a secretary.

In companies where a works council is in place (*comité d'entreprise*), two representatives of the works council are entitled to attend the shareholders' meeting. They do not have the right to vote or to speak at the meeting (unless they are invited to speak by the chairman).

Apart from these works council representatives, the chairman can restrict attendance to the shareholders only (or their proxy holders). Members of the press, for example, may be prevented from attending a shareholders' meeting. In practice, many public companies allow their presence as they consider that the meeting shall be public. If a shareholder complains about the presence of the press, the question would have to be submitted to the vote of the shareholders.

Similarly, a shareholder may be allowed, but is not entitled, to be accompanied by a bailiff or a lawyer.

3.3 How are minority shareholders' rights protected?

French law offers limited protection to minority shareholders. It is not uncommon for the main shareholders, including in companies whose shares are listed, to enter into a shareholders' agreement offering protection that goes beyond that provided by law.

Among the legal provisions offering protection to minority shareholders, the following can be highlighted:

- Minority shareholders can convene a shareholders' meeting and put resolutions on the agenda under certain conditions. Article L. 225-103, II-2 of the French Commercial Code entitles one or several shareholders holding 5% or more of the company's share capital to petition the competent commercial court in summary proceedings in order to convene a shareholders' meeting. Provided the request is made in the company's interest, as opposed to the sole interest of the petitioning shareholders, the court will have to appoint an agent who will in turn convene the shareholders' meeting. In addition, shareholders representing 5% or more of the company's share capital are entitled to

propose resolutions to be included in the shareholders' meeting agenda (note that in company's whose share capital exceeds EUR750,000, the threshold to propose resolutions is lower than 5% and calculated in accordance with a complex formula).

- When the company's shares are listed on NYSE Euronext Paris, a shareholders' association composed of shareholders representing 5% or more of the share capital can exercise similar rights.
- Any shareholder, whatever its equity participation, can ask questions to the board of directors or the managing board, which must be answered during the shareholders' meeting.
- The adoption of decisions at the extraordinary shareholders' meeting requires a majority of two-thirds of the shares present or represented at such meeting. This means that minority shareholders holding more than one-third of the shares present or represented can veto any decision submitted to the vote of the extraordinary shareholders' meeting. In practice, the blocking minority can be achieved by shareholders holding less than one-third of the voting rights if a significant number of shareholders are neither present nor represented at the meeting.
- Finally, another noteworthy feature is the "abuse of majority" concept, which can trigger the annulment of a decision adopted by the shareholders' meeting. In short, any shareholder can ask a court to annul a decision which was adopted by the majority shareholder(s) solely in its (their) own interest and is contrary to the company's interest. The abuse of majority is not easy to prove but was established by French courts for instance in the case of majority shareholders who refused to distribute any dividends for 20 years and did not invest the corresponding funds, or in the case of a decision of majority shareholders to fund the losses of the company's subsidiary which was managed by one of them.

3.4 Is shareholder activism encouraged or discouraged? If not encouraged, how is it regulated?

Shareholder activism in France has significantly increased in the recent past, mainly through the rise of proxy advisors and investor associations.

Although shareholder activism is not heavily regulated, a few key legislative changes have enabled its development:

- In 2001, the threshold allowing minority shareholders to propose resolutions at the shareholders' meeting has been lowered to 5% of a company's share capital (and even less than 5% in company's whose share capital exceeds EUR750,000); this allows institutional investors to be more active at the shareholders' meetings.
- Since 2003, investment management companies are required to put in place an investment policy applicable to the shares held by their funds and to report on the implementation of such policy to their investors; today, these policies and their implementation are heavily influenced by proxy advisors.
- While shareholders used to be required to freeze the trading of their shares within the five-day period preceding the shareholders' meeting,

a record date system was implemented in 2005 pursuant to which shareholders who record their shares three days before the shareholders' meeting are admitted to vote; this significantly increased the rate of participation of shareholders, in particular foreign institutional investors, in the shareholders' meetings.

- Since 2010, French law recognises the right for shareholders to be represented by any third party at the shareholders' meeting of companies whose securities are listed on NYSE Euronext Paris or on Alternext; this facilitates proxy fighting (before 2010, a proxy holder had to acquire at least one share in the company).

The rise of proxy advisors' influence over shareholders' meetings has raised some concerns. The AMF issued a recommendation on 18 June 2011 asking proxy advisors to be more transparent with respect to their policies and to use their best efforts to prevent conflicts of interest. The European Securities and Market Authority (ESMA) published a report dated March 2012 pointing out the growing influence of proxy advisors and encouraging them to develop their own code of conduct. As a result, a number of industry members formed a group to develop a set of best practice principles for providers of shareholder voting research and analysis. The signatories (including Proxinvest the most significant French proxy advisor) are required to adopt these principles on a "comply or explain" basis. Firstly, proxy advisors should publicly disclose their methodology, guidelines and voting policies. Besides, they should disclose their conflicts of interest policy. Finally, they should disclose their communication policy with shareholders, users and other stakeholders. In France, Proxinvest has complied with those principles by publishing the required information on its website.

3.5 How are professional shareholders (those minority shareholders who seek some extra benefit from companies by unduly and habitually influencing management by using their shareholding) treated by the law? Are they excluded from attending the shareholders' meeting? Are they criminally or otherwise publicly sanctioned?

There are no specific rules applicable to professional shareholders and, as a general rule, shareholders cannot be prevented from attending a shareholders' meeting. However, minority shareholders shall not abuse their right to vote at a shareholders' meeting. The abuse of minority is a situation where minority shareholders prevent the adoption of a decision that is essential for the company in order to satisfy their own interest. Examples of abuse include the refusal by a minority shareholder to allow a capital increase of an undercapitalised company, creating a risk that the company will be wound up or the refusal to allow the company's profits to be allocated to the reserve when the company urgently needed cash. When the abuse of minority is found, the minority shareholder(s) can be ordered to pay damages to the company. The court could also appoint an agent who will represent the minority shareholder(s) at the next shareholders' meeting and will vote in its (their) name in the interest of the company.

3.6 Are shareholders' benefits given to some of the shareholders by the company without resolution by the shareholders' meeting prohibited or regulated by the law or other rules?

The company must ensure equal treatment of all shareholders. Any benefits given to some of the shareholders must be approved by a resolution of the shareholders' meeting on the basis of a report by a special auditor (for example, issuance of preferred shares).

4. DIRECTORS AND BOARD OF DIRECTORS

4.1 What are the functions and responsibilities of the directors and the board of directors? Do you have a one or two-tier board system? What are the outside directors called?

French joint stock companies may either adopt a unitary or a dual system. A one-tier structure consists in a single board of directors (*conseil d'administration*), headed by a chairman. A general manager (*directeur general*) appointed by the board of directors, who may also be the chairman of the board, runs the company along with his management team.

A two-tier structure consists in a management board (*directoire*), which manages the company, and a supervisory board (*conseil de surveillance*), which oversees the actions of the management board. The management board members and its chairman are appointed by the supervisory board, whose members are appointed by the shareholders.

Most public companies (80 per cent) are managed under a one-tier board system.

The board of directors is a collegial body composed of at least three directors, with a maximum of 18.

The Afep-Medef code recommends that the term of the directors' office should not exceed four years. Moreover, directors should not hold more than five director positions in public companies that are not part of the same group.

The mission of the board of directors is as follows:

- It contributes to the development of the general strategy by determining the overall orientations of the company.
- It supervises the implementation of the company's strategic orientations by the management through control or verification of the management's actions as it deems appropriate.

In addition, although the company's day-to-day management is handled by the general manager, the board of directors can make business decisions (provided such decisions are implemented by the general manager, for example a lawsuit decided by the board of directors can only be brought by the general manager or a person to whom the general manager has delegated his authority). It must also draw the annual accounts and a management report to be submitted to the shareholders' meeting.

By contrast, a supervisory board operates as a permanent supervisory body and is not involved in the management of the company, which is solely carried out by the management board. Accordingly, the supervisory board does not prepare the annual accounts. Nonetheless, it can make

observations on the management report and annual accounts prepared by the management board.

The powers of the board of directors and the management and supervisory board are subject to the sovereign power granted to the shareholders (see paragraph 3.1 above).

Outside directors are commonly referred to as independent directors (see paragraph 4.4 below for further details).

4.2 What are the rules that may give rise to civil and criminal liability of the director(s)? How are those liabilities sought?

Civil liability

Directors can be held liable towards the company and/or the shareholders on the following grounds:

- Breach of applicable laws and regulations.
- Breach of the company's article of association.
- Mismanagement, that is an action or a failure to act that is contrary to the interest of the company.

Directors may only be liable towards third parties if they commit a wrongdoing that is separate from their corporate duties.

According to the French highest court (*Cour de cassation*), each director is presumed liable towards the company and/or the shareholders in case of improper decisions, whether intentional or resulting from negligence and, in order to escape liability, a director should prove that he disagreed with the improper decision. Directors can also be considered liable for not overseeing properly the management of the company.

Such liability may either be individual or collective, depending on the nature of the misconduct. If the judge considers that the liability is collective, that is when several directors are responsible for the misconduct, the court will determine to which extent each of these directors is liable.

As far as supervisory board members are concerned, they have no liability towards the company or third parties other than for personal negligence, tortious acts in the performance of their duties or mismanagement. They have no liability for managerial acts and their consequences.

Directors' civil liability may be engaged either:

- By a shareholder who suffered harm that is separate and different from the harm suffered by the company.
- Through a claim introduced by the company itself through its legal representatives.
- Through a claim introduced by one or several shareholders on behalf of the company.

Criminal liability

In addition to general rules of criminal law, directors' criminal liability may be triggered for misuse of corporate assets or power, payment of fictitious dividends and introduction of false corporate accounts.

Misuse of corporate assets is the most common criminal offence found against directors. It consists in deliberately using the company's assets against

the company's interest and for one's personal benefit. Is it punishable by a five-year prison sentence and a fine amounting to EUR375,000.

Other cases of liability

Directors may incur civil and criminal liability for breach of securities law, including disclosure of false or misleading information, insider trading, failure to declare the crossing of shareholding thresholds, and so on.

Finally, directors may be held liable in the following cases:

- In the context of bankruptcy proceedings, corporate officers may be held liable for corporate losses in case of mismanagement and may be subject to measures preventing them from holding management positions.
- Breach of health and safety regulations, environmental regulations and/or antitrust regulation.

As a result of the increasing number of lawsuits brought against corporate officers, an increasing number of companies subscribe to an insurance policy known as RCMS (civil liability of corporate officers). Cases of fraud, intentional improper actions and fines resulting from criminal practices are not covered by directors' insurance.

4.3 Does the board of directors have a committee system, for example nomination committee, compensation committee, audit committee? If not required, is it common practice for companies? How does it function?

There is a legal requirement for companies whose shares are listed on NYSE Euronext Paris to appoint an audit committee to oversee the preparation of financial information, the effectiveness of internal control procedures and risk management, and the certification of the accounts by the statutory auditor. The audit committee also makes recommendations on the appointment of the statutory auditors.

French law provides that the audit committee must be composed of non-executive directors and that at least one member of the audit committee must be an independent director. However, the Afep-Medef corporate governance code, which is applied by almost all companies whose shares are listed on the CAC40 index, recommends that two-thirds of the members of the audit committee be independent directors.

French law does not require that other committees be put in place. But, as the workload of boards of directors has expanded considerably in recent years, it has become common practice for the board of directors to delegate certain powers to specialised committees. The following committees are increasingly common among companies whose shares are listed on the CAC40 index: remuneration committee, nominations committee, strategic committee, ethics committee, governance committee, risk committee, and so on.

4.4 Is it a legal requirement to have an independent director or a third-party director? If so, how are they appointed? Is it required for listed companies?

There is no legal obligation to appoint independent or third-party directors.

However, the corporate governance codes recommend such appointment in order to guarantee the independence of the board of directors. In particular, companies applying the Afep-Medef code shall ensure that (i) half of the directors are independent in companies where there is a scattered shareholding and no controlling shareholder and (ii) at least a third of the directors are independent in controlled companies. The code defines an independent director as a person who has no relationship of any kind with the company, its management or the corporate group to which it belongs.

4.5 How is the compensation for directors or officers determined? Can it be contested by the shareholders or the regulatory authorities? What are the common rules or practices for the compensation of officers?

This section will only address the compensation of directors. See paragraph 9 for officers' compensation.

Under French law, directors can only be granted the following remuneration:

- An annual fixed attendance fee called "*jetons de presence*", which is a lump-sum amount for the entire board determined by the general meeting, such amount being then allocated by the board between its members.
- Remuneration for specific missions carried out by some of the directors.
- Any other form of remuneration of directors would be deemed null and void. In two-tier structures, the fees payable to supervisory board members are allocated in a similar manner to the directors' fees.

The Afep-Medef code recommends that remuneration granted to directors be tied to their contribution to the board, including attendance to board meetings and membership in specialised committees. However, directors' remuneration does not have to be tied to the company making profits.

The publication of the remuneration policy applicable to directors is now a well-established practice.

4.6 How will the board handle a corporate crisis like an internal criminal case, violence, social media exposure or dawn raid by the authorities?

In any situation involving a corporate crisis, the board of directors, or any specialised committee such as an audit or risk committee, as the case may be, will be urgently convened in order to discuss the solutions that shall be implemented and define a communication strategy.

5. BOARD OF AUDITORS, AUDIT COMMITTEE, ACCOUNTING AUDITORS

5.1 How is the internal accounting and legal audit structured and conducted? Is an outside accounting audit required and, if so, how is it structured? Are there requirements to change the auditor each five years?

Companies publishing consolidated accounts and public companies must appoint two statutory auditors. Other limited liability companies must have at least one statutory auditor.

The statutory auditor(s) is in charge of:

- Certifying the company's accounts.
- Ensuring that the shareholders have been treated equally.
- Ensuring compliance of the company's accounts with applicable accounting standards.
- Ensuring the accuracy of the accounting information provided to the shareholders.

They are appointed by the shareholders' meeting for six financial years. As mentioned above, public companies must also set up an audit committee, which will review the financial information prepared by the statutory auditors.

5.2 Are there supervisory auditors? What is the function of the supervisory auditors' board?

Not applicable.

6. MARKET DISCLOSURE/TRANSPARENCY TO THE SHAREHOLDERS AND THE PUBLIC

6.1 What are the disclosure requirements for companies in your jurisdiction under company law, capital markets law or any other rules?

Any French company must make public, through the commercial registry, its annual financial statements and its up-to-date articles of association.

In addition, companies whose shares are listed on NYSE Euronext Paris or on Alternext are required to inform the public (i) periodically, about their business activity and results (periodic reporting obligations) and (ii) at all times, whenever circumstances which may affect the market price of their stock arise (permanent disclosure obligations).

Permanent disclosure obligations imply that any information which could be considered as inside information should be disclosed by the issuer through a press release or a prospectus to the general public as soon as possible. Inside information is defined by article 621-1 of the AMF General Regulation as:

“information of a precise nature that has not been made public, relating directly or indirectly to one or more issuers of financial instruments, or to one of more financial instruments, and which, if it were made public, would be likely to have a significant effect on the price of the relevant financial instruments or on the price of related financial instruments”.

Periodic reporting obligations applicable in NYSE Euronext Paris involve the following (disclosure obligations on Alternext are much less significant):

- Filing with the AMF of a registration document (*document de référence*), which includes the annual financial report (audited financial statements, management report), a report on internal control procedures, information on the remuneration of directors and officers and information on the fees of the statutory auditors.
- Disclosure to the AMF and the public of an annual financial report (included in the registration document mentioned above), a half-year financial report and a quarterly financial report.
- Disclosure to the AMF and to the public of information on the total number of voting rights and shares, the description of any share buyback programmes, news releases setting out the arrangements for supplying the prospectus, news releases indicating how the information relating to upcoming shareholders' meetings is made available or may be consulted.
- Informing the AMF and, if applicable, the managers of EEA-regulated markets on which their shares are listed of any proposed amendments to their articles of association.
- Submitting to the AMF a written list of all persons and third parties who have regular or occasional access to inside information.

6.2 What is the liability or responsibility of the board in relation to the company's disclosure requirements?

The board of directors must ensure compliance with the disclosure obligations described above.

7. M&A AND CORPORATE GOVERNANCE

7.1 Upon an M&A offer, how are the transparency and fairness rules of the company provided under the company and stock market laws and rules?

Preliminary negotiations of an M&A transaction involving a French issuer whose shares are listed on NYSE Euronext Paris or Alternext may have to be disclosed as inside information when such negotiations become sufficiently defined so as to have a reasonable chance of success.

The AMF has ruled that entering into a non-disclosure agreement (NDA) does not constitute information sufficiently precise to be inside information.

However, the execution by the French issuer of a non-binding LOI/MOU setting forth the main terms and conditions of the contemplated transaction, which are sufficient to assess the potential effect of the contemplated transaction on the issuer's stock price, constitutes inside information and must be disclosed by the issuer.

8. PROXY FIGHTING

8.1 Is proxy fighting customarily conducted for control of the company management or anything else? How is it regulated under the company law or market regulations?

Proxy fighting is not very common within French companies. One of the only high profile cases in which proxy fighting was – successfully – conducted

is the Eurotunnel case, in which a group of minority shareholders gathered proxies to finally obtain the removal of management in 2004.

The Eurotunnel proxy fight occurred at a time when French law allowed shareholders to give proxy to other shareholders, but not to third parties. As explained above in paragraph 3.4, the rule changed in 2010 and it is today possible for shareholders to give a proxy to any third-party proxy holder. Yet, this change should not significantly increase the number of proxy fights in France, as there remains two hurdles making proxy fights difficult to carry out:

- The proxy holder cannot easily identify the minority shareholders: as a general rule, shares traded on NYSE Euronext Paris or Alternext must be registered with an authorised book keeper and the company does not have any obligation to identify the holders of such shares (as opposed to the shares that are not traded, in which case the identity of their holders must be communicated to other shareholders at least 16 days before the meeting).
- The shareholders giving proxies run the risk of being considered as acting in concert: if the purpose of the proxy fight is to take control of the company, the shareholders could be deemed as jointly liable in case of breach of any applicable legal provisions.

Proxy fighting is further regulated as follows:

- Proxy holders must inform the shareholders giving the proxy of any fact or circumstances likely to create a conflict of interest, for example that the proxy holder is an employee or a director in the company.
- Proxy holders who solicit proxies must publish on their website their voting policy.
- Proxies can be given for any specific shareholders' meeting and cannot have an indefinite term.
- Proxy holders cannot delegate their powers.

9. OFFICERS' REMUNERATION RULES

9.1 How is remuneration of officers determined? By whom? Is there a role for the shareholders' meeting? Is there any mechanism for an independent body to review and evaluate them?

In one-tier structure companies, the fixed and variable part of the officers' remuneration is set by the board of directors whereas in two-tier structure companies, the fixed and variable part of the management board members' remuneration is set by the supervisory board.

Some components of the remuneration, such as stock-options and gratuitous shares, must be authorised by the shareholders.

Finally, additional benefits granted by public companies to a departing officer, such as a golden parachute, are subject to the procedure applicable to related-party agreements, that is transactions entered into between the company and one of its officers. In this case, the board of directors approves such benefits, which are thereafter ratified by the shareholders. If the shareholders disagree with the board decision, these benefits would remain valid and enforceable but the board of directors may be held liable for any negative consequences suffered by the company.

In private companies, this procedure is not applicable, provided that the benefits granted to the departing officer meet the following conditions:

- The benefit is granted to the officer in exchange for specific services rendered to the company while the officer was still exercising his or her functions within the company.
- The benefit is proportional to the services the officer provided.
- The benefit does not constitute an excessive burden for the company.

The corporate governance codes also recommend complying with certain criteria when determining the remuneration of officers. For instance, the Afep-Medef code suggests that golden parachutes should not exceed an amount equal to two years of remuneration and should be awarded only in case of forced departure or change of control of the company.

The Afep-Medef code also recommends that listed companies set up a remuneration committee mainly composed of independent directors.

Currently, the law does not provide for any independent body that would be in charge of reviewing and evaluating the remuneration granted to corporate officers.

As mentioned in paragraph 1.2 above, steps have been taken in order to improve shareholders' involvement in the regulation of officers' remuneration. The Afep-Medef code as amended in June 2013 introduced a non-compulsory and advisory say-on-pay for public companies. As a shareholders' vote is non-binding, the board is under no obligation to change its remuneration plans following disapproval. However, when the shareholders' meeting issues a negative opinion, the board, acting on the advice of the compensation committee, must discuss this matter at another meeting and immediately publish on the company's website a notice detailing how it intends to deal with the opinion expressed by the shareholders.

According to the 2014 AMF report, the say on pay principle has been implemented by all listed companies that are referring to the Afep-Medef code and 90% of them drafted a specific paragraph relating to say on pay in their annual reference document.

Finally, a bill adopted in February 2015 by the French National Assembly (still requiring approval of the Senate to be passed into law) provides that retirement allocations must be linked to the company's performance and must be approved annually by the board of directors. Moreover, the yearly increase of those additional retirement rights should not exceed 3%.

9.2 Is the mechanism of officers' remuneration publicly debated?

The mechanism of officers' remuneration was debated in 2014 in France. The debate mainly focused on the say on pay mechanism. While it was believed at first that the French government would impose say on pay through a bill, it was finally decided that soft law would be better suited to introduce this principle into French corporate practice.

10. DIRECTORS' LIABILITIES, LIABILITY INSURANCE, INDEMNIFICATION

10.1 What are the directors' responsibilities and liabilities under the law? Can those liabilities be covered by insurance? Can it be indemnified by the company or other related parties?

See paragraphs 4.1 and 4.2 above.

11. SHAREHOLDERS' DERIVATIVE SUITS

11.1 Is a shareholder's derivative suit provided for by law in your jurisdiction? How is it enforced by the shareholders?

French law recognises the possibility for one or several shareholders to sue directors or officers on behalf of the company (*action sociale ut singuli*). Shareholders' derivative suits can be brought in the case of mismanagement by a director or an officer that caused harm to the company itself. It is valid provided the company has not already brought suit against the relevant director or officer.

Shareholders holding at least 5% of the company's share capital can bring a derivative suit jointly by electing one or several representatives. In addition, in a company whose shares are listed on NYSE Euronext Paris, a shareholders' association can also bring a derivative lawsuit.

Any damages for the harm caused by the officer or director would be awarded to the company, and not to the shareholders.

11.2 Have there been any recent relevant court cases on the subject?

In February 2013, Lagardère sued the management of Canal + to obtain EUR1.6 billion in damages on behalf of Canal +. Lagardère is a minority shareholder of Canal +, with 20% of the share capital, the remaining 80% being held by Vivendi. Lagardère claimed that a cash-pooling agreement entered into between Canal + and a wholly owned subsidiary of Vivendi is invalid, as a result of which Vivendi should return EUR1.6 billion of treasury to Canal +.

12. SOCIAL INTEREST IN CORPORATE BEHAVIOUR

12.1 How is a company in your country expected to deal with the following issues: corporate social responsibility; gender, racial and social diversification; environmental issues; ecology and corruption?

The rules on corporate social interest are rather limited. In practice, many French public companies voluntarily undertake some efforts to act as good citizens in relation to these issues.

On gender, companies whose shares are listed on NYSE Euronext Paris (as well as large private companies exceeding certain thresholds in terms of employees and revenue) must ensure that they reach a balance between men and women in their board of directors (see paragraph 2.3 above).

In companies whose shares are listed on NYSE Euronext Paris (as well as large private companies exceeding certain thresholds in terms of employees

and revenue), the management report submitted by the board of directors to the shareholders must provide specific information set out in the Commercial Code relative to the social and environmental consequences of the company's operations, as well as the company's commitments in terms of sustainable development, the fight against discriminations and the promotion of minorities. Public companies must also provide an independent third-party report opining on the company's assessment.

Finally, any company with more than 20 employees must have at least 6% of people with disabilities in its workforce. Companies that do not reach that threshold can make a financial contribution to a dedicated non-profit organisation associated with the public authorities.

13. REGULATORY FRAMEWORKS FOR PROFESSIONAL INVESTORS

13.1 How are professional investors (like pension funds or investment funds) required or encouraged to exercise their power for the good of corporate governance of the company? Are they required to comply with rules like the Stewardship Code?

French professional investors' activities are regulated by a number of rules. Those rules are derived primarily from European Directives, the French Monetary and Financial Code and the General Regulation, decisions and instructions of the AMF.

First, asset management companies must receive a clearance from the AMF. The AMF ensures that they have adequate financial, technical and human resources for the investment services being offered. It then monitors the companies to ensure that their resources remain adequate.

In addition, pursuant to a law dated 1 August 2003, the AMF General Regulation requires asset management companies to disclose an updated "voting policy" document. This document must provide the conditions under which they intend to exercise the voting rights attached to the shares held by the fund they manage. Asset management companies are also under the obligation to disclose a report explaining the conditions under which they exercised their voting rights. If asset management companies do not exercise their voting rights, they have to explain their decision on a "comply or explain" basis.

A Decree of 9 March 2006 also requires asset management companies to have a compliance and internal control officer. These officers need to obtain a professional license issued by the AMF. They are responsible for ensuring compliance with professional standards and contractual commitments. These professional standards have been mainly developed by the Association Française de la Gestion Financière (AFG), a professional group representing the French asset management industry. The AFG has played a decisive role in setting professional rules since 1990, in particular by enacting a code of good practice. The AMF recognised the AFG code of good practice as mandatory professional standards, which apply to the entire asset management industry. The code of good practice addresses the prevention of conflicts of interest,

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business organisation and continuity, exercise of shareholders' rights, relations with intermediaries, services providers and lease-holders, employee conduct and oversight of personal dealings. In case of failure to comply with these rules, the AMF can impose injunctions or sanctions against the breaching company.