

FRANCE



France

PART I: CONTRACTUAL – NO OFFICE IN THE TARGET COUNTRY

A. Direct sale:

A.1. Without written agreement – general terms

1. *What are the formalities a foreign seller must complete in your jurisdiction in order to make sure that its terms and conditions of sale are binding and enforceable towards local purchasers? Are these conditions enforceable towards non commercial parties?*

In the case of an international contract of sale of merchandise, the Vienna Convention may be applicable.

The last conditions sent (sale or purchase) are the ones that apply to the contract, as they constitute a counter-offer (Article 19).

Under French law (sale between two French entities), the terms and conditions must be accepted by them which means, in practice, that they must be established in a document which is given prior to or at the time of delivery.

In case of conflict between sale and purchase conditions, the Judge will cancel the conflicting provisions and judge in accordance to the principles of contract law. Given the prominence of sale conditions (article L.441-6 of the Commercial code), the judge will often rule in favour of the seller.

A master agreement may also be entered into with the purchaser in order to define precisely the rights and duties of the parties.

Special rules apply for consumers' protection.

A.2. With a written agreement:

2. *What are the clauses a foreign seller should integrate into a written sales agreement (or into his general terms and conditions) and the reasons why?*
 - (a) Retention of title: *Is this provided for in your jurisdiction? What are the conditions to make it enforceable towards local purchasers and third parties?*

The seller can retain the title of ownership until the price of the

purchased good is fully paid.

The stipulation of retention of title must be made in writing before the delivery occurs.

This means the purchaser has to accept in writing.

It is advisable to ensure the clause is made clear on the front page of the delivery note.

Retention of title can only be used when goods are still available and can be identified on the premises of the purchaser.

On the contrary, retention of title cannot be used if the goods cannot be identified.

For instance, if one buys a kilogram of rice but this kilogram is mixed with more rice in a bag, the purchased kilogram cannot be separated from the other one and consequently, the retention of title cannot be used.

It is important to bear in mind that the retention of title cannot be used against the bona fide purchaser, in the event of a subsequent sale.

- (b) *Interest and penalty clause: Are these clauses enforceable in your jurisdiction? Can they be reduced or annulled? What are the consequences if this clause is not integrated into the agreement? What is the legal rate in your jurisdiction?*

Penalty clauses are enforceable so long as the amount of the penalty is clearly defined in the contract.

The Judge can always reduce the penalties if they are deemed excessive .

Unless this is provided for in the contract, the creditor can only seek a legal rate starting from the date of request for payment.

This is an annual rate which depends on the global banking rate. It was 0.35% per annum in 2011, 0.68% in 2010.

- (c) *Applicable law and competent jurisdiction: Are these clauses enforceable in your jurisdiction? What are the consequences if this clause is not integrated into the agreement?*

Notwithstanding any international convention (such as Rome or Vienna) which may apply, the French rules concerning the governing law are:

The international contract will be governed by the law chosen by the party.

If the parties have not chosen the governing law, it shall be submitted to the law of the country with which it is closely connected. (i.e.: the location of the delivery...)

B COMMERCIAL INTERMEDIARIES

3. *What types of commercial intermediaries do exist in your jurisdiction?*
 - commercial agents who enjoy a very protective status;
 - salaried commercial agent with special status called “VRP”;
 - distribution agreements;
 - Commission agent
4. *What legislation does apply in your jurisdiction with regard to the above mentioned types of distribution agreements?*
 - commercial agency contracts are governed by articles L.134-1 et seq. of the French Commercial Code;
 - salaried commercial agents are governed by articles L.7311-1 et seq. of the French Labour Code;
 - distribution agreements are governed by miscellaneous articles contained in the Commercial Code, such as:
 - article L.330-1 relating to exclusivity clauses;
 - article L.330-3 relating to the disclosure of compulsory information prior to entering into the agreement;
 - article L.442-6 sanctioning the breaking off without sufficient notice of established business relationships.

Commission agents are governed by articles L.132-1 of the French Commercial Code

PART II: BRANCH – OFFICE IN THE TARGET COUNTRY BUT NO LEGAL PERSON:

5. *In your jurisdictions what are the differences between starting up a branch and starting up of a company (subsidiary)?*

Unlike a subsidiary a branch is not a legal person on its own.

The foreign company is liable for all debts and obligations of the branch.
6. *What formalities must be fulfilled for opening a branch?*

The foreign company must apply for registration of the branch to the local Commercial Court.

The company has to file in a number of documents relating to its own legal status including the articles of association of the mother company, and has to mention the name of the person who will represent the foreign company in this branch.

7. *Why would you rather advise a foreign seller to set up a branch and not a company in your country, or vice versa?*

Branches are easier to be set up and closed: formalities are also easier. Thus, they can ensure a cost-effective representation in foreign countries.

To start up a business, it could be convenient to set up a new company because the mother company is liable for all decisions or debts of its branch. Besides, a branch may only pursue the activity undertaken by its mother company.

8. *Is a branch authorized to act before the court, to engage people ?*

A branch may act before the court, but solely insofar as it represents the mother company.

The person registered at the Commercial Court (point 6) represents the mother company.

9. *What is the liability of the legal representative of the branch?*

The representative of the branch is an employee of the company. His liability is that of an ordinary employee except if there is a delegation of authority by the mother company.

In this case, the employee may be liable if there has been a proper delegation.

10. *Is there an automatic liability of the head office for the operations or acts of the branch?*

The head office is bound by all decisions or debts of its branch.

11. *Which language will the documents be in?*

All documents required by law must be written in French.

Documents in other languages must be translated when they are transmitted to French authorities.

Contracts between professional parties may be drafted in another language.

12. *What are the accounting requirements for a branch?*

The branch must have its own financial statements.

PART III: SUBSIDIARY – LEGAL PERSON (SEPARATE LEGAL LOCAL ENTITY) IN THE TARGET COUNTRY

13. *What are the advantages of establishing a subsidiary compared to establishing a branch?*

Having a separate legal entity liable to third parties instead of the foreign company itself.

14. *Can you present the main characteristics of the company forms existing under your jurisdiction in the following schedule:*

COMPANY FORM	SARL	SA	SAS
Limited liability	yes	yes	yes
Free transferability of the shares	Shares may not be transferred to third parties unless the majority of members representing at least half the shares approve, subject to higher majority requirement in the "statuts". Shares are freely transferred between members, to their spouses, ascendants and descendants. However, the « statuts » may provide for prior approval as for transfers to third parties.	No approval required by the law; freedom to include clauses to control the shareholding or to ensure it remains stable in the statuts.	No approval required by the law; freedom to include clauses to control the shareholding or to ensure it remains stable in the statuts.
Fixed or variable capital	fixed or variable	fixed	fixed or variable
Minimum capital	no more minimum (1 st Aug. 2003 Act) 1/5 th to be paid up	37,000 € ½ to be paid up	1 €
Number of founders	2 minimum or 1 in the case of the one-person SARL (called "EURL")	7 minimum	2 minimum or 1 in the case of the one-person SAS ("SASU")
Notarial deed	no	no	no

COMPANY FORM	SNC	SCI	SEP
Limited liability	no, unlimited joint and several liability	no, but liability is not joint and several; each member is liable proportionally to his share in the capital	no, this company cannot be registered and therefore does not enjoy legal capacity
Free transferability of the shares	no, must be approved by all the members	no, must be approved by all the members	no, must be approved by all the members, except clause to the contrary in the "statuts"
Fixed or variable capital	fixed or variable	fixed or variable	fixed or variable
Minimum capital	no	no	no
Number of founders	2	2	2
Notarial deed	no	no	no

15. Which of the company forms is used most frequently in your jurisdiction?

SAS

16. Which company form is used most frequently in case of small or family business?

SARL and SAS

17. What are the main formalities a foreign company has to comply with in order to establish a subsidiary (filial/filiale)?

- ability of the officers to chair the company;
- signature of the memorandum and articles of association ("statuts");
- signature of a lease;
- share capital deposit in a bank;
- stamp duties: free of charge;
- publication in a legal notice newspaper;
- companies house registration.

18. What are the costs of establishing a subsidiary in your jurisdiction?

Depending on the chosen form expenses range between € 600 and € 1 000.

Fees are paid in addition.

19. *How long does it take to establish a subsidiary in France?*

1 month after receipt of all the necessary documents duly signed by the client.

20. *Is there specific legislation with regard to the liabilities of the founders and the directors of the most used company form?*

Founders: no specific legislation.

Directors:

- civil liability may be incurred towards the company or some members in the event of mismanagement, infringement of statutory and regulatory provisions;
- criminal liability may be incurred especially in respect of environment law and labour law (companies can now be held criminally liable);
- tax liability: directors may be held jointly and severally liable towards the tax administration when fraudulent acts have been committed.

21. *What are the main taxes for which a French company is liable?*

21.1 Corporation tax:

- SA, SAS and SARL: company tax law is assessed on the company's profits up to:
 - 15% up to an amount of € 38 120 of the profits providing that:

the turnover is less than € 7 630 000 and that at least 75% of the share capital is held by individual shareholders or by a company which itself is held by at least 75% of individual shareholders.

- 33, 33 % if the profits are higher than € 38 120.
- SNC, SCI and SEP: the profits of those transparent companies are not subject to tax at corporate level but their shareholders will be subject to personal income tax.

21.2 Dividends:

- 15,15% CSG, CRDS and social taxes if dividends are paid to individual shareholders.

21.3 Value added tax (VAT): 19, 60% for deliveries of goods and for supplies of services (to be raised to 20% as from 1st January 2013)

PART IV – MISCELLANEOUS

A. Real estate

A.1. Purchase of a real estate

22. *Who do you turn to in order to close a valid purchase agreement?*

A “notaire” for the final purchase deeds and anyone for the preliminary binding contract (“compromis”); therefore the assistance of a lawyer is strongly advised at this earlier stage.

23. *What are the costs related to the purchase agreement?*

Between 7% and 8% of the purchase price (covering “notaire” remuneration and duties paid to the state) + legal assistance cost.

24. *Is there in your jurisdiction legislation that can slow down the purchase process (e.g. environmental legislation requiring preliminary soil examinations)*

Yes, such as, depending on each case:

- energetic performance survey;
- asbestos survey;
- lead survey;
- pollution survey;
- insect survey;
- natural risk statement;
- mortgage certificate;
- town planning regulations;
- pre-emptive rights;
- electricity survey;
- surface area survey;
- gas survey.

A.2. Rent a real estate:

25. *In your jurisdiction is there imperative law with regard to the rent of offices, industrial real estate or commercial real estate? Can you give a summary of the major stipulations of these regulations?*

Articles L.145 et seq. of the French Commercial Code relating to commercial leases mainly provide as follows:

- 9-year lease duration;
- right of renewal;
- compensation right when the landlord terminates;
- no sub-lease without the landlord agreement;
- limitation of the rent increase / decrease upon renewal;
- tenant entitlement to transfer the lease upon sale of his business;
- right to add new lines of business to the initial activities.
- Asbestos survey
- Environmental survey
- Town planning regulations

26. *Are there any formalities to fulfil in order to enforce the lease agreement towards third parties?*

No need to. Tenants should be made aware that landlords often require the lease agreement to be executed with a "notaire" to give it "authentic" effects. This then eases enforcement of the lease obligations onto the tenant.

A.3. Environmental issues:

27. *For what types of activities is an environmental permit required?*

In order to prevent environmental damage, many industrial projects are subject to declaration or authorization.

The higher the environmental risk, the heavier the formalities will be.

If the activity represents a real risk for the environment, a prior authorization may be necessary in order to start up the project.

If the activity has a lower risk for the environment, the company may need to file a request for simplified authorisation.

If the risk is even lower, a simple declaration is sufficient.

The classification of dangerous industries is made according to some criteria contained in State regulations.

28. *Can you describe briefly this procedure? How much time will this procedure normally take?*

The process in order to obtain an authorization is quite complicated.

The company has to describe its project and particularly the environmental impacts or dangers and the various precautions taken against the aforementioned dangers.

Besides, it must prove its technical and financial capacity to control the environmental risk and to respect the French regulations.

The population must be informed and can obtain a copy of the company's environmental file and to make observations.

This takes between ten and twelve months.

However, the process is easier when a simple declaration is necessary. In this situation, the State only checks that the file is complete. This takes approximately 3 months.

A.4. Employment:

29. *Are there any specific regulations with regard to outsourcing of employees?*

Outsourcing of employees is possible under French law.

30. *Applicable legislation according to the type of employment (differences between employment by local company or by head office for the local branch)*

No differences exist in the applicable labour law between employees employed by a local branch or by a subsidiary.

31. *Legal engagement and dismissal requirements and formalities*

The employer needs to fulfil several formalities concerning his staff. The contract can be concluded orally except for some specific contracts (concluded for a limited period generally) which will need to be made in writing.

The employer can stop the employment agreement at any time but pursuant to a quite complicated procedure. Employers must always justify their dismissals. The procedure is very strict for employers and any mistake can be costly.

In case of dismissal, an indemnity must be paid to the employee.

If the dismissal is illegal or unjustified, the sum might be higher (up to 2 years of salary).

32. *Social security regulations*

Both employer and employee contribute to the social security payment.

Employers have to employ disabled people depending on the number of their employees. If not, they may be liable to pay a special tax.

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EUROJURIS INTERNATIONAL BUSINESS GROUP:

who we are

Eurojuris International

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Eurojuris is now the leading network of law firms in Europe and worldwide with over 600 member firms and approximately 5000 lawyers. In addition Eurojuris can, through its correspondent firms, provide access to local firms in many other countries throughout the world. Members and correspondents are always well established medium sized independent law firms satisfying the Eurojuris criteria.

Eurojuris aims to provide more than just a reliable directory of legal firms. A permanent headquarters with full time staff to manage the organisation was created in 1993 and its responsibilities include co-ordinating numerous national activities, publishing brochures, newsletters and guides, organizing meetings and congresses, promoting specialist groups and setting up an organisation to provide cohesion among different legal systems and business cultures.

The Eurojuris commitment to quality is paramount and is maintained by ensuring that management procedures and work methods are tailored to match the client needs and are dynamic and open to constant improvement. It is also essential that all Eurojuris International members understand and implement approved work methods and that regular internal and external control procedures are reviewed on a systematic basis.

Eurojuris International Business Group

The Eurojuris International Business Group (Eurojuris IBG) is one of a number of the Eurojuris practice groups. Eurojuris IBG is a proactive, business generating group that was formed to enable a small group of Eurojuris members to focus on the needs of business clients. Members of the Eurojuris IBG are experienced in their practice areas and leaders in the international legal and business community.

Eurojuris IBG members aim to provide a Partner level service to clients and, through close co-operation with European colleagues, to provide a consistent and seamless service.

Eurojuris IBG aims to offer a uniform presentation and mutual legal education schemes with common practices and to develop common services for the clients of member firms.

As more and more businesses find that improved communication and access opens the way to more international trade, the need for legal representation throughout a number of jurisdictions becomes essential. Eurojuris IBG provides access to expert local knowledge through a lawyer in the jurisdiction of the client's head office.

The members of Eurojuris IBG maintain close levels of co-operation and knowledge of each other's firms. This is achieved not only via the usual media of email, fax and telephone, but also through regular meetings, some of which take place in the offices of the member firms to enable members to understand the way in which they can better serve their client's needs.

The members of Eurojuris IBG fulfill very strict criteria: they are business minded, they work with business clients across Europe and overseas, they all work in the English language and have some knowledge of other European languages. Importantly they are equipped with the most up to date information technology systems and maintain substantial Professional Indemnity Insurance.

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