France

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CORPORATE ENTITIES

The main limited liability corporations used in France are the following:

- ***Société anonyme* (SA).** This is the most commonly used corporate structure for large businesses in France. The vast majority of French listed companies are incorporated as an SA. The SA has a minimum share capital of EUR37,000 (about US$47,423) if not listed or EUR225,000 (about US$288,382) otherwise. It must have at least seven shareholders.
- ***Société par actions simplifiée* (SAS).** The SAS is a highly flexible structure allowing its shareholders the freedom to determine the rules governing their relationships. This structure is typically favoured:
  - by large groups for their wholly-owned French subsidiaries;
  - whenever shareholders wish to organise their relationships in particular non-standard ways and have no intention of taking the company public in the future.

  The bye-laws of an SAS can notably permit:
  - multiple voting rights per share;
  - transfer of ownership;
  - pre-emption rights; and
  - shareholder exclusions.

  The minimum required share capital is EUR1 and shares cannot be publicly traded. There may be a single shareholder. The only mandatory body is the president, who may be a legal entity.
- ***Société en commandite par actions* (SCA).** The SCA is characterised by the co-existence of two categories of shareholders:
  - general partners (*commanditiés*) with joint, unlimited liability for corporate debts;
  - limited partners (*commanditaires*) whose potential liability cannot be greater than their contributions.

  This corporate structure, rarely used today, has the advantage of permitting capital to be raised from public offerings (as shares can be listed) while keeping management within a restricted group. The SCA is therefore generally considered to be a suitable anti-takeover structure.
- ***Société à responsabilité limitée* (SARL).** This structure is generally preferred by small and medium-sized businesses and can be incorporated with a minimum share capital of EUR1. A SARL can be formed with one shareholder (and is then known as a EURL) and must not have more than 100 shareholders.

A European company (*Societas Europaea*) (SE) can also be used, typically in the form of an SA.

As corporate governance issues arise mainly in the SA, the following chapter mainly refers to the SA.

LEGAL FRAMEWORK

1. What is the regulatory framework for corporate governance and directors' duties?

Directors' duties and corporate governance in France are principally governed by:

- The Commercial Code (*Code de commerce*).
- The company's bye-laws.

In addition, specific regulations apply to listed companies:

- Certain provisions of the Monetary and Financial Code (*Code monétaire et financier*).
- The regulations of the Financial Markets Authority (*Autorité des Marchés Financiers*) (AMF).
- Binding corporate governance principles adopted by certain companies.
- Non-binding recommendations by professional associations (Viénot I (1995) and II (1999), Marini (1996) and Bouton (2002) reports).

BOARD COMPOSITION AND REMUNERATION OF DIRECTORS

2. What is the management/board structure of a company? In particular:

- **Is there a unitary or two-tiered board structure?**
- **Who manages a company and what name is given to these managers?**
- **Who sits on the board(s)?**
- **Do employees have a right to board representation?**
- **Is there a minimum or maximum number of directors or members of the managerial and supervisory bodies?**

Board structure

The governance of an SA may be organised as a unitary or a dual structure.

Unitary structure. This most widely-used structure consists of a board of directors (*conseil d'administration*), headed by a chairman, and a chief executive officer (CEO) (*directeur général*) who runs the company. Both positions can be held by the same individual.

Dual structure. This structure consists of a management board (*directoire*) composed of up to five members running the company, and a supervisory board (*conseil de surveillance*) which oversees the management board. The management board's members and chairman are appointed and dismissed by the supervisory board, whose members are appointed by the shareholders at a duly convened general shareholders' meeting.

Management

Unitary structure. The CEO, appointed by the board of directors, manages the company. He may be assisted by one or several deputy CEOs (*directeurs généraux délégués*), also appointed by the board.

Dual structure. The management board carries out the day-to-day management.

Board members

Unitary structure. The board of directors consists of three to 18 directors appointed at a general shareholders' meeting and of employees' elected representatives. Directors can be natural persons or legal entities (which must designate a permanent representative, subject to the same obligations and liabilities as a natural person). The statutory auditor attends board meetings when the board approves the accounts but his presence is optional in all other cases.

Dual structure. The supervisory board consists of natural persons or legal entities (except for its chairman) appointed in a shareholders' meeting and employees' representatives. The management board consists exclusively of natural persons elected by the supervisory board.

Employees' representation

In companies having over 50 employees, workers' council representatives sit on the board without voting rights.

In listed SAs where employees hold more than 3% of the share capital, one or more representatives must be elected to the board by the shareholders. These directors have the same status, obligations and liabilities as the other directors.

Unlisted SAs' bye-laws may also authorise employee-elected directors to sit on the board without voting rights. The maximum number of such directors is four (or five for listed companies) and cannot exceed one third of the total number of other directors. Employee directors have the same status, obligations and liabilities as directors appointed in shareholders' meetings.

Number of board members

Unitary structure. The number of directors is set in the bye-laws and must be between three and 18 (24 following a merger).

Dual structure. The management board consists of up to five members for an unlisted company or seven for a listed company. The number of supervisory board members is set in the bye-laws and must be between three and 18 (24 following a merger).

Employee-elected representatives are not taken into account for the calculation of the total number of directors.

3. Are there any age or nationality restrictions on the identity of directors?

Age restrictions

Unitary structure. Except when otherwise provided for in the bye-laws, the number of directors aged over 70 cannot exceed one-third of the total and the age limit for the chairman and CEO is 65.

Dual structure. Except when otherwise stated in the bye-laws, the number of directors aged over 70 cannot exceed one-third of the total and the age limit for members of the management board is 65.

Nationality restrictions

European citizens. Citizens of the EU and of Iceland, Liechtenstein, Norway and Switzerland are exempt from any formalities (except if resident in France, in which case they must complete local registration formalities).

Other non-French nationals. A national of any other country who wishes to become chairman, CEO, deputy CEO or chairman of the management board of a French company must:

- If a resident of France, be in possession of a temporary residency permit (*carte de séjour temporaire*) authorising commercial and professional activities.
- If a non-resident of France, file a declaration with the *préfet* of the administrative area in which the company's registered office is located.

Unless otherwise stipulated in the bye-laws, these formalities are not required for:

- A director who is not also the CEO.
- Members of the management board not authorised to represent the company in its dealings with third parties.

4. In relation to non-executive, supervisory or independent directors:

- **Are they recognised?**
- **Does a part of the board have to consist of them? If so, what proportion?**
- **Do non-executive or supervisory directors have to be independent of the company? If so, what is the test for independence or what makes a director not independent?**
- **What is the scope of their duties and potential liability to the company, shareholders and third parties?**

- **Recognition.** There are no obligations regarding independent directors. However, the corporate governance codes of best practice (*see Question 1*) recommend their appointment to guarantee the overall independence of the board. In practice, numerous listed companies have appointed independent directors over recent years.
- **Board composition.** Board members within unitary structures are all non-executive directors, except for the chairman of the board when he also acts as CEO.

  In dual structures, members of the management board are all executive directors and members of the supervisory board are all non-executive directors.
- **Independence.** Independence is not defined in law. The *Bouton* code of best practice defines an independent director as someone having no relationship of any kind whatsoever with the company, its group or its management that could compromise his freedom of judgment.

  It is recommended that at least one-third of the board should consist of independent directors.
- **Duties and liabilities.** There is no legal distinction between executive, non-executive and independent directors in terms of duties and liabilities.

5. Are the roles of individual board members restricted? For example, can one person be the chairman and chief executive?

Unitary structure

Depending on the bye-laws, the roles of chairman and CEO can be separated or held by the same person. A natural person may only hold one position as CEO (two under certain circumstances) and cannot hold more than five directorships at any one time, although directorships with a parent company and its subsidiaries count as one. This limitation does not apply to legal entities; however, the position of permanent representative is taken into account. Although a director cannot enter into an employment agreement with the company, an employee can become a director and continue working as an employee under certain conditions.

Dual structure

These same restrictions apply to members of the supervisory board. A management board member cannot simultaneously sit on the supervisory board of the same company. One person cannot hold more than one seat on a management board at any one time (two under certain circumstances).

6. How are directors appointed and removed? Is shareholder approval required?

Appointment of directors (unitary and dual structures)

The first directors are appointed in the initial bye-laws at the time of incorporation. In listed companies, the first directors are appointed by the general shareholders' meeting.

In both listed and unlisted companies, directors (other than those elected by employees) are subsequently elected by the general shareholders' meeting. For vacancies created by death or resignation, the board may co-opt a director and this decision must subsequently be ratified by the general shareholders' meeting.

Supervisory and management board members are appointed under the conditions described above.

Removal of directors

Directors can be removed with immediate effect and without justification at any time by the general shareholders' meeting. The dismissed director has no right to compensation but may be awarded damages if the dismissal is deemed to be harmful or offensive, and golden parachutes may be granted if duly approved as related-party agreements.

Supervisory and management board members can be dismissed in the same manner as directors.

7. Are there any restrictions on a director's term of appointment?

Unitary structure

Unless otherwise stipulated in the bye-laws, the maximum term of appointment, re-election included, is:

- Unlisted companies: three years for initial directors, six years for directors appointed thereafter.
- Listed companies: six years in all cases.

Dual structure

The term of appointment of supervisory board members is the same as for directors. Management board members are appointed for terms of between two and six years as determined by the bye-laws.

8. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

Directors employed by the company

Unitary structure. A director is prohibited from being an employee of the company. An employee may under certain circumstances be appointed as director provided that both positions involve separate duties within the company. The number of directors employed by the company is limited to one-third of the total.

Dual structure. An employee may become a member of the company's management board and vice versa. The employment contract must correspond to an actual position and cover specific non-managerial duties for which the relevant person is in a subordinate position with regard to the company. Up to one-third of supervisory board members may simultaneously hold employment contracts. A supervisory board member may enter into an employment agreement with the company before or after becoming member of the supervisory board.

The non-binding guidelines applicable notably to chairmen and CEOs adopted in 2008 by AFEP and MEDEF (two French employers' organisations) recommend that a manager should terminate his employment contract on becoming a director or board member.

Shareholders' inspection (unitary and dual structures)

Directors' employment contracts and any material amendments to them must be approved by the board of directors and disclosed to the statutory auditors, who file a report put to the vote at the general shareholders' meeting.

9. Are directors allowed or required to own shares in the company?

Unitary structure

Since 1 January 2009, there has been no legal requirement for directors to own shares in their company, although this may be required by the bye-laws.

Dual structure

Members of the management board have an option but no obligation to hold shares in the company. Since 1 January 2009, it has no longer been mandatory for supervisory board members to own shares in their company, although this may be required by the bye-laws.

10. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

Determination of directors' remuneration

To comply with professional corporate governance guidelines, many (mostly listed) companies have introduced compensation committees to determine the criteria applicable to the remuneration of corporate officers.

Unitary structure. A lump-sum amount of fees (*jetons de présence*) for the entire board is approved each year by the general shareholders' meeting, which the board then divides among its members. The board may also allocate exceptional remuneration to certain directors for special assignments.

The compensation of the chairman and CEO is set by the board of directors.

Dual structure. The remuneration of management board members is set by the supervisory board. The fees payable to supervisory board members are allocated in a similar manner to directors' fees.

In listed companies, remunerations and benefits of any kind (including golden parachutes) granted to the chairman, CEO, deputy CEO or a member of the management board must be disclosed to the shareholders and linked to the beneficiary's performance.

The non-binding AFEP and MEDEF guidelines published in 2008 recommend putting a stop to golden parachute arrangements in distressed companies.

Disclosure

Companies with more than 200 employees must disclose the global amount of compensation paid to the five highest-paid individuals, as certified by the statutory auditors, before the general shareholders' meeting.

A pending decree will prohibit companies which have accepted emergency aid from the French state from granting stock options, free shares, bonuses, golden parachutes or top-up pension plans to chairmen, CEOs and deputy CEOs, members of management boards or chairmen of supervisory boards. This ban will remain in force until 31 December 2010.

Shareholder approval

Fees paid to directors and supervisory board members are approved each year by the general shareholders' meeting.

In listed companies, bonuses and golden parachutes for corporate officers and board members must comply with the procedure applicable to related-party agreements and thus be approved by the board and by shareholders.

MANAGEMENT RULES AND AUTHORITY

11. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

The procedures for convening board meetings are freely defined in the bye-laws and the frequency of such meetings is not defined by law. Directors can either agree to meet at regular intervals or allow the chairman to call meetings as necessary. However, the supervisory board must meet at least four times per year in order to examine the quarterly report presented by the management board.

The board of directors and supervisory board have a quorum if at least one half of their members are present (including via video conferencing). Decisions are adopted on the basis of a simple majority of members present or represented, although a higher majority can be stipulated in the bye-laws for matters of particular importance.

The quorum of the management board is not regulated by law and can be freely determined in the bye-laws.

Except in certain circumstances (for example, the approval of the company's accounts) or unless prohibited in the bye-laws, directors or supervisory board members can attend board meetings via video or telephone conferencing.

12. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' powers

Unitary structure. The board of directors determines the company's strategic direction and supervises its implementation. The CEO has all powers to act in the company's name under all circumstances and represents the company in its relations with third parties.

Dual structure. The management board has all powers to act in the company's name under all circumstances and its chairman represents the company in its relations with third parties. The supervisory board exercises permanent supervision over the management board.

Restrictions

The powers of the CEO or management board can be restricted by the bye-laws or via board resolutions. However, such restrictions are unenforceable against third parties.

13. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

In both unitary and dual structures, the board of directors and supervisory board can delegate responsibility for specific issues to specially-created committees whose members may or may not be directors or supervisory board members. These committees cannot become involved in the company's management or indirectly limit the statutory powers of the relevant board or the CEO. In accordance with corporate governance codes of conduct, many listed companies have created committees of this kind (notably audit and compensation committees).

DUTIES AND LIABILITIES OF DIRECTORS

14. What is the scope of a director's duties and personal liability to the company, shareholders and third parties? Please distinguish between civil and criminal liability under each of the following (if relevant):

- **General duties.**
- **Theft and fraud.**
- **Securities law.**
- **Insolvency law.**
- **Health and safety.**
- **Environment.**
- **Anti-trust.**
- **Other.**

- **General duties.** CEOs, members of the management board or directors can be held liable with regard to the company and/or the shareholders for any breaches of applicable laws or regulations or of the bye-laws, and for mismanagement.

  Directors only have liability toward third parties if they have personally committed a fault separate from their corporate duties.

  Supervisory board members have no liability toward the company and/or third parties other than for personal negligence in the performance of their duties or mismanagement. They incur no liability with respect to managerial acts and their consequences.

- **Theft and fraud.** In addition to general rules of criminal law, CEOs, directors and management board members incur specific criminal liability with regard to certain acts, notably:

  - misuse of corporate assets or power;
  - payment of fictitious dividends;
  - presentation of false corporate accounts.

  Supervisory board members may incur liability for any offences committed by management board members and not disclosed to the shareholders' meeting.

- **Securities law.** CEOs, members of the management and supervisory boards, and directors incur civil and criminal liability for breach of securities law, whether intentional or resulting from negligence, including in the following cases:

  - disclosure of false or misleading information;
  - insider trading;
  - failure to declare the crossing of certain shareholding thresholds;

- stock price manipulations;
- violation of black-out periods.

- **Insolvency law.** In the context of insolvency proceedings against the company, the CEO, directors and management board members may have liability for corporate losses in case of mismanagement and can also be subject to measures preventing them from holding management positions in the future.
- **Health and safety.** CEOs and members of the management board may be held liable for any breach of health and safety regulations, whether intentional or resulting from negligence. Directors are obliged to ensure the strict application of health and safety regulations and can incur personal criminal liability if they do not take all appropriate measures, regardless of whether any incident actually occurs as a result.
- **Environment.** CEOs, directors and members of the management board may be held liable for any breach of environmental regulations, whether intentional or resulting from negligence. Directors are generally held personally responsible by the courts for any breaches of environmental regulations committed by their employees.
- **Anti-trust.** CEOs, directors and members of the management board may be held liable for any breach of anti-trust regulations.

15. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

Directors' liability cannot be limited in the bye-laws or via resolutions of the board of directors or the shareholders. A company may indemnify its directors against their civil liability, but not against any criminal liability.

A director who delegates his powers to a person having the necessary competence, authority and means to perform the tasks delegated may be exonerated from his liability for faults or wrongdoing committed by that person.

16. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

Directors can be insured against the financial consequences of any civil liability incurred by them, but not against fraud or criminal acts. A director's civil liability insurance covering actions carried out in the company's name, in his official capacity and in the absence of any separate personal fault, is frequently paid for by the company. Insurance coverage for directors and managers is common.

17. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

Any person de facto running a company under the cover of, or in place of, its legal representatives has the same civil and criminal liability as the official directors. This includes having to contribute to corporate losses in case of insolvency proceedings.

TRANSACTIONS WITH DIRECTORS AND CONFLICTS

18. Are there general rules relating to conflicts of interest between a director and the company?

Directors have the general and absolute duty to place the company's interests before their own personal interests, having been appointed to act in the company's best interests. They therefore cannot:

- Enter into any agreement with the company which would be advantageous for them and prejudicial for the company.
- Enter into any transaction with a third party that could have been profitable for the company if it had concluded the same transaction.

19. Are there restrictions on particular transactions between a company and its directors?

Any direct or indirect agreements entered into between a company and its CEO, chairman, directors, supervisory or management board members, or any shareholder owning more than 10% of the voting rights, are governed by a specific disclosure and review procedure.

This procedure differentiates between three categories of related-party agreements:

- Prohibited agreements (for example, borrowing from the company).
- Unrestricted agreements (that is, agreements entered into in the normal course of business and under normal conditions).
- Other agreements which are subject to prior approval by the board of directors or the supervisory board.

A special report on such agreements, prepared by the statutory auditors, is submitted to the general shareholders' meeting for further approval. If the agreements are not approved, they can be invalidated if harmful to the company.

20. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

In listed companies, any purchase or sale by directors of the company's securities on the basis of insider information is subject to criminal penalties.

The chairman, CEO and board members must register or hold in nominative form all company shares owned by them.

Any transactions carried out involving company shares by board members and the CEO must be declared to the AMF within five days.

More generally, listed companies have adopted guidelines stating that managers and directors must abstain from any trading activities during a certain period before the publication of interim and annual results (black-out period).

Options cannot be granted:

- Within ten trading sessions before and following the date on which the consolidated (or annual) accounts are made public.
- Between the date on which the company's corporate bodies are informed of a fact which, were it to be made public, could have a material impact on the price of the company's securities, and a date equivalent to ten trading sessions following that on which the information was made public.

DISCLOSURE OF INFORMATION

21. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

The board of directors or the management and supervisory board must provide the following information to shareholders before a general shareholders' meeting:

- The annual accounts for the most recent financial year, including details of the allocation of earnings.
- The statutory auditors' reports.
- Reports by the board of directors (or management or supervisory board).

Shareholders may also, at any time, consult certain documents concerning the company, including:

- The annual accounts (balance sheets, earnings accounts and appendices) for the three most recent financial years.
- If applicable, the consolidated accounts for the same period.
- The list of board members (or management or supervisory board members).
- The global amount, certified by the auditors, of remuneration paid to the five or ten highest-paid individuals, according to whether the number of employees is greater than 200 or not.

In addition, companies must each year file accounts for the previous financial year with the clerk of the commercial court having jurisdiction over their registered office, which are then made available to the general public.

Before a general shareholders' meeting, any shareholder may put questions in writing to the board of directors or management board.

There are numerous specific disclosure obligations applicable to listed companies for which any material change concerning information already communicated to the public must be disclosed rapidly in the same manner in which the initial disclosure was made.

COMPANY MEETINGS

22. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

An ordinary general shareholders' meeting must take place at least once per year, within six months of the end of the financial year, notably for:

- The approval of the accounts for the past financial year.
- The allocation of earnings and calculation of the dividend.
- The appointment, replacement and/or dismissal of directors.
- The approval of any related-party agreements.
- The calculation of the remuneration allocated to the board.

A criminal sanction (six months' imprisonment or a EUR9,000 (about US$11,353) fine) may be imposed on the chairman or board members if no meeting is convened.

23. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

The general shareholders' meeting is in principle called by the board. A general meeting can also be called by a court-appointed agent at the request of either:

- Any interested party in case of emergency.
- One or several shareholders representing at least 5% of the share capital.

In listed companies, a general shareholders' meeting can also be convened by shareholders owning a majority of the capital or voting rights and after a public takeover bid or the sale of a controlling interest.

The shareholders' right to submit resolutions to the general meeting is conditional on them owning a certain percentage of the share capital (5% if the total share capital is under EUR750,000 (about US$961,275); less if the total share capital is greater). The workers' council can also request that draft resolutions be added to the agenda for general meetings.

MINORITY SHAREHOLDER ACTION

24. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

If a minority shareholder believes the company is being mismanaged, he may:

- Submit questions in writing to the board, to be answered in the next general meeting.
- At any time, if holding alone or in concert at least 5% of the shares, submit questions in writing to the chairman of the board or the management board on the company's management transactions. If no response is forthcoming within one month or if the response is unsatisfactory, the shareholder(s) may request a summary judgment ordering the appointment of an expert entrusted with drawing up a report on the relevant management transactions (management expertise procedure).
- Bring an action against the managers in the event of criminal law offences (for example, misuse of corporate assets).
- Request, under certain conditions (*see Question 23*), that a general shareholders' meeting be convened.
- Seek indemnification from directors on behalf of the company through derivative legal action. In this case, any damages awarded by the court would be paid to the company itself.
- Bring individual legal action against the directors, when having suffered a loss distinct from that suffered by the company.
- In the event of serious difficulties preventing the normal operation of the company, ask the courts to appoint an interim administrator to carry out temporarily the management of the company's business.
- Ask the courts to order a preventative pre-trial expertise procedure (*expertise in futurum*) to gather or preserve factual evidence with a view to future legal proceedings. In contrast to management expertise procedures, these preventive expertise measures are available to any shareholder, with no minimum ownership condition.

INTERNAL CONTROLS, ACCOUNTS AND AUDIT

25. Are there any formal requirements or guidelines relating to the internal control of business risks?

In listed companies, the chairman of the board of directors (or supervisory board) must present to the general shareholders' meeting a report on the company's internal control and risk management procedures, covering all of the procedures put in place to prevent and monitor the risks generated by its business activity. The statutory auditors must present a report summarising their observations on the chairman's report on internal controls.

26. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The company's accounts must be accurate and provide a true picture of the assets, financial situation and earnings of the company, failing which management could face severe criminal penalties. Any chairman, director, CEO or management board members who, even in the absence of any dividend payment, have published or presented to shareholders annual accounts which do not give a true picture of the financial situation and assets, aimed at concealing the company's actual situation, is exposed to a five-year prison sentence and a EUR375,000 (about US$480,938) fine.

In listed companies, any irregularity in the annual accounts also exposes the company and its management to financial penalties imposed by the AMF.

27. Do a company's accounts have to be audited?

An SA must have at least one statutory auditor responsible for:

- Verifying the company's accounting documents.
- Ensuring compliance with applicable accounting standards.
- Ensuring the accuracy of the information provided in the management report and documents addressed to shareholders on the company's financial situation.

Companies which publish consolidated accounts and listed companies must appoint at least two statutory auditors.

28. How are the company's auditors appointed? Is there a limit on the length of their appointment?

The statutory auditors are appointed for six financial years. In unlisted companies, they can be reappointed indefinitely.

The statutory auditors are appointed (or their appointments are renewed) by the general shareholders' meeting, further to a proposal from the board or, under certain circumstances, the shareholders. In listed companies, when the board of directors selects the proposed statutory auditors, the CEO and deputy CEO(s) abstain from voting if they are also directors.

To be valid, the appointment of the auditors must feature on the agenda of the general shareholders' meeting.

The AMF is notified of proposals for the nomination or renewal of the appointment of the statutory auditors made by listed companies.

29. Are there restrictions on who can be the company's auditors?

Only legal entities or natural persons registered on a special list can act as statutory auditors. This list imposes several conditions regarding professional integrity and competence, among others.

The role of statutory auditor is incompatible with any employment, commercial business activity or activity liable to restrict independence.

Any persons having been managers or employees of a company within the last five years cannot be appointed as statutory auditors of that company. For the five years following the termination of their activities, the statutory auditors cannot be appointed as managers or employees of the companies audited by them, or of any company controlled by or controlling the company whose accounts they have certified.

30. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

Statutory auditors are prohibited from providing any company audited by them, or any company controlled by or controlling such company, with any consulting or other services not covered directly by the scope of their assignment as statutory auditor.

31. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

The statutory auditors are liable to the company and third parties for any prejudice caused by misconduct and negligence committed in the performance of their duties. They are in principle bound by a best efforts obligation and not by an absolute obligation.

Statutory auditors may in particular incur criminal liability in the following cases:

- Breach of professional secrecy.
- Non-disclosure of criminal facts to the state prosecutor (*procureur de la république*).
- Issuance or confirmation of false information on the company's situation.
- Failure to indicate major investments or acquisitions of other companies located in France in their report.
- Provision of inaccurate information in the report presented to the general shareholders' meeting called to vote on the deletion of shareholders' preferential subscription rights.
- Performance of acts potentially harmful to their independence or exercise of their activity irrespective of legal incompatibilities.

If they breach their obligations, the statutory auditors can also be subject to disciplinary penalties (notably a temporary ban and formal exclusion from the profession). They may take out professional liability insurance, although their liability cannot be limited in any way.

CORPORATE SOCIAL RESPONSIBILITY

32. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

Since 2001, the board's report to the general shareholders' meeting within listed companies must include information on the manner in which they take into account the social and environmental impacts of their business activity.

In practice, listed companies often also publish ethical codes of conduct regarding social or environmental matters.

ROLE OF COMPANY SECRETARY

33. What is the role of the company secretary in corporate governance?

There is no requirement for a company secretary (*secrétaire général*) to be appointed. It is in practice unusual for the company secretary to sit on the board of directors.

ROLE OF INSTITUTIONAL INVESTORS AND SHAREHOLDER GROUPS

34. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.

Institutional investors and other shareholder groups, representing over 80% of the shareholders of CAC 40 companies, are influential in monitoring and enforcing best practice in corporate governance. Their growing strength as shareholders of French listed companies has led to the adoption of new corporate governance codes.

ADAM, led by Colette Neuville, is the main organisation in France dedicated to protecting the rights of minority shareholders of listed companies.

WHISTLEBLOWING

35. Is there statutory protection for whistleblowers (persons who disclose criminal activity or other serious malpractice within a company)?

Subject to criminal penalties, statutory auditors must disclose to the state prosecutor any criminal facts revealed to them in the context of their assignment and must inform the authorities of any fact or decision justifying their intention to refuse to grant certification for the accounts.

The Data Protection Authority (*Commission Nationale de l'Informatique et des Libertés*) (CNIL) publishes a list of guidelines defining the conditions governing whistleblowing mechanisms in order for these to be compliant with the law. Companies must restrict the scope of such proceedings to a specific field (particularly accounts and anti-corruption measures), must not encourage anonymous denunciations, must put in place a specific organisation to gather and handle alerts, and must inform the person concerned as soon as any evidence has been saved.

Any employee who alerts either his employer or the authorities regarding corruption which may have become known to him in the course of the performance of his duties is protected by law against any penalties, dismissal or other discriminatory measures.

REFORM

36. Please summarise any impending developments or proposals for reform.

A draft bill on the decriminalisation of business law is currently being prepared by the French Justice Ministry, adopting a large number of the recommendations made by the February 2008 Coulon Report. Concerning securities offences, the bill aims at reducing overlap between criminal and administrative penalties and seeks to reform the interaction between criminal procedures (led by the courts) and administrative procedures (led by the AMF). Given the current financial crisis, the content of this draft law and the timetable for its adoption remain highly uncertain at this stage.

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