



IR GLOBAL - MEET THE MEMBERS

France

IR Global - The Future of Professional Services

IR Global was founded in 2010 and has grown to become the largest practice area exclusive network of advisors in just a few years, this incredible success story has seen the network awarded Band 1 status by Chamber & Partners, recommended by Legal 500 and has been featured in publications such as The Financial Times, Lawyer 360 and Practical Law amongst many others.

The group's founding philosophy was based on bringing the best of the advisory community into a sharing economy; a system, which is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

MULTI-DISCIPLINARY

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

NICHE EXPERTISE

In today's marketplace, both local knowledge and specific practice area / sector expertise is needed. We select just one firm, per jurisdiction, per practice area ensuring the very best experts are on hand to assist.

VETTING PROCESS

Criteria is based on both quality of the firm and the character of the individuals within. It's key that all of our members share a common vision towards mutual success.

PERSONAL CONTACT

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

CO-OPERATIVE LEADERSHIP

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups who focus on network development, quality controls and increasing client value.

ETHICAL APPROACH

It is our responsibility to utilise our business network and influence to instigate positive social change. IR founded Sinchi a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities / tribes around the world.

STRATEGIC PARTNERS

Strength comes via our extended network, if we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR or someone else.



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FOREWORD BY EDITOR, NICK YATES

France: A potent mix of economy and culture

France is world famous for its culture. It is one of the great democracies, responsible for everything from artistic masterpieces and important literary works, to revolution and everything in between.

But, while it may be tempting to imagine France as simply a place of museums, art galleries and fine dining - there is also a powerful economic engine beneath the Gallic hood. France is a modern, efficient economy at the heart of Europe with a multitude of attractions for foreign investors.

The country is one of the most powerful members of the European Union and the Eurozone, with full access to the European Single Market and its 500 million consumers. It's central location and excellent transport infrastructure make France an ideal location to service those consumers, plus others in the wider European area and North Africa.

Aside from its influence in Europe, France has an affluent domestic market of almost 70 million people and has already demonstrated its attractiveness to foreign investors with a range of initiatives to encourage and support investment from both large and small companies.

Figures from Business France, an organisation supporting small and medium-sized (SME) businesses, show that there were 25,000 foreign-owned subsidiaries in France in 2016 and over 1,000 foreign direct investment (FDI) projects. The data suggests that foreign companies already contribute 16 per cent of the total value of the French economy and are responsible for 30 per cent of all French exports.

This level of investment does not come about without a concerted effort from both the private sector and government to provide the right legislative framework and business environment to allow commerce and entrepreneurship to thrive.

The French Government has put in place a number of initiatives to encourage FDI. Figures from the French Ministry of Europe and Foreign Affairs show that France has signed tax conventions with over 120 countries, for the avoidance of double taxation. It has also provided companies with a single contact for tax matters (Tax4Business) and adapted flexible residence permits.

France has also issued a Responsibility and Solidarity Pact, which commits the government to help with economic growth by reducing tax and labour costs for companies and simplifying legislation, in order to help with job and wealth creation.

In accordance with this mandate, France has adopted the European Commission's Competitiveness and Employment Tax Credit (CICE) aimed at reducing employment costs. It has also passed legislation on the simplification of running companies, which entered law in December 2014, enabling companies and users to make aggregate annual savings in the region of EUR 3 billion.

While the government is playing its part, the private sector also makes FDI attractive in France. France Invest is a body that unites and represents all areas of the French private equity industry, and provides funding for credible operations in the country. Figures from France Invest show that, in 2015, EUR 10.7 billion was invested by its members in about 1,645 businesses, 78 per cent of which were SMEs and 21 per cent mid-cap companies. Overall, 314,000 jobs were created by French private equity backed companies between 2010 and 2014 (net of jobs destruction), mainly in France.

Forward-thinking bodies like France Invest have had a dramatic impact. For the first time ever, in 2017, France took the crown from the UK as Europe's top venture capital hub, with EUR 2.7 billion funds raised.

France is also at the cutting edge of technological development and the economy is very receptive to research & development in a range of high technology fields. Innovative technology companies receive strong backing through the government's National Investment Program, and, by achieving the internationally-recognised 'La French Tech' accreditation, companies can access private and public sector support through specialist 'La French Tech' hubs. Several cities across France have been designated as 'tech cities', including Lille, Lyon, Paris,

Nantes, Grenoble, Toulouse and Bordeaux. The world's biggest start-up campus, Station F in Paris, catered for over 1,000 start-ups in 2017.

Of course, any investors considering France as a destination for development or expansion will need professional advisors with the expertise to help them to take advantage of every assistance the country offers, from tax incentives to employment legislation.

The following pages contain contributions from eight French lawyers, with expertise in different areas of French law that affect companies. They discuss issues that investors should be aware of, such as changes to tax and employment legislation, insurance intermediation, insolvency, legislation directly affecting FDI, as well as developments in attorney/client privilege.

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ANDREAE ASSOCIATES



Avocats Associés

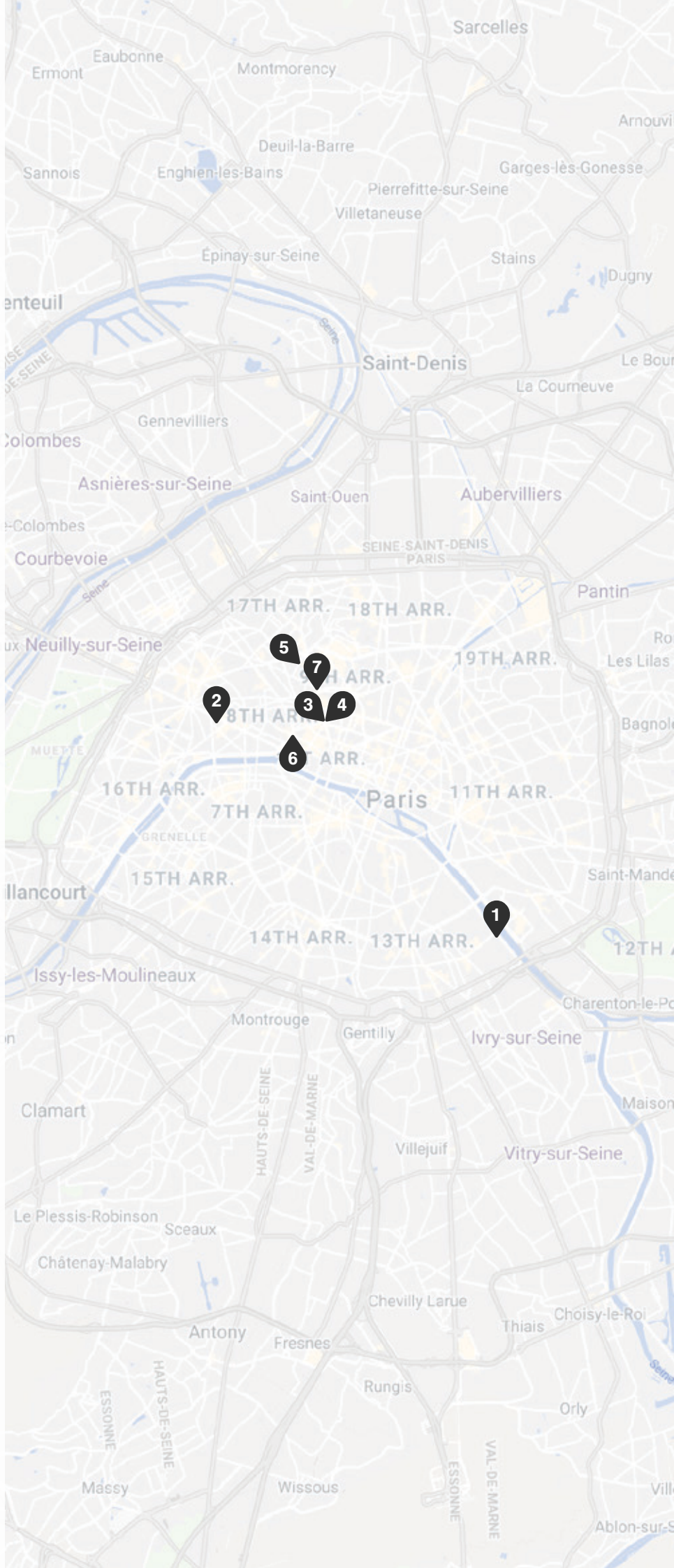


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Member Firms in France

IR Global members in France are largely located in Paris with its investment-friendly business environment consisting of leading legal, accountancy and financial advisers. They are recommended exclusively by practice area thus ensuring that our members have the highest quality niche expertise available to them.

Whether its advice needed on the tax law developments, FDI regulation, simplifying insolvency or understanding the new keystone of French labour

law, our French representatives are on hand to provide you with a high-quality service that suits your every business need.

Member firms featured here retain a global support network across 155+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivalled results. Please see the full list of French member firms below and on the IR Global website via bit.ly/2GADRW3.

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actah.net

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andrae-avocats.com

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Dirk Andreae-Nehlsen is the managing partner of Andreae Associates Avocats with 15 years of experience as a tax attorney in France.

He has a Master in Business and Tax Law from the Sorbonne University and a Master in Business Administration (MBA) from the EADA Business School in Barcelona.

Admitted to the Bar of Paris at the beginning of 2003, Dirk has worked in several leading law firms in Paris (Mayer Brown, CMS Francis Lefebvre, GGV, PDGB) with a focus on international tax law. His French-German profile naturally influenced him to found Andreae Associates Avocats with specialism in French, German and International tax law.

Dirk regularly assist companies and individuals with tax planning and wealth management. In 2018, the notorious magazine 'Leaders League Decideurs' ranked him, for the second year in a row, as one of the best tax lawyers in France in the categories of tax law, tax litigation and re-adjustment assistance, wealth management, regulation and litigation and taxation of international groups. He is the co-author of the book 'Tax Control and Disputes' by Lamy Editions and has published several articles on international tax law. Dirk speaks French, English and German.

Andreae Associates Avocats is an independent Paris-based boutique law firm, specialising in French, German and International tax law.

The firm services foreign private clients who have been in France for some time or are interested in developing their activities in France. Andreae Associates Avocats manages the tax matters of those expatriates, as well as impatriates of international groups, high net worth individuals, mobile employees and high-level executives. Andreae Associates also represents these individuals in front of the French tax authorities and in court.

The objective of Andreae Associates Avocats is to always find the best and most convenient solutions for its clients. The firm has been ranked as one of the best in France in tax law and is proud to be 'highly recommended' for the quality of its relations with the tax authorities and the 'overall management' of the legal and tax affairs of its clients in France.

TAX LAW

Taxing Times: key developments in French tax law

Recent changes to French tax law could have serious repercussions for high net worth individuals who don't incorporate the new legislation into their tax planning strategies.

On 20 December 2018, the French Parliament approved the Finance Bill for 2019. The bill contained significant alterations that will impact a range of taxes, including income tax, investment income, life insurance, wealth tax, inheritance tax and the parameters around tax avoidance.

Income tax

A Pay as You Earn (PAYE) scheme was introduced in France for the first time on January 1st 2019. Before 2019, French tax residents paid their income tax one year in arrears, after the tax return for the relevant year had been submitted. Now, a withholding tax system ('Prélèvement à la source', PAS) is applicable to all French tax resident individuals, and employers are legally responsible for collecting the wage taxes.

In order to avoid paying income tax twice in 2019 (i.e. payment of income tax due on 2018 income and withholding tax on 2019 income), French taxpayers will each receive a tax credit ('credit d'impôt') to cancel out the 2018 French income tax due on non-exceptional income.

Investment income

Dividends, interests and capital gains are now taxed at a flat tax rate of 30 per cent including income tax and social charges ('Prélèvement Forfaitaire Unique'). The 30 per cent flat tax does not apply to rental income.

Special expatriate tax regime

A special expatriate tax regime was completed last year, giving expatriates several very interesting tax benefits (tax exemption on 50% per cent of total income from investments, up to 100 per cent tax exemption on expatriation bonus, etc.) for a period of eight years. This applies, under the condition that they have not been tax resident in France for five calendar years prior to taking up their duties in a company based in France.

Life insurance ('Assurance-vie')

Life insurance policies one of the most commonly-used inheritance tax planning vehicles for French private clients. This is because life insurance policies are not liable to inheritance tax in France, unless the amount received by the beneficiary exceeds EUR 152,500.

There are no changes to this in the Finance Bill, meaning premiums paid by an insured person aged over 70 years old, in respect of a policy taken out since 20 November 1991, are still subject to inheritance tax on proceeds above EUR 30,500. Subsequent proceeds are taxed at a rate of 20 per cent on the fraction of taxable share of each beneficiary not exceeding EUR 700,000 and 31.25 per cent beyond that.

Wealth tax

A big wealth tax reform took place in 2018 reducing the scope of the wealth tax from the 'worldwide assets' of French tax residents to specifically worldwide real estate assets. Savings and investments (including life insurance policies 'assurances-vie') are no longer subject to this tax. The current threshold of EUR1,300,000 remains in place. Tax rates start at 0.5 per cent for assets between EUR 800,000 and EUR 1,300,000, rising progressively to 1.5 per cent for assets over EUR 10,000,000. Considering that rental income does not benefit from the 30 per cent flat tax, the French wealth tax system now clearly dissuades property investments over EUR 1,300,000 and encourages capital investments in order to boost the economy.

Social charges

There is very good news in regard to French Social Charges. Even though the main social charge rates remain the same as last year at 9.7 per cent for employment income, 9.1 per cent for pensions and 17.2 per cent for investments income (including rentals), the social security budget for 2019 has introduced one main change: private clients who are covered by the health system of another EU/EEA country, no longer

have to pay the full 17.2 per cent social charges on investment income and capital gains, but instead only pay a new lower flat rate of 7.5 per cent.

Inheritance tax

The inheritance tax regime remains unchanged this year, since, in comparison to other European countries, inheritance taxes are often considered to be high. Transfers of wealth between spouses and civil partnerships (PACS) are exempt from inheritance tax, but successions between parents and children are taxed up to 45 per cent from a band of value of EUR 1,805,677 upwards with a tax free allowance per child of EUR 100. Transfers to unrelated beneficiaries and/or concubines are taxed at 60 per cent on the whole amount received, with a tax free allowance of EUR 1,594. Inheritance tax might become more punitive next year (following the Yellow Vest (Gilets Jaunes) demonstrations, since a committee has been set up in order to review the inheritance tax in France. Knowing this, private clients might want to review their estate planning this year. Also the application of the new General Anti-Avoidance Rule from 1 January 2020 (article L 64 A of the Tax Procedure Code) will counter certain tax arrangements that are still possible in 2019.

French GAAR (general anti avoidance rules)

Another big change results from the introduction of article L. 64 A of the French Tax Procedure Code by the Finance Bill for 2019. Article L 64 currently allows the French Tax Authorities to counter any 'abusive tax arrangements' by proving that the obtaining of a tax advantage was the 'one and only purpose' of the arrangement ('motif exclusivement fiscal'). From the 1st of January 2020, article L 64 A of the Tax Procedure Code makes it easier for the tax administration to counter abusive tax arrangements by only proving that obtaining a tax advantage was 'one of the main purposes' ('motif principalement fiscal').







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Hervé de Kervasdoué has been a member of the New York Bar since 1995 and of the Paris Bar since 1996. He holds a Master in International Economic Law and an LL.M. from Cornell University, New York, United States.

Hervé advises companies, both listed and unlisted, regarding their strategic merger-acquisitions transactions and/or joint ventures, as well as investment funds and entrepreneurs in private equity transactions. He is also notably involved in the media, internet, luxury, sports and bio/medtech industries.

He has recently worked on behalf of M6 in connection with the acquisition of the French division of RTL radio, the divestiture of the League 1 Football Club Les Girondins de Bordeaux (after advising QSI for its acquisition of PSG Football Club) and the acquisition of William Saurin's assets for COFIGEO.

Hervé de Kervasdoué has been recognised by the Best Lawyers in France Guide for corporate practice since 2013.

BG2V is an independent French business law firm founded in 2010. With nearly 35 lawyers, including 11 partners, all from major Parisian business law firms, BG2V provides its clients with high quality, tailored services in business law.

BG2V's entrepreneurial model, the size of its structure, the personal involvement and the dynamism of each of its lawyers, allows them to be responsive, creative and to offer their clients tailor-made services, adapted to their needs.

The training received by some of the lawyers of the firm in major business schools (HEC, ESSEC) and their experience in renowned companies (IBM, Crédit Lyonnais, Groupe Casino, etc.) contribute to their dynamism and allows them to offer their clients pragmatic solutions adapted to their operational and strategic issues in the main areas of business law: Mergers & acquisitions/private equity; Distressed companies; Tax law; Intellectual property and new technologies; Litigation; Commercial law; Criminal law; Labour law; Real estate.

The combined practice of consulting and litigation also gives them a transversal vision of their respective practices, which is crucial to providing an effective response to BG2V's clients.

FOREIGN DIRECT INVESTMENT

Foreign Investment in France: navigating increasing regulatory requirements

Foreign investments in France are becoming increasingly regulated, handing more control to the French Government.

More foreign investments will be subject to prior authorisation, thanks to a new decree dated November 29, 2018 which provides for the expansion of the 2014 decree. In addition, the Action Plan for Business Growth and Transformation (the 'PACTE'), which is a bill set to pass in the coming weeks, reinforces the control the French Government and Finance Minister has over the French economy, particularly via a strengthening of sanctions.

As a result, foreign investors should familiarise themselves with these changes and remain vigilant for more regulatory decrees in France.

How does this new development affect foreign investors?

Foreign investors must obtain the Economy and Finance Minister's prior authorisation to invest in certain sectors, such as private security services, counter-terrorism, wiretapping, IT, national security secrecy, cryptology, weapons, energy, public health, transport, telecommunication, and the gambling industry (excluding casinos).

Under these provisions, (i) the acquisition of control of a French company under Article L. 233-3 of the French Commercial Code or (ii) the acquisition of all or part of a French business' branch of activity or (iii) the acquisition of more than 33.33 per cent of the share capital or voting rights of a French company, in the sectors listed above, are considered as falling under a foreign investment subject to prior authorisation from the French Economy and Finance Minister.

In order to obtain this authorisation, the investor must notify the foreign planned transaction to the French Economy and Finance Minister. Upon receipt, the Minister will conduct a review and make a decision within two months (past this deadline, the authorisation is deemed granted). The foreign investor may request an advance ruling concerning the foreign planned investment before beginning negotiations with the French target business.

The government appointed by the French President, Emmanuel Macron, considers these provisions to be insufficient and is seeking to update these provisions to new technologies and to put in place a more flexible prior authorisation mechanism.

Under the new decree, dated 29 November 2018, the prior authorisation mechanism is expanded to include new sectors, in particular, data capture and storage, cyber security, artificial intelligence, robotics, and the space industry.

Concomitantly, the decree lays out the framework of the procedure by setting out which documents are needed to make a decision and by widening its scope of application to not only cover foreign investors but also the French company that is the target of the foreign investment.

What will change for foreign investors in the future?

The French government also wants to impose more dissuasive penalties. Therefore, the PACTE provides for the reinforcement of the minister's powers and for the strengthening of the financial penalties in the event the foreign investment was performed without the required prior authorisation or in breach of the conditions imposed by the minister for the performance of the planned transaction.

Injunctions and precautionary measures

The French Economy and Finance Minister will have a greater power of injunction (accompanied by a financial penalty). The Minister will be able to impose an injunction against the foreign investor in order to file an authorisation application, or to restore (financially) the previous situation, or to modify the investment strategy.

The minister will also be able to take precautionary measures, such as suspending the voting rights attached to shares subject to the prior authorisation, prohibiting and limiting the dividend distributions, suspending, limiting or prohibiting the free disposal of strategic assets,

and/or appointing an agent who will ensure the protection of national interests and prevent certain decisions of corporate bodies.

Moreover, the minister will have a greater power in the event the foreign investment was performed in breach of the conditions imposed for the performance of the planned transaction. In such cases, the minister will be able to use the injunction procedure or, more radically, withdraw the authorisation.

Financial penalties

The financial penalties will increase substantially. In case of breach, the foreign investor will pay the greater of (i) twice the amount of the irregular foreign investment, or (ii) 10 per cent of the annual turnover (taxes excluded) of the company or (iii) 5 million Euros per legal entity and 1 million Euros per individual.





Taking into account the expanded scope of this protective mechanism and these heavy financial penalties, a thorough legal analysis should be carried out for each foreign investment project.



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Géraldine Brasier Porterie is partner and co-founder of Baro Alto law firm and a member of the Paris Bar since 1996. She began her career in the litigation and insurance departments of PwC law firm before joining Stehlin & Associés law firm in 2003. She became a partner in 2007 and created and headed the litigation and arbitration department, before founding Baro Alto Law Firm with Caroline Joly in 2015.

Géraldine advises in significant and complex French and international business litigation, particularly in commercial law, economic law, banking and financial law, insurance liability, industrial risks and banking and insurance regulations before any jurisdiction: civil, commercial or criminal courts, regulatory authorities (AMF, ACPR) and European courts (ECJ – European Court of Justice). She also practices as a counsel regarding insurance and life and non-life insurance contracts and regulations.

She graduated from the University of Paris II Pantheon Assas (Master I in Litigation), the University of Paris Pantheon Sorbonne (Master II in Insurance Law) and the Queen Mary and Westfield College London.

Baro Alto offers cutting-edge, high-quality services dedicated to the management and prevention of risks and disputes in business law. The firm advises French and International, rated and unrated firms and their managers and/or shareholders.

Baro Alto's approach combines a comprehensive understanding of the issues at stake and pro-active resolution of the legal issues raised by technical expert assessments. The firm is a member of the IR Global network, and is supported by a structured network of correspondent lawyers and experts in over 50 practice areas and more than 150 countries.

INSURANCE

Insurance Intermediation: innovations and new outlooks

Corporations are consistently faced with newly emerging regulatory and legal risks, particularly so during the last few years with the multiplication of texts regarding obligations concerning governance and corporate responsibility.

There is an increasing liability on corporations and their executives to provide a duty of care around the verification and independence of service providers. Their approach to compliance needs to be rethought in order to align with these evolving regulatory demands. In this context, the role of insurers and insurance distributors has also evolved and the new regulation fits into this perspective.

The Directive (EU) 2016/97 of the European Parliament and of the Council of January 16th 2016, on insurance distribution (known as the Insurance Distribution Act, hereafter 'IDA'), was transposed into French Law with the Ordinance of May 16th 2018, which entered into force on October 1st 2018.

The insurance distribution sector is already strongly regulated in France, and intermediaries are subject to the licensing and inspection of the regulatory authority, the Prudential Supervisory and the Resolution Authority (*Autorité de Contrôle Prudentiel et de Résolution, hereafter 'ACPR'*). The intermediary members of the European Union can exercise their activity thanks to an extension of their license, either in view of the freedom of establishment, or the freedom to provide services. Intermediaries foreign to the European Union are required to create a corporation in France that would be licensed and inspected by the ACPR.

The IDA has the main objective of extending the regulation and inspection to the complete chain of distribution, by integrating new actors, such as insurance comparators, and reinforcing their duties.

The Directive pursues a second objective: that insurance clients benefit from the same level of protection, regardless of the differences between the channels of distribution, and that they can therefore benefit from basic requirements for insurers in order to guarantee that they are perfectly informed. Concretely, the Directive reinforces the intermediary's obligation to formalise a collection of requirements and pre-contractual information, and to propose an insurance product perfectly consistent with the needs of the insured.

Additionally, there are transparency obligations concerning the remuneration of the entire chain of distribution. As an example, the IDA requires that the insured be informed regarding the existence of financial links with one or more insurance corporations.

Intermediaries must also indicate if they receive compensation, and the nature of this compensation. More generally, intermediaries should not be compensated in a way which would go against their obligation to act in the best interest of their clients. Corporations that are not insurance intermediaries, but do distribute insurance contracts on an ancillary basis (for example Airbnb, telephone operators, banks, loyalty programs...), are also subject to the new regulation – but in a lighter way.

Indeed, intermediaries that distribute insurance products on an ancillary basis are partially exempted with respect to the regulation introduced by the IDA, provided the insurance contract:

- constitutes a complement to the good or service and covers certain risks, excluding that of civil liability
- has a premium that does not surpass EUR 600 per year, or EUR 200 in a case where the contract constitutes a complement to a service. The duration of the service must also be three months or less.

Henceforth, corporations that do not respect these criteria will be subjected to reinforced reporting obligations set up by the IDA, such as, sharing the nature of their remuneration and, in certain cases, the amount of their compensation.

To date, few French intermediaries have implemented this regulation.

Building upon our strong experience in consulting and litigation in the sector of insurance liability and regulation, we accompany our clients – intermediaries and insured – at every stage of prevention and risk management: mapping out risks, compliance with the regulation, development of handbooks, audits in insurance coverage, identification of needs, insurance coverage negotiations and litigation - among other things.

Baro Alto works with an excellent network of partners, made up of insurance professionals (intermediary experts) with whom we intervene in the interest of a better understanding of risks and their coverage.



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Nicolas is a member of the Paris bar since 2005. His expertise covers French and international taxation of individuals and international mobility.

He advises companies on all aspects of their compensation policies and assists mobile employees and high level executives with respect to their global tax liabilities and for the preparation of their French income tax return in either French or international contexts.

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Stephanie has been a member of the Paris Bar since 1998. As a tax lawyer, she has developed specific expertise in the optimisation, from a tax and social security standpoint, of high-level executive compensation.

Stéphanie advises companies on their global compensation strategy and on the implementation of share-based and profit-sharing schemes, and also high level executives in relation to the optimisation of their global compensation, and in the structuring of their management packages. She also deals with international assignments, more particularly on tax and social security aspects.

Galahad is a law firm which focuses on Compensation & Benefits and International Mobility. The team led by Stéphanie Le Men-Tenailleau and Nicolas Pregliasco, its founders, deals with a range of issues pertaining to compensation management in France and abroad, including global compensation strategy as well as providing guidance for its clients regarding international mobility.

Galahad clients are French entities, foreign groups established in France (or planning to do so) or mobile individuals. The firm deals with tax matters, social security, labour law or corporate law in order to cover every aspect of compensation management

EMPLOYMENT

Exploring PAYE: how the new French income tax system will impact foreign employers

France's new Pay as You Earn (PAYE) tax system will have implications for foreign employers, including, in some cases, the appointment of an accredited tax representative in France.

The PAYE system went live on January 1st 2019, and is designed to compel employers to withhold income tax from their employees' taxable salaries and pay it monthly to the French tax authorities. The scope of this new system includes both French and foreign companies employing people who are tax resident in France. This involves a significant change, since, up until now, French and foreign companies' only dealings with the French tax authorities, in regard to the tax liabilities of their employees, were limited to the cases in which employees who were not considered French tax residents, were paid salaries related to work performed in France.

As a result of the reforms, French and foreign employers will now also be bound to engage with the French tax authorities when they hire employees to work in France, who are considered French residents for tax purposes.

To this end, foreign employers who do not have an establishment in France, must choose a tax representative, and have such representative accredited by the French tax authorities, unless they are established in a EU Member State, or in a State party to the EEA agreement which has concluded a tax treaty with France. This representative will be responsible for the company's compliance with French regulations regarding the withholding of personal income tax.

Employers are required to withhold tax each month by applying a specific rate provided by the tax authorities, computed on the basis of the employee's last reported net taxable income. The applicable tax rate is provided monthly by the tax authorities, following the filing of a declaration by the employer (DSN or PASRAU declarations). In case the French tax authorities do not provide any rate for the employee (for example if an employee had just arrived in France and had never filed a tax return), a standard tax rate based on the level of monthly taxable salary would apply.

Compulsory identification formalities for foreign companies with no establishment in France

Since 1st January, 2019, foreign companies with no establishment in France, but with employees falling under the scope of the PAYE system must:

- apply for a SIREN/SIRET identification number in France
- open a bank account in the SEPA zone
- create a professional account on impots.gouv.fr (web site of the French tax authorities)
- get a professional account on the net-entreprises.fr website in order to file the withholding tax declaration each month and get the tax rates provided by the authorities for each employee.

Monthly filing requirements

The foreign company, or the representative in charge of the withholding tax declaration, has to report the withholding tax monthly to the French tax authorities. This declaration is a 'Déclaration sociale nominative' (DSN) when the company's employees are affiliated to the French social security regime. The DSN has to be filed at the latest on the 5th or the 15th (depending on number of employees and on the date of payment of their salary) of the month following the month during which the salary has been paid.

If the employer is not established in France and the employee subject to the withholding tax is not affiliated to the French social security system, the declaration must be a 'Prélèvement à la source sur revenus autres' (PASRAU) declaration. It shall be filed at the latest on the 10th of the month following the one during which the income has been paid.

In both cases, the declaration has to be filed on the net-entreprises.fr website. It will be sent to the competent company's tax service (if the employer is not established in France, the competent service will be the Service des impôts des entreprises étrangères (SIEE), the foreign company's tax service).





These new requirements have been in force since 1st January, 2019. Although it seems the French tax authorities do not wish to apply a zero tolerance policy against foreign companies who did not already fulfill all their duties with respect to this new PAYE system, it is essential to inform foreign employers of these new obligations as soon as possible, especially since the deadlines for obtaining the necessary identifiers may prove relatively long and increase the delay already made by these companies in fulfilling these formalities.



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Admitted to the Bar in 1997, Lionel Paraire founded Galion in 2008. He worked for six years with Jeantet Associés and then at Baker & McKenzie, followed by Mayer Brown, where he became Of Counsel.

He is a senior lecturer at the University of Montpellier I (DJCE and Certificate of Special Studies in Labour Law), where he teaches employment litigation.

Lionel has developed an acknowledged expertise in the area of individual employment relations and (high-risk) litigation and dispute resolution. He regularly assists companies with restructuring, and the labour and employment law aspects of corporate transactions. His activity extends towards Alternative Dispute Resolution (ADR), notably as a mediator.

He is a member of various national and international organisations: Avosial (Association of French Employment Lawyers Association); EELA (European Employment Lawyers Association); and IBA (International Bar Association). He is also an active member of IR Global.



Founded in 2008 by Lionel Paraire, Galion is an independent French business law firm dealing exclusively with labour and employment law and specialising in advice, litigation and dispute resolution.

Close to its clients, Galion creates and develops 'made-to-measure' solutions adapted to their needs, culture, business and organisation.

The approach is based on three fundamental points:

- *Technical excellence maintained in a context of increasing legal uncertainty;*
- *Pragmatic vision and a strong corporate culture to act effectively; and,*
- *Partnership, availability and commitment, essential in creating a close-working relationship with HR, legal and top management teams.*

Galion advises French and international clients, comprising companies of various sizes (small & medium sized, public companies, subsidiaries of multi-national groups) in the industrial, banking, insurance, luxury, new technologies, consulting services, telecommunication and medical sectors.

LABOUR LAW

Efficient Negotiation: the new keystone of French labour law

Negotiation has undoubtedly turned into the new keystone of French labour law, due to two recent major pieces of legislative reform relating to industrial relations and employment litigation.

No less than five orders were adopted on 22 September 2017, as part of the 'flexisecurity' movement, with the aim of revising our old labour code, while modernising social dialogue and work relationships in France.

Order No. 2017-1385 relates to the reinforcement of collective bargaining, and facilitates company-level bargaining, for a greater adaptability of the social norm. The new legislation redefines the rules of articulation between branch agreements and company agreements, and recognises a universal right to bargaining, by facilitating its conditions in the absence of union representatives.

The general public now has access to company agreements through a national platform put online on 28 March 2018 by the Ministry of Employment. But if more weight is to be given to company-level bargaining, then companies should be provided with the means for effective and fair bargaining, carried out by competent and consistent actors. This is the objective of Order No. 2017-1386, relating to the new organisation of the social and economic dialogue within a company, and facilitating the carrying out and valuation of trade-union responsibilities, which clarifies the scope and facilitates the conditions of the social dialogue.

The unique staff representation is made possible by the merger of the staff representatives, the employee representative committee and the health and safety committee into a new body, called the Social and Economic Committee (CSE). In this respect, the reform is quite radical: the requirement for a CSE affects all companies above all employees and shall be effective on 31 December 2019 at the latest. Furthermore, a more complete form of the CSE, the company council, may be put in place by a majority company agreement, or by an extended branch agreement.

The reform, thus realised, constitutes the most important labour law reform since the famous 1982 Auroux laws. With more than 400 pages in the Official Journal, the extent of the change is considerable. Securing individual

work relations and simplifying and optimising collective work relations (both representation and negotiation-wise) are the key works of the reform.

We must, however, not rush into judging its efficiency and effectiveness. A few months, probably ultimately running into a few years, are necessary before we can note improvements, especially given that such improvements will be made effective only with the help of those involved in labour law (employers and employees, social partners, judges, jurists, HR services and lawyers) who must now grasp all the potentialities of the reform.

Another example of the need to negotiate can be found in the area of employment litigation. Despite the reforms carried out between 2015 and 2017 notably aiming at improving the functioning of the labour courts and decongesting them, the employment tribunals' and courts of appeal's caseload remains significant.

A large decrease in requests made to employment tribunals have already been noted. Litigants have had trouble appropriating the obligation to bring an action before the employment tribunals by means of an application containing a brief presentation of the grounds of each originating motion along with evidence.

The Order No. 2017-1387 has also set a schedule of compensation in case of dismissal without real and serious cause, which has reduced the hopes of gain from many employees. But some employment tribunals have begun to criticise and bypass this schedule, considering that it does not conform with the principles stated by article 10 of the ILO convention No. 158...

Facing this legal uncertainty, litigants still have a place to negotiate. Negotiation can take place before courts (conciliation is a compulsory preliminary phase in proceedings before the employment tribunal) or out of courts (alternative dispute resolution which is not common practice has also been promoted by the reforms in order to reduce the need of justice).





These are exciting times for experienced French labour lawyers.



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He holds a Master's in business law at Paris X university, a post graduate diploma (DEA) in British and North American business law (under the supervision of Professor Blanc Jouvan) and acted as a visiting scholar at Columbia University.

Yves-Marie created his firm in 1991, and is a passionate entrepreneur, with a keen sense of negotiation.

He has been advising companies and their managers for more than 30 years. His practice includes both counsel and litigation and is focused on trust as well. He assists his clients with their day-to-day corporate and contractual legal needs, as well as with their complex external growth operations (mergers, joint-ventures).

The majority of his clients are institutional creditors, which he assists in all the aspects of insolvency proceedings, debt restructuring terms, drafting schemes of arrangements. His area of expertise also covers debt recovery and judicial bid offers.

Ravet & Associés is an independent law firm focused on delivering the highest quality legal advice to its clients.

The firm focuses on various areas of business law such as company law, mergers and acquisitions, tax law, commercial law and real estate law with an emphasis on insolvency law (mostly assisting institutional creditors, during restructuring proceedings as well as insolvency and bankruptcy procedures).

With its multi-disciplinary, independent, available and responsible team, Ravet & Associés also assists its clients in the setup and enforcement of mechanisms for security trust or management trust.

INSOLVENCY

Simplifying Insolvency: support for entrepreneurs from the PACTE Act

French insolvency law is constantly being reshaped, with multiple new laws, amendments and reforms taking place across the last three decades.

This article aims to present the latest amendments introduced by the 'PACTE Act', which is currently being discussed by the French parliament.

The PACTE Act, has a broader scheme than just insolvency procedure, but the five major amendments introduced by this law deal with the resurrection of debtors, company owners and entrepreneurs. The law is actually being discussed by the French parliament at present and is subject to change, but covers the following areas;

Remuneration for company owners and entrepreneurs during receivership

The PACTE Act changes the circumstances in which the remuneration of company owners and entrepreneurs is determined.

Remuneration used to be determined by the judge at the opening of the procedure, according to a law passed in 1967, at a time when debtors had little to no role to play throughout the ongoing procedure.

Overtime, their role completely changed as they were given a key role during the procedure, rendering that law dated and useless. As a result, according to the new legislation, the determination of the remuneration by the judge is no longer mandatory. Remuneration shall now be maintained, and only reduced, if necessary, by the judge.

Systematising the use of the 'rétablissement professionnel' procedure

This procedure was introduced in French law by the statute of March 12th, 2014. This enables any individual with low value assets to erase their liabilities without going through a bankruptcy procedure. To be eligible for that procedure previously, debtors had to file for bankruptcy first and request the application of the 'rétablissement professionnel', which is a process with no equivalent in other European legal systems. Statistics show that only 257 procedures were opened since 2014, since debtors were not aware of its existence and legal practitioners not used to it.

The 'rétablissement professionnel' procedure will now be used as a way to promote the resurrection of company owners and entrepreneurs, by giving the judges the power

to evaluate the opportunity to in agreement with the debtor. Furthermore, the procedure can now be opened to the benefit of a debtor that has previously been granted a safeguard or a receivership procedure.

Simplified bankruptcy procedure

The French commercial code used to provide a choice between two types of simplified bankruptcy procedure: one was mandatory and the other was optional.

A survey conducted among insolvency professionals showed that there was no need for the mandatory procedure to be maintained. As a result, in order to simplify that procedure, the new law only keeps the optional bankruptcy procedure, which becomes the new mandatory bankruptcy.

In addition, that procedure will only last six months, which allows the debtor to rebound even more quickly.

Simplifying the 'EIRL' status

Another innovation introduced by the new law targets any individual who wishes to do business by using the EIRL status. This status enables them to create a trust estate only used for their business. From now on they can do so without initially having any assets, rights or warranty.

Neutralising solidarity clauses in commercial leases

In case of a sale agreement implemented by court during a receivership procedure, the French commercial code provides that all contracts transferred to the purchaser must be performed the same way as agreed by the original parties.

However, some clauses such as solidarity clauses in commercial leases were nullified. Furthermore, no legislation was provided when that solidarity was reversed. As a result, the purchaser could be burdened with unpaid rents, from before the contract was transferred, preventing the implementation of the sale agreement.





The PACTE Act now nullifies those clauses, whether they burden the purchaser or the seller. The clauses still apply when the transfer occurs during a bankruptcy procedure.



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Christian Roth has 40 years of experience in corporate law and business litigation, developing a knowledge-based multicultural approach.

After practicing for 25 years as senior lawyer and managing partner in two French-German and European practices, he founded rothpartners in Paris in 2012. He is the managing partner of the firm, which became a leading law firm in its area of practice in a very short time.

Christian is a member of the Paris and Brussels Bar and the President of the Franco-German committee of the Paris Bar. Alexander Roth joined the law firm rothpartners as a lawyer in 2013. He specialises in contract law, commercial law, civil and commercial litigation and business law.

Essentially oriented towards the world of business deals, companies and their executives, rothpartners offers consulting, arbitration and litigation for companies whose markets are Europe and the world. rothpartners operates in four different practice areas: corporate law, intellectual property, commercial law and public law.

The firm has offices in Paris and Brussels and comprises four attorneys, two consultants, two paralegals and an office manager. Biculturalism or multiculturalism surrounds each member of rothpartners. The heart of their know-how is the knowledge of others.

CORPORATE LAW

Relationship Tensions: protecting attorney/client privilege while respecting tax avoidance legislation

A number of legislative measures restraining the attorney-client privilege have been implemented in France during the past 20 years.

The most controversial of these restraints affect tax attorneys, who are often authors of the outlines of tax regularisation. As a fundamental ethical principle of the profession, the attorney-client privilege is actively protected by French attorney associations on all levels.

There are two main laws, which have determined the actual situation in France:

Directive 2005/60/EC

The first is Directive 2005/60/EC of the European Parliament and of the Council of 26, October 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

This was transposed into French law by the Order of 30 January 2005, and the legislation introduced a double obligation concerning attorneys. The duty of vigilance (also known as 'know your client') and the duty of declaration in case of suspicion of an offense, especially if this offence is money laundering.

The duty of vigilance requires attorneys to dissuade their clients, if the operations which they are intended to commit reveal criminal character. They are obliged to withdraw their services, if these clients refuse to break down the suspicious operations. Where the duty of declaration is concerned, attorneys have to declare to TRACFIN (a special service of the French Ministry of Finance), suspicious transactions which, in their opinion, could be punishable by an imprisonment above one year. If this offence is tax fraud, then disclosure is governed by the terms of the special Decree of 2010.

French law has developed the role of the Chairman of the Bar, who acts as a 'filter' between the attorney and the Ministry of Finance. Their role is to assess the respect of the attorney-client privilege and to send the declaration to the Ministry of Finance only if necessary. The European Court of Human Rights held in its decision of 6 December 2012, that the presence of the Chairman of the Bar is a proportional and legal measure.

Some attorney's activities are still covered by the attorney-client privilege and have no duty of declaration attached to them. This is notably the case, if an attorney just gives legal counsel, not aimed at money laundering or the financing of terrorism. TRACFIN has created an edited regulation containing a limited list of cases, in which attorneys are always obliged to proceed to a declaration of suspicion, such as financial or real estate transactions, opening bank accounts or management of stocks.

The law of 6 December 2013

The second piece of legislation is the Law of 6 December 2013, which has been adopted as a consequence of the 'Cahuzac-affair'.

Jérôme Cahuzac was the Minister of Budget under President François Hollande and was accused of tax fraud and money laundering. The press investigation revealed that Jérôme Cahuzac, his wife and mother had held non-declared bank accounts in Switzerland and the Isle of Man. This political and financial scandal led to the adoption of a number of important measures within the Law of 2013, in order to fight against tax criminality, tax fraud, money laundering, corruption and stock market criminality.

These are;

- The creation of a new jurisdiction: PNF (French national public prosecutor's office)
- The reinforcement of the tax control administration's capacity
- The creation of the new aggravating circumstances for the most serious frauds, especially for tax fraud committed by an organised crime gang. This includes liability for intermediaries and counsel

Penal judges consider, that a tax attorney is bound by a reinforced duty of counsel, so that he has to think about the real aims of his client. A lack of vigilance of the attorney may be considered as an element of complicity. Despite this the practice of tax optimisation is a public freedom and is not illegal per se. French judges are still obliged to respect the attorney-client privilege and the rights of the defense.

Two finance laws of 2014 and 2015 tried to introduce even more serious penalties for tax frauds, and new obligations for tax counsels, but they were penalised by the Constitutional Court of France on request of the National Bar Council.

A recent illustration of the changes affecting tax counsel in France, comes from the Arlette Ricci case. In May 2017 the heiress of the fashion house Nina Ricci was convicted by the Court of Appeal of Paris for a two-decade long dissimulation of her inheritance of 17 million euros into a non-declared bank account in Switzerland. The tax attorneys for Arlette Ricci, who took an active part in the elaboration of tax outline, were fined, while Arlette received three years in prison and confiscation of the hidden inheritance. The judges held that tax attorneys are obliged to a reinforced counsel duty. According to the Court, professionals have to be able to separate tax optimisation from the organisation of insolvency. The other obligation which is duty of reinforced vigilance seems to be an obligation to guess the real intention of the client. Otherwise, the attorney automatically become an accomplice to the offence committed by their clients.

In the aftermath of the Arlette Ricci case, new legislation was passed in France, with a government decree of 18 April 2018, defining the lawyer's obligations and sanctions attached to a potential breach of the duty of vigilance.

The acronym used for this legislation is 'LAB-FT' (Lutte contre le blanchiment de capitaux et le financement du terrorisme). This new legislation is consolidated under article L561-2 of the French Monetary Code. The sanctions are inspired by the Anglo-Saxon concept of disclosing the fault. Once the concerned lawyer is definitively convicted of a breach of the duty of vigilance, the sanction is to be posted on the website of the Conseil National des Barreaux, the French equivalent to the Law Society, for a period up to five years.

In the corporate practice, the LAB-FT has created an environment of suspicion, which now leads to an overly cautious approach to all transaction activities. The systematic requirement of a waiver declaration has become very inquisitive, since the questions do not concentrate any more on the origin of the funds, but on the destination and future use of the funds.





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