



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
France: Corporate Governance

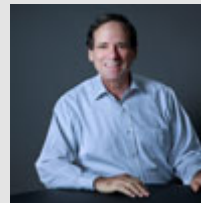
This country-specific Q&A provides an overview to tax laws and regulations that may occur in [France](#).

This Q&A is part of the global guide to Corporate Governance. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/corporate-governance/>



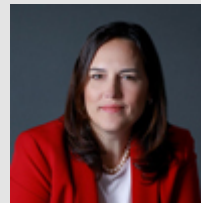
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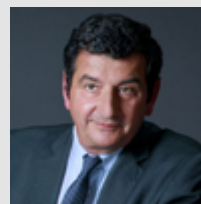
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1. What is the typical organizational structure of a company and does the structure typically differ if the company is public or private?

The most common forms are the following limited-liability companies:

- *société anonyme* (“SA”) – This form, with rather rigid governance rules, is the prevalent form historically for large companies. An SA issues shares (actions) which are negotiable securities. It must have a minimum capital of €37,000 and at least two shareholders, or seven if it is publicly traded. (A variant of the SA is the European company or *societas Europaea* (“SE”), adopted by a few dozen companies in France.)
- *société par actions simplifiée* (“SAS”) – This form, like the SA, issues shares (actions) in the form of negotiable securities, but there is great freedom in choosing governance rules. Shares of an SAS may not be publicly traded. There is no minimum capital or minimum number of shareholders. (An SAS with only one shareholder is referred to as a “*société par actions simplifiée unipersonnelle*” or “SASU”.)
- *société à responsabilité limitée* (“SARL”) – This is a traditional form for closely held companies, with a certain flexibility of governance rules. Its shares (referred to as “*parts sociales*”) are not negotiable but may be transferred only by written contract. There is no minimum capital or minimum number of shareholders, but there is a maximum of 100. (An SARL with only one shareholder is referred to as an *entreprise unipersonnelle à responsabilité limitée* or “EURL”.)

Less frequently used forms for operating business entities are:

- limited partnership (*société en commandite*), with somewhat flexible governance rules, some partners/shareholders of which (*commandités*) have unlimited liability, the others (*commanditaires*) having limited liability. There are two types of such companies:
 - *société en commandite par actions* (“SCA”), which issues negotiable shares (actions), and has somewhat flexible governance rules, allowing unlimited-liability partners to maintain control. A few publicly traded companies take this form;
 - *société en commandite simple* (“SCS”), which issues shares in non-negotiable form (“*parts sociales*”).
- *société en nom collectif* (“SNC”), all partners of which have unlimited liability;
- *société civile* (which is not intended to engage in a business deemed to be “commercial”), each partner having unlimited liability for its rateable share of the company’s debts; and

- *de facto* companies (*société en participation* and *société créée de fait*), members of which have unlimited liability.

The vast majority of publicly traded companies take the form of an SA, with a few taking the form of an SCA or SE (the rules for which are substantially those applicable to an SA).

The forms SCS, SNC and *société civile*, as well as *de facto* companies, all of which are infrequently used for major operating companies, are not discussed further in this paper.

This paper presents a non-exhaustive summary of certain relevant rules applicable to the SA, SCA, SAS and SARL. It does not describe special rules applicable to companies whose shareholders include the French state or other governmental entities or to regulated entities including financial institutions.

2. Who are the key corporate actors (e.g., the governing body, management, shareholders and other key constituencies) and what are their primary roles? How are responsibilities divided between the governing body and management?

Besides shareholders, the key actors in the above company forms are as follows:

- For an SA, two options are possible:

(a) Under the “single-tier” structure, which is the most common, management authority is exercised by:

- a board of directors (conseil d'administration) made up of 3 to 18 members (not counting directors representing employees) presided by a chair (président), and

- the chief executive officer (directeur général or DG), who has the authority to bind the company vis-à-vis third parties (and need not be a member of the board).

One person may hold both the offices of board chair (président) and DG (and is then commonly referred to as the "PDG") or the positions may be held by different individuals.

(b) Under a "two-tier" structure, the company is managed by individuals composing a management board (directoire) with not more than 5 members (7 if the company is publicly traded), one of whom is named chairman (président du directoire), or for companies with stated capital less than €150,000 by a sole chief executive (directeur general unique or "DGU"), but the management function is supervised by a supervisory board (conseil de surveillance) with between 3 and 18 members (not counting directors representing employees) headed by a chair (président).

- An SAS must have a president (either an individual or a legal entity) but other governance features are optional, so that it is possible for the president to carry out all management functions with supervision only by the shareholders (who can deliberate as infrequently as once a year) or to provide for a board of directors, a supervisory board or other governing bodies.
- An SARL is headed by a manager (gérant) who must be an individual; other governance features are optional (but not common).
- Companies in other forms mentioned above are headed by one or more managers

(gérants). An SCA features a supervisory board which oversees the manager(s).

An SA structure featuring a PDG, i.e. the same person being chair of the board of directors and DG, is referred to as having a unitary (*moniste*) structure, whereas an SA with a supervisory-board/management board structure or an SCA (having one or more managers and a supervisory board) is considered to have a two-tier (*dualiste*) structure. An SA with a board chaired by someone other than the DG is also sometimes classified as a two-tier structure.

Executive officers include, for a one-tier SA, the DG and any deputy DG (*directeur general délégué*) if named by the board; for a two-tier SA, the management board members or DGU; for an SAS, the president; for an SCA or SARL, the manager(s) (*gérant(s)*).

3. **What are the sources of corporate governance requirements?**

The principal sources of such requirements are the Civil Code (Code civil or “C. civ.”), the Commercial Code (Code de commerce or “C. com.”), the Monetary and Financial Code (Code Monétaire et Financier or “CMF”) and rules promulgated by the Autorité des Marchés Financiers (“AMF”, the French securities regulator). This body of legislation reflects the numerous EU directives touching on corporate governance. An influential source of “soft law” requirements is the code of conduct promulgated jointly by the Association Française des Entreprises Privées (“AFEP”) and the Mouvement des Entreprises de France (“MEDEF”) most recently in June 2018 (the “AFEP-MEDEF Code”), and the code issued by Middlednext most recently in 2016, used principally by smaller listed companies (the

“Middlenext Code”).

4. **What is the purpose of a company?**

The fundamental purpose of a company is to produce economic gain (C. civ. article 1832), but other purposes are recognised. For example, the AFEP-MEDEF Code (article 1) refers to “long-term value creation” while “considering the social and environmental aspects of its activities”. And legislation under consideration at this writing (17 January 2019), known as the “Loi PACTE”, would if enacted, among many other changes, require that “social and environmental stakes” be taken into account (pursuant to EU Directive 17/828) and provide that bylaws could set out a corporate *raison d’être*, consisting of “principles” to be followed in carrying out its business.

5. **Is the typical governing body a single board or comprised of more than one board?**

Among publicly traded French companies, about half adopt the unitary (*moniste*) structure with the board headed by the DG, and about 30% have a single board structure but with the board chaired by a person other than the DG. The remaining 20% of listed companies have a two-tier (*dualiste*) structure, either being SAs with a supervisory board and management board or, in a few cases, having the form of an SCA.

Companies not publicly traded most often are constituted as either a single-tier SA, an SAS managed by its president or an SARL with one or more managers (*gérants*).


6. How are members of the governing body appointed and removed from service?

Members of the board of directors or the supervisory board of an SA (other than directors representing employees) are chosen and removed by shareholders, except that vacancies caused by resignation or death of a board member can be filled by co-optation by remaining board members (if at least three are then in office), subject to ratification at the next shareholder meeting. The board of directors of an SA names and removes the DG. When there is a supervisory board, it selects members of the management board and names its chair (or names the DGU); members of the management board (or the DGU) are removed by the shareholders or, if the bylaws so provide, the supervisory board.

In an SCA, supervisory board members are named and removed by the limited-liability shareholders (*commanditaires*), with vacant positions filled by co-optation, subject to ratification by the limited-liability shareholders. Rules for naming and removing managers of an SCA are as set out in the bylaws, and usually give control to the unlimited-liability partners, sometimes with a veto right of limited-liability shareholders.

7. Who typically serves on the governing body and are there requirements that govern board composition or impose qualifications for directors regarding independence, diversity or succession?

French law and the AFEP-MEDEF Code set out rules and recommendations for board composition in respect of gender diversity, employee

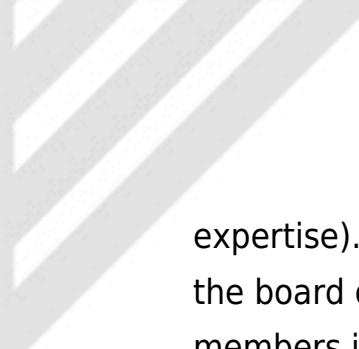


representation, the presence of independent board members, maximum number of board positions held, retirement age and maximum term of office.

Gender diversity on boards is prescribed by law. An SA is to aspire to the general goal of “balanced representation of women and men” on boards (C. Com. article L. 225-17). Companies which are publicly traded or with at least 500 employees and €50 million in either turnover or assets are required to have at least 40% of board members of each gender (the 500-employee threshold is to decrease to 250 employees in 2020).

Employee representatives are required on the board of directors or supervisory board of any SA or SCA which employs (or belongs to a group that employs) at least 1000 staff in France or at least 5000 worldwide. In such cases, a board of 12 or fewer members must have one employee representative and those above that threshold must have two (the proposed Loi PACTE mentioned above would lower this threshold from 12 to 8). In addition, in a publicly traded company which has more than 3% of shares held by employees of the company or certain affiliates, those shareholders have the right to at least one board seat. There are restrictions on the right of a board member also to have an employment contract with the company. Note that, in addition to employee representatives who are members of the board, representatives of the workers council are entitled to attend board meetings and express their views but have no voting rights.

In respect of independent board members, the law requires only that, for publicly traded companies (and certain financial-services and other companies), the board constitute an audit committee which includes one independent board member (having financial, accounting or compliance



expertise). However, the AFEP-MEDEF and Middlednext Codes suggest that the board of directors or supervisory board include one-half independent members if the company's shares are widely held with no controlling shareholder and one-third independent members for other publicly traded companies. The Middlednext Code also recommends that the board include at least two independent members.

An individual cannot hold more than five memberships on boards of directors or supervisory boards of French SAs or SCAs or more than one DG or management board position for such companies (a DG position coupled with a membership of the board of directors counts as one position for purposes of this limit). When one of these positions is with a company having more than 1000 employees in France or 5000 worldwide, no more than two other positions may be with other publicly traded companies. There are exceptions to these rules for board/DG positions held with certain affiliates.

Each term of a member of a board of directors or supervisory board cannot exceed six years, but the AFEP-MEDEF Code recommends that terms not exceed four years and be staggered, and typically board members of large listed companies have terms of three or four years (but incumbents can be re-elected). The Middlednext Code recommends staggered terms but no specific duration.

Age limits for board members and the DG of an SA, and supervisory and management board members of an SA or SCA, may be set out in a company's bylaws but, if they are not so defined, individuals holding those positions are automatically considered to resign at the age of 65 and no more than one-third of board members can be over 70 years old.

Succession plans are not required by law but are required under the AFEP-MEDEF Code and recommended by the Middlenext Code.

8. **What is the common approach to the leadership of the governing body?**

As mentioned, about half of listed companies and most unlisted companies constituted as SAs are single-tier SAs in which the chair of the board of directors is also the DG, with about half of listed companies featuring either a supervisory board or a board of directors with a chair other than the DG.

Among listed companies (in the form of an SA) it has become increasingly common to name a lead independent director (*administrateur référent*) assigned to handle certain governance issues, including relations with shareholders, and/or a vice-president with similar functions

Other committees can be named by the board. The APEF-MEDEF Code recommends nominations and compensation committees, each composed principally of independent directors and no executive officer (with the compensation committee to include an employee director). Most publicly listed companies have at least compensation and nominations committees (sometimes one committee with both missions) and other committees (such as a strategy committee) are not uncommon.

The role of committees is to make recommendations to the board, which remains responsible for taking the relevant decisions.

9. **What is the typical committee structure of the governing body?**

As mentioned, publicly traded companies are required to have an audit committee of board members not including any executive officer but including an independent board member with financial, accounting or compliance expertise (although this committee's functions can under certain conditions be carried out by the board itself). Pursuant to the AFEP-MEDEF Code two-thirds of its members should be independent and no executive officer of the company should be a member; the Middlednext Code suggests only that the chair of this committee be independent. The missions of the audit committee include review of the processes of preparation of the accounts, compliance and risk control.

Other committees can be named by the board. The APEF-MEDEF Code recommends nominations and compensation committees, each composed principally of independent directors and no executive officer (with the compensation committee to include an employee director). Most publicly listed companies have at least compensation and nominations committees (sometimes one committee with both missions) and other committees (such as a strategy committee) are not uncommon.

The role of committees is to make recommendations to the board, which remains responsible for taking the relevant decisions.

10. **How are members of the governing body compensated?**

The global amount of remuneration of board members is set by the shareholders, with the allocation among members being decided by the board itself (which may take account of matters such as attendance at

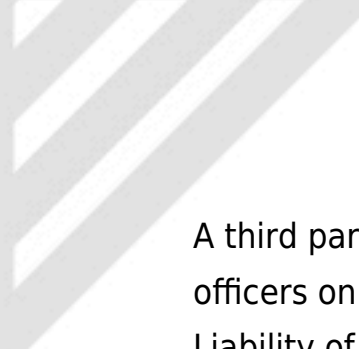
board or committee meetings and functions assumed, including chairing the board). No other compensation may be paid to governing board members, except pursuant to work for the company as an employee (in a function distinct from board membership) or a specific temporary assignment.

11. Are fiduciary duties owed by members of the governing body and to whom are they owed?

Although not characterised as “fiduciary duty” (a common-law concept), members of the governing body (board of directors or supervisory board), as well as executive officers, have a duty to act diligently in the interest of the company, along with duties of loyalty, care and to insure compliance with the law and the bylaws.

12. Do members of the governing body have potential personal liability? If so, what are the key means for protecting against such potential liability?

Breach of these duties which causes damage to the company can result in liability to the company, which can be asserted by the company itself or, if the company does not act, by one or more shareholders on its behalf; they may act either individually or, if they represent a minimum percentage of its capital (10% for an SARL or, for an SA, SCA or SAS, a lower percentage calculated on a sliding scale of from 5% to 0.5), as a group. A shareholder can on its own behalf assert liability against board members or executive officers only to the extent that the shareholder suffered damages separate from the damages suffered by the company.



A third party can assert liability against board members or executive officers only for acts committed outside the context of their official duties. Liability of board members can be joint, for example assessed against the entire board, or assessed only against individual board members. Clear opposition by a board member to a given board action can be an effective defence against liability.

In case of bankruptcy proceedings, members of the board of directors, an executive officer or anyone deemed to be a de facto manager can be held liable to the bankruptcy administrator for the shortfall in company assets resulting from “management errors”.

Board members, executive officers or de facto managers may also be held jointly liable with the company to pay taxes and penalties if their serious and repeated failures to observe tax rules have made it impossible for the tax authorities to collect such taxes and penalties due by the company.

Insurance is available to cover such liability, generally with exclusions including for acts intended to inflict the actionable damage; acts falling outside the normal exercise of board or executive functions; damages suffered by third parties; and civil and penal fines.

Board members and executive officers can also be subject to penal sanctions for failure to observe various rules relating to the administration and operation of companies, for example compliance with workplace safety standards; presentation of inaccurate or misleading accounts; distribution of dividends not properly justified by the accounts; or use of company assets or credit in bad faith in a manner not in its interest but to benefit the company’s managers or other companies in

which they are directly or indirectly interested (*abus de biens sociaux*). Exposure to penal liability can in some cases be avoided by delegating responsibility (for example, for supervision of safety standards) to appropriately qualified employees.

13. **How are managers typically compensated?**

Compensation of chief executives, which may include fixed and variable components, is decided as follows:

- for a DG of a single-tier SA, by the board of directors;
- for the chair of the managing board (and other managing board members) of a two-tier SA, by the supervisory board;
- for the manager(s) of an SCA, by the shareholders with the approval of the unlimited-liability shareholders (*commandités*), or if provided by the bylaws by the unlimited-liability shareholders alone;
- for the president of an SAS, as provided in the bylaws (for example, by the shareholders or by a specific shareholder);
- for the manager of an SARL, as provided in the bylaws.
If the board has a compensation committee the board will take into account the committee's recommendations.

Publicly traded companies are subject to “say on pay” rules requiring the compensation package of top management (DGs and board chair or members of the management board of an SA or managers of an SCA) to be approved by the shareholders in advance (*ex ante*) and, with respect to variable or exceptional elements, prior to pay-out (*ex post*). The proposed Loi PACTE would authorise the government to adopt legislation tightening the procedures applicable to shareholder approval (including approval and implementation of the management compensation package).

14. **How are members of management typically evaluated?**

The AFEP-MEDEF and Middledenext Codes set out recommended criteria applicable to management compensation packages, including fixed and variable components, stock grants, deferred compensation (such as stock options and pension contributions), “exceptional” payments and welcome bonuses.

15. **Do members of management typically serve on the governing body?**

In a one-tier SA with a PDG the chief executive (DG) chairs the board of directors, and if another person is the chair the DG frequently sits on the board. Executive officers do not sit on the supervisory boards of a two-tier SA or SCA (this is not permitted by law, and would be incompatible with the board’s supervisory function).

The bylaws of an SAS may provide for a board of directors and/or other governance or advisory bodies (such as an executive committee), the functioning and composition of which are set out in the bylaws. In such cases the president would typically be either the chair or a member.

16. **What are the required corporate disclosures, and how are they communicated?**

In addition to disclosure requirements on publicly traded companies

resulting from securities law (including information on performance, financial position, certain shareholding changes and other material information), French company law requires disclosures as follows:

- to the public commercial registry (*registre du commerce et des sociétés*), information including:
 - name, capital, headquarters, business, bylaws, executive officer(s), board members, statutory auditors, branches and changes in those items;
 - annual accounts (which can be kept confidential on request for companies not exceeding two of the following thresholds: total assets €350,000, turnover €700,000 and 10 employees on average); and
 - for certain listed companies, annual board and management reports;
- to shareholders of an SA or SCA:
 - documents to be sent to shareholders, or made available to them at the company's main office, include the following:
 - prior to any shareholder meeting: proxy, agenda, draft resolutions, summary of developments during the year in progress, management report (see below), information on board members and executive officers and candidates for board positions, reports of the statutory auditors (if applicable);
 - prior to the annual meeting: accounts submitted for approval; comments on historic financial information; corporate governance report (which may be combined with the management report, for a single-tier SA); the total amount of compensation for the five most highly paid individuals (or ten most highly paid, if the company has more than 200 employees); the list of all shareholders; and (for companies with at least 300 employees) a "*bilan social*" including detailed information about the workforce (among other items, the ratio between average compensation of the 10% highest-paid and the 10% lowest-paid employees or between the senior white-collar and certain lower-category workers, the total compensation of the ten most highly paid individuals, with comments from the workers council (*comité social et économique*));
 - at any time: the information referred to in the preceding paragraph, for the past three years;
 - at any shareholder meeting: answers to questions from any shareholder, sent to management at least four days prior to the meeting;

- for a shareholder or group of shareholders holding at least 5% of share capital:
 - written responses to questions to management, posed not more than twice a year, regarding any fact of the sort which could “compromise the continuity of the business” (C. com. article L.225-232); and
 - the right to request the management to report on one or several management issues and, in the absence of a satisfactory response within one month, to request a court to name an expert to report on these issues;
- to shareholders of an SAS or SARL:
 - prior to any meeting: the agenda, draft resolutions and report of management thereon;
 - prior to the annual meeting, the accounts and report of the statutory auditor;
 - written responses to questions posed to management, not more than twice a year, regarding any fact that could “compromise the continuity of the business” (for an SAS, only available to a shareholder or group of shareholders holding at least 5% of share capital).

Also note that shareholders representing a minimum of share capital (5% for an SAS or 10% for an SARL) can request a court to name an expert to report on specific management issues (for an SAS, the shareholders have the right first to request management to provide a response on these issues).

The management report should include certain business and financial information and other matters. This report for certain large companies must include a social responsibility statement, called a “declaration of non-financial performance”. Companies required to provide this statement are those which are publicly traded with more than 500 permanent employees on average and with either assets exceeding €200 million or turnover exceeding €40 million or those not publicly traded with more than 500 permanent employees on average and either assets or turnover exceeding €100 million. The non-financial performance statement must include the following (to the extent relevant to the company’s business):

- social and environmental consequences of its business, for example in respect of climate change, sustainable development, measures to combat discrimination and to promote diversity, including in respect of the handicapped;
- principal risks and risk-prevention policies and
- for publicly traded companies, respect for human rights and anti-corruption efforts.

Further, companies with at least 5,000 employees in France or 10,000 employees worldwide must present a risk-prevention plan (*plan de vigilance*) on risks, relating to human rights/fundamental liberties, health, safety and the environment, resulting from the business of the company, its affiliates and certain sub-contractors and suppliers.

Any SA or SCA is also required to prepare an annual corporate-governance report (which can for certain SAs be included as a section in the management report). The corporate governance report covers such matters as:

- a description of board and committee procedures and operations,
- all positions held by board members and executive officers,
- the choice of a governance code and an explanation of any deviation therefrom,
- for certain large companies, diversity statistics and policies (required for companies meeting at least two of the following criteria: assets of at least €20 million, turnover of at least €40 million and at least 250 permanent employees on average).

For listed companies the report must indicate compensation information for executive officers, capital structure, information about voting restrictions and shareholder agreements, agreements dependent on a change-in-control and “golden parachute arrangements”.

17. **How do the governing body and the equity holders of the**

company communicate or otherwise engage with one another?

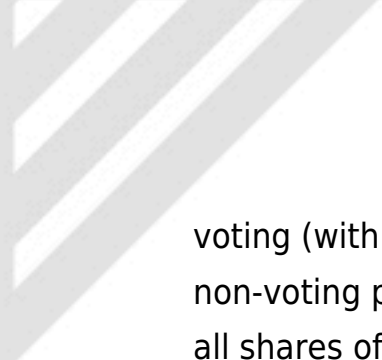
In addition to communication required under securities law and as described in the answer to question 16, listed companies typically establish a procedure to communicate with shareholders, through public announcements or direct contact. Under the AFEP-MEDEF Code the board is to ensure that the shareholders and investors receive relevant information regarding strategy, the company's "development model", significant "non-financial aspects" and long-term outlook. The AFEP-MEDEF Code suggests that the board president or lead director is to handle relations with shareholders. The Middlenext Code provides that the shareholders obtain clear information regarding risks, including those relating to strategy choices and "mal-functioning" of the governance system.

18. Are dual or multi-class capital structures permitted and how common are they?

Multi-class capital structures are permitted, with great flexibility possible for an SAS but more limited flexibility for an SA or an SARL.

For an SA or SCA, further, double voting rights are permitted for shares held longer than at least two years; for listed companies, this double voting right is automatic, unless the bylaws provide for no such right or a longer minimum holding period.

An SA can issue, besides common shares, preferred shares having preferential financial and/or other rights (priority dividends, liquidation preference, right to board seats, etc.). Preferred shares can be either



voting (with the same voting rights as common shares) or non-voting (but non-voting preferred shares must not make up more than one-fourth of all shares of a listed company or one-half of all shares of a non-listed company). Under the proposed Loi PACTE, a non-listed SA could issue preferred shares with voting rights either greater or lesser than those of common shares.

Further, the maximum number of votes for any shareholder can be limited by the bylaws (but this limit will not apply subsequent to a tender offer resulting in holding of at least two-thirds of the capital or voting rights).

For an SARL, all shares must have equal voting rights, but the bylaws may provide that some shares will have financial rights different from others.

19. **What percentage of public equity is held by institutional investors versus retail investors?**

Institutional investors reportedly have held, in recent years, about 25% of public equity.

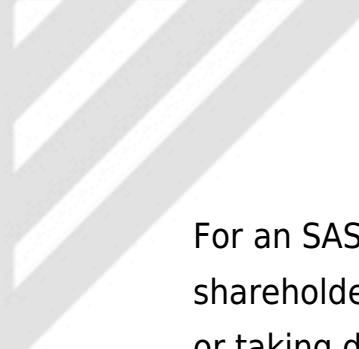
20. **What matters are subject to approval by the shareholders and what are the typical quorum requirements and approval standards? How do shareholders approve matters (e.g., voted at a meeting, written consent)?**

The questions which must be submitted to approval by the shareholders, and required quorum and majority for these decisions, are as follows:

- For an SA or SCA, annual approval of accounts and appointment or removal of members of the board of directors or supervisory board and other questions not subject to extraordinary meeting are decided in an ordinary shareholder meeting, by majority vote with a quorum of one-fifth of voting shares on first convocation and no minimum quorum on the second convocation (the quorum can be increased by the bylaws for non-listed SAs). For an SARL, annual approval of accounts and certain other decisions must be decided by an ordinary shareholder meeting; the required majority is 50% of all shares on first convocation and a majority of votes expressed on second convocation (the bylaws can provide higher majority rules; there is no quorum requirement).
- Certain decisions are required to be taken by an extraordinary general meeting, including changing the company's purpose, dissolution of the company, increase and decrease in capital, approval or change in rules relating to transfer of shares, modification of the company's structure, merger, etc. For an SA or SCA, the quorum is one-fourth of voting shares on the first convocation and one-fifth on the second convocation. For an extraordinary meeting in an SARL, the quorum is one-fifth on first convocation and one-fourth on second convocation and in either case the minimum majority requirement is two thirds of all shares present or represented at the meeting (unless the bylaws provide for a higher majority rule, but the bylaws may not provide for unanimous decisions).
- In the case of an SCA the above rules apply to decisions of limited-liability shareholders, but all shareholder decisions (except appointment of supervisory board members) must also be approved by the unlimited-liability shareholders, with quorum and majority determined by the bylaws.

In general, if the bylaws permit, shareholders can participate in the meeting by audio or video conference (and, for non-listed companies, the entire meeting can be held by video conference, if allowed by the bylaws and if not opposed by at least 5% of the shareholders).

For an SARL, decisions other than annual approval of accounts and certain other decisions can be taken by written document taking a decision either unanimously or by the required majority, and indicating the position taken by each shareholder.



For an SAS, the bylaws determine the quorum and majority necessary for shareholder decisions and other matters relating to shareholder meetings or taking decisions by written consent, with great flexibility permitted except that unanimous agreement is required for certain key decisions including any change that increases the obligations of shareholders.

21. **Are shareholder proposals permitted and what requirements must be met for shareholders to make a proposal?**

In addition to the right of any shareholder to raise questions at shareholder meetings (see answer to question 16), shareholders of an SA or SCA holding a required percentage of capital can propose subjects for discussion or decision at shareholder meetings, if they represent a minimum percentage of capital, calculated on a sliding scale from 5% to 0.5%. For example, for a company with €100 million in stated capital, the threshold for proposing agenda items is about 0.8%. Such proposals must be notified to the company at least 25 days prior to the meeting (10 days if a tender offer is in progress). In addition, any shareholder may propose that the meeting decide to remove members of the board of directors or supervisory board.

22. **May shareholders call special meetings or act by written consent?**

In addition to acting by written consent as provided above, shareholder meetings of an SA or an SCA may be convened by shareholders holding the majority of the capital after a tender offer or acquisition of a controlling block of shares or by a person named by a court upon the

request of shareholders holding at least 5% of share capital (or, for a listed company, an association of shareholders holding at least 5% of capital).

For an SARL, a shareholder meeting can be convened by the manager or the statutory auditor (if one exists) at the request of at least 10% of shareholders holding at least 10% of shares or by a person named by a court at the request of any shareholder.

For an SAS, rules as to convocation of shareholder meetings by the shareholders are set out in the bylaws.

23. Is shareholder activism common and what are the recent trends?

There is a certain amount of shareholder activism in France but it is not as significant as in some other countries. Shareholder activism is facilitated by a steady stream of legislative changes marginally increasing shareholder rights and transparency, as described above in this paper. "Say on pay" issues have been the most visible, but activists have also proposed reorganisations or exceptional dividends and challenged takeover bids. Solicitation of proxies is permitted, subject to some restrictions.

24. What is the role of shareholders in electing the governing body?

See answer to question 6.

25. **Are shareholder meetings required to be held annually or otherwise, and what information needs to be presented?**

See answer to question 16.

26. **Do any organizations advise or counsel shareholders on whether to approve matters?**

Shareholder advisors have become increasingly active in France in recent years. The proposed Loi PACTE would expand on existing guidance of the AMF on proxy advisers, by establishing rules for shareholder voting advisor services, which will be expected to refer to a code of conduct and explain deviations therefrom (or explain why they do not subscribe to such a code), provide rules relating to conflict-of-interest and publish at least annually information relating to their methodology and other matters.

27. **What role do other stakeholders, including debt holders, employees, suppliers and customers and the government, typically play in the corporate governance of a company?**

The roles of bondholders and employees in corporate governance are defined by French law.

Bondholders have the right to be consulted on certain decisions, including merger or split-up of the company, in which case bondholder opposition

could result in a court decision to require constitution of additional security or reimbursement of the bonds.

As for employees, in addition to board participation as described above, the workers council (*comité social et économique*), required in any company or group with at least 50 employees, has rights of consultation, including in the following cases: any significant modification of the economic or legal organization of the company, including sale of or significant investment in the company; certain grants of shares or options; merger; tender offer; or insolvency proceedings.

French law does not provide for a formal role in corporate governance of other stakeholders, such as suppliers, customers and the government, but of course management and governing bodies communicate with them and take their interests into account.

28. What consideration is given to environmental and social issues, including climate change, sustainability and product safety issues, and are there any legal disclosure obligations regarding the same?

It is increasingly accepted that environmental and social issues should be taken into account in evaluating and formulating company policy and French listed companies generally give priority to such issues. For certain large companies an extensive report on “non-financial” performance is required, as described in the answer to question 16. Also as mentioned above (see answer to question 4), the Loi PACTE would require that “social and environmental stakes” be taken into account in the company’s purpose.

29. **How are the interests of shareholders and other stakeholders factored into decisions of the governing body?**

See answers to questions 16 and 17.

30. **Do public companies typically provide earnings guidance on either a quarterly or annual basis?**

Consistent with market practice generally, French listed companies typically provide earnings guidance on a quarterly and annual basis.

31. **May public companies engage in share buybacks and under what circumstances?**

Listed companies may engage in share buybacks subject to restrictions, including that:

- shares so purchased (either on the open market or privately) must be cancelled, except when they are held for distribution to employees or managers, for liquidity programs of certain listed companies and for non-listed companies for use in acquisitions, mergers or certain other operations; and
- a company may not hold more than 10% of its own shares or 10% of each category of its shares.

32. **What do you believe will be the three most significant issues influencing corporate governance trends over the next two**

years?

Besides increased compliance with the many corporate-governance rules described above (including gender parity on governing bodies), issues which could be significant in France over the next two years include the following:

- the extent to which factors other than maximising profit for shareholders will be genuinely taken into account in decision-making by publicly traded and other companies;
- continued efforts to curb agency effects (excessive benefits and prerogatives for management), including via executive compensation transparency, accountability and limits;
- whether non-French institutional investors will continue to accept the French corporate-governance model as it evolves.