DOWNLOAD PDF INTRODUCTION TO THE PRIVATE AND PUBLIC LAWS OF LIABILITY IN FRANCE

Chapter 1 : Premises Liability | AllLaw

French law is famous for the sharpness with which it draws the distinction between private law and public (and particularly administrative) law, revealed at the level of the courts' jurisdiction, as well as at the levels of substantive law and legal procedure.

Posted in Business law , Guides , Publications On: March 1, Comparison of public and private companies 1. Introduction There are numerous differences between private and public companies, some derived from statute while others are derived from practice. The general rule is that any company which is not a public company is a private company. Very broadly stated the most important difference between a public company and a private company is that a public company is intended as a vehicle not only for a business but also for public investment in that business, whereas a private company is the private concern of the persons engaged in the business incorporated in it. The only substantial advantage of a public company is that if the public company satisfies the conditions for listing, its shares can be listed or dealt with on a recognised Stock Exchange, thus enabling the company to raise equity capital by offering shares to the public, and also permitting shareholders to buy and sell their shares very easily. In return for this benefit, and to protect public investors, public companies are subject to considerably more stringent controls than private companies. The following paragraphs contain some of the most important distinctions in law between public and private companies. Please note that this list is not exhaustive. Unless otherwise stated, none of the provisions contained in Paragraphs 2 to 13 below apply to private companies. Further, as appears in Paragraphs 14 to 22 below, private companies may also do a number of things which public companies may not do. Allotment of shares A public company may not allot shares unless at least one-quarter of their nominal value and the whole of any premium has been paid up. Accordingly, no public company may do business until it has shareholder funds of a value equal to at least one-quarter of the authorised minimum. Non-cash consideration for shares A public company may not allot shares as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than five years after the date of the allotment. In any event, a public company may not allot shares in consideration of an undertaking to do work or perform services. Such an agreement may be validated if: Disapplication of pre-emptive rights Unlike a private company, a public company may not exclude altogether the preferential rights conferred by law on its existing equity shareholders to subscribe for new shares or other equity securities and which it offers for subscription in cash: Distribution of profits Like a private company, a public company may make distributions to its shareholders only out of the excess of its accumulated realised profits so far as not already utilised by distribution or capitalisation over its accumulated realised losses so far as not previously written off in a reduction or reorganisation of capital duly made ; but unlike a private company, a public company is prohibited from making a distribution if its net assets are less than the aggregate in value of its called-up share capital and its un-distributable reserves. The distribution must not reduce the amount of those assets to less than that aggregate. Treatment of shares held by or for public company Where shares in a public company are forfeited or where a company acquires shares in itself in which it has a beneficial interest, such shares, unless previously disposed of, must be cancelled within three years of such forfeiture or acquisition. In general, a public company may not take mortgages, charges or liens over shares in itself. Duty of directors on serious loss of capital If the net assets of a public company are reduced to half or less of its called-up share capital, its directors must, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting, to be held not later than 56 days from that day, for the purpose of considering whether any, and if so what, steps should be taken to deal with the situation. Company secretary A private company does not have to appoint a company secretary, unless its Articles require it to do so. A public company must have a company secretary and it is the duty of the directors of a public company to take all reasonable steps to ensure that the

secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary to the company, and who complies with the statutory requirements. Whereas a private company secretary need not be specially qualified or experienced, the secretary of a public company must be someone with the appropriate knowledge and experience, e. Company investigations In addition to their powers to issue securities to the public, public companies have a statutory power not conferred upon private companies to enquire into the existence of interests in their shares either on their own initiative or upon the requisition of a members holding one-tenth of the voting capital. Form and filing of accounts A public company must submit its accounts to its members in a general meeting within 6 months of the end of its accounting period: A small or medium-sized private company may be exempt from the obligation of having its accounts audited and may file abbreviated accounts. A private company which qualifies as small or medium-sized may be exempt from certain provisions of the Companies Act relating to accounts and disclosure. A company or a group containing such a company is not eligible for small or medium-sized status and relief from disclosure if at any time during the year it was a public company, a banking or insurance company, an authorised person under the Financial Services and Markets Act or certain types of investment company. Dormant companies A private company which qualifies as a small company need not appoint auditors while it is dormant. A dormant company is currently required to file an abbreviated balance sheet with notes. Financial assistance for acquisition by private company of its own shares All companies are prohibited from giving financial assistance, either directly or indirectly, for the acquisition of their own shares. However, a private limited company is permitted to do so if a special resolution is passed following a statutory declaration of solvency by the directors and a report by the auditors. The private company must have net assets which are not reduced by the acquisition, or, to the extent that they are reduced, the assistance is provided out of distributable profits. Redemption or purchase of own shares out of capital Subject in each case to strict compliance with the statutory safeguards including a sworn solvency statement made by all directors , a private company may not only purchase its own shares or redeem any shares issued as redeemable shares out of its distributable profits as may a public company , but may also effect such a purchase or redemption by applying assets representing its capital and non-distributable reserves. A public company has to apply to the High Court if it wishes to reduce its share capital; for example in order to write off accumulated losses on the balance sheet, which is a costly procedure. Disclosure of interests in shares Persons entitled to interests in the shares of a private company carrying full voting rights need not disclose them to the company, and the company is not required to keep a register of such interests. A person who acquires an interest in the shares with voting rights in a public company may, in certain circumstances, come under an obligation to notify the company of his interest. A public company is required to keep a register of interests in its shares. Sole director A private company may have a sole director, whereas every public company [2] must have two directors. Meetings and shareholder resolutions A public company must hold an Annual General Meeting within 6 months of its financial year end. A private company does not need to hold an AGM unless its Articles require one. Shareholder resolutions in a public company have to be passed by the appropriate majority at a properly convened meeting, whereas most shareholder resolutions in a private company can be passed by a written resolution, which can be a quicker and simpler process. Appointment of directors Directors of a private company can be appointed at a general meeting by a composite resolution without further authorisation. At a general meeting of a public company, a single resolution appointing two or more directors may not be moved unless agreed by the general meeting without any vote being given against it. Rights of a proxy A proxy attending a general or class meeting of members in a private company has the same right as the member appointing him to speak at the meeting. Practical differences between public and private companies. There are a number of practical differences between public and private companies, including the following: The directors of a private company usually hold or control all or a majority of its shares. Shares in a private company are rarely traded, as there is no established market place and no readily ascertainable market price for them. Further, it is usual for the articles of association of private companies to

impose restrictions on transfers of shares. Shareholders in a private company who are not directors may therefore receive no income return from their shares. However, if the failure to pay dividends in contrast with substantial payments of remuneration to directors amounts to unfair prejudice, non-director shareholders may have rights under the Companies Act In the event of a dispute, minority shareholders in a private company are likely to be in a weak position. Their shares, as mentioned above, may yield no income and it is difficult to realise their capital value. Whereas the directors and shareholders in a private company are frequently the same persons, there will usually be a significant difference in personnel in a public company. In a public company, the position of a director is more like that of an employee paid to manage a business and shareholders are more likely to be investors, whether institutional or otherwise. The material contained in this guide is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for specific circumstances and before action is taken.

Chapter 2 : Italy adopts new anti-corruption law | Global law firm | Norton Rose Fulbright

2 Introduction to the Private and Public Laws of Liability in France 3 Droit PrivÃ©: Delictual Liability for Fault and for the 'Deeds of Things' 4 Droit PrivÃ©: The Law of Sale.

Domestic company joint ventures JVs Regulation 1. Are JVs expressly regulated? The laws applicable in the UK reflect the separation between laws applying to England and Wales, those relating to Scotland and those relating to Northern Ireland. EU law is generally applied consistently throughout the UK. This chapter focuses on the law of England and Wales, which is generally also applicable to joint ventures in the other jurisdictions of the UK. However, there are some important differences that influence joint ventures set up in Scotland in particular , which are outside the scope of this article. English corporate law does not expressly regulate joint ventures as distinct legal entities in themselves. However, two persons natural or corporate coming together to carry on business can constitute a partnership regulated by the Partnership Act see Question 3. In addition, joint arrangements may fall within EU or UK domestic competition legislation see Questions 7 , 15 and Which types of JV are allowed? As the establishment of joint ventures in the UK is not prescriptive, there are no laws restricting the structuring of a joint venture. It is not necessary for both parties to be UK incorporated or resident, although UK tax and accounting advice should be taken into consideration at an early stage. Joint ventures are usually formed where two or more persons or companies come together to execute a particular business proposition or project in a contractual or corporate arrangement. Typically, a UK joint venture takes one of the following forms: A corporation normally a private limited liability company incorporated under the Companies Act An unlimited liability partnership governed by the Partnership Act An unincorporated, contractual arrangement. In addition, since April , a new type of limited partnership called "private fund limited partnership" PFLP has been available. New and existing private investment schemes can now be structured as limited partnerships. Contractual joint ventures can take any form, but common examples include: Agency agreements where one party appoints the other to act on its behalf as agent, for example to exploit a new market. Distribution agreements where one party, such as a manufacturer, appoints a distributor to supply its products in a particular area, with the distributor taking more risk than under an agency agreement. There is no UK legislation which expressly governs joint ventures. However, joint ventures established by way of incorporation as a company are subject to UK company law, in particular the Companies Act CA Joint ventures structured as general English unlimited partnerships are governed by the Partnership Act and unincorporated, contractual agreements are governed by general company and commercial law. Scottish partnerships and Scottish limited partnerships are outside the scope of this chapter. Limited partnerships, which are sometimes used as an investment vehicle, are governed by the Limited Partnership Act as amended LPA. Partnerships not otherwise covered above are governed by the Partnership Act PA unless expressly or impliedly excluded by agreement of the partners. Their use for formal joint venture arrangements has declined in popularity since the introduction of LLPs. Formation and registration 4. What are the typical JV founding documents for a corporate JV? A company can be incorporated in the UK with liability limited by guarantee or by shares. In practice most joint venture companies are incorporated as private companies limited by shares. While joint venture companies can be established as public limited companies, this is unusual, principally to avoid the increased regulation on public companies contained in the Companies Act CA Also, it may be more difficult for a disgruntled party to sue for breach of contract. However, most joint ventures prefer to conclude their arrangements in a private contract and restrict changes in the articles of association to matters relating to the issue and transfer of shares, as well as to meeting quorums and voting rights. The Companies Act provides that documents required to be filed at Companies House for registration must be in English except for companies incorporated with a registered office in Wales which can deliver documents in Welsh, but they must be accompanied by a certified translation into English unless it is of a description exempted from that requirement under regulations issued by the Secretary of State or in a form

prescribed in Welsh. There are no restrictions governing the language of a contractual joint venture. Public notaries are not required to be involved in applying for the formation of UK corporations of any variety or LLPs. Many of the registration and filing actions required by Companies House can be completed online without the submission of paper documents. There is no English legal requirement to consult public officers or to follow a formal notarisation procedure to establish a contractual joint venture or a joint venture established as a partnership governed by English law. Are JVs registered with any local registries? Local registries A joint venture intended to be established as a limited liability company or a limited liability partnership must apply for registration with Companies House see Question 6. Otherwise, there is no specific requirement for a joint venture to register with a local registry in the UK. If an overseas joint venture has a branch or place of business in the UK, it may be necessary to register such presence with Companies House. Likewise, any entity whether formed in the UK or overseas carrying on business in the UK should consider the impact of UK law particularly as it relates to direct and indirect tax and employees, both of which require registration with appropriate public bodies. Public sector bodies Other than the requirements set out above, there is no specific requirement for a corporate joint venture to be registered with any national regulatory authority. However, in certain circumstances, the parties to a joint venture about to be formed may agree to approach the CMA to discuss its impact on the relevant market s , in particular if the parties are already competing with each other and the joint venture is to assume parts of their competing operations or supply them. The CMA will take an interest in such a joint venture where the jurisdictional thresholds are satisfied. The following thresholds must be considered: The "share of supply test" does not apply to a newly formed joint venture. In addition, the acquisition of a stake minority or controlling interest in an existing joint venture may give rise to a "relevant merger situation" and attract the interest of the CMA, if the parties decide not to notify the acquisition to the CMA. What other formal requirements must be complied with to validly constitute a JV? Can the JV structure be used in every industry sector? Are there any restrictions to be considered and carefully assessed before investing in a JV? A joint venture can be established in any sector. However, consideration should be given to industry or sector-specific regulations, particularly in relation to the following sectors: Health care, the treatment of disease or disorder may require registration with the Care Quality Commission. Gaming and gambling may require a licence from the Gambling Commission and is regulated by the Gambling Act and the Gambling Licensing and Advertising Act Can a JV be established with any purpose? A joint venture, in whatever form, can be established with any purpose, although clearly no illegal purpose would be permitted. Share capital and participation How can a JV member contribute and are there statutory limits on the possibility to make contributions in kind? There are no statutory limitations on how a member can contribute to a private incorporated joint venture. However, if the company is registered at Companies House as a public limited company not to be confused with a "listed" company or a company whose shares are publicly traded , any non-cash assets other than shares used to contribute in satisfaction of the issue of new shares must be independently valued section , CA Public companies cannot allot shares in consideration of an undertaking to do work or perform service for the company or another person, or in consideration of any undertaking which can be performed more than five years after the allotment sections and , CA Both private and public companies should be aware of the requirement section , CA for shareholder approval of any substantial property transactions with any director of the company. There are no statutory limits on the level of contributions in kind made by a member and no statutory requirements for a member of a joint venture to meet any minimum level of contribution in kind, whether in a limited liability partnership under the LLPA, a partnership under the PA or a limited partnership under the LPA. The Limited Liability Partnership Act does not refer to the denomination of the capital contributions of its members, so a joint venture structured as a LLP can also be established with any currency. Duration and limits on membership There are no statutory limits to the duration of a joint venture. Are there statutory limits on the number of members participating in a JV? There are no limits to the number of members of a joint venture. Private limited companies need only a single member while public limited companies need at least two members. LLPs must have at least two members.

Neither the Companies Act nor the Limited Liability Partnership Act imposes any restrictions on the maximum number of members of a joint venture. Public sector bodies Can a public sector body enter into a JV agreement? Subject to what conditions? In particular, do public private partnerships PPP laws and regulations apply? As public sector bodies are established under individual statutes, their ability to establish a joint venture will be governed by the relevant legislation covering their sector. When a public sector body is involved in the ownership and operation of a joint venture, the joint venture company will need to consider whether it would qualify itself as a public body under the relevant public procurement rules, in which case it will need to comply with public procurement rules when it purchases works, services and supplies of certain value. Non-competition and anti-trust clauses Are there statutory constraints on the use of non-competition or anti-trust clauses in a JV agreement? The formation of a new joint venture, other than being potentially scrutinised under the UK merger control regime, may need to be reviewed under the UK Competition rules set out in the Competition Act , as amended CA and in particular the Chapter I and II Prohibitions. This is more pertinent when the joint venture has been formed by actual or potential competitors in so far as the formation can affect competition within the UK to an appreciable extent. Research and development JV agreements specific EC regulation for exemption. Production JV agreements including subcontracting. Specialisation agreements specific EC regulation for exemption. Standardisation JV agreements including standard contracts. Information exchange JV agreements. The EC Guidance is based primarily on legal and economic criteria that help to analyse a horizontal co-operation agreement and the context in which it occurs. Economic criteria such as the market power of the parties and other factors relating to the market structure form a key element of the assessment of the market impact likely to be caused by a horizontal co-operation agreement and, therefore, for the assessment under the relevant EU Article , TFEU and Chapter I Prohibition under the CA Under English law, there is no concept of a de facto company, as the incorporation of a company is set out in Companies Act The process for establishing a partnership is not prescribed. All that is required is that the parties carry on a business in common with a view to profit section 1, PA. Contractual joint ventures may involve some pooling of profits and loss, so to avoid a contractual joint venture arrangement being construed as a partnership, care should be taken when drafting a joint venture agreement to reflect the intention of the parties. In particular, while not conclusive, it is common for the agreement to expressly state that the joint venture is not intended to create a partnership. Limiting member liability

Chapter 3 : Law of France - Wikipedia

The Public-Private Partnerships Law Review - Edition 4, This fourth edition of The Public-Private Partnership Law Review covers topics involving public-private partnerships (PPPs) and private finance initiatives (in areas such as projects and construction, real estate, mergers, transfers of concessionaires' corporate control, special purpose vehicles and government procurement), providing a.

Corporate law The existence of a corporation requires a special legal framework and body of law that specifically grants the corporation legal personality, and it typically views a corporation as a fictional person, a legal person, or a moral person as opposed to a natural person which shields its owners shareholders from "corporate" losses or liabilities; losses are limited to the number of shares owned. It furthermore creates an inducement to new investors marketable stocks and future stock issuance. Corporate statutes typically empower corporations to own property, sign binding contracts, and pay taxes in a capacity separate from that of its shareholders, who are sometimes referred to as "members". The corporation is also empowered to borrow money, both conventionally and directly to the public, by issuing interest-bearing bonds. Corporations subsist indefinitely; "death" comes only by absorption takeover or bankruptcy. According to Lord Chancellor Haldane , It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. The legal personality has two economic implications. It grants creditors as opposed to shareholders or employees priority over the corporate assets upon liquidation. Second, corporate assets cannot be withdrawn by its shareholders, and assets of the firm cannot be taken by personal creditors of its shareholders. The second feature requires special legislation and a special legal framework, as it cannot be reproduced via standard contract law. That enables corporations to "socialize their costs" for the primary benefit of shareholders; to socialize a cost is to spread it to society in general. Without limited liability, a creditor would probably not allow any share to be sold to a buyer at least as creditworthy as the seller. Limited liability further allows corporations to raise large amounts of finance for their enterprises by combining funds from many owners of stock. Limited liability reduces the amount that a shareholder can lose in a company. That increases the attraction to potential shareholders and so increases both the number of willing shareholders and the amount they are likely to invest. Perpetual lifetime Another advantage is that the assets and structure of the corporation may continue beyond the lifetimes of its shareholders and bondholders. That allows stability and the accumulation of capital, which is thus available for investment in larger and longer-lasting projects than if the corporate assets were subject to dissolution and distribution. However a corporation can be dissolved by a government authority by putting an end to its existence as a legal entity. That rarely happens unless the company breaks the law, for example, fails to meet annual filing requirements or, in certain circumstances, if the company requests dissolution. Financial disclosure[edit] In many jurisdictions, corporations whose shareholders benefit from limited liability are required to publish annual financial statements and other data so that creditors who do business with the corporation are able to assess the credit-worthiness of the corporation and cannot enforce claims against shareholders. That requirement generally applies in Europe, but not in common law jurisdictions, except for publicly traded corporations for which financial disclosure is required for investor protection. Corporate tax In many countries, corporate profits are taxed at a corporate tax rate, and dividends paid to shareholders are taxed at a separate rate. Such a system is sometimes referred to as " double taxation " because any profits distributed to shareholders will eventually be taxed twice. One solution, followed by as in the case of the Australian and UK tax systems, is for the recipient of the dividend to be entitled to a tax credit to address the fact that the profits represented by the dividend have already been taxed. The company profit being passed on is thus effectively taxed only at the rate of tax paid by the eventual recipient of the dividend. Most of the largest businesses in the world are publicly traded corporations. However, the majority of corporations are privately

held , or closely held, so there is no ready market for the trading of shares. Many such corporations are owned and managed by a small group of businesspeople or companies, but the size of such a corporation can be as vast as the largest public corporations. Closely held corporations have some advantages over publicly traded corporations. A small, closely held company can often make company-changing decisions much more rapidly than a publicly traded company, as there will generally be fewer voting shareholders, and the shareholders would have common interests. A publicly traded company is also at the mercy of the market, with capital flow in and out based not only on what the company is doing but also on what the market and even what the competitors, major and minor, are doing. However, publicly traded companies also have advantages over their closely held counterparts. Publicly traded companies often have more working capital and can delegate debt throughout all shareholders. Therefore, shareholders of publicly traded company will each take a much smaller hit to their returns as opposed to those involved with a closely held corporation. Publicly traded companies, however, can suffer from that advantage. A closely held corporation can often voluntarily take a hit to profit with little to no repercussions if it is not a sustained loss. A publicly traded company often comes under extreme scrutiny if profit and growth are not evident to stock holders, thus stock holders may sell, further damaging the company. Often, that blow is enough to make a small public company fail. A closely held company is far more likely to stay in a single place that has treated it well even if that means going through hard times. Shareholders can incur some of the damage the company may receive from a bad year or slow period in the company profits. Closely held companies often have a better relationship with workers. In larger, publicly traded companies, often after only one bad year, the first area to feel the effects is the workforce with layoffs or worker hours, wages or benefits being cut. Again, in a closely held business the shareholders can incur the profit damage rather than passing it to the workers. The main difference in most countries is that publicly traded corporations have the burden of complying with additional securities laws, which especially in the US may require additional periodic disclosure with more stringent requirements , stricter corporate governance standards as well as additional procedural obligations in connection with major corporate transactions for example, mergers or events for example, elections of directors. In some jurisdictions, the subsidiary of a listed public corporation is also defined as a public corporation for example, in Australia.

Chapter 4 : Product Liability Law In France - Consumer Protection - France

In academic terms, French law can be divided into two main categories: private law ("droit privÃ©") and public law ("droit public"). This differs from the traditional common law concepts in which the main distinction is between criminal law and civil law.

French product liability law is profoundly inspired by these European provisions, although French law continues to include several other provisions governing liability for defective products that remain applicable in addition to the PLD and GPSD principles. This chapter will briefly highlight the principal rules specific to French law. Civil Liability Causes of Action The user of defective goods has several causes of action against the vendor or manufacturer. The user may assert all available causes of action should their conditions be fulfilled. Legal actions based on latent defects and compliance defects apply only in the case of a sales agreement, and there need not be a safety issue. Liability for defective products , just after the chapter relating to general civil liability rules Title IV: Undertakings formed without an agreement. Pursuant to Article et seq. A "producer" is defined under Article as "the manufacturer of a finished product, the producer of a raw material, the manufacturer of a component part, where he acts as a professional. Manufacturers of finished products or of component parts and producers of raw materials; Own-branders â€" Suppliers who put their names on the products and give the impression that they are the producers; Importers â€" Meaning importers into the European Union, not just into the French market. Pursuant to Article of the French Civil Code and in accordance with the PLD, a product is defective "when it does not provide all the safety that can be legitimately expected from it. Moreover, Article of the Civil Code provides that "the producer may be responsible for the defect even when the product was manufactured in accordance with good engineering practices or existing standards or when the distribution of the product was subject to and obtained an administrative authorization. Finally, a strict liability civil action is subject to two statutes of limitation as the PLD provides: First, the injured person must begin his or her court action within three years of the date of injury or, if later, the date when he or she knew or should have known of the claim against the defendant see Article of the French Civil Code. However, the producer cannot be sued 10 years after the product was introduced unless a legal action was started during that period Article of the French Civil Code. Warranties and Limited Liability Provisions A buyer may also benefit from contractual warranties. The French Consumer Code provides that the seller may offer a "commercial warranty" to the buyer in addition to other legal warranties such as latent defects and product safety that remain applicable in any case Articles L. While as a general rule the producer cannot limit or exclude its liability to the injured person by contract Article of the French Civil Code , contractual provisions limiting liability between professionals are valid as long as: Proceedings usually last several months. The court may appoint a judicial expert to analyze the product and determine the cause of any defect and injury. In this case, proceedings can then last up to two years. During civil proceedings, the parties the plaintiff and the respondent , usually represented by lawyers, exchange various written submissions in which they present their own versions of the events, their legal arguments, and claims. The parties also have to disclose to each other the evidence on which their claims or defenses rely. In contrast to civil procedure in the U. A "fishing expedition" is not permitted, and parties need disclose only the evidence useful to their claims. There is no provision in French procedure for the deposition of witnesses or interrogatories. Once the parties have exchanged all of their evidence and arguments and the case is deemed ready for argument, an oral hearing takes place before the court. While the appearance of witnesses in civil and commercial proceedings remains the exception, when witnesses appear during hearings on the merits, the judge conducts their examination. The court will then render its decision within several weeks or months. The parties may appeal the decision within one month of the date of notification Article of the French Code of Civil Procedure Save when the court has ordered provisional enforcement of the judgment, the appeal is suspensive, and the judgment may not be enforced during the pendency of the appeal. However, associations

or nonprofit organizations can bring some specific types of judicial collective action: These collective actions typically take place where product safety is at stake. Actions taken in collective interest. Associations may claim collective damages and initiate proceedings to stop the allegedly illegal behavior. They aim to protect collective interests rather than the individual interests of consumers. They are not considered to be class actions, because individuals will not receive compensation for individual harm. French law also allows specific associations to represent certain categories of injured persons by bringing representative actions in the fields of the environment,18 stockholders,19 and health. In order to bring a joint representative action, the authorized association must have the written approval of each claimant, and the claimant may revoke the authorization at any time. Moreover, the organization may not advertise or approach individuals personally to obtain their approval. Because of these hurdles, joint representative actions are used very rarely in France. Punitive Damages The notion of punitive damages does not exist under French law. The injured person is entitled only to full reparation of any losses. The lawyer and client can agree to a potential extra payment in addition to the initial retainer. However, the court typically fixes the amount, and the granted amount rarely corresponds to the amount claimed and actually spent by the winning party. In other words, criminal liabilities are not cumulative, and the legal entity can be solely found criminally liable. Prohibited Acts Several criminal laws apply to hazardous products: This offense is intended to punish safety breaches. Indeed, the Code provides that deceit or an attempt to deceive may occur not only with respect to the nature or kind of a product, but also with respect to "the fitness for use, the risks inherent in use of the product, the checks carried out, the operating procedures or precautions to be taken. Penalties are doubled when the deceit allows the use of goods that are dangerous for human or animal health Article of the French Consumer Code. The offense of involuntary bodily harm requires proof of three elements: The bodily harm can be physical or mental it can be a disease , and the injured person must have had a total incapacity to work. No criminal intent is needed for this offense, and it is sufficient to prove awkwardness, lack of prudence, lack of attention, negligence, or violation of a legal obligation of prudence or security or, when it comes to the aggravating factor of immediate exposure to a risk: This offense requires proof of three elements: The element of "manifestly deliberate violation" requires not the intention to injure somebody, but merely the awareness of violating a specific obligation imposed by a statute or regulation. This offense applies, for instance, in the event that an executive officer or company has not taken all the measures necessary to prevent or stop the expansion of any risk of which the officer or company should have been aware. Misleading commercial practice Pratique commerciale trompeuse, Article L. This offense applies when a professional: Such a public action may be commenced either: The public action aims to have the criminal offense publicly determined and punished. Depending upon the nature of the offense, three types of criminal courts have jurisdiction: A victim who has been "personally" harmed by the criminal offense and who wants compensation may start a civil action Article 2 of the French Code of Criminal Procedure. The civil action will not necessarily be suspended until the criminal court has ruled on the existence of the criminal offense. The criminal court, composed of three magistrates, presides over the trial. The examining magistrate, who is in charge only of the investigation, cannot participate in the trial. The criminal trial is divided into four principal phases: The defendant or counsel will always speak last, after the public prosecutor. Save for a few exceptions, criminal hearings are open to the public. The parties are supposed to appear in person at each hearing but may be represented by their lawyers. Should a party not speak French fluently, the court will provide a translator. After the closing arguments, the criminal court withdraws to deliberate and then renders its decision to convict or acquit the defendant. However, if the case is complicated and requires further deliberation, the criminal court may inform the parties that it will render its decision later. A party may appeal the decision within 10 days of the rendering of the judgment. Producers and distributors who "know or ought to know, on the basis of the information in their possession and as professionals, that a product that they have placed on the market poses risks to the consumer that are incompatible with the general safety requirement are required to inform the competent authorities immediately. The general safety requirement is broadly defined: Prior to defining existing legal obligations 2.

Professionals Subject To The General Safety Obligation Both the producer and the distributor of products are subject to the general safety obligation as defined under Article L. Both the producer and the distributor have a mutual obligation, in particular, to provide public notification of the risk, as well as a duty to cooperate Article L. The producer is to take "any useful measures" to contribute to compliance with the safety obligation: Dual obligation to inform: The producer must provide the consumer with any "useful information. The product must be easily identifiable and the producer must be easy to contact in the event of a problem. Initiate the necessary actions: The duty requires withdrawal and recall from the market and the warning of consumers. Notify authorities of the existing risk: Producers and distributors that have marketed unsafe products must notify the relevant public authority immediately. This single form enables simultaneous notification to other national authorities of the Member States in which the product was marketed. Therefore, a producer who marketed or otherwise supplied consumers with a defective or dangerous product in France cannot be liable under civil or criminal laws for failing to notify the competent authorities of an unsafe product. However, the failure to provide notification can be considered an aggravating circumstance in the event that the producer is held liable: Producers and distributors should act voluntarily to redress the risk of unsafe products on the market. However, should they remain inactive or take insufficient action, the national authorities also may order certain actions: Prohibit or restrict the production, sale, and distribution of products Article L. Insurance Except for certain regulated professions and in the construction industry, French companies are not obliged to have general civil liability insurance. However, most French companies obtain insurance policies to cover both professional civil liability and risks arising from commercial operations. These insurance policies usually cover personal injury and property damage claims from product liability, subject to specific exclusions. They may also include other costs that may arise, such as product recall costs. Coordination is also key for the purpose of notifying the European authorities of any risk identified by the producer or distributor and then acting to remediate and prevent any risk. A distributor may decide to join a foreign producer in proceedings initiated in France to share liability in case of an unfavorable decision against the distributor. In such case, the producer will also be ordered to pay damages to the injured person or buyer or to indemnify the distributor.

Chapter 5 : Introduction to the Private and Public Laws of Liability in France - Oxford Scholarship

The simple difference between public and private law is in those that each affects. Public law affects society as a whole, while private law affects individuals, families, businesses and small groups.

Google In France, as in many other countries, invasions of privacy have become widespread, aided by advances in science and technology as well as abetted by the claim that "the public has a right to know" and justified by the principle of freedom of expression. Freedom of expression is enshrined in article 11 of the Declaration of the Rights of Man and of the Citizen - part of the corpus of constitutional law - and in the European Convention on Human Rights. The value to society of information on the private life of public figures is obviously undeniable where it has the potential for public enlightenment. In this respect the French legal system is among the most protective that exists: In addition, although not mandatory, certain rules of professional ethics may apply III. Article 9 of the Civil Code and the formulation of the right to privacy in general Respect for privacy is guaranteed by the general principles of civil liability as set forth in article of the Civil Code. More specifically, article 9 of the Civil Code, inserted by Act of Parliament of 17 July , provides that "everyone has the right to respect for his or her private life". In general, the right to privacy entitles anyone, irrespective of rank, birth, fortune or present or future office, to oppose the dissemination of his or her picture - an attribute of personality - without the express permission of the person concerned. One example is a photograph of a monarch which shows him otherwise than in the conduct of his public life Judgment of the Court of Cassation, 13 April A breach of privacy can arise not only from the dissemination to the public of indiscretions, but also from certain ways of obtaining or gathering information, even if the information is not subsequently published. It should be borne in mind that the protection of privacy afforded by article 9 of the Civil Code is quite wide, since it operates both in a public and in a private place, unlike certain provisions of criminal law. Article 9, paragraph 2, of the Civil Code provides that the court can take the necessary measures to prevent or put a stop to an invasion of privacy which is linked to an act of publication. Various steps such as embargo, confiscation of a publication and others can be directed by the court after trying the action on its merits, and in urgent situations they can be the subject of an interlocutory order. In interlocutory proceedings a judge can also take an immediate decision in advance to suspend publication, prohibit circulation or order the total or partial suppression of a publication; these latter measures are limited to the more serious infringements. In regard to civil liability, the damages awarded to the victim by the courts depend not on the degree of fault as is the case with punitive damages in Anglo-Saxon law but on the extent of the harm which the victim has suffered. Reparation can be made in kind, by the compulsory insertion in the offending publication of the text of the judicial decision which declared the offending publication harmful; it can also be an equivalent value in the form of damages, i. The courts will, moreover, take different views of the infringement of privacy according to whether or not the victim had previously divulged facts about his or her private life. A civil action can be brought not only in the civil courts but also in the criminal courts, since conduct capable of giving rise to civil liability for the publication by reason of a violation of the right of privacy can be classified as a criminal offence, which is not the case under the common law system. Criminal offences relating to violations of privacy. The offences which relate to violations of privacy derive from the Act of Parliament of 17 July ; as amended in , they now constitute articles to of the new Penal Code. By receiving, recording or transmitting, without the consent of their author, words uttered in private or confidentially; 2. By taking, recording or transmitting, without his or her consent, the picture of a person who is in a private place. The purpose of article is to curb the behavior of the paparazzi. By virtue of article According to the definition developed by the courts, a private place is deemed to be a place which is not open to anyone without the permission of the person who occupies it in a permanent or temporary manner. Conversely, a place is classified as public if it is accessible to everyone, without specific permission from any person whatsoever, whether access to it is permanent and unconditional or subject to certain conditions.

Furthermore, under article of the Penal Code it is an offence to make use of recordings and documents obtained by means of conduct which is an offence under article , with penalties for anyone who has knowingly preserved them, or intentionally brought them to the notice of a third party, or used them publicly. This article, then, aims at penalizing newspapers and magazines which publish paparazzi photos. The rule is that a press concern must satisfy itself about the consent of the person photographed when buying photographs from a journalist or through a press agency. Articles and of the Penal Code lay down further rules governing offences against privacy; for example, as with defamation, prosecution can only take place as a result of a complaint by the victim or his or her legal representative or successors. It must be emphasized that article does not concern a "press offence" and therefore its operation is not subject to the procedural rules which are specific to the press three-month limitation period, summons, etc. Thus the determination of the perpetrator of the offence will vary according to whether or not the breach of privacy was made public. Before publication, the general law will indicate who is liable in most cases the journalist. In any case, article A further point is that since , by virtue of article of the Penal Code, corporate bodies can be found criminally liable for offences against privacy and are subject to a fine five times greater than that prescribed for individuals under article of the Penal Code. Despite this possibility, in practice no proceedings seem to have been brought against corporate bodies for breaches of privacy. Although the protection afforded by article is confined to violations of privacy occurring in a non-public place, certain breaches committed in a public place are punishable under another provision, namely article 38 of the Act of 29 July ; this prohibits the publication, by any means, of photographs, prints, drawings or portraits which reproduce all or part of the circumstances of a crime or other serious offence provided for in Book II, Title II, Chapters I, II and VII, of the Penal Code murder, intentional or unintentional wounding, etc. Article 38 was in fact brought into play in connection with instances of publication of photos of the terrorist attack at the RER Saint-Michel station in July The Paris Court of Major Jurisdiction held that the article contravened the provisions of Article 10 of the European Convention on Human Rights, dealing with freedom of expression, by being too broadly drawn and insufficiently precise for the description of an offence. Additionally, an Act of Parliament of 10 July lays down the principle that correspondence transmitted by means of radio waves, optical signals, etc. This makes it an offence to intercept or divert correspondence once it has been transmitted and to use or divulge its contents. Exceptionally, interception may take place where ordered by a court or for security reasons. Ethics There is a code of conduct in France dating from which is common to the press as a whole, and several publications have drawn up their own individual ones, but none of these documents stipulate penalties for transgressing the principles which they lay down. France has no equivalent to a professional association of the Italian kind, or even to a Press Complaints Commission as in the United Kingdom or a Press Council in Germany which ensures compliance with rules of professional conduct. Furthermore, journalism is an open profession and its practitioners do not need a press card. Press cards are issued by a joint board of journalists and editors on which the government is not represented.

Chapter 6 : Be covered: An introduction to insurance in France

POLICYMAKING AND PUBLIC LAW IN FRANCE: PUBLIC PARTICIPATION, AGENCY INDEPENDENCE, AND IMPACT ASSESSMENT Susan Rose-Ackerman Thomas Perroud** Policymaking in government ministries and agencies is the.*

France , Global October 5 Trends and climate Trends Have there been any recent changes in the enforcement of anti-corruption regulations? In terms of fighting corruption, France was generally considered to be lagging behind the trend. In the Organisation for Economic Cooperation and Development raised serious concerns regarding the lack of bribery convictions in France and stated that France should intensify its efforts to combat corruption. However, the ruling was overturned by the Paris Court of Appeal on January as an "insufficiently grounded" offence. Legislative activity Are there plans for any changes to the law in this area? The law entered into force on December 9 and been supplemented by several decrees. It provides for new compliance obligations for French companies and their managers and aims to promote better business ethics. At first glance, this prevention-oriented law appears to be less repressive than the provisions of the UK Bribery Act and the Foreign Corrupt Practices Act provisions. However, the implementation of certain mechanisms such as off-setting agreements could result in significant financial penalties. Legal framework Authorities Which authorities are responsible for investigating bribery and corruption in your jurisdiction? This new regulation provides for the creation of a national anti-corruption agency that has replaced the SCPC and ensures compliance with the law â€" the Agency for the Fight against Corruption. The agency is in charge of drawing up recommendations on prevention and assistance in detecting corruption for public and economic actors, as well as a plan for the prevention of corruption. It is also in charge of assisting administrations and local and regional authorities in the prevention of corruption. The agency has also been given real control and monitoring power through the power to investigate within private companies, public companies and administrations. Investigations may be initiated following the receipt of information provided by a whistleblower. The agency will be able to investigate on site, request documents and interview any person in the company. The agency has a sanctions commission with various powers, including the power to: Domestic law What are the key legislative and regulatory provisions relating to bribery and corruption in your jurisdiction? The Criminal Code distinguishes between active and passive corruption: Articles and following of the Criminal Code criminalise active corruption when a person, either directly or indirectly, unlawfully induces or attempts to induce a public official to accept a bribe by proffering an offer, promise, donation, gift or reward. Articles and following punish passive corruption, which is characterised as when a public official, either directly or indirectly, solicits a bribe by requesting or accepting without right any offer, promise, donation, gift and advantage by another person. Articles and following provide for the same rule in the private sector for commercial bribery. One fundamental point is that the penalties concerning corruption are assorted under the law with ancillary provisions, which contain in particular the debarment of up to five years from public tenders. Economically speaking, this debarment risk is much more mitigated for a business than the penalties. International conventions What international anti-corruption conventions apply in your jurisdiction? Specific offences and restrictions Offences What are the key corruption and bribery offences in your jurisdiction? Criminal Law punishes active and passive corruption of foreign and domestic public officials, as well as private commercial corruption. The offence is defined as unlawfully proffering, directly or indirectly, any offer, promise, donation, gift or reward to induce a public official to either carry out or refrain from carrying out any action linked with his or her functions or duties Article of the Criminal Code. It is also an offence for the public official to directly or indirectly solicit or accept such offers, promises, donations, gifts or rewards Article The offence is also defined in the private and commercial sector as the act of directly or indirectly making offers, promises, gifts, presents or other advantages to a person who is not a public official but holds or occupies a management position or any occupation for a private person, whether natural or legal,

or for any other body, in order to obtain the performance or non-performance of an action in relation with his or her occupation or position. Hospitality restrictions Are specific restrictions in place regarding the provision of hospitality eg, gifts, travel expenses, meals and entertainment? If so, what are the details? The Criminal Code does not provide specific rules on the provision of hospitality, but rather prohibits any kind of offer, promise, gift, present or other advantage that would serve as a bribe. However, there are specific rules for certain industries eg, the pharmaceutical industry. Article L of the Public Health Code prohibits companies which manufacture or market medicinal products from offering any benefits, either directly or indirectly, in cash or in kind, to healthcare professionals, medical practitioners, students or associations representing them. Facilitation payments What are the rules relating to facilitation payments? There are no specific rules in relation to facilitation payments. Contrary to the US Foreign Corrupt Practices Act, there is no derogation regarding facilitation payments in France, and they are therefore prohibited. Liability Can both individuals and companies be held liable under anti-corruption rules in your jurisdiction? Yes, the Criminal Code allows both individuals and companies to be convicted of corruption. In respect of companies, Article of the code specifically provides that corporate entities can be held liable for offences committed on their behalf by their organisation or representatives. The corporate criminal liability does not exclude the possibility of prosecuting an individual for the same offence. Therefore, a managing director can be held liable for acts committed within his or her company. Can agents or facilitating parties be held liable for bribery offences and if so, under what circumstances? Article and Article of the Criminal Code provide that an accomplice of the offence is as punishable as the perpetrator, with the same penalties. Foreign companies Can foreign companies be prosecuted for corruption in your jurisdiction? Pursuant to Article of the Criminal Code, a criminal offence is considered to be committed on French territory when one of its constituting elements took place in France. Therefore, in theory, any company, regardless of its nationality, can be prosecuted in France if the act of corruption took place in France. However, in practice, France is often criticised for being lax regarding fighting transnational corruption cases and foreign companies are rarely prosecuted by the French public prosecutor. In the past 15 years, there has been only one example of a conviction by the Paris Court of Appeal Total, February Consequently, the Sapin II Law has extended the extra-territorial jurisdiction of French courts. In accordance with Article 21 of the Sapin II Law Articles and of the Penal Code , if a foreign company has all or a part of its economic activity in France, then French courts will be competent to hear the case, even if the acts of corruption were not committed in France. In light of other French regulations, the threshold for considering that an organisation has part of its present activity in France could be relatively low ie, based on a few operations in France only. Whistleblowing and self-reporting Whistleblowing Are whistle-blowers protected in your jurisdiction? The Sapin II Law has created a judicial status for whistleblowers and sets forth protective measures. A whistleblower is an individual who is deemed to be acting in a selfless manner, which means not routinely alerting or reporting wrongdoings. The whistleblower must report in good faith ie, have sufficient grounds to believe that the facts and risks reported are accurate. He or she must also have had personal knowledge of the alleged facts. A number of measures have been introduced to protect the whistleblower: However, the protective status of the whistleblower does not preclude liability in the event of misreporting. Further, the benefit of this protection is subject to compliance with the whistleblowing process Article 10 I 1 of the Sapin II Law. Such whistleblowing process consists of three levels and requires the organising internal procedures for the collection of alerts: Reports must be made to the immediate or indirect supervisor, the employer or a referee designated by the employer. If no action is taken within a reasonable period to check the admissibility of the report, the whistleblower may refer the matter to the judicial or administrative authority or professional orders. If the report is not processed by one of the three bodies within three months, the whistleblower may disclose the facts to the public. Only in the event of serious and imminent danger or a risk of irreversible damage can the whistleblower refer directly to judicial or administrative authorities or professional orders. The Sapin II Law compels legal entities that are governed by private or public law and that have at least 50 employees to put in place such a whistleblowing process. The

details of this obligation were specified by Decree on April 19 , which became effective on January 1 by virtue of Article 8 of the decree. Companies must determine the best legal instrument to meet these obligations and implement them in accordance with the legislation Article 1 of the decree. The Sapin II Law also punishes obstructions to whistleblowing. If so, what process must be followed? Because of cultural differences with the common law system in the United Kingdom, the French legal system is not keen on encouraging self-reporting. It is therefore unusual for companies to voluntarily report an offence to the French public prosecutors or regulatory authorities. The only field where French law has allowed leniency programmes is in antitrust matters. Like in the United States, companies in France can report cartel activity to the French authorities in order to avoid or reduce penalties. Under the French system, the company which is the first to report cartel activity that the authority is not already aware of can benefit from total immunity. Other companies which wish to report illegal activity and cooperate with the French authorities can be offered a fine reduction. In relation to corruption, there is no such leniency programme in the existing legal framework, which means that self-reporting is still not an option that would be legally encouraged. Dispute resolution and risk management Pre-court settlements Is it possible for anti-corruption cases to be settled before trial by means of plea bargaining or settlement agreements? One of the main new legal tools set out by the Sapin II Law has established an off-setting agreement inspired by the deferred prosecution in United States called judicial convention of public interest or penal transaction. Each party can benefit from such a public interest agreement: This off-setting agreement provided for in Article 22 of the Sapin II Law can be proposed by a public prosecutor or the investigating judge to companies that are under investigation. However, it seems possible that it could also be made following self-reporting. The procurator may propose that the legal person conclude an agreement containing one or more of the following obligations: Before entering into force, this off-setting agreement must be validated by a judge. The validation order does not qualify as a conviction and does not produce the effects of a conviction judgment. This off-setting agreement does not prohibit action against directors. Further, it does not seem to obstruct the prosecution and conviction of a company for the same acts by foreign authorities. This risk must be considered because of the publicity of the agreement, which is the subject of a press release and the publication of the validation order on the French Anti-corruption Agency website. The company will then have to assess the possible consequences in other countries before concluding an off-setting agreement. On October 30 , in a case involving HSBC, a precedent was set in respect of the implementation of the public interest agreement: The precedent has been used in a case that concerned tax fraud, not corruption. This complementary penalty should lead companies to consider voluntary self-disclosure or subsequent cooperation in exchange for a more lenient fine. HSBC has had to pay damages to the victim, which shows that the fine and damages are cumulative. Defences Are any types of payment procedure exempt from liability under the corruption regulations in your jurisdiction? No, there is no type of payment procedure exemption under French law. What other defences are available and who can qualify? There are no general defences in French regulations on corruption. However, the defendant can challenge the material element of the offence and the intent of committing the offence. Article of the Criminal Code requires the intent of the defendant as a legal basis for the conviction.

Chapter 7 : The Public-Private Partnership Law Review - France | Public private partnership

The Public-Private Partnership Law Review, Chapter 7: France, by FranÃ§ois-Guilhem Vaissier, Hugues Martin-Sisteron, and Anna Seniuta, White and Case, Law Business Research, The Law Reviews, April Despite the existence of articles in various law reviews on topics involving public- private.

The bye-laws can reserve other decisions for the GM. Regardless of the form of company, a GM can be held by videoconference if provided in the bye-laws. A shareholder can also vote by correspondence. In this case, the draft resolutions have to be sent to the shareholders, who are asked to accept or reject them. This cannot be used to approve the financial statements, which requires a GM. What are the notice, information, and quorum requirements for holding general meetings and passing resolutions? The managing directors in the SCA and the chairman of the board or management board in the SA have to convene the shareholders, at least 15 days before the general meeting on the first call or ten days before, on the second call by: On request, shareholders of SAs and limited partners of SCAs are entitled to have access to corporate documents relating to the company. Documents which have to be made available to shareholders are listed in the Commercial Code, and include the: Shareholders can require copies of documents listed by the Commercial Code, including the: Agenda of the GM. A minimum shareholding is not required to exercise these rights. General partners of SCAs can obtain copies of the corporate books and registers twice a year, and can ask written questions of the company. A management report and a draft of the resolutions have to be made available to the shareholders prior to any extraordinary meeting in an SA and SCA. The managing director has to convene the shareholders at least 15 days before the GM by registered letter. A French Decree dated 18 May provides that, as from 1 June , shareholders can be convened by electronic means, subject to their individual acceptance. Shareholders must be provided with the general meeting agenda and the management report at least 15 days before the general meeting. There is no quorum for ordinary decisions. In SARLs, the management has to deliver to the shareholders: A list of the inventory. However, unanimous decisions of the shareholders are required in certain circumstances, for example to modify share inalienability clauses, shareholder exclusion clauses, or share transfer prior approval clauses. What are the voting requirements for passing resolutions at general meetings? As a general rule, one share gives one vote. However, preferred shares can create classes of shares which do not have a voting right or have double-voting rights. Bye-laws can also provide a double-voting right to shareholders holding their shares for more than two years, provided that the shares are registered in the nominative form. The new double voting rule applies to shareholders who have held nominative shares for at least two years. In addition, the bye-laws of an SAS can provide multiple voting rights for a class of shares. Voting is conducted by a show of hands or by a poll vote, as decided by the GM bureau, except where the bye-laws decide otherwise. Shareholders can delegate attendance through a proxy to another shareholder or to their spouse. If a proxy is granted without specifying any proxy-holder, the chairman of the GM is deemed to be able to vote on behalf of the shareholder granting the proxy. Such a proxy is only valid for a specific GM. In an SAS, proxy voting is freely organised in the bye-laws. Shareholders of listed companies can group themselves into a specific association in charge of representing their interests. The Commercial Code provides that an association is entitled to exercise some rights originally allocated to individual shareholders who join the association. The Commercial Code requires a minimum share capital to set up such an association. Further, shares pooled in this association have to be registered in the nominative form for at least two years. In this case, the draft resolutions have to be sent to the shareholders who are asked to accept or to reject them. What voting requirements and majorities apply? The GM has a reserved competence for specific ordinary and extraordinary corporate decisions listed in the Commercial Code. Usually, ordinary decisions include the: Approval of the financial statements. Allocation of the results. Appointment or removal of managing officers and statutory auditors. Approval of agreements between the company and its board members. Extraordinary decisions generally include amendments to the bye-laws and an increase or reduction of capital. The

Commercial Code sometimes requires a unanimous vote for certain decisions. In an SAS, to amend certain clauses of the bye-laws, such as a share inalienability clause, a shareholder exclusion clause, and a share transfer prior approval clause. In an SCA, certain decisions have to be adopted by all the general partners, such as an amendment of the bye-laws or the appointment of managing directors. The voting requirements and majorities differ from one type of company to another: In an SA, ordinary decisions are adopted by a simple majority vote. For extraordinary decisions, the threshold is two-thirds of the voting rights of the shareholders. In an SARL, ordinary decisions are adopted by more than half of all shares on the first call and by a simple majority vote on the second call. Extraordinary decisions are adopted by at least three-quarters of all shares. In an SCA, any decision must be adopted by both the general partners and the limited partners. The requirements of a GM of the general partners are provided in the bye-laws. Shareholder rights relating to general meetings Can a shareholder require a general meeting to be called? What level of shareholding is required to do this? Can a shareholder ask a court or government body to call or intervene in a general meeting? In an SAS, the bye-laws freely determine the convocation rules of shareholders and can therefore provide the shareholders with a right to convene a GM, subject to a capital threshold or not. Further, each shareholder, regardless of its stock interest, can request the judicial appointment of a representative to convene a GM. Can a shareholder require an issue to be included and voted on at a general meeting? This information depends on the type of GM. For an ordinary GM, the shareholder can require copies of: A form of proxy. The names of the managing officers, and the names of companies where they hold an office. For an extraordinary GM, other specific documents can be required by the shareholder from the company. In an SARL, any shareholder is entitled to ask written questions to the managing director, who will have to answer them during the GM. Do shareholders have a right to resolve in a general meeting on matters which are not on the agenda? During the GM, shareholders can only debate issues on the agenda, except for the removal of board members which can be brought up during the GM. However, shareholders are free to amend the content of resolutions submitted to their vote, as the power of the GM is not limited to the rejection or approval of the draft resolutions. Can a shareholder challenge a resolution adopted by a general meeting? Is a certain shareholding level required to do this? What is the time limit and procedure to challenge a general meeting resolution? Any shareholder can challenge a resolution adopted by the GM if it contravenes any compulsory provision of the Commercial Code, for example: A breach of any competence or majority rule. A violation of regulation related to the issue of securities. The absence of statutory auditors for the approval of the financial statements. There are no thresholds required to bring such a claim. A resolution of the GM can be challenged before a court within three years of it being passed. In some cases provided by the Commercial Code, the court must declare the resolution null and void if it contravenes compulsory legal provisions. For instance, the violation of majority or competence rules in SAs causes the nullity of the GM. Otherwise in limited cases, the Commercial Code leaves it up to the court to decide whether the resolution should be declared null and void. What is the procedure to appoint and remove a director? The members of the supervisory board conseil de surveillance are appointed by the limited partners commanditaires, with limited liability. In relation to the board of directors in SAs and the supervisory board in SCAs, a resigning member can be replaced by the other members. This co-optation has to be confirmed by a subsequent GM. In an SARL, the manager can only be removed for cause. The removal of directors of an SA or members of the supervisory board of an SCA can be freely decided, and can happen at any time at the request of the GM. Specific rules restricting the removal of the chairman of an SAS can be included in the bye-laws. If the bye-laws do not provide removal provisions, the manager of an SCA can only be removed by a court decision. When justification for dismissal is required by a legal provision or the bye-laws, damages can be due to a director removed without cause. Can shareholders challenge a resolution of the board of directors? Is there a minimum shareholding required to do this? According to French case law, shareholders can challenge resolutions of the board of directors due to a violation of a legal provision. No minimum percentage of capital is required to challenge a board resolution. What is the potential liability of directors to the shareholders? Can their liability be limited or excluded? On

what grounds can shareholders bring legal action against the directors?

Chapter 8 : French law | calendrierdelascience.com

Part 1 Introduction to law 4 Figure The distinction between public and private law and procedures of Parliament, the functioning of central and local government, citizenship and the civil liberties.

The new Law is set to combat that figure and bring the Italian anticorruption legislation in line with that of other EU countries. Public sector The anti-corruption law requires each Public Administration to put in place specific measures to prevent the occurrence of acts of corruption or bribery. A new national anti-corruption authority will be established. Each Public Administration must implement its own anti-corruption plan on the basis of this National Anti-Corruption Plan and use their own plan as a continuous assessment tool to check their level of exposure to bribery risks. The plan must identify all activities that entail a degree of risk and set out what arrangements have been made or will be made to prevent the occurrence of corruption in these areas. In addition, each Public Administration will be required to adopt a tailored code of conduct for employees, which will have to follow set criteria and models laid down by CIVIT. Infringement by any employee of any part of the code will result in disciplinary sanctions. Public employees who report acts of misconduct in the workplace will not suffer dismissal, sanctions or discrimination as a result of their action. Each Public Administration will adopt an internal mechanism to protect any whistleblowers and will keep their identity secret, unless she or he has given prior consent to its disclosure. Private sector The Anti-Corruption Law defines three new corruption and bribery offences that are relevant for the private sector. The three new offences are: The private party who is unlawfully induced to give or promise such money or other advantage to the public officer or person charged with a public service also commits an offence. Article quater of the Italian Criminal Code Dealings in unlawful influences Traffico di influenze illecite It is an offence for a person to take advantage of his or her relationship with a public officer for the purpose of receiving or promising money or other kind of economic advantage as compensation in exchange for his or her unlawful mediation. It is also an offence for any person to unlawfully give or promise money or other advantage in exchange for unlawful mediation. Article bis of the Italian Criminal Code Private bribery Corruzione tra privati It is an offence for a manager, general executive, director, auditor and liquidator of a company or any employee of a company acting under the direction or supervision of any of these persons to act â€" or omit to act â€" in breach of the duties relating to their office or in breach of the duty of loyalty incumbent upon them, to the detriment of the company, in exchange for the payment or the promise of money or other kind of advantage. It is also an offence for any person to give or promise money or other advantage to these individuals. Since no sanction is provided for the companies that are bribed, the latter have no legal incentive to implement any procedure to combat receiving bribes. In a landmark case of 27 April , the Court of Milan held the Italian branch of a German company liable for one of the offences provided for by the Decree, committed by a consultant of the company in the interests of the company itself. In particular, the judge maintained that: Protection against liability The Anti-Corruption Law encourages all companies to adopt an organisational model that will afford protection against liability. Awareness of the importance of combating bribery and corruption, as well as other financial crimes such as money laundering and fraud, is increasing at all levels, all across Italy. Now, more than ever, involvement in an act of corruption or bribery may have serious negative legal and financial consequences. Moreover, the company must prove that it has: Actions If your company does not have an organisational model, adopt and implement one. Check the level of risk your company is exposed to. Streamline and integrate all information channels within your company.

Chapter 9 : Shareholders' rights in private and public companies in France: overview | Practical Law

Attractive Nuisance Laws: Liability for a Child's Injuries on Private Property In some cases, the property owner can be held liable for injuries to a child trespasser. Private vs. Public Nuisance Claims Against Property Owners.