

LABOUR AND EMPLOYMENT LAW

February 2008

Save-As-You-Earn (SAYE) schemes – implementing Decree dated 24 October 2007

The three major changes brought in by the Decree are as follows:

1. Terms governing the filing of PEE, PEI, and PERCO (respectively French company, inter-company and collective pension fund savings plans) agreements or regulations (ref. Article R.444-1-1 of the French Labour and Employment Code)

- Agreements governing employee incentive schemes, profit-sharing schemes, and grants of bonus shares, savings plan regulations, as well as their schedules and supplementary agreements, must be filed with the *Direction Départementale du Travail et de l'Emploi* (DDTE for short, the French departmental office for Work and Employment) and are governed by the same rules as those which apply to collective work agreements and understandings (ref. Article R.132-1 of the French Labour and Employment Code). This notably means that two copies thereof must be filed, one of which must be a hard copy signed by the parties and one of which must be a soft (electronic) copy.

However, up until 25 October 2008, such agreements and regulations may be filed by means of hard copies provided in triplicate.

These filing arrangements also now apply to agreements setting out the details regarding the distribution of bonus shares to employees, in cases in which shares are granted under the terms provided for in Articles L.225-197-1 to 3 of the French Commercial Code and which may be included in a *Plan d'Épargne d'Entreprise* (PEE for short, a French company savings plan) at the end of the acquisition period.

- Companies which employ fewer than fifty people have the option of voluntarily implementing profit-sharing by means of a unilateral decision taken by the employer under certain circumstances (ref. Article L.442-15 of the French Labour and Employment Code).

In that case, the decision specifying the procedure for unilateral implementation of such schemes shall be filed with the DDTE along with the minutes of consultations with the company's works council or, failing that, the minutes of consultations with staff delegates.

2. The *livret d'entreprise* (company record book) (new Article R.441-1-3 of the French Labour and Employment Code)

Since 1 January 2007, businesses which offer Save-As-You-Earn (SAYE) schemes must provide a SAYE record book to employees at the time they are hired.

The Decree specifies that the book must be drawn up on any durable medium and must be given to each employee at the time his/her employment contract is signed.

The book must include details of SAYE mechanisms:

- Incentives (ref. Article L.441-1 of the French Labour and Employment Code);
- Profit-sharing schemes (ref. Article L.442-1 of the French Labour and Employment Code);
- PEE (French company savings) plans (ref. Article L.443-1 of the French Labour and Employment Code);
- PEI (French inter-company savings) plans (ref. Article L.443-1-1 of the French Labour and Employment Code);
- PERCO (French collective pension fund savings) plans (ref. Article L.443-1-2 of the French Labour and Employment Code).

Also to be included in the book, where applicable:

- A certificate indicating the nature and the amount of entitlements relating to the special profit-sharing reserve and also the date on which shall be allocated any incentive and profit-sharing employee entitlements as regards the then-current fiscal year;
- When an employee leaves a company, a statement providing a summary of all of the sums and securities saved or transferred in the business within the framework of SAYE schemes.

3. SAYE schemes and changes to a company's legal position (new Article R.443-18 of the French Labour and Employment Code)

The French Economic Confidence and Modernisation Act dated 26 July 2005 (the "Breton Act") provides that, should a change arise in the legal position of a company which has set up a PEE (French company savings) scheme, in particular by means of mergers, sales of a business, take-overs, or de-mergers, rendering continuance of previous savings schemes impossible, the sums which have been assigned to it may be transferred into the new business's savings scheme, once staff

representatives have been informed in accordance with the provisions set forth by a Decree.

The French Decree dated 27 October 2007 provides details on this subject.

Thus, if a change occurs in the legal position of a business which has put in place a PEE scheme (or a PERCO or PEI), the signatories to the agreement (or the employer if the plan was not set up by virtue of an agreement) can decide to transfer the employees' balances into the SAYE scheme (or the PERCO or PEI plan) of the new business, if the latter involves collective securities investment the characteristics of which are the same as those of the investment provided for in the original plan.

If it is legally impossible to obtain consent from the initial signatories, the transfer can be set up by means of an agreement with the staff in question or with the works council or councils in question.

In cases in which SAYE schemes had not been set up by virtue of agreements with staff, the company's works council – or, failing that, staff delegates – must be consulted regarding the proposed transfer at least fifteen days before the transfer is actually carried out.

AREAS OF LEGAL PRACTICE

• **MERGERS & ACQUISITIONS**

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

• **CAPITAL INVESTMENTS AND LBOs**

Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

• **COMPANY LAW**

"Long-term capital" transactions, capital increases, issuance of composite securities (convertible or repayable in shares, investment certificates, priority dividend shares etc.), stock option agreements, company founder share plans, temporary business combinations, management fees and cash management agreements, changes to charter/by-laws and legal secretariat services.

• **SECURITIES LAW**

IPOs and preparatory work, drafting of prospectuses, legal secretariat services for listed companies, relations with market authorities, securities litigation.

• **BANKING AND FINANCE**

Advice on loan and financing agreements, warranties/guarantees, syndication, banking regulations, financing of acquisitions and structured asset financing (particularly of real estate).

• **COMMERCIAL CONTRACTS / ECONOMIC LAW**

Advice and litigation with commercial contracts, i.e. service, sale, distribution, concession, franchise, commercial agent agreements, distributor/supplier relations, general terms of purchase/sale, commercial partnerships, manufacturing and subcontracting agreements, business sale agreements, management leases, consumer law, public and private procurement contracts.

• **ADVERTISING / MARKETING**

Advice and litigation work in advertising and marketing law (validation of advertising or promotional campaigns on all media and related litigation).

• **LABOUR AND EMPLOYMENT LAW**

Advice and litigation work in collective and individual disputes as well as in social security law and criminal labour law.

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Advice and litigation work covering all facets of business, company and securities law, as well as collective procedures and white-collar crime. Representation at all stages of the dispute, from pre-litigation to litigation before judicial or arbitral courts, protective measures and enforcement.

• **REAL ESTATE LAW**

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

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• **COMPETITION LAW (FRENCH AND EU)**

Advice and litigation work in respect of industrial cooperation agreements and structuring of distribution networks. Advice and representation before the competition authorities and courts in cartel, anti-competitive practices, abuse of a dominant position and unfair competition cases. Advice on the control of concentrations (conduct of feasibility studies, preparation of notification files, negotiation with the national and Community control authorities) and on State aids/subsidies.

• **NEW TECHNOLOGIES AND INTELLECTUAL PROPERTY LAW**

Advice and litigation work, notably in IT matters (development and integration of software, licenses, assignments and other software-related contracts, facilities management, maintenance of IT systems and software, software infringement), in the field of new technologies (multimedia, Internet, e-commerce). Creation and hosting of websites, affiliation, partnership, online auctions, ASP licenses.

• **INTELLECTUAL PROPERTY**

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• **AUDIOVISUAL AND MULTIMEDIA LAW**

Advice and litigation work in connection with the production, publishing, co-production, distribution and licensing agreements, in France and abroad, of motion picture and/or audiovisual and/or multimedia works and related agreements. Navigation of audiovisual and motion picture regulations and assistance with financing.

• **TELECOM**

Legal advice and preparation of applications for telecom operator licenses, legal aspects of foreign investments in the telecom sector, link leasing (cable and fibre), co-leasing, leasing of capacity, service and/or capacity supply agreements and general terms of service and/or capacity supply, legal aspects and local loop unbundling.

• **COLLECTIVE PROCEDURES**

Alert, restructuring and reorganisation procedures, conciliation and ad hoc representation procedures. Court-ordered reorganisation, preparation of reorganisation plans, sale and recovery plans, liquidation. Representation and assistance of creditors, company officers (action to make good the shortfall in assets, extension procedures, etc.).

Wide network of foreign correspondents

The Firm has developed a wide network of foreign correspondents in most industrialised countries and in certain developing countries.

ISO 9001

The Firm was the first Paris law firm to obtain ISO 9001 certification back in 1998.

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