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France
CORPORATE GOVERNANCE

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in France.

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FRANCE
CORPORATE GOVERNANCE

1. What are the most common types of corporate business entity and what are the main structural differences between them?

The most common types of French corporate business entity are limited-liability companies:

- the société anonyme ('SA') is the most common corporate form for the largest companies (whether listed or not). An SA shall have at least seven shareholders (if it is listed) or two shareholders (if it is not listed), and a share capital of at least €37,000 represented by negotiable shares. Most French listed companies are SA. The legal regime applicable to the SA is governed by detailed rules with respect to corporate governance and shareholders' rights;
- the société par actions simplifiée ('SAS') is a very common corporate form for non-listed companies (an SAS may not be listed). An SAS shall have at least one shareholder, its share capital is represented by negotiable shares (but there is no minimum share capital requirement). The main advantage of the SAS, as compared to that of an SA, is that its legal regime is very flexible in terms of corporate governance and shareholders' rights. Most newly incorporated French companies, or French companies changing their corporate form, take the form of an SAS;
- the société à responsabilité limitée ('SARL') is a traditional corporate form for closely held companies (e.g., family businesses). An SARL shall have at least one and no more than 100 limited-liability partners. There is no minimum share capital requirement. The share capital of an SARL is represented by non-negotiable shares ('parts sociales'), meaning that any transfer of SARL shares is subject to legal formalities and, under most circumstances, restrictions such as a prior approval by the other partners;
- the société en commandite par actions ('SCA') is a much less common corporate form. An SCA may be listed, and part of its legal regime refers to that of the SA. An SCA shall have at least four partners (whether it is listed or not), and a share capital of at least €37,000 represented by negotiable shares. The main characteristic, and difference from the SA, of an SCA is that certain of its partners are unlimited-liability partners (e.g., founders and heirs) while the other partners are limited liability shareholders, with the unlimited liability partners often managing and controlling the SCA. The SCA is generally considered as an efficient defence against unsolicited takeovers; however, the recent change in the control of Lagardère (formerly an SCA and now an SA) has shown that this defence may be circumvented in certain circumstances; or
- the European company or societas europaea ('SE') is governed by European regulations and, for SE having their registered office in France, the legal regime applicable to the SA. Certain technicalities for the constitution and functioning of an SE and the fact that one of its main advantages is the possibility to transfer its registered office within the European Union make it appropriate for large companies having European or worldwide activities. Twenty-five of the SBF 120 listed companies (i.e., the 120 largest companies listed on Euronext Paris) are SE.

Other corporate forms are either less frequently used or used mainly in specific contexts, and, therefore, are not further described in this paper:

- the société en nom collectif ('SNC') shall have at least two unlimited-liability partners. There is no minimum share capital requirement and the share capital of the SNC is represented by non-negotiable shares ('parts sociales'). No SNC share may be transferred (whether to another partner or a third party) without the

unanimous consent of the partners. Under certain circumstances (in particular for small, closely held companies), the SNC may be an alternative to the SARL;
- the société en commandite simple ('SCS') is rarely used. An SCS shall have at least two partners, with at least one unlimited-liability partner and one limited-liability partner. There is no minimum share capital requirement and the share capital of the SCS is represented by non-negotiable shares ('parts sociales'). The unlimited-liability partners manage and control the SCS, and may not transfer their SCS shares without the prior consent of the other partners; or
- the société civile may be used to engage in activities that are deemed to be non-commercial. It is frequently used for certain real estate, legal and medical activities. The partners of a société civile have potential unlimited liabilities.

Given their activities (e.g., regulated financial institutions) or their shareholding structure (e.g., state-controlled companies), certain organisations are subject to specific rules concerning their corporate form and governance, which are not further described in this paper.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

Environmental-Social-Governance ('ESG')

Obligations of French companies relating to ESG and related matters have become more detailed and stringent over the last few years and are currently one of the major concerns of the EU and French regulators. The European Green Deal has resulted, and will continue to result, in the adoption of new ESG-related regulations. The ambition of this strategic plan requires a more detailed, standardized and structured framework for ESG reporting and disclosure to ensure clear, reliable and comparable information among companies and industries. The objective is to place ESG information on the same level as financial information. EU Directive n°2022/2464 on corporate sustainability reporting (CSRD) adopted by the European Parliament in November 2022 and implemented into French law in December 2023, EU Regulation n°2020/852 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation), EU Regulation n°2019/2088 on sustainable finance disclosure as well as the upcoming corporate sustainability due diligence directive and ESG ratings regulations are key pillars of this plan. Ensuring that the ESG-related information published by the in-scope companies is actually comparable is one of the key challenges of this new regulatory framework. The CSRD significantly strengthens the existing rules introduced by EU Directive n°2014/95 relating to the disclosure of non-financial and diversity information by large companies. The CSRD requires in-scope companies to disclose information pursuant to a double materiality principle, i.e. sustainability matters that affect the company as well as the impacts of the company on sustainability matters. These companies will have to apply the European Sustainability Reporting Standards (ESRS) which will improve the quality and comparability of the information disclosed. A first set of ESRS standards was adopted by the European Commission on July 31, 2023 and includes, inter alia, the disclosure requirements relating to the governance processes, controls and procedures put in place to monitor, manage and oversee sustainability matters. Under the CSRD, sustainability reporting shall also be subject to review by statutory auditors or accredited independent third-party organisations. The CSRD will progressively apply and extend the EU's sustainability reporting requirements to all large EU companies and mostEU companies listed on a regulated market as well as to certain non-EU companies listed on a EU regulated market and/or meeting certain criteria, as follows: as from 2025 (with respect to the reporting related to the financial year 2024) for companies already subject to EU Directive n°2014/95; as from 2026 (with respect to the financial year 2025) for large companies not already subject to EU Directive n°2014/95; as from 2027 (with respect to the financial year 2026) for small and medium-sized companies listed on a European regulated market ; and as from 2029 (with respect to the financial year 2028) for non-EU companies with a European turnover of more than €150 million and a subsidiary or branch in the EU. According to the European Commission, this will lead to an expansion of the in-scope companies from approximately 11,000 companies under EU Directive n°2014/95 to approximately 49,000 companies under the CSRD. These companies will also have to comply with the Taxonomy Regulation which is now effective and is intended to provide for an EU common classification system to identify economic activities considered as sustainable. Pursuant to article 8 of this regulation, since in 2022 in-scope companies have been required to publish indicators measuring the scope of their activities/investments eligible for the Taxonomy (without considering whether these activities/investments are effectively aligned with the Taxonomy criteria). Since 2023, in-scope non-financial companies must publish full reporting on the alignment of their activities with the

Taxonomy criteria and financial companies will have do so as from 2024. The European Commission initially prioritized the classification of activities covering primarily two climate-related objectives (adaptation and mitigation); it has recently extended the Taxonomy to a larger scope of economic activities and defined sustainability criteria for the other four environmental objectives (marine resources, circular economy, pollution and biodiversity) which must be taken into account by in-scope companies as from 2024 (with respect to the reporting related to the financial year 2023) for the eligibility and as from 2025 (with respect to the financial year 2024) for the alignment. The information to be published under the Taxonomy Regulation has been identified by the ESMA (the European Securities and Markets Authority), as one of its priorities in relation to the preparation of annual reports. In 2022 and 2023, the Autorité des marchés financiers (the French securities and markets regulator (AMF)) issued important reports on the first years of application of the Taxonomy reporting obligations by French issuers, which contain important guidelines as the issuers face unprecedented challenges to obtain, articulate and present some of the required information. The ESMA and the AMF will continue to closely monitor the completeness and the comparability of the information disclosed by the issuers.

Development of ‘say-on-climate‘ resolutions

Over the last four years, so-called ‘*say-on-climate*‘ resolutions (i.e., resolutions put on the agenda of a shareholder general meeting by the board or certain shareholders and relating to the company’s environmental strategy or policy, including inter alia its impact on climate) have become more frequent. Soft law also contributes to these developments. In December 2022, the corporate governance code issued by the Association Française des Entreprises Privées (AFEP) and the Mouvement des Entreprises de France (MEDEF) (‘AFEP-MEDEF Code’) to which most large listed companies referred to was revised to expressly recommend that the board determines a long-term ESG strategy, including with respect to climate for which precise objectives shall be set for different, relevant time horizons. More and more boards of directors are spontaneously submitting their own say-on-climate resolutions to the general meeting, sometimes as a way to pre-empt any activist attempt in this respect. In 2023, the general meetings of ten SBF 120 companies (Altarea, Amundi, Covivio, EDF, Engie, Icade, Klepierre, Schneider Electric, TotalEnergies and Vallourec) were consulted on say-on-climate resolutions. However, activists take advantage of all legal means provided by French corporate law to influence company strategies by submitting their own say-on-climate resolutions, thereby creating tensions with the boards of directors and executive management of the targeted companies. In 2023, sixteen shareholders of Engie filed a request to include a climate resolution on the agenda of the shareholder general meeting to amend the articles of association and provide for the organisation of a vote every three years on the climate strategy and every year on the progress of its implementation. This resolution was ultimately rejected after the board of directors called for a vote against it. In 2022, the board of directors of TotalEnergies submitted its own climate-related resolution to the general meeting and refused to submit a say-on-climate resolution presented by activist investors in order to amend the articles of association and provide that the management report submitted to the general meeting shall set forth the company’s strategy to align its activities with the objectives of the Paris Agreement. Such requests by activists for ESG strategy-related resolutions have raised legal debates on the principle of hierarchy of the decision-making bodies within French companies (i.e., whether the shareholders would infringe upon the legal powers and authority of the board to determine the company’s ESG strategy). Calls have been made to introduce a legal ‘say-on-climate’ regime in the same manner as the legal ‘say-on-pay’ regime was introduced a few years ago. The French Treasury has set up a dedicated working group within the Haut Comité Juridique de la Place Financière de Paris (HCJP) to consider this reform. In its report of December 2022, the HCJP concluded that no legislative or regulatory modification is necessary to allow the development of climate-related resolutions but encouraged the adoption of soft law recommendations to provide for the principle of such consultative resolutions and their general framework. In March 2023, the AMF invited listed companies to reinforce their communication regarding their climate strategy to their shareholders without awaiting the full implementation of the CSRD’s framework and to present it during each general meeting by including the related items on the agenda for debate. It also considers that it would be appropriate, in due course and under conditions to be defined by law, for this information to be submitted to shareholders for formal approval, as is the case for the annual financial statements.

Multiple voting shares

Multiple voting shares in French listed companies are currently prohibited (only double voting shares are authorised). However, in September 2022, the HCJP expressed a favourable opinion on the introduction into French law of multiple voting rights in listed companies at the time of the IPO and subject to certain restrictions (beneficiaries, maximum number, duration, shareholder resolutions to which the multiple voting rights might apply). Such a proposal is inspired by the United States model and reflects the need to safeguard the competitiveness of the Paris financial centre (following the introduction of multiple voting shares on the London Stock Exchange) and the willingness to attract founders of high-growth companies to list their companies on the Paris regulated market. At the European level, as part of the Listing Act package, the adoption of the European Commission's proposal for a directive on multiple vote share structures in companies that seek the admission to trading of their shares on an SME growth market (it being noted that an extension to companies regulated on a regulated market is under negotiation) is expected in the course of 2024. The French government has also announced that it will present a new act on the financial attractiveness of the Paris financial centre in the first half of 2024, which should include, inter alia, measures to implement the upcoming directive on multiple voting rights.

Directors' duty of discretion

Under French corporate law, any director of a SA has a statutory duty of 'discretion' with respect to any confidential information designated as such by the chairman of the board. In December 2022, the HCJP issued a report on the scope and extent of directors this duty. This topic has given rise to numerous debates among the French and legal community and is of a particular importance in companies whose significant shareholders are represented at the board by individuals. Acknowledging that there is no unanimous opinion on this topic among the legal community, the HCJP called for certain modifications and clarifications to the French statutory provisions. According to the HCJP, it is advisable for any director to consider that the duty of discretion is actually an obligation of confidentiality, and that this obligation applies to any information and materials discussed at the board. The most complicated issue is whether or not an individual director may communicate board information to the shareholder that he/she represents or with which he/she has close business relationships. In its report, the HCJP considers that the individual director shall be considered as being authorised to communicate this information to the shareholder in any situation where the legal entity shareholder has been nominated as director and the individual is merely formally representing such shareholder at the board. The HCJP also considers that French corporate law should be modified to authorise, under certain conditions, an individual director having been appointed directly at the board to communicate this information to the shareholder with which he/she has specific close business relationships. The likely upcoming modifications to French corporate law on this topic will be monitored closely by companies and the corporate governance institutions.

3. Who are the key persons involved in the management of each type of entity?

The key persons involved in the management of an SA (or SE) are:

– the executive officer(s):

- Any SA organised with a board of directors is managed by a chief executive officer appointed by the board and, as the case may be, up to five deputy chief executive officers appointed by the board upon proposal by the chief executive officer. The chief executive officer (and, if any, the deputy chief executive officer(s)) has powers and authority to represent, sign agreements and contractually bind the company vis-à-vis third parties;
- Any SA organised with a supervisory board is managed by a management board that shall consist of no less than one and no more than five (or, for listed companies, seven) members, who are appointed by the supervisory board. The management board collectively has the same powers and authority as the chief executive officer of an SA with a board of directors;

– the board of directors or supervisory board:

- board of directors: Most SA are organised with a board of directors that shall consist of no less than three and no more than 18 directors appointed by the shareholders (including one chairman (appointed by and among the directors) but excluding any director representing employees). The board of directors shall decide and oversee the strategy and material decisions of the company and their implementation. It may proceed with any controls and investigations. The board of directors may (and, for listed companies, shall) set up specialised committees to assist the board on certain matters (e.g., audit, compensation, nomination, strategy, investment). As a general rule, the board of directors does not have powers and authority to sign agreements or contractually bind the company (which powers and authority belong to the chief executive officer). The chief executive officer may be a board member as well as the chairman thereof;
- supervisory board: An SA may also be organised with a supervisory board that shall consist of no less than three and no more

than 18 members appointed by the shareholders (including one chairman (appointed by and among the supervisory board members) but excluding any board member representing employees). The main mission of the supervisory board is to oversee and control the management of the company by the management board. The supervisory board is generally not involved in the management of the company save that the articles of association of the company may provide that certain material decisions require its prior approval or information; and

– the employee representatives: Any French company (whether an SA or not) having 10 or more employees shall set up a works council (‘comité social et économique’). In companies with 50 or more employees, this committee shall be informed and consulted prior to the company or its shareholders taking, or entering into, certain material decisions or transactions. The opinion of the works council is not binding, i.e., the company or its shareholders may proceed with the decision or transaction even if the works council has issued a negative opinion. In addition, large SA shall appoint board members representing the employees (see question 8 below).

The key persons involved in the management of an SAS are:

– the president: Any SAS shall have a president who may be an individual or a legal entity and is appointed by the shareholders or as otherwise determined by the articles of association. The president has powers and authority to represent, sign agreements and contractually bind the company vis-à-vis third parties. Except for the mandatory requirement to appoint a president, the legal regime applicable to the SAS offers great flexibility to organise its governance. Even small SAS tend to have tailored governance structures. The articles of association frequently provide that other executive officers may be appointed in addition to, but subject to the powers and authority of, the president. It also is not uncommon for large SAS to adopt governance structures rather similar to those of the SA, including the set-up of a board and/or committees having responsibility to approve and control certain major decisions of the president and/or the other executive officers of the SAS; and

– the employee representatives: Contrary to the rules applicable to the SA, there is no requirement to appoint board or similar members representing the employees even if the SAS has set up a corporate body similar to the board of directors of an SA.

The key persons involved in the management of an SARL are:

– the general managers: Any SARL shall be managed by one or several general managers who shall be individuals and are appointed by the shareholders in the articles of association or by a decision of the shareholder meeting. The general managers have powers and authority to represent, sign agreements and contractually bind the company vis-à-vis third parties. They may be removed by (i) a decision of the shareholder meeting for cause (‘juste motif’), i.e., only if the general managers have committed a fault (mismanagement) or taken decisions that are contrary to the corporate interest, or (ii) a court decision upon request of any shareholder for a legitimate reason (‘cause légitime’), i.e., only in the event of a violation of applicable laws and regulations or the articles of association, any mismanagement likely to jeopardize the company’s interests or a loss of confidence of the shareholders in the general managers; and

– the employee representatives.

The key persons involved in the management of an SCA are:

– the general managers: Any SCA shall be managed by one or several general managers who have powers and authority to represent, sign agreements and contractually bind the company vis-à-vis third parties. The general managers are appointed and removed as set forth in the articles of association and, in practice, are frequently selected among the unlimited-liability partners. The articles of association frequently provide that its general managers may only be removed with the unanimous consent of the unlimited-liability partners, so that any such general manager also being an unlimited liability partner is almost unremovable;

– the supervisory board: Members of the supervisory board are appointed by the shareholders (the unlimited liability partners do not vote in this respect), and the supervisory board shall consist of at least three shareholders (there is no statutory maximum number of board members). The supervisory board is not directly involved in the management of the SCA and has mainly control missions. No unlimited-liability partner may be appointed to the supervisory board; and

– the employee representatives.

4. How are responsibility and management power divided between the entity’s

management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

As a general rule, shareholders do not have a direct role in and responsibility for the management and direction of the company in the ordinary course of business. However, the shareholders appoint the governing bodies and have powers and authority to take or approve certain material decisions pursuant to French law and/or the articles of association. Interestingly, for listed companies (SA, SE, SCA), the increasingly stringent say-on-pay rules have strengthened the shareholders' influence on the management and governing bodies. The general ordinary shareholder meeting of an SA (or SCA) shall approve, inter alia, the annual accounts and consolidated financial statements, the appointment or removal of board members, the appointment of the statutory auditors, the related-party transactions and, in listed companies, the compensation of the board members and the executive officers. The general ordinary shareholder meeting takes its decisions by a simple majority vote (50% + one voting right) and its quorum shall be at least one-fifth of voting shares on first notice (there is no minimum quorum on second notice). The general extraordinary shareholder meeting of an SA (or SCA) shall approve, inter alia, modifications to the company's corporate purpose, any share capital increase or reduction, merger, spin-off or dissolution as well as, more generally, most modifications to the articles of association. The general extraordinary shareholder meeting takes its decisions by a two-third majority vote and its quorum shall be at least one-fourth of voting shares on first notice (and one-fifth on second notice). The shareholders may vote by proxy, but they may not take their decisions by written consent. Shareholders of listed companies often participate to shareholder meetings by remote voting in advance of the meeting. The legal regime applicable to the SCA provides that the decisions of the shareholders (i.e., the limited-liability partners) shall also be approved by the unlimited-liability partners except for, inter alia, the appointment and removal of the supervisory board members.

The shareholders of an SAS shall approve, inter alia, the annual accounts, the appointment of the statutory auditors, any share capital increase or reduction, merger, spin-off or dissolution, certain restrictions to the transfer of the SAS shares (inalienability, prior approval, exclusion), the related-party transactions, certain modifications to the articles of association as well as other matters subject to a shareholders' vote pursuant to the articles of association. The articles of association (freely) determine the conditions applicable to the convening, quorum and vote of the shareholders, save that certain decisions always require the unanimous consent of the shareholders (e.g., clauses in the articles of association relating to the inalienability of the shares, the change of control of any shareholder and, for certain commentators, the exclusion of any shareholder). The articles of association may provide that the shareholders can take their decisions in a meeting (and vote by proxy and/or remotely) and/or by written consent.

Where an SA, SCA or SAS has issued ordinary and preferred shares, certain decisions may be subject to prior approval by the general meeting (or, if permitted by the articles of association of an SAS, by written consultation) of the holders of preferred shares, in particular if the decisions concerned may affect the rights or obligations attached to the preferred shares.

The ordinary shareholder meeting of an SARL shall approve, inter alia, the annual accounts, any decisions by the general managers that are subject to prior approval by the shareholders pursuant to the articles of association, the appointment and removal of the general managers, the appointment of the statutory auditors and the related-party transactions. The general ordinary shareholder meeting takes its decisions by an absolute majority vote (50% + one of all the voting rights of the SARL), unless the articles of association impose a higher majority. The extraordinary shareholder meeting shall approve, inter alia, any modifications to the articles of association by a three-fourth majority of all the voting rights (for any SARL incorporated prior to August 4, 2005) and a two-third majority of the voting rights present or represented at the meeting (for any SARL incorporated as from August 4, 2005). The shareholders may vote by proxy. To the extent permitted by the articles of association, they may also take their decisions by written consent, except for the approval of the annual accounts and the issuance of bonds.

To the extent permitted by the articles of association, shareholders of an SA, SCA, SAS or (except for the approval of the annual and consolidated accounts) SARL may participate and vote during the meeting remotely (e.g., video conference). Shareholders of SA, SCA and SAS may also generally vote remotely prior to the shareholder meeting. In 2022 and 2023, no SBF 120 French company gave its shareholders the option to vote remotely during its annual general meeting. In its 2023 annual report on corporate governance, the AMF made a call on all stakeholders to work on the development of these so-called 'hybrid' general meetings.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

The main sources of corporate governance requirements and practices are:

– the EU Directives and Regulations relating to shareholders' rights and information, in particular EU Directive n°2017/828 relating to the encouragement of long-term shareholder engagement, EU Directive n°2013/50 (modifying EU Directive n°2004/109) relating to transparency requirements for listed securities, EU Directive n°2004/25 on takeover bids (as amended), EU Regulation n°596/2014 on market abuse (as amended), EU Directive n°2022/2464 on corporate sustainability reporting (CSRD) (which is replacing EU Directive n°2014/95 relating to the disclosure of non-financial and diversity information by large companies) and EU Regulation n°2020/852 (Taxonomy Regulation);

– the mandatory provisions of the French Civil Code, the French Commercial Code and the French Financial and Monetary Code; and

– for listed companies, the General Regulation of the AMF, the recommendations issued by the AMF and the ESMA and the soft law recommendations of the corporate governance codes, i.e., the AFEP-MEDEF Code (as revised in December 2022) referred to by most large-cap listed companies, and the Middlenext Code (as revised in September 2021) referred to by medium and small-cap listed companies. Referring to a corporate governance code is not mandatory for French companies; however, any listed company electing not to do so shall specifically and publicly explain its decision and, in particular if it is a large or medium company, would generally be put under pressure to change such position by proxy advisors and institutional shareholders. Only one of the French SBF 120 companies has elected not to refer to any corporate governance guide. Whenever a listed company has elected to refer to a corporate governance guide, it is expected to comply with all the recommendations thereof and, if not, to explain specifically and publicly why it does not comply with certain recommendations. Over the last decade, several soft law recommendations have been enacted as mandatory legal provisions as part of a general trend by European and French legislators to tighten the governance rules applicable to listed companies and improve shareholders' rights and participation. The AFEP and the MEDEF have set up a governance committee ('Haut Comité de Gouvernement d'Entreprise' (HCGE)) in charge of verifying the implementation of and compliance with the AFEP-MEDEF Code by the listed companies referring thereto.

Interestingly, the corporate governance of large, non-listed companies is frequently inspired by the corporate governance codes for listed companies, in particular for companies having significant foreign or institutional shareholders. In addition, over the last decade, the French legislator has extended certain rules initially intended to apply to listed companies so that they also apply to large, non-listed companies.

6. How is the board or other governing body constituted? Does the entity have more than one? How is responsibility for day-to-day management or oversight allocated?

Please see question 3.

Most SA (or SE) are organised with a board of directors; in practice, any such company is managed mainly by a chief executive officer and, if any, one or several deputy chief executive officers; the board shall decide and/or approve the most important decisions and transactions, and it is entitled to proceed with any control over the management. The chief executive officer is also frequently acting as chairman of the board of directors, which may make it more difficult for the board to efficiently control the management and is one of the reasons why certain companies (in particular regulated banks and insurance or investment companies) are required by law or their regulator to separate the positions of chairman and chief executive officer. Other SA as well as any SCA are organised with a supervisory board, with the company being managed by a management board (SA) or one or several general managers (SCA). A supervisory board is generally less involved in the management of a company than a board of directors.

The board of any SA (or SCA) may set-up committees to assist and make recommendations to the board on specific matters, provided that only the board may take, and shall be responsible for, final decisions in relation thereto. For most French listed companies, French laws and corporate governance codes impose and/or recommend that the board sets up an audit committee (in charge of assisting the board in connection with, inter alia, its review of the financial statements and the compliance and risks control of the company), a nomination committee (in charge of assisting the board in, inter alia, identifying and selecting potential board members and executive officers) and a compensation committee (in charge of assisting the board in, inter alia, determining the compensation package of the executive officers). It is frequent for a board to set up other specialised committees, such as strategic and/or investment committees. 86,5% of the SBF 120 companies' boards of directors have also set up a committee in charge of ESG matters (compared to 50% in 2019). Certain listed companies have followed the suggestion of the AFEP-MEDEF Code to appoint a lead independent director, in particular where the chief executive officer is also acting as chairman of the board. Interestingly, certain listed companies have also recently appointed a lead director for the ESG-related matters.

Most SAS only have a president although it is not uncommon for large SAS to have a president and a board (as well as specific board committees) with powers and authority similar to those of a board of directors or supervisory board of an SA. To a large extent, the articles of association of the SAS freely determine the scope of the powers and authority of the president and the mechanisms to control his/her management of the company.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

The ordinary shareholder meeting of an SA (or SCA) has powers and authority to appoint and remove the board members, except for members representing the employees. In the event of death of or resignation by a board member, the board may appoint another member subject to ratification by the next ordinary shareholder meeting. The board has powers and authority to appoint and remove its chairman.

Shareholders of an SAS have great flexibility to determine, in the articles of association, the rules for the appointment and removal of the board or similar corporate body (if any).

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

The board of any listed company, and of any other SA (or SCA) having (i) 250 or more employees and (ii) annual net revenues or assets of €50 million or more, is required by law to include at least 40% of board members of each gender. Other SA (and SCA) are encouraged to reach such proportion, but no sanctions are attached to non-compliance thereto. At the European level, a new directive on gender balance on corporate boards was adopted in November 2022. By 2026, listed or large companies will need to ensure that the under-represented gender represents at least 40% of the non-executive directors or 33% of all the directors. Although French quotas remain higher than those of the European directive, the latter will have an impact on certain companies listed in France but whose registered offices are abroad and to which French law on gender equality is therefore not applicable (e.g., Airbus, ArcelorMittal, LafargeHolcim).

Any SA (or SCA) employing, together with its subsidiaries, 1,000 or more employees in France (or 5,000 or more employees worldwide) shall appoint at least two board members representing the employees or at least one such member if the board consists of eight or less members (for listed companies, the AFEP-MEDEF Code also recommends the appointment of a board member representing the employees at the nomination committee of the board). In addition, any such SA (and any listed SA) shall appoint one or several board members representing the employees if they hold more than 3% of the share capital. In July 2022, the French Government issued a report confirming the positive impact of the appointment of board members representing the employees and indicating that for now it is not advisable to increase the minimum number of such board members that is legally required.

The chief executive officer of an SA is typically a member of its board of directors, and frequently also the chairman thereof. In the event of a supervisory board, no executive officer may be a member thereof.

For listed companies (SA, SE and SCA), the AFEP-MEDEF Code recommends that independent directors should represent half of the board members if the listed company is not controlled, and at least one third of the board members otherwise (in each case, excluding the board members representing employees). The Middlenext Code recommends that the board should include at least two independent directors. The audit committee of any listed company is required by law to include at least one independent director. Pursuant to the AFEP-MEDEF Code, independent directors should represent (i) at least two third of the audit committee members, and (ii) a majority of the members of the nomination and the compensation committees, and no executive officer may be a member thereof. The AMF and the HCGE are interpreting the concept of independence in a more and more stringent manner.

Following the recommendations of the AFEP-MEDEF Code and the Middlenext Code, most listed companies have set-up a succession plan for the key company officers (which is generally prepared and regularly reviewed by the nomination or a specific committee). There are no general rules (or obligations) for non-listed companies in this respect.

The term of office of any board member of an SA shall not exceed six years (which limit is not applicable in an SCA if its articles of association provide otherwise). In practice, most listed companies provide for terms of four years (or less), in compliance with corporate governance best practices. Applicable law and corporate governance best practices impose and/or recommend restrictions on the number of board and/or chief executive officer positions held by any individual as well as age limits.

All these matters are freely determined by the articles of association of the SAS with respect to its president and, if any, its other executive officers and governing bodies. Given the great flexibility in the organisation of the governance of an SAS, the president and, if any, other executive officers may also be members of any board or committee.

9. What is the role of the board with respect to setting and changing strategy?

The board of directors of an SA shall decide and oversee the strategy and material decisions of the company and their implementation, which shall all be in furtherance of the corporate interest of the company. The strategy and material decisions decided by the board of directors are then implemented by the chief executive officer and the senior management.

The main mission of the supervisory board is to oversee and control the management of the company by the management board (SA) or the general managers (SCA). Therefore, the supervisory board is generally less involved in the management of the company; however, strategic or important decisions often require the prior approval or information of the supervisory board pursuant to applicable laws, the articles of association or the internal regulations of the company.

In December 2022, the AFEP-MEDEF Code was revised to expressly recommend that the board determines a long-term ESG strategy, including with respect to climate for which precise objectives shall be set for different, relevant time horizons. Requests by activists for climate-related resolutions have also raised legal debates as to whether the shareholders would thereby infringe upon the legal powers and authority of the board to determine the company's strategy (see question 2).

The articles of association of the SAS determine the corporate bodies that have powers and authority to decide and oversee the strategy.

10. How are members of the board compensated? Is their remuneration regulated in any way?

As a general rule, the ordinary shareholder meeting of any SA has powers and authority to decide the aggregate, global compensation of the board members, with the allocation of this global compensation among the board members being then decided by the board (e.g., based on attendance rates to board and committee meetings). The board may decide to compensate a board member for a specific mission and, pursuant to the AFEP-MEDEF Code, the position of vice chairman or lead independent director may also be specifically compensated by the board. In addition, certain agreements (e.g., consulting, service, commercial or similar agreements) entered into by the company and one of its board members (directly or through a company he or she holds) are considered as related-party transactions and, therefore, subject to prior authorisation by the board and a subsequent vote by the shareholders.

Listed companies are subject to increasingly stringent mandatory obligations (in particular, French law n°2019-486 of May 22, 2019 ('Pacte Law') and its implementing ordinances) and soft law recommendations with respect to the compensation of their board members and senior executive officers (chairman of the board, chief executive officer, deputy chief executive officers, management board members and, for SCA, general managers), including the say-on-pay rule, pursuant to which:

- the annual (ordinary) shareholder meeting shall approve annually the compensation policy of the company submitted by the board ('ex ante vote'), which policy shall (i) comply with the corporate interest and sustain and be in line with the development and commercial strategy of the company, and (ii) include information relating to, inter alia, the decision process for the compensation policy (including the role of the compensation committee and the prevention of conflict of interests), the compensation attributable to the board members, the financial and non-financial (e.g., corporate social responsibility) performance criteria applicable to the senior executive officers' compensation, any fixed, variable, exceptional, equity-linked, severance and other compensation attributable to the senior executive officers, and any claw-back clauses in favour of the company;

- detailed information on the individual and collective attributed compensations shall be presented to the following annual (ordinary) shareholder meeting ('ex post vote'):

- the actual payment of the compensations (except for the fixed compensation) to each of the senior executive officers is subject to approval (for each such officer) of the final attributed amount by this following annual shareholder meeting; and
- the compensation finally attributed to the board members (together with that of all the senior executive officers) shall also be presented to this following annual shareholder meeting; failing approval, the compensation of the board members for the current fiscal year may not be paid until the next shareholder meeting approves a revised compensation policy;

• the compensation policy and attributed compensations shall be publicly disclosed by the company (including in its annual corporate governance report) as well as the shareholder vote thereon. In addition, listed companies shall annually disclose certain comparisons between their senior executive officers' compensation and their employees' average and median compensation; and

• say-on-pay rules applicable to listed SCA are substantially similar, save that, inter alia, the compensation policy and the actual payment thereof to the general managers and the supervisory board members shall be also approved unanimously by the unlimited-liability partners, unless the articles of association provide otherwise.

The conditions for the compensation of the president and, if any, board members of an SAS are determined by its articles of association.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Board members and executive officers of any limited liability company shall act in furtherance of the best corporate interest of the company (and by taking into consideration the social and environmental matters related to its activities). They have, inter alia, duties of loyalty, care and confidentiality vis-à-vis the company and all its shareholders. The duties of board members have given rise to important judicial decisions as well as several recommendations and statements by the HCGE and the AMF.

Board members may incur personal and/or collective liability in the event of a breach of their fiduciary duties (see question 18).

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Insurance policies for civil liabilities of board members and executive officers are permitted, and widely used. These insurance policies are, however, subject to legal and contractual exceptions, in particular with respect to intentional and wilful misconducts, serious faults incompatible with the normal exercise of the corporate mandate, certain damages or losses caused to third parties, most penal liabilities as well as civil, tax and administrative fines. Under certain circumstances, penal liability risks may be avoided or reduced by delegating the relevant powers and authority to senior, qualified employees of the company.

13. How (and by whom) are board members typically overseen and evaluated?

The shareholder meeting of any SA (or SCA) has powers and authority to appoint and remove the board members; as a general rule, the shareholder meeting may remove any board member at any time event if the matter was not on the agenda of the meeting (subject to the board member concerned being fairly informed of the reasons of his/her contemplated removal and given an opportunity to defend him/herself).

Concerning listed companies, the more and more stringent say-on-pay rules, the attention of major and institutional shareholders to the proper governance and management of the company and, under certain circumstances, shareholder activist campaigns have significantly strengthened shareholder scrutiny and oversight on the board members (and the senior management). In addition, the corporate governance codes recommend that the board proceeds annually with its evaluation (with the related information being made public in the annual report of the company). The AFEP-MEDEF Code also provides for an annual individual evaluation of each board member as well as a formal evaluation of the board to be conducted every three years by an independent board member and/or the nomination committee with the assistance of external consultants. In its 2023 report on corporate governance, the AMF issued proposals to enhance investors information on the evaluation of listed companies' boards. Among other recommendations, it recommends using every three years an outside consultant to evaluate the board (which is optional under the AFEP-MEDEF Code), and ensuring the consultant's independence from the company and its executives.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

French statutory provisions mostly govern the publication and communication by the companies of their financial and corporate information, but not the regular dialogue or communication between the companies and their shareholders. Fostering a regular, efficient and fair dialogue between shareholders and boards of listed companies is one of the main current concerns of the AMF, which recommends in its information guidelines of April 2021 that issuers establish and maintain such regular dialogue on all the main issues of concern to shareholders, including ESG-related topics, and not only at the time of the annual shareholder meeting.

As part of a general trend for a more active participation by the shareholders, most listed companies maintain a regular dialogue with their significant shareholders under the supervision of their board (and more precisely, the chairman of the board and/or the lead independent director). They generally take the opportunity of the preparation of their annual shareholder meeting to organise meetings and engage in in-depth discussions with their significant shareholders (so-called 'governance roadshows'). Certain shareholder activists have disrupted this communication process by making public their requests, positions or criticisms and not keeping them as part of a private dialogue with the board. In this respect, how and when listed companies should be entitled to publicly respond to activist campaigns has been a key debate among the business and legal community (see question 19).

There are no general rules or obligations for a company (whether listed or not) to report on its discussions with its shareholders and/or the resulting decisions or actions. However, there are certain specific situations where such reporting is required, e.g., in the event the shareholder meeting of a listed company does not approve the compensation policy proposed by the board, the latter shall present a revised policy to the next shareholder meeting together with the explanations as to how the vote and opinions expressed by the shareholders have been taken into account. Similarly, the AMF and the AFEP-MEDEF Code recommend that the board of any listed company consults the shareholder meeting prior to any sale or transfer of the main asset(s) of the company (i.e., any asset(s) representing more than 50% of two of the following criteria: market capitalisation, consolidated revenues, consolidated incomes, consolidated total assets and group's employees) and, in the event of a negative vote (which is not binding on the board), the board shall decide and issue without delay a press release on whether or how it intends to pursue the transaction.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

Although legally permitted, dual or multi-class structures are not frequent for listed companies, save that unless otherwise provided for in the articles of association, any share held in registered form by the same shareholder for at least two consecutive years gives right to double voting. Approximately two third of the French SBF 120 companies have double voting rights. Multiple voting shares in French listed companies are currently prohibited, but French Law could be modified in the coming months (see question 2).

Preferred shares having financial, voting or other specific rights or obligations attached thereto are frequent in non-listed companies in the context of fundraisings, LBO and similar transactions. The SAS is the most frequently used corporate form to implement multi-class structures.

Interestingly, the Pacte Law has authorised any non-listed SA (or SCA) to issue preferred shares with multiple (i.e., more than two) voting rights attached thereto, in the same manner as what was generally considered as already permitted to SAS.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

Overview

Non-listed companies are required to file certain (limited) information with the commercial and company registry and to send or make available at their registered office to their shareholders (but not to publish) more exhaustive information in connection with the preparation of their shareholder meetings, as follows:

- For SA or SCA: proxy and remote voting forms, draft resolutions, management's,

board's and statutory auditors' reports, information on board member candidates, responses to shareholders' questions, and, for the annual shareholder meeting, annual and consolidated accounts, corporate governance report, compensation of highest paid individuals, shareholders list, and workforce report. The shareholders may also have access at any time to certain of the aforementioned information for the last three fiscal years. Similar information shall be presented or communicated to shareholders of SARL.
- For SAS: as determined by the articles of association, which may provide for the communication of more limited information than those required for shareholder meetings of SA, save that the shareholders shall be presented at least the annual accounts and a management report.

In addition to the aforementioned corporate disclosure, listed companies are required to publicly disclose (including on their websites) exhaustive business, financial, legal, ESG and other information pursuant to securities law, whether in the context of a significant transaction (right issue, merger, tender offer, etc.) or as part of their (voluntary) quarterly and (mandatory) half year and annual communications.

Corporate governance disclosure

The bulk of the corporate governance-related disclosure is included in the annual corporate governance report prepared by the board of any SA (or SCA). Where the company is organised with a board of directors, the corporate governance report may be, and is generally, included in the annual management report submitted by the board of directors to the shareholders. Where the company is organised with a supervisory board, the corporate governance report shall be separate from the annual management report prepared by the management board. Listed companies make their corporate governance report public on their website, which shall include, *inter alia*:

- the composition of the board (and its committees) and the senior management, including the biographies and list of corporate mandates and functions of these officers, the number of independent board members, and the representation of each gender at the board and among the senior management as well as the policy applied by the company in this respect;
- the organisation of the board and its committees, with a summary description of the meetings held during the last financial year and the material matters discussed;
- the resolutions submitted to the shareholders as part of the say-on-pay vote (compensation policy of the company and compensation actually attributed to the officers concerned);
- the outstanding shareholder authorisations to the board to increase the share capital;
- the share capital structure and the contractual and other arrangements of the company or its shareholders that may have an impact on, or be impacted by, any takeover bid on, or change of control of, the company;
- the related-party transactions;
- the relevant rules applicable to the participation by the shareholders to the shareholder meetings of the company;
- for large companies, the diversity policy applied by the company;
- for any listed company referring to the AFEP-MEDEF Code or the Middlenext Code, relevant explanations concerning any provision of this Code that has not been applied or complied with by the company, it being noted that the AMF may specifically review any such noncompliance and the related explanations; and
- in the event of a company organised with a supervisory board, any remarks of the supervisory board on the management report or the financial statements prepared by the management.

In addition to the annual corporate governance report, any listed company shall publish (immediately) numerous corporate governance-related information on its website, including (i) the supporting documentation made available to the shareholders prior to the shareholder meetings, (ii) the conclusion of related-party transactions, (iii) the arrangements relating to certain compensations of the senior executive officers (e.g., severance indemnity, being noted that the AFEP-MEDEF also recommends to release specific public information on any welcome bonus), (iv) the articles of association of the company, (v) the internal regulations of the board, and (vi) more generally, any material non-public information relating to its corporate governance (e.g., resignation by a board member).

ESG disclosure

Large (listed or non-listed) SA or SCA are required to disclose exhaustive ESG-related information, including an annual detailed statement and report on their non-financial performance in their annual report, which is closely scrutinized by the AMF and the investors. French statutory provisions relating to such annual statement and report have been amended following the implementation into French law of the CSRD which increases both the disclosure obligations and the scope of companies to which the regulation applies. French SAS – a very common form for non-listed companies to which existing rules introduced by EU Directive n°2014/95 did not apply – will from now on be in-scope if they exceed the thresholds provided by the CSRD. 6,000 French companies are expected to fall within the scope of this new law. Since 2022, these companies are also required to comply with the additional disclosure and reporting obligations resulting from the Taxonomy Regulation (see question 2).

17. Can an entity’s economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

As a general rule, shareholders of a limited-liability company may propose resolutions to the shareholder meeting or amendments to the resolutions proposed by the corporate body having convened the shareholders. For instance, any shareholder of a listed company may propose:

- one or more resolutions to be included on the agenda of the shareholder meeting to the extent (i) he/she holds, alone or together with other proposing shareholders, more than the minimum, statutory percentage of the share capital of the company (which minimum may never be higher than 5%), and (ii) its proposed resolutions are received by the company no later than 25 days prior to the date of the shareholder meeting (they shall also be sent no later than 20 days after the publication of the first convening notice). Any resolution validly proposed by a shareholder must be included on the agenda of the shareholder meeting for a vote thereon; and/or
- one or more matters to be discussed (but not voted) and included on the agenda of the shareholder meeting under the same conditions as those applicable to the proposed resolutions.

Shareholder meetings of SA and SCA are generally convened by, as applicable, (i) their board of directors, (ii) their supervisory board or (iii) their management board or general managers, provided that (a) any shareholder holding (alone or together with other shareholders) the majority of the shares or voting rights following a public tender offer (or the acquisition of controlling block) may convene a shareholder meeting in order, for instance, to change the governing body or the articles of association, (b) any shareholder may judicially request the convening of a shareholder meeting in the event of a duly justified urgency, and (c) any shareholder holding (alone or together with other shareholders) at least 5% of the share capital may also judicially request the convening of a shareholder meeting (without having to demonstrate any urgency).

Shareholder meetings of SARL are convened by their general manager(s), provided that (a) if the general manager fails to do so, any shareholder may judicially request the convening of a shareholder meeting, and (b) shareholders holding half of the shares or representing at least 10% of the shareholders may request the general manager to convene a shareholder meeting.

The right (if any) for any shareholder of an SAS to convene a shareholder meeting is determined in the articles of association, provided that any shareholder may judicially request the convening of a shareholder meeting if the corporate body in charge of such convening pursuant to the articles of association fails to do so.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

As a general rule, board members and executive officers of any limited liability company may be held liable to the company and/or its shareholders in the event of mismanagement, violation of applicable laws and regulations (including, inter alia, corporate, tax and labour laws), breach of the articles of association of the company and, under certain circumstances, bankruptcy or insolvency proceedings against the company. The company itself or, in the event the company does not act, any shareholder (ut singuli claim) may seek the liability of these officers vis-à-vis the company. In addition, any shareholder may seek their liability vis-à-vis himself or herself (as opposed to vis-à-vis the company) in the event he/she has suffered damages or losses different from those suffered by the company. Depending on the circumstances, liability claims may also give rise to judicial injunctions or orders against the officers and/or the company, e.g., a judicial order prohibiting, preventing or suspending an action or decision by the company or the officer or corporate body concerned.

Under certain conditions, in the event of an actual or reasonably suspected violation or breach of applicable laws and regulations and/or the articles of association, a shareholder may also seek specific, judicial enforcement actions or orders against the company and/or its officers (e.g., a shareholder may seek such enforcement actions or orders to remedy a breach of his or her information rights or rights to participate to and vote at shareholder meetings). Subject to holding (alone or together with other shareholders) at least 5% (SA and SAS) or 10% (SARL) of the share capital, a shareholder may also judicially obtain an order to appoint an expert to review and report on a specific transaction (other than most transactions for which the shareholder meeting is competent) that is suspected of having been decided and/or implemented in breach or violation of applicable laws and regulations and/or the corporate interest of the company.

Finally, in the event the majority shareholder imposes a decision that is contrary to the corporate interest of the company and intended to benefit only to the majority shareholder to the detriment of the other shareholders, the latter may judicially obtain the nullity of the decision concerned as well as damages.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

Shareholder activism has become increasingly common in Europe and France, which is often in the top three EU targeted countries. Under French law, shareholder activism is neither specifically defined nor specifically regulated. However, depending on the type of activist campaign and the means used in connection thereto, shareholder activism may fall within the scope of, inter alia, the following regulations: (i) the ownership interest, short selling and significant transaction disclosure obligations (see question 25 below); (ii) the regulations relating to investment recommendations (in particular EU Regulation n°2016/958 supplementing EU Regulation n°596/2014 regarding investment recommendations and disclosure of conflicts of interest); (iii) the EU Regulation n°596/2014 relating to the prevention of market abuse; and (iv) French statutory provisions relating to proxy solicitations.

Over the last three years, large listed companies have been targeted (e.g., Danone, Lagardère, Saint-Gobain, Atos and Ipsos), and certain activist campaigns have led to important changes (CEO and other executive officers (Danone) or corporate form (Lagardère was converted from an SCA into an SA)). The dynamism of shareholder activism is also largely fuelled by the growing impact and consideration for ESG-related issues, which results in new purposes and protagonists of activist campaigns. Listed companies now regularly face activist campaigns relating to ESG issues, which are presented in specific proposals and no longer exclusively carried out by "traditional" activist investors but also by NGOs, specialised funds, etc, using procedures similar to those of traditional activist campaigns.

Recent activist campaigns have raised public and legal debates, in particular with respect to the accuracy of the disseminated public information and the right for the company to respond publicly, the dialogue between boards and shareholders, the potential risks of massive short selling strategies and the potential infringement of certain resolutions submitted by shareholders on the powers and authority of the board (in particular its authority to determine the company's strategy). Over the last four years, the Finance Commission of the French Parliament as well as several highly regarded organisations (including Paris Europlace, the MEDEF and the AFEP) and think tanks (including a dedicated working group of the Club des Juristes chaired by the former president of the AMF) have issued reports and recommendations in connection with shareholder activism. Key debates include whether increased mandatory regulations or additional soft law recommendations and best practices are needed and whether the existing regulations provide for a level playing field for the activists and the targeted issuers.

In April 2020, the AMF issued its report on shareholder activism. In line with the approach generally prevailing in France, the AMF considers that "the active involvement of shareholders in the life of listed companies is a necessary condition for their proper functioning and sound governance. […] the challenge therefore is not how to prevent activism, but how to set limits and make sure that it is able to control excesses". Considering that (i) the legal framework applicable to shareholder activism derives mostly from EU regulations, and (ii) no major changes to the current legal framework are required, the AMF proposes, inter alia, to:

- enhance transparency on stake-building by lowering the first legal notification threshold (currently set at 5%) and by making public threshold crossings reported to listed companies pursuant to their articles of association (see question 25) (it being noted that this would require a modification of French law by the French legislator);
- improve market information with respect to investors' financial exposure, by supplementing the reporting on net short positions on shares by similar information with respect to debt instruments also held by the

reporting investor (e.g., bonds and credit default swaps); and
- foster an open dialogue between listed companies and their shareholders.

In April 2021, the AMF supplemented its information guidelines and recommendations to provide that issuers may provide the market with any necessary response to public statements made by activist or other shareholders (including during the “quiet period” preceding the publication of financial statements); any shareholder initiating a public campaign should immediately disclose to the issuer concerned the material information sent to other shareholders and publish these projects and proposals to ensure proper information of the market and shareholders; and any public activist campaign should be preceded by a dialogue attempt between the shareholders concerned and the issuer.

As a general rule, shareholders do not have a direct role in the management and direction of the company in the ordinary course of business. In order to exert influence on the management of the company, a (significant) shareholder may first ask for its appointment at the board or similar corporate body. In addition, since (i) the shareholders may propose resolutions to the shareholder meeting (see question 17), (ii) the shareholder meeting has powers and authority to, inter alia, (x) appoint and remove board members as well as to approve their compensation (and, for listed companies, that of the senior executive officers), and (y) approve material decisions such as share capital increases or reductions, share buy-backs or mergers (with the AMF and the AFEP-MEDEF Code also recommending that the shareholder meeting be consulted prior to a listed company disposing of its main assets), and (iii) the senior management and the board of any large company (whether listed or not) maintain a regular dialogue with the main shareholders, including with respect to the strategy of the company, a significant or activist shareholder, acting alone or together with other shareholders, may find multiple ways and options to try to exert influence on the governing and management bodies of the company. In the context of a steady reinforcement of the ESG-related disclosure obligations of large and listed companies, say-on-climate resolutions have also become more frequent (see question 2).

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

The shareholder meeting of any limited-liability company is required to meet at least once annually to approve the financial statements of the company as well as related matters (e.g., related-party transactions, dividend distributions). In addition, the shareholder meeting shall be convened whenever a decision requires its approval pursuant to applicable law or the articles of association.

See question 16 for the information presented to shareholder meetings.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Voting and corporate governance recommendations of global or French proxy advisors such as ISS, Glass Lewis and Proxinvest are seriously taken into consideration by institutional and other investors in French listed companies. Such recommendations cover matters such as, inter alia, the compensation of senior management and board members, the composition of the board and the conditions for the authorisation by the shareholders to the board with respect to the issuance of shares and share buybacks. On the other hand, listed companies are assisted by proxy solicitors for the preparation of their shareholder meetings and the regular dialogue with their main shareholders.

The Pacte Law and its implementing ordinances have implemented the EU regulations imposing certain obligations on proxy advisors, in particular with respect to their transparency and code of conduct and the disclosure of conflict of interests. Most proxy advisors have adhered to the code of conduct of the Best Practice Principles Group, which is supported by the ESMA in Europe. Since 2020, the AMF has included in its annual report on the corporate governance of listed companies detailed reviews and analyses of the laws and regulations applicable to the proxy advisors and of their practices as well as certain recommendations in this respect.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

Employees and their representatives have a significant role in the corporate governance of the company as a result of the obligation for any company having 50 or more employees to set up a works council ('comité social et économique') that must be informed and/or consulted prior to any significant modifications to the economic or legal organisation of the company, including, inter alia, the sale, change of control, merger or spin-off of the company (the recent takeover of Suez by Veolia was delayed as a result (inter alia) of legal proceedings initiated on the ground of a violation of this consultation obligation). Representatives of the works council shall also be invited to any board meetings (with consultative but no voting rights). The works council may also request that (i) one or more resolutions be included on the agenda of any ordinary or extraordinary shareholder meeting, and (ii) under specific conditions (i.e., in the event of an emergency and upon judicial approval), a shareholder meeting be convened. In addition, large SA (and SCA but not SAS) shall appoint board members representing the employees (see question 8). The articles of association of any other SA or SCA may (if the shareholders so decide) provide for the appointment of up to four (five if the company is listed) board members representing the employees.

The bondholders' role is organised mainly through the general bondholder meeting which under applicable law shall approve or be consulted prior to certain decisions relating to the (i) appointment of bondholder representatives, (ii) modifications to the terms and conditions, the guarantees and the reimbursement of the bonds, (iii) judicial claims to protect the bondholders, and (vi) issuing company (modifications to the corporate purpose or form, merger, spin-off, issuance of certain new bonds, etc.). In the event of certain wholesale bond issuances (i.e., bonds with a nominal value of at least €100,000 per unit), bondholders' protections may be organised either by reference to the statutory provisions relating to the general bondholder meeting or as determined in the terms and conditions of the bonds. Creditors other than bondholders are protected either contractually (e.g., through the terms and conditions of the credit loan agreements) or, under certain specific circumstances, by applicable law (e.g., in the event of certain share capital reductions).

Regulators (such as the ESMA, the AMF or, for French financial institutions, the Autorité de contrôle prudentiel et de résolution (ACPR)) play a significant role in the corporate governance of listed and regulated companies through the regulations and recommendations issued by them in this respect, their right to review and/or investigate the functioning of the governance of such companies as well as the dialogue maintained by such companies and their regulator(s) in particular in the event of material matters or issues. The AMF issues an annual report on the corporate governance of listed companies and does not hesitate to ask for modifications to the corporate governance codes whenever it deems it necessary or to disclose the name of companies that do not comply with its recommendations. Similarly, the AFEP and the MEDEF (which both are employer and business organisations) have set up a corporate governance committee (HCGE) in charge of verifying the implementation of and compliance with the AFEP-MEDEF Code by the listed companies referring thereto. The HCGE also issues an annual report on the corporate governance of the companies referring to the AFEP-MEDEF Code (together with certain recommendations by the HCGE) and may publish the name of the companies that do not comply with it (so called 'name and shame' principle).

Other stakeholders do not typically have a direct role in the corporate governance of the company, save that (i) the board and senior executive officers of a company shall act in furtherance of its best corporate interest (and by taking into consideration the social and environmental matters related to its activities), which is generally considered as encompassing the interest of all significant stakeholders, and (ii) certain foreign investments in French companies are subject to prior approval by the French Ministry of Economy. In addition, state-controlled companies and financial institutions are subject to specific governance rules and regulatory oversight in this respect.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

The management body and the executive officers must consider the interests of stakeholders other than shareholders in making decisions. In particular, they shall act in furtherance of its best corporate interest and, since the enactment of the Pacte Law, by taking into consideration the social and environmental matters related to its activities. The corporate interest is generally considered as encompassing not only the interest of the company and its shareholders, but also that of its employees and its other (significant) stakeholders. For instance, any board of a listed company issuing a reasoned opinion on a takeover bid targeting such company shall specifically justify its opinion having regard to the interests of such takeover bid for the employees of the target company. Any decision by the governing body and the senior executive officers in breach of the corporate interest of the company may give raise to liabilities (see question 18).

The articles of association of any company may set forth the general principles to which the company refers (and which may include ESG matters) and the means it intends to dedicate thereto. Most commentators consider that these general principles may express certain long-term, core values and ambitions of the company. Three of the CAC 40 companies (i.e., the 40 largest companies listed on Euronext Paris) have already included such general principles in their articles of association, with many other companies having adopted similar principles without expressly setting them forth in their articles of association for the moment. Subject to certain additional conditions, any company the articles of association of which provide for such general principles may qualify as a 'société à mission' (which is inspired from the community interest company (UK) and the benefit corporation (USA)). In the wake of this legislative trend, mandatory reports and disclosure by French listed companies in relation to social, environmental and, more generally, non-financial matters have been increased over the last few years.

Large companies are also required to issue an annual detailed statement and report on their non-financial performance and to comply with the disclosure obligations required by the Taxonomy Regulation (see question 24 below).

In December 2023, the European Parliament and the Council reached a provisional agreement on the corporate sustainability due diligence directive (CSDD) (the financial sector has been temporarily excluded from this agreement but could be included in a future version of the act). A final act should be formally adopted in the course of 2024. The CSDD aims at providing harmonized rules on a European scale by mandating in-scope companies within the EU to identify and prevent adverse social and environmental impacts arising from their activities across their entire value chain. It would require large companies to meet due diligence obligations with respect to human rights and environment and would apply to both certain large EU and certain non-EU companies operating in the EU and provide for enforcement mechanisms with potential sanctions and civil liabilities for non-compliance. It would also require certain in-scope companies to set up a climate transition plan designed to ensure that the company's business model and strategy are compatible with the requirements of the Paris Agreement to limit global warming to 1.5 degrees. France has already placed itself at the forefront of this trend by enacting its own law on the duty of vigilance and care of parent companies in 2017. The directive proposal is inspired by this French duty of vigilance but targets a broader scope of companies and provides for a more comprehensive and detailed framework. It would then entail transformation of in-scope companies' compliance practices, including French companies already subject to the 2017 law. In 2023, the Club des Juristes and the HCJP have issued reports analysing the potential impacts of CSDD on French law.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

Under French and EU regulations, the concept of ESG covers a broad range of matters (human rights, gender equality, non-discrimination, working conditions, sustainable development, environment, health, anticorruption, taxation, transparency, etc.). The general trend has been to steadily increase the obligations and disclosure of large companies in this respect:

• The Pacte Law has enacted the stewardship principle applicable to any French company, pursuant to which any company shall be managed not only in furtherance of its best corporate interest but also by taking into consideration the social and environmental matters related to its activities.

• Since a French corporate law dated May 15, 2001, French companies have been required to disclose certain ESG-related information in their annual report to their shareholders. Following implementation in 2017 by France of the EU Directive n°2014/95 relating to disclosure of non-financial and diversity information, large companies and listed companies have also been required to issue an annual detailed statement and report on their non-financial performance, explaining, inter alia, how they take into consideration the social and environmental consequences of their activities. The EU Directive n°2022/2464 on corporate sustainability reporting (CSRD) implemented into French law by an ordinance dated December 6, 2023 strengthens the existing rules and extends the scope of the companies subject to the regulation. These companies will also have to comply with the Taxonomy Regulation (see question 2).

• Pursuant to French Law n°2016-1691 dated November 9, 2016 relating to the prevention of corruption and bribery (so-called 'Sapin Law II'), large French companies shall actively take and implement measures and processes to prevent, detect and remedy acts of corruption and bribery committed in France or abroad. These measures and processes shall cover the whole corporate group.

• Pursuant to French Law n°2017-399 dated March 27, 2017 relating to the duty of vigilance and care of parent companies, large French companies (i.e., whose group has at least 5,000 employees in France or 10,000 employees worldwide) shall prepare, implement and disclose in the annual management report an alertness/vigilance plan including, inter alia, reasonable measures and processes to identify risks and prevent serious damages and violations concerning the environment, the human and fundamental rights and the health and safety of persons that may result from the activities of the company and its group as well as from those of its subcontractors or suppliers. The parent company may be held responsible for not having prepared and implemented the appropriate plan to identify and prevent the risks that caused the damages or violations. At the European level, the final text of the CSDD should be formally adopted in the course of 2024 (see question 23).

• Large companies have been recently subject to new mandatory obligations with respect to the equal representation of each gender within their top senior management. In December 2021, the French legislator passed a new law requiring a minimum representation of each gender in executive officer positions (‘cadres dirigeants’) and executive or similar committees for all companies employing at least 1,000 employees. In 2023, the average proportion of women in executive committees of the SBF 120 companies was 29,84%, an increase of 2% over the previous year, which is very close to the minimum proportion required by law as from 2026 (30%).

• The ESMA, the AMF and the corporate codes also regularly issue recommendations regarding the extent of the ESG-related obligations and disclosure. Among other recommendations, the variable compensation of the CEO of any French company referring to the AFEP-MEDEF Code shall be based on several ESG performance criteria (including at least one climate-related criteria) and the company shall publicly disclose whether these criteria have been achieved.

Since the financial sector is considered as a key driver for positive climate policy-related changes, it is subject to increasingly detailed and stringent regulations and recommendations by EU (including EU Regulation n°2019/2088 of November 27, 2019 on sustainability-related disclosures in the financial services sector (so-called ‘Disclosures‘ regulation)) and French authorities in connection therewith. One of the objectives is to reduce the proportion of CO2-intensive industries in the portfolios of financial institutions as well as to improve the climate change-related public disclosure and reporting by such institutions. Among other recent important initiatives in France, are (i) Article 29 of the French energy-climate law has increased the reporting obligations of financial companies (banks, insurances, etc.) and certain institutional investors, including, inter alia, by imposing the disclosure of certain information recommended by the Task Force on Climate-Related Financial Disclosures (TCFD) reporting framework, and (ii) since 2019, the AMF and the ACPR have released three joint annual reports on the commitments by and obligations of major regulated financial institutions (banks, insurers, asset managers) with respect to climate change. ESG matters have indisputably become a key aspect of any French large company’s disclosure and a key criteria of its important decisions. They are also a key criteria of the investment policy of large institutional shareholders and of the voting policy of most proxy advisors. The Taxonomy Regulation is directly intended to allow institutional investors to assess and compare the sustainability-related performance of companies in order to (re)allocate their investment portfolios (see question 2). Within this framework, rating activities play an important role in the EU sustainable finance market as they provide information to investors and financial institutions regarding, for example, investment strategies and risk management on ESG factors. In June 2023, the European Commission presented a proposal on a Regulation on transparency and integrity of ESG rating activities, as part of its renewed sustainable finance strategy, the aim of which is to improve the reliability, comparability and transparency of ESG ratings. A final text could be adopted in the course of 2024.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Corporate governance

For the powers and authority of the shareholders to (i) appoint and remove the board members, please see question 7, and (ii) approve the compensation of the board members and executive officers, please see question 10. In addition, certain fundamental matters relating to the corporate governance of the company (number of directors, term of their office, age limitations, election of a board of director or supervisory board, etc.) are governed by its articles of association, which cannot be amended or modified without the approval of the shareholder meeting (see question 4).

Level of investment

As a general rule, French law does not provide for specific limitations on the number of securities of a company that may be held by any investor. Under certain conditions, the articles of association of the company may, however, limit the number of voting rights that a shareholder may cast at any shareholder meeting, it being noted that large investors and proxy advisors generally oppose such limitation in listed companies and request its removal (only a few French listed companies have provided for such limitation in their articles of association). Conversely, as indicated above, since the introduction of French Law n°2014-384 of March 29, 2014 ('Florange Law'), unless otherwise provided for in the articles of association a double voting right is granted to any share of a listed company held in registered form by the same shareholder for at least two consecutive years (approximately two thirds of the French SBF 120 companies have double voting rights), thereby potentially diluting the voting power of the new shareholders. Prior to acquiring, directly or indirectly, a significant stake or the control of any French company (whether listed or not), any investor should also have regards, inter alia, to French regulations relating to foreign investments (as recently modified, including, inter alia, certain temporary measures during the coronavirus crisis) and/or certain specific sectors (e.g., financial institutions, media), which may require a prior authorisation and/or restrict the contemplated investment.

French securities laws and regulations require any person (whether acting alone or in concert) crossing over the threshold of 30% of the share capital and/or voting rights of a listed company to file without delay a mandatory tender offer for all its remaining share capital (and equity-linked instruments). The same applies to any shareholder already holding between 30% and 50% of the share capital or voting rights and increasing its ownership interest by more than 1% over a 12-month period. In addition, where the majority shareholder (whether acting alone or in concert) holds 90% or more of the share capital or voting rights of a listed company, the minority shareholders may, under certain conditions, request the majority shareholder to file a buy-out offer. Conversely, such (90%) majority shareholder may also request the squeeze-out of the minority shareholders.

There are numerous disclosure obligations with respect to shareholding interests in listed companies, including, inter alia:

• the legal obligation to notify the AMF and the company, within four trading days, of any crossing upward or downward of the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 1/3, 50%, 2/3, 90% and/or 95% of the share capital or voting rights of the company, it being noted that (i) shares held in concert or underlying certain derivative instruments are assimilated to shares fully, directly owned by the relevant investor for such purpose, and (ii) in its report of April 2020 on shareholder activism, the AMF has indicated that it would be in favour of the French legislator deciding to lower the first legal notification threshold, at least for the largest French listed companies (e.g., down to 3%);

• if it is so provided in the articles of association of the listed company (which is often the case), the obligation to notify the company of the crossing upward and/or downward of certain shareholding thresholds in addition to the aforementioned statutory thresholds. The first threshold to be disclosed pursuant to the articles of association may not be lower than 0.5% the share capital or voting rights. In its report of April 2020 on shareholder activism, the AMF has indicated that it would be in favour of the French legislator (i) deciding that any such threshold crossing should be publicly disclosed by the issuer upon receipt of the notification by the investor, and (ii) clarifying the legal regime applicable to the obligation to notify such threshold in terms of threshold calculation and sanctions;

• any shareholder (acting alone or in concert) crossing upward the thresholds of 10%, 15%, 20% or 25% of the share capital or voting rights of a listed company shall publicly declare its intentions vis-à-vis the company for the next six months (including, inter alia, whether he/she intends to take control of the company, to increase its ownership interest or to be represented at the board as well as its contemplated strategy vis-à-vis the listed company);

• any person preparing a transaction that may have a significant impact on the share price of a listed company shall publicly disclose the characteristics thereof as soon as possible. If confidentiality is duly preserved and temporarily necessary to carry out the transaction, this disclosure may be deferred. In the past, the AMF imposed severe sanctions on certain investors for breach of this disclosure obligation;

• the so-called 'put-up or shut-up' rule pursuant to which, in the event of rumours and/or significant and unusual volume or share price variations, the AMF may request any person that may be reasonably suspected to prepare a takeover bid to publicly disclose his or her intention in this respect within the timeframe set by the AMF;

• in the context of a takeover bid, the statutory obligation for the bidder, the target, their respective managers and officers, the persons acting in concert with them as well as certain shareholders holding or having acquired more than certain given percentages of shares, to disclose their dealings on a daily basis;

• the statutory obligation to notify the AMF of certain short positions as from 0.2% of the share capital of a listed company (with any position exceeding 0.5% of the share capital being publicly disclosed);

• the statutory obligation to notify certain shareholder agreements to the listed company and the AMF (which then discloses them to the public on its website), in particular any such agreement providing for preferential rights to sell or acquire shares or voting rights representing 0.5% or more of the share capital or voting rights of the company; and

• prior to any shareholder meeting, the obligation to notify the AMF and the company of any temporary agreement (e.g., share loan) if it relates to more than 0.5% of the voting rights of the company.

Investors in non-listed companies are not subject to disclosure obligations as stringent as the aforementioned listed securities-related obligations. However, any French non-listed company shall obtain, and file with the relevant company registry, the identity of its beneficial owner (i.e., any person(s) who directly or indirectly holds more than 25% of its share capital or voting rights or controls such company) as well as the exact ownership interest held by this beneficial owner. The beneficial owner-related information is made available to the public authorities (e.g., the tax authorities) and the public (French regulation might change, as the EU Court of Justice invalidated the provision of the EU Directive providing for such public access in November 2022).

Responsibilities

As a general rule, French law does not provide for specific, express duties or responsibilities of the shareholders of a limited liability company vis-à-vis the other shareholders or the company, which means in particular that shareholders are free to exercise their voting rights (or abstain) as they wish and are not responsible for the decisions, acts or omissions of the company, save, inter alia, that:

• where a corporation or legal entity has been appointed to the board, it has the same duties and responsibilities as any other individual board member;

• French case law has decided that a shareholder may be held liable in exercising its voting rights for (i) majority abuse, i.e., in the event the majority shareholder imposes a decision that is contrary to the corporate interest of the company and intended to solely benefit the majority shareholder to the detriment of the other shareholders (which may judicially claim for damages from the majority shareholder as well as for the nullity of the decision concerned), or (ii) minority abuse, i.e., in the event the minority shareholder, acting solely in his or her own interest and to the detriment of the other shareholders, opposes, and prevents from being approved (blocking minority), an important decision that is in the best interest of the company (in which case the other shareholders may claim for damages from the minority shareholder);

• French case law has also decided that even if any board member (except those representing the employees) may be removed at any time by the shareholder meeting, the board member concerned shall be fairly (i) informed of the reasons of his or her contemplated removal, and (ii) given an opportunity to defend him/herself, failing which the company and the shareholders may be held liable. Similarly, any shareholder excessively, publicly denigrating a board member or executive officer may also be held liable; and

• under certain specific circumstances:

  - pursuant to French insolvency law (e.g., mismanagement of the company by its majority shareholder having contributed to its financial difficulties), the corporate veil may be pierced with the shareholder concerned no longer benefiting from the limited liability shield and being called to pay for the debt of the company (in addition to losing all or part of his or her investment); and
  - large French companies may be held liable, in the event of damages to, or violations of, the environment, the human and fundamental rights and the health and safety of persons by their subsidiaries, for not having prepared and implemented an appropriate alertness/vigilance plan (see question 24).

Please also note that the unlimited-liability partners of an SCA are severally and jointly responsible for the debts of the SCA if it is not able to pay them.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

The risks of short-termism and the promotion of sustainable, long-term value creation have been major, long-standing concerns of EU and French legislators and the business community. The general approach of the legislators and regulators to promote sustainable, long term value creation is based on a balanced mix of mandatory laws and regulations and soft law recommendations and initiatives. Disclosure is widely considered as an appropriate way to induce appropriate changes in this respect. The Taxonomy Regulation is based on new disclosure obligations to publish sustainability indicators so as to allow institutional investors to (re)allocate their investment portfolios towards sustainable companies, activities and projects.

In 2014, the Florange Law enacted several new provisions intended, inter alia, to reinforce the powers and authority of the board to take defensive measures against unsolicited takeover attempts and to promote long-term investments by granting (unless otherwise provided for in the articles of association) double voting rights to any share of a listed company held in registered form by the same shareholder for at least two consecutive years. Following the enactment of the Pacte Law, the French Civil Code now provides that any company, whether listed or not, shall be managed in furtherance of its best corporate interest and by taking into consideration the social and environmental matters related to its activities (see question 23). The annual statement of non-financial performance has become a key aspect of the disclosure and reporting of French large companies (see question 24). Among other recommendations, the variable compensation of the CEO of any French listed company referring to the AFEP-MEDEF Code shall be based on several ESG performance criteria and the company shall publicly disclose whether these criteria have been achieved. The financial institutions are under increased scrutiny by the EU and French regulators with respect to their investments in or activities with polluting industries and the related disclosure. The AMF, the ACPR and the HCGE have indicated that ESG matters, and the implementation of the new EU regulations, will be under their scrutiny over the next few years.

In December 2023, the French government has made permanent the application of the 10% threshold that triggers its control over non-EU investments in French listed companies, which had been temporarily instituted during the Covid-19 crisis.

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