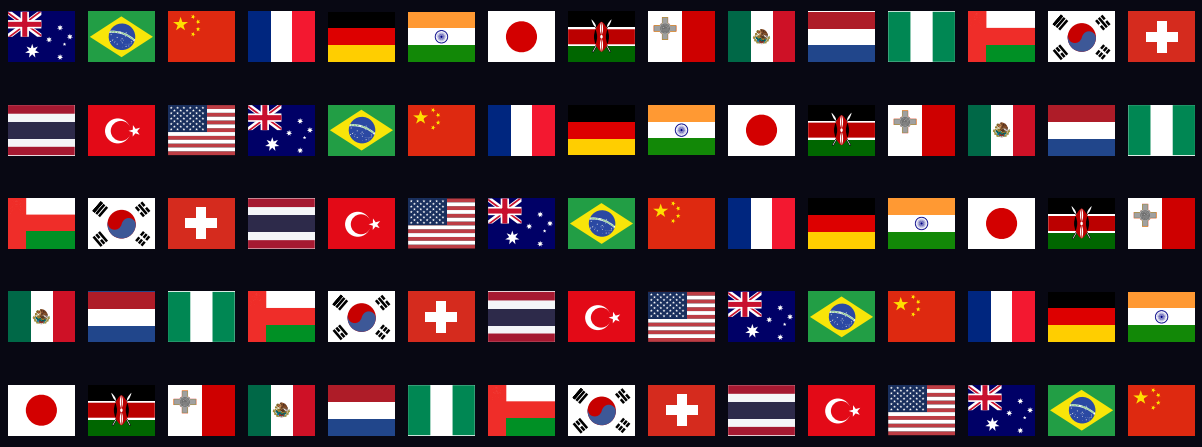
CORPORATE GOVERNANCE

France



LEXOLOGY
Getting The Deal Through

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Quick reference guide enabling side-by-side comparison of local insights into corporate governance issues worldwide, including sources of rules and practice; responsible agencies and notable opinion formers; shareholder powers, decisions, meetings, voting, duties and liabilities; employee role in governance; corporate control issues; board structure and composition, duties, leadership, committees, meetings and evaluation; director and senior management remuneration; director protections; disclosure and transparency; hot topics, such as shareholder engagement, and sustainability, pay ratio and gender gap reporting; and other recent trends.

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The main sources of law relating to corporate governance in France are:

- the Commercial Code;
- concerning listed companies, the general regulations, which are binding, and recommendations of the French stock exchange authority (AMF), which may be binding on a case-by-case basis; and
- specific laws that organise the governance of corporate vehicles designed for certain business sectors (financial institutions) or professions (such as auditors or pharmaceutical businesses).

The relevant European regulations have been incorporated into these sources.

The Commercial Code encourages companies listed on a regulated market to refer to a corporate governance code and requires companies that do not intentionally refer to these codes to explain their reasons for not doing so and to clarify their own corporate governance rules.

There are two established corporate governance codes currently available: the Afep-Medef Code, designed for large listed companies, and the MiddleNext Code, which was initially dedicated to small and medium-sized listed companies but now also addresses large listed firms controlled by one shareholder or a group of shareholders and non-listed companies with a dispersed shareholding. Listed companies that apply a corporate governance code must justify any deviation therefrom in accordance with the 'comply or explain' principle.

Law stated - 18 April 2023

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

There is no specific agency with exclusive competence in the elaboration and enforcement of corporate governance rules.

However, the AMF, as guarantor of sound market information, closely reviews and monitors the corporate governance practices of listed companies and publishes an annual report on this matter.

The Afep and Medef associations have set up a high-level committee on corporate governance to review the practices of the listed companies applying the Afep-Medef Code and to ensure the effective implementation of the 'comply or explain' principle. This committee works closely with the AMF.

Several shareholders' associations are active in promoting and defending shareholders' rights. They are often consulted by authorities in the development of new regulations and are sometimes involved in legal actions to defend their position.

Recommendations of international (Institutional Shareholder Services and Glass Lewis) or domestic (Proxinvest) proxy

adviser firms active in France are also carefully considered by the market.

Law stated - 18 April 2023

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

In France, the 'limited liability company' concept covers different corporate forms of vehicles.

- Public limited company (SA): most functioning rules are provided for by the Commercial Code and are compulsory. The SA is the only type of vehicle (apart from the limited partnership) that may be listed.
- Joint-stock company (SAS): functioning rules are predominantly decided by the shareholders in the articles of association.
- Limited company (SARL): functioning rules are provided for by the Commercial Code and are compulsory. The SARL structure is generally reserved for small businesses.
- Limited partnership (SCA), organised by the Commercial Code and, to a certain extent, by the articles of association: a sort of limited partnership with share capital, where two types of members coexist, namely general partners, who are liable on their personal assets for the SCA's debts, and limited partners, who basically are shareholders. The SCA form is chosen by listed companies as a poison pill against hostile takeover bids.

In an SA with either a one-tier structure (a board of directors) or a two-tier structure (an executive board and a supervisory board), the shareholders always have the power to remove members of the (supervisory) board with a simple majority vote in a meeting, even if this matter has not been included in the agenda.

SCAs are managed either by a general partner or a third person whose rules of appointment and removal are freely set in the articles of association. SCAs also have a supervisory board whose role is to control management and that may exercise a veto right on the appointment of managers. The power of shareholders in these companies is limited: every decision must be confirmed by the general partners, with the exception of the appointment of the members of the supervisory board.

Shareholders of an SAS benefit from large flexibility to draft the articles of association, especially as regards governance rules, which is why investors who need to address specific governance issues and tailor peculiar corporate functioning rules generally choose this legal form. Appointment and removal rules of executives and directors are provided for in the articles of association.

SARLs do not have a board of directors per se, as management and executive functions are combined in a single type of duty. The appointment and removal of managers are decided by the shareholders at a simple majority unless the articles of association provide for a qualified majority. Shareholders may also request the removal of the managers with cause to the courts.

When consulted on a specific question, a shareholders' vote is binding (with a few exceptions). However, apart from their removal right regarding the board or legal action, shareholders have no direct way to require the board to pursue a particular course of action.

The right of a director to be indemnified in the event of a dismissal depends on the types of corporate form and duties, bearing in mind that dismissal in vexatious circumstances or where the director cannot defend him or herself may give rise to specific damages.

Law stated - 18 April 2023

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

Shareholders' approval is required for the following decisions:

- approval of the company's (and consolidated) annual accounts;
- dividends allocation;
- appointment of the (supervisory) board members and allocation of the global amount of their attendance fees, the (supervisory) board having the exclusive power to split the fees between members;
- appointment of the statutory auditors;
- approval of the report of the statutory auditors on transactions between the company and its related parties;
- amendments to articles of association (eg, increase or reduction of the share capital, mergers and change of corporate form or nationality); and
- dissolution.

Listed companies' shareholders' meetings also vote each year on all components of the compensation packages of the executive officers and board members for both the current year and the past year.

The articles of association may also provide that certain other decisions require the shareholders' prior approval, but these restrictions cannot be opposed to third parties, and agreements concluded without such a prior approval remain binding. The company's representatives can, however, be held liable for the loss suffered by the company as a result of these agreements. The same solution applies regarding transactions with related parties when the shareholders have refused to approve the statutory auditor's report.

Law stated - 18 April 2023

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The 'one share, one vote' principle generally applies subject to several exceptions.

In listed SAs and SCAs, a double voting right is automatically granted to registered shares after a two-year period of uninterrupted holding (unless otherwise provided for by the articles of association).

In non-listed SAs and SCAs, as well as in SASs, preference shares with multiple voting rights may be issued.

Companies may also issue preference shares deprived of voting rights, usually in consideration of the entitlement to preferred dividends. These preference shares are limited to a quarter of the total amount of shares in listed companies (half in non-listed companies). On the contrary, some preference shares benefit from double voting rights or a veto right for certain decisions.

A cap on the votes may also be implemented for each shareholder, it being specified that the articles of association of listed companies may suspend this limit in the event of a takeover bid.

Law stated - 18 April 2023

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Shareholders must justify ownership of their shares two business days prior to the meeting for listed companies (record date), and either this date or the date of the meeting for non-listed companies (as provided for in the articles of association of such companies).

Shareholders who cannot attend the meeting may vote beforehand (by mail or using an electronic platform if the articles of association authorise this option) or give a proxy. This proxy is either given to a specific person, who may be a shareholder, or sent to the company with no specific proxy holder's name, which corresponds to a vote in the way recommended by the board. In companies that have adapted their articles of association accordingly, shareholders may also vote electronically.

Although French law allows shareholders to participate virtually in meetings if the articles of association so provide, professional associations and law professionals do not, at present, recommend using such an option. To date, only one listed company (with a limited number of participating shareholders) has experienced the format of a digitalised shareholding meeting with online voting.

Shareholders of an SA are not allowed to act by written consent without a meeting. Shareholders in companies of another form may do so if this is expressly permitted in the articles of association.

Law stated - 18 April 2023

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Shareholders' meetings are generally convened by the board.

All shareholders may request the court to force a board to convene the annual shareholders' meeting in the event of the board's failure to do so as and when legally required. All shareholders may also request the court to appoint an agent who will convene a shareholders' meeting in the event of an emergency. Shareholders holding at least 5 per cent of the share capital have the right to request the court to appoint an agent, who will convene a shareholders' meeting on a given agenda. (They do not need to provide evidence of an emergency, but the judge will assess whether the request is consistent with the company's interests.)

After a public takeover or a change of control of a company, majority shareholders may also convene a shareholders' meeting.

Before a meeting, minority shareholders (holding at least 5 per cent of the voting rights in companies with a share capital not exceeding €750,000, less if it does) may force the board to put a matter on the agenda, including director nomination, which will be discussed during the shareholders' meeting. They may justify their action in a statement, which will be transmitted to the shareholders. Otherwise, shareholders cannot force the board to circulate any statement.

Law stated - 18 April 2023

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

French law does not provide for any duties owed by controlling shareholders to the benefit of the company or to minority shareholders. However, case law prevents majority shareholders from voting in favour of resolutions taken against the company's interests with the sole purpose of favouring their own interests to the detriment of other shareholders. When this is characterised by the judge, the disputed vote may be declared null and void, and the majority shareholders may be sentenced to pay damages.

Law stated - 18 April 2023

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

The responsibility of shareholders is normally limited to the price paid for their shares.

However, the corporate veil may be pierced when a shareholder has de facto replaced a chief executive and committed mismanagement (eg, commingling its own assets with those of the company or causing the company's insolvency by obvious misconduct).

In addition, parent companies may be held liable for damage caused by their subsidiaries: as regards environmental losses, if a mismanagement action can be assessed against the parent company; and if they belong to a large group (employing 5,000 persons in France or 10,000 worldwide), as regards human rights abuses, physical injuries or environmental losses, if the parent company has failed in the setting-up of a specific prevention plan and if a loss directly arises out of this failure.

Law stated - 18 April 2023

Employees

What role do employees have in corporate governance?

All companies employing at least 50 individuals must set up a social and economic committee (composed of employees' representatives), which must be periodically consulted and informed on various matters that include, in some instances, contemplated corporate governance changes. Representatives of the committee may attend all meetings of the corporate bodies and must be provided with the same level of information.

Two non-cumulative schemes exist to appoint one or several genuine directors representing the employees in companies listed on a regulated market according to a process provided for in the articles of association: when they have employees owning more than 3 per cent of the share capital; or when they employ, with their subsidiaries, more than 1,000 individuals (5,000 worldwide) and must set up a social and economic committee.

Law stated - 18 April 2023

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

Anti-takeover devices are allowed under French law insofar as they abide by the corporate interest. Although France has implemented the Takeover Directive, it has often chosen not to adopt some options of the Directive.

Before a takeover bid is made public, various measures may be implemented to thwart any offer, including:

- double voting rights, which increases the number of shares that a bidder must acquire to gain the target's control;
- prior disclosure of shareholders' agreements provisions relating to share transfer;
- share repurchase programmes (up to 10 per cent of the share capital); and
- delegations to the board to issue new shares or specific 'bid warrants'. These warrants are designed to be attributed, if a takeover bid takes place, to existing shareholders for no consideration to maintain the share ownership (if the bid fails, the company can finally decide not to activate the warrants and new shares will not be issued).

During the takeover bid, unless the articles of association provide otherwise, the board is no longer (as it formerly was) required to remain neutral and to submit any anti-takeover action to shareholders' approval. The board may also sell (or buy) a strategic asset, seek an alternative and friendly bid (the white knight), use delegation previously granted by the shareholders, etc. However, approval is still necessary to perform a repurchase programme if it may harm the success of the bid.

Law stated - 18 April 2023

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Shareholders' approval is necessary for the issuance of new shares but can be delegated to the board (which, in a listed company, may then subdelegate this power to the executive officers). Rights of issuance can be granted to the board with or without a preferential subscription right to shareholders. In this latter case, a priority right may be implemented in listed companies by the board, depending on the shareholder delegation's terms.

Law stated - 18 April 2023

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Restrictions on share transfers are compulsory in limited companies (requiring prior approval of any transfer to a third party) and optional in other non-listed limited liability companies. If some or all shareholders agree to be bound by these restrictions, they are provided for in the articles of association or in shareholders' agreements (in which case they may remain confidential).

Shareholders of listed companies may include share transfer restrictions in shareholders' agreements only, and these restrictions must be disclosed to the public when they relate to at least 0.5 per cent of the shares or voting rights, failing which the undisclosed agreement will have no effect during a takeover bid.

Common restrictions include pre-emption rights, prior approval (by the shareholders' meeting, the board or a specific corporate body), tag-along and drag-along rights, and standstill. Apart from standstill restrictions, of which the effect must be time-limited, these restrictions may not harm the ability of a shareholder to exit the company if it has found a buyer (the transfer being made to this buyer, the company or the other shareholders).

Law stated - 18 April 2023

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

A shareholder of a non-listed company may force the company or other shareholders to buy its shares if the implementation of a prior approval clause contained in the company's articles of association has given rise to the refusal of the contemplated share transfer.

The articles of association of a joint-stock company and non-listed public limited company (SA) may contain drag-along rights or exclusion clauses (with objective exclusion causes and price determination rules) whereby a shareholder may be forced to sell its shares.

In listed companies, compulsory repurchase may only occur when 90 per cent of the shares and voting rights are held by a shareholder or shareholders acting in concert. This bid may be triggered either by minority shareholders or by majority shareholders or may follow a takeover bid at the successful bidder's initiative.

Law stated - 18 April 2023

Dissenters' rights

Do shareholders have appraisal rights?

Minority shareholders do not have the right to sell their shares if they disagree with a decision of the company unless it is so provided in the articles of association or in a shareholders' agreement.

Certain restructuring transactions (such as a merger, a disposal of all or most of the company's assets, reorientation of the company's purpose and substantial changes to the articles of association) involving listed companies may lead to the French stock exchange authority imposing on the majority shareholders to launch a takeover bid at fair market value (this is compulsory in the event of the conversion of an SA into a limited partnership).

Finally, in a merger involving (listed or non-listed) entities with the same parent (owning at least 90 per cent of the voting rights of all involved entities) or an absorbing entity owning at least 90 per cent of the voting rights of all absorbed entities, minority shareholders have the right for their shares to be acquired at a fair market value if the entities involved in the merger decide not to submit the transaction to an independent auditor.

Law stated - 18 April 2023

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

One-tier structured public limited companies (SA) are largely predominant, representing about 80 per cent of large issuers. About two-thirds of them are led by a chief executive who is also the chair of the board. Two-tier structured SAs represent about 15 per cent and limited partnerships about 5 per cent.

Law stated - 18 April 2023

Board's legal responsibilities

What are the board's primary legal responsibilities?

The board of directors is the corporate body in charge of setting the main lines of the company's business activity and strategy and of ensuring their implementation, in accordance with the powers reserved by law to the shareholders and the company's executives. If the board is legally entitled to deal with any issue it considers relevant, by law it has exclusive competence in the following matters:

- drawing up of the annual (consolidated) accounts and management report;
- suggesting dividends allocation;
- the convening of shareholders' meetings and fixing their agenda;
- appointment and removal of the company's executives;
- authorisation of guarantees granted by the company and of transactions with related parties; and
- bonds' issuance (unless reserved to the shareholders' meeting by the articles of association).

In two-tier structures, the supervisory board's role is mainly to appoint (and remove if permitted by the articles of association), control and supervise the executive board (eg, review of the accounts, management reports and strategy, and prior approval of transactions with related parties) and refer matters to the shareholders' meeting. The executive board and the supervisory board may each convene shareholders' meetings.

Law stated - 18 April 2023

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

The board has no legal personality and is only a corporate body that promotes and defends the company's interests.

Ultimately, the board is responsible to the shareholders, who can decide, at each meeting, to remove any of its members (including all of them). However, civil and criminal liability of directors may be sought where applicable either by the company itself or by shareholders (or third parties in limited cases and the public prosecutor as regards criminal liability).

Law stated - 18 April 2023

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgment rule?

Legal actions may be brought against directors individually or collectively. The 'corporate' derivative action aims at indemnifying against losses suffered by the company itself as a result of faults of its directors. It can be initiated for the account of the company either by the company's legal representatives or by a shareholder acting on behalf of the company. Shareholders may also bring an action to be indemnified for losses that they have directly suffered.

These actions may only be brought if directors have committed a breach of law or of the company's articles of association, or mismanagement acts. As regards mismanagement, there is no business judgment rule as such in France, but as the claimant must evidence that a fault has been committed, this is a similar conclusion as to the directors' liability regime in common law countries. When the fault is committed collectively, the enforcement action is led against all directors taken individually, but each member of the board may elude its liability if it can prove that it opposed the disputed decision.

Criminal liability may be sought in specific cases, mainly in the event of misuse of corporate assets, abuse of powers, distribution of fictitious dividends and publications of untrue accounts. It may be initiated by any purported victim, but the legal action is controlled by criminal judges.

No distinction is made by law between the directors depending on whether they are interested or disinterested, executive or independent. They are all under the same liability regime, and the difference only resides on the grounds of evidence and the ability of the claimant to establish the facts that give rise to liability of any such directors.

Law stated - 18 April 2023

Care and prudence

Do the duties of directors include a care or prudence element?

Directors owe a duty of care to the company at all times. Case law has promoted a specific duty of loyalty by board members if these directors hold sensitive information and are involved in share transactions with other shareholders.

Internal rules of the board often describe more precisely the scope of this duty (eg, attendance of members and conflict of interests).

Law stated - 18 April 2023

Board member duties

To what extent do the duties of individual members of the board differ?

The duties of the various board members are the same and considered on an equal basis.

Directors may be members of specific board committees (audit (which is compulsory in listed companies), appointment, compensation, strategic, ethical, etc) and their work (and exposure) may so differ in practice. Usually, members of specific committees are chosen among directors with skills and experience corresponding to their field of expertise.

Law stated - 18 April 2023

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The board may delegate to the management some of its specific powers, such as the authorisation of guarantees (by law) or the issuance of new shares (upon shareholders' approval).

The board may create committees in charge of monitoring specific matters. It can also appoint any person to perform specific tasks. However, the aim of these committees or appointments is only to facilitate or improve the work of the board and its decision-making process. Directors cannot ignore any of the matters discussed in board meetings; committees or individuals that the board has appointed always act under its authority.

Law stated - 18 April 2023

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Companies listed on a regulated market must appoint at least one independent director to their audit committee. This is a minimum, and the law implicitly leaves it to the soft law corporate governance codes to determine the appropriate proportion of independent board members and the criteria of independence. For example, the Afep-Medef Code requires that at least half of the directors are independent in an uncontrolled company, or one-third in the case of a company controlled by a majority shareholder or a group of shareholders, and those independent directors should represent two-thirds of the audit committee and the majority of the appointment and compensation committee if applicable.

The Afep-Medef Code sets out that to be considered as independent, directors must not have any particular relationship (majority shareholder, employee, family or other) with the company or the company's executives. According to these criteria, an independent director is someone who:

- has not been an employee or an executive officer for the past five years in the company or a related company;
- is not a significant client, supplier, adviser or banker; and
- has not been an independent director for longer than 12 years (renewal included).

While they are expected to be particularly cautious of the company's interests, their liability does not differ by law from that of the other directors.

Law stated - 18 April 2023

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The board size of between three and 18 members is ultimately determined by the shareholders. If they do not provide otherwise, no more than one-third of the directors may be over 70 years old. The same threshold applies to employees of the company.

In listed companies and large companies (ie, companies that had, for three consecutive financial years, over 250 permanent employees and a total turnover or balance sheet of more than €50 million), the proportion of board members of a specific gender must represent at least 40 per cent of the total. As an exception to the 40 per cent requirement, boards can be made of eight members or fewer, when the gender gap cannot exceed two directors.

Before their appointment, shareholders may request information on the candidates' curricula vitae during the last five years; in listed companies, a brief summary of their expertise should always be available. Apart from the specific requirement regarding the independent member of the audit committee, expertise is not required by law.

Criminal records are only provided to the French stock exchange authority (AMF) for listed companies during initial public offerings, but directors or supervisory board members in all companies must demonstrate that they have not been restricted from running a business owing to criminal proceedings.

The (supervisory) board may appoint temporary new members in the event of a vacancy, subject to confirmation by the next shareholders' meeting, while only the shareholders may create new directorships.

Law stated - 18 April 2023

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

Laws and governance codes do not require the separation or joining of these functions but organise decision-making processes (including in terms of transparency) in this respect.

Historically, these functions were joint, and this structure still prevails today (about two-thirds of SAs with a one-tier structure are managed by a CEO who is also the chair of the board).

Law stated - 18 April 2023

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

The audit committee is mandatory in companies listed on a regulated market, but the board of directors may decide to take over its functions directly. In these cases, when the agenda of the board meeting handles relevant matters of the audit committee, executive members of the board must temporarily leave. Only board members may be part of the audit committee, of which at least one independent director must have specific financial expertise.

Further, the board may set up whatever committees it considers appropriate and has complete flexibility to organise them. However, the Afep-Medef Code recommends the creation of committees on the nomination and compensation of senior management and a corporate responsibility committee regarding environnement, social and governance topics.

Law stated - 18 April 2023

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

Legally, in one-tier structures, the board must meet at least once per year to draw up annual accounts and convene the annual shareholders' meeting (twice in listed companies, which have to publish half-year accounts).

In two-tier structures, the supervisory board must meet at least four times a year to review the executive board's report.

However, in listed companies, corporate governance codes require more frequent meetings: the MiddleNext Code recommends a minimum of four meetings a year, whereas the Afep-Medef Code does not set a minimum requirement but provides that the number of meetings must be sufficient to enable the board to perform an in-depth review of all topics that are put on its agenda and that one meeting per year must be held without the presence of the executive officers.

Law stated - 18 April 2023

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

The board of a listed company is required by law to disclose specific information on its operations and on the company's governance in general. This information includes the structure of the board, the number, the overall attendance of the meetings during the last year and individual attendance of each member, which governance code it applies and a review of the company's compliance with that code. Explanations of the items it has chosen not to enforce must be disclosed under the 'comply or explain' principle.

Law stated - 18 April 2023

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

The board of directors, or the executive board in a two-tier structure, of a listed company must issue each year a report on the corporate governance in place within the company. The supervisory board, in a two-tier structure, must approve the terms of this report. The statutory auditors must also give their views on it.

The content of this report addresses most corporate governance issues: the frequency of the board meetings, options that were chosen when the comply or explain principle applies, description of the board and the committees' work, description of the compensation policies for executives and directors, review of the independence criteria applicable to the directors, etc. The Afep-Medef Code issued a recommendation on a board evaluation process including an evaluation of the effective contribution of each director to the work of the board.

Every year, the AMF reviews a sample of these reports and delivers a study, which is a major source of sound practices in corporate governance.

Law stated - 18 April 2023

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

In consideration of their duties in this capacity, directors can only receive attendance fees, the global amount of which is decided by the shareholders' meeting. The division of this amount is, however, reserved to the (supervisory) board itself; governance codes recommend allocating the fees in consideration of the attendance of each relevant member at the meetings, a criterion that is predominant in the Afep-Medef Code. Directors are also reimbursed for the expenses incurred while carrying out their duties, but no other compensation is allowed.

The director's appointment term is legally capped at six years (but is renewable), but the shareholders may retain a shorter term of duties.

Loans to directors are prohibited, and transactions between the company and directors (or their relatives) must be submitted for prior approval by the board, and are subject to subsequent reviews by the statutory auditors and votes by shareholders. Transactions that exceed one year must be reviewed by the board each year and mentioned in the auditors' report to the shareholders' meeting.

Law stated - 18 April 2023

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

The remuneration of senior management is determined by the (supervisory) board and must, in listed companies, be disclosed to shareholders and to the public and is submitted to a compulsory say-on-pay vote.

Governance codes intend to set effective criteria to give general and consistent frameworks to the executive officers' compensation. These criteria include benchmark, balance, intelligibility, consistency and social and environmental targets of the company.

When variable compensation is provided, the French stock exchange authority requires that it is calculated with respect to objective criteria fixed in advance.

Executive officers are in the same position as directors regarding loans or transactions with the company (requiring prior approval by the board, review by the statutory auditors and a vote by the shareholders' meeting).

Law stated - 18 April 2023

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

Shareholders of listed companies have a binding say-on-pay vote as follows:

- to approve general compensation schemes regarding corporate officers (eg, chief executive, deputy CEO, board chairs and directors), it being specified that in the event of a negative vote, the existing scheme would continue; and
- to approve the fixed, variable and exceptional remuneration for each individual corporate officer (excluding directors in that capacity) for the past financial year, it being specified that variable and exceptional remuneration will not be paid until a positive vote is held.

Golden parachutes must be authorised as transactions with related parties, as the vote is not purely advisory.

Law stated - 18 April 2023

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability insurance is permitted and very common in companies with significant business exposures. Usually, companies pay the corresponding premiums.

Law stated - 18 April 2023

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

As opposed to market practices in other jurisdictions, a French company never indemnifies managers acting in their professional capacity, as any fault committed by them would likely give rise to a claim by the company itself against these managers; or a directors' and officers' liability insurance scheme, which are authorised by French law, will cover relevant situations where managers might incur personal liability (unless the acts that gave rise to liability cannot legally be covered by an insurance policy).

Law stated - 18 April 2023

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

A company may advance expenses to directors or executive officers in connection with litigation or other proceedings only to the extent that these proceedings are not reasonably expected to give rise to these directors' or officers' personal liability. Otherwise, advance payments would qualify as misuse of corporate assets.

Law stated - 18 April 2023

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

Executive officers may delegate part of their powers in specific matters to employees and, consequently, preclude their personal, including criminal, liability (eg, in labour law or tax matters). To be effective, the delegation must be precisely determined, and the assignee must be granted all resources and powers needed to perform the relevant tasks (including in the articles of association or otherwise).

There is no other way to preclude or limit the liability of directors and officers.

Law stated - 18 April 2023

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

All companies' articles of association are available at the companies' registry and can be accessed electronically. Corporate governance codes recommend that listed companies publish their board and the internal rules of their committees on their websites.

Law stated - 18 April 2023

Company information

What information must companies publicly disclose? How often must disclosure be made?

All companies must file specific corporate documents with the companies' registry, these documents being publicly available (eg, articles of association, and shareholder resolutions amending the articles of association or appointing corporate bodies, merger agreements, statutory auditors and specific auditors' reports).

Listed companies have periodic disclosure obligations. In particular, they must make the following publicly available:

- annual financial reports (containing annual accounts and notes thereto, the management report and the statutory auditors' report);
- half-year information (half-year accounts, the interim management report and the statutory auditors' limited review report); and
- certain other information (eg, statutory auditors' fees and missions, and data regarding repurchase programmes).

Quarterly results are no longer subject to a disclosure obligation, but listed companies usually continue to disclose them. The annual financial report may be included in the universal registration document mentioned by Regulation (EU) 2017/1129 relating to prospectuses, which is to be filed in France with the French stock exchange authority (AMF).

Listed companies also have an ongoing disclosure obligation, where they must disclose without delay any non-public information that, if known to the public, would likely have a significant effect on the price of securities (privileged information). The AMF regulations authorise the relevant issuer to postpone this disclosure to protect its legitimate interests, provided that the public is unlikely to be misled and the issuer ensures the confidentiality of this information.

Law stated - 18 April 2023

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Before a meeting, shareholders holding a certain number of shares (5 per cent if the share capital does not exceed €750,000, less if it does) may force the board to put the appointment of a director on the agenda. All meeting materials (including those at the shareholders' request or initiative) are prepared and distributed at the company's expense.

During shareholders' meetings, if a director nomination is on the agenda or upon the dismissal and appointment of a director, every shareholder may apply for the board position.

Regarding proxy solicitation, shareholders may freely consult the list of registered shareholders to contact and convince them to vote in a certain way. However, they have no right of access to the list of holders of bearer shares (except those who are also registered shareholders and have expressed their intention to vote at the meeting with their bearer shares). The cost of proxy solicitation is assumed by the initiator of this solicitation. Anyone can actively solicit proxies if they disclose their voting policy.

Law stated - 18 April 2023

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

French listed companies are increasingly engaging with shareholders beyond the mandatory legal interactions at the time of the annual shareholders' meeting through written or oral questions, resolution proposals, etc. The engagement efforts mainly depend on the size of the company: the larger it is, the more specific and dedicated the staff it involves. The types of initiatives are also diversified (shareholders' clubs, social events, periodical information meetings, newsletters, etc).

Law stated - 18 April 2023

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

Large listed companies (ie, companies that have more than 500 permanent employees and either a total turnover of €40 million or a balance sheet of €20 million at the end of the financial year) and large non-listed public limited companies (ie, companies that have over 500 permanent employees and a total turnover or balance sheet of €100 million at the end of the financial year) must disclose corporate social responsibility information.

This information includes details on the impact of the company's activity on climate change; actions being taken towards sustainable development and recycling and waste management; the relations and state of negotiations with the social and economic committee, diversity programmes, etc, to the extent that these details help understand the position of the disclosing company, the evolution of its business, its results and any impacts of its activities.

Additionally, listed companies must disclose information on the effects of their activities on human rights and the fight against corruption.

This information is disclosed in the annual report. Companies that have over 500 permanent employees and a total turnover or balance sheet of €100 million at the end of a financial year must have the information verified by an independent body prior to annual shareholders' meetings.

Law stated - 18 April 2023

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

Listed companies must now disclose all components of the compensation of the chief executive and other top officers, and indicate the pay ratio between the compensation of each of these executives and the average compensation of other workers and the median compensation of all workers (including the executives), as well as the evolution of this ratio over the five preceding financial years.

In other companies, shareholders are entitled to receive information on the compensation of the five or 10 (depending on whether the company has over 200 employees) best-paid people.

Law stated - 18 April 2023

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

Companies are required to disclose gender pay gaps as part of the annual consultation of the social and economic committee. For companies employing fewer than 300 persons, a general comparison is made by taking into account differences in pay, qualifications, experience, age and promotion rates per occupation category. Companies employing more than 300 persons must provide a breakdown of this data by specifying, for each gender, the average period between two promotions and the average experience level per occupation, within each occupation, per level and hierarchy within the company. The average age must be presented by occupation, level and hierarchy within the company.

Information on pay is therefore broken down by average monthly pay per occupation, level and hierarchy within the company and age group. The information on the 10 best-paid women in the company must also be provided.

Law stated - 18 April 2023

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

Last year, again, non-financial considerations received most attention from corporate governance institutions and practitioners in France. In line with European initiatives (adoption on 14 December 2022 of the Corporate Sustainability

Reporting Directive (EU) 2022/2464, European Commission works on the proposal for a directive on corporate sustainability due diligence), the new version of the soft law code jointly issued by the Afep and Medef organisations in 2022 includes a full section on social and environmental corporate responsibility (which is mainly set on boards of directors). Clearly, boards' obligations are to be increased, in terms of control of social and environmental information to be provided to all stakeholders, as well as a result of the guideline given to boards to draw up and monitor a climate change related plan, which is to be submitted to the non-binding vote of shareholders' meetings every three years or following a significant amendment to such plan. Even though 'say-on-climate' shareholder resolutions were not considered market practice in 2022 (only 11 blue chip companies submitted this resolution to their annual shareholders' meetings), they will be soon, and shareholders' voting will become more educated and crucial due to increased disclosure of qualified information, open positions of proxyholders, and proposals made by professionals to facilitate shareholders' voting initiatives at shareholders' meetings.

Law stated - 18 April 2023

Jurisdictions

Australia	Kalus Kenny Intelex
Brazil	Loeser e Hadad Advogados
China	BUREN NV
France	Aramis Law Firm
Germany	POELLATH
India	Chadha & Co
Japan	Anderson Mōri & Tomotsune
Kenya	Robson Harris Advocates LLP
Malta	GVZH Advocates
Mexico	Chevez Ruiz Zamarripa
Netherlands	BUREN NV
Nigeria	Streamsowers & Köhn
Oman	Addleshaw Goddard LLP
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Switzerland	BianchiSchwald LLC
Thailand	Chandler MHM Limited
Turkey	Gün + Partners
USA	Sidley Austin LLP