How to set up in France

MIFID Firm

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in France.

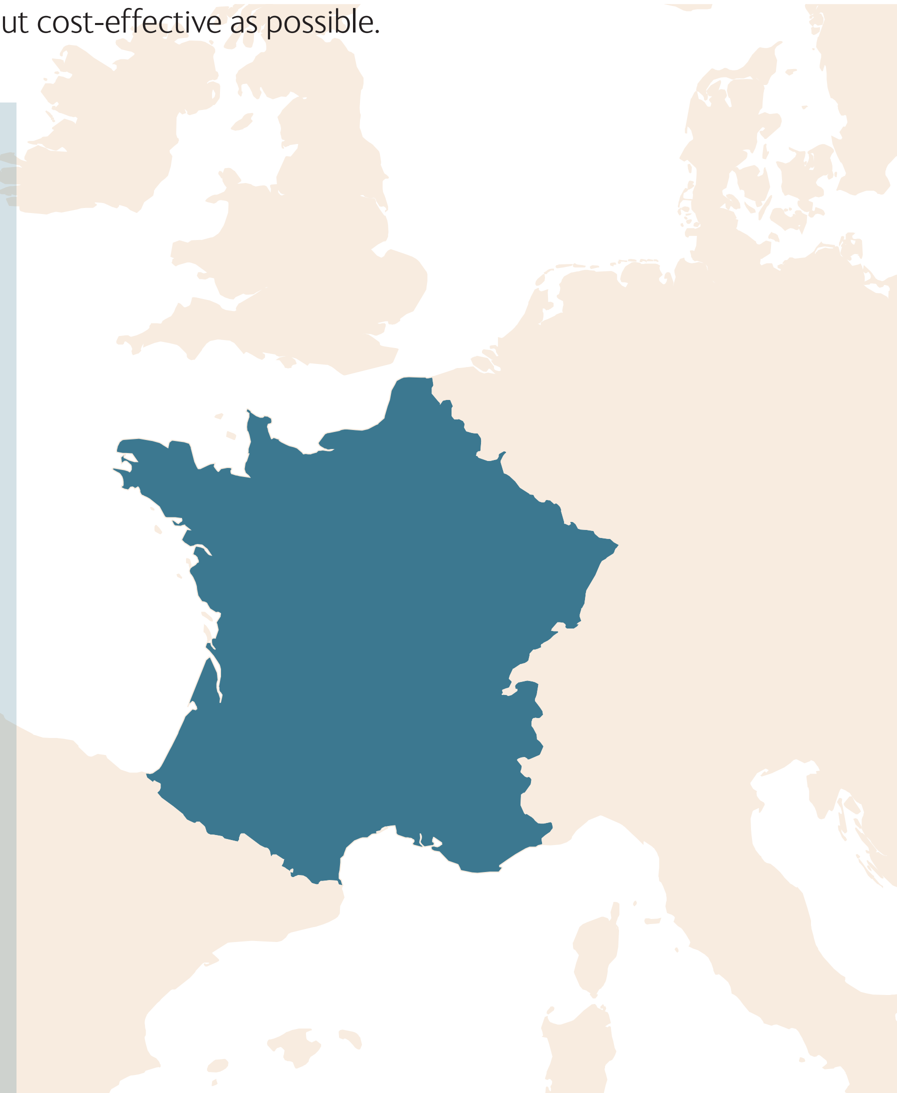
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- No material super-equivalent requirements
- Limited quantitative requirements on corporate governance

What are the cons?

- Employment law less flexible than in the UK
- Corporate and personal taxes (when taking into consideration social security charges) higher than in the UK
- Correspondence with regulators typically in French



Subsidiary (MiFID Investment Firm)

Note that currently investment management companies managing UCITS and AIFs are investment firms. As part of the implementation in France of MiFID2, UCITS management companies and AIFM (who do not provide investment services in reliance on MiFID2) will not be subject to the requirement of MiFID2.

Licence/Passport Process	■ Information on the application process is available here and here ■ The process involves submission of a template application form plus numerous supporting documents to the Autorité de Contrôle Prudentiel et de Résolution ("ACPR") and/or the Autorité des Marchés Financiers ("AMF") for review ■ The ACPR, after having contacted the AMF (where management activities are provided), will decide within approximately 4-5 months depending on the kind of MiFID Investment Firm and which investment service is proposed. The AMF will decide within three months. Please note that 2-3 months of preparation time is recommended ■ The AMF charges an annual fee calculated according to the number of authorised services multiplied by a coefficient based on the company's equity ■ The ACPR and the AMF does not allow any outsourcing that would involve the delegation of functions to the extent that would be considered to the investment firm being a "letter-box entity" (as set out in MiFID).
Conduct of business Prudential rules	■ French requirements will apply – based on MiFID ■ CRR/CRD IV requirements will apply ■ No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States).
Corporate governance	■ Systems and controls requirements are based on CRD IV/MiFID requirements ■ No set requirement on number of directors – but the ACPR will require at least two managers (dirigeants effectifs). Managers must be able to devote sufficient time to the role in order to ensure sound and prudent management ■ Heads of the firm (eg directors, CEO and deputies, members of management board) must show they have the respectability, skills and experience necessary to fulfil their functions ■ The AMF requires that persons in certain functions (eg asset managers, traders and clearers of financial instruments, compliance officers) hold professional licences from the AMF, or by the firm in certain cases, and that they undergo examinations to certify they have the appropriate skills ■ The MiFID firm must ensure the natural persons under its authority or acting on its behalf have the relevant qualifications and expertise as well as sufficient knowledge ■ No other specific quantitative requirements.
Regulatory environment	■ The ACPR and the AMF are relatively open to discussion on key issues in the licence application ■ All the MiFID firms have a dedicated point of contact at the ACPR/AMF ■ AMF in particular has a constructive approach with the entities it regulates.
Tax	■ The French standard corporate income tax rate on income is 33.1/3%. In the wake of Brexit vote, the Prime Minister announced that this rate will be cut to 28% ■ No withholding tax on interest ■ Regarding royalty payments, in the absence of bilateral tax treaty, there is a withholding tax of 33.1/3% of the gross amount paid by the French entity to a company with no business permanent establishment in France (applicable rate of 75% if the beneficiary is a Non-Cooperative State). If a bilateral tax treaty is in force, it usually gives the exclusive right to tax the royalty payments to the state of residency of the beneficiary. ■ Standard French dividend withholding tax rate on outgoing dividends is 30%. Tax rate applicable to non-resident physical person established in the EU or a member country of the EEA is 21%. An increased rate of 75% on distributions to a beneficiary established in a Non-Cooperative State is applicable. However, a reduction or exemption may be applicable on the basis of EU Parent-Subsidiary Directive ("régime mère-fille") or a double tax treaty

Subsidiary (MiFID Investment Firm)

Tax	■ The French transfer pricing legislation is based on the OECD arm's length principles ■ Income from employment is subject to income tax at progressive rates up to 45%. However, certain qualifying foreign employees that move to France may be able to benefit from a favourable regime which would allow them under certain conditions to be exempt from French income tax for the portion of their income directly related to their assignment to France. It should reduce the effective income tax rate ■ This regime currently applies for five calendar years following the year of arrival to France of the foreign worker. Following the Brexit vote, the Prime Minister has proposed that this should be extended to eight years ■ See also a comparative table of the main taxes and reliefs relevant to setting up a financial services business.
Employment law	■ French employment law is generally very complicated, protective of employees and rather costly. It is also constantly evolving ■ Most important rules (ie those rules which are most costly or most sensitive from an employer's point of view): working time, dismissals/redundancies, remuneration, holidays, discrimination and harassment, workplace discipline, and termination of employment ■ Remuneration for Identified staff: French rules are in line with EU Regulations and provide for a bonus cap of 100% of the fixed remuneration (which can be increased up to 200% by decision of the general meeting of the shareholders of the company), a minimum of 40% of the variable remuneration must be deferred for at least three years, a minimum of 50% of any variable remuneration must be granted in instruments (applied equally to the non-deferred and the deferred parts) ■ Social security is also a very complex and highly regulated area of law and dealt with directly by the payroll company. Mandatory social security contributions (withheld by the employer on the employee's gross salary) cover various areas (sickness, maternity, family, work accident, state owned pension, unemployment, mandatory complementary retirement scheme, etc.). Their aggregate amount is around 50% for the employer and 25% for the employee ■ The employer must also provide a complementary private health insurance scheme ("mutuelle'), a life and disability providence scheme ("prévoyance'). However, there is no mandatory company pension scheme as pensions are state owned and funded by contributions included in the 50%/25% mentioned above ■ Various formalities must be complied with, either on a one-off basis or on a regular basis, both towards employees, the employment administration and the various administrations in charge of the recovery of social security contributions.
Data protection	■ Legislation is based on EU directives with some French specifics compared to the UK in terms of practical application, eg requirement to file declarations or obtain authorisations from the French data protection authority prior to implementing the processing of personal data. French legislation will be subject to the terms of the EU General Data Protection Regulation which will be applicable from May 2018
Outsourcing	■ Many French financial institutions have outsourcing arrangements ■ Appropriate oversight will be required per MiFID requirements (including regular audits/reviews provided on the outsourced activities, plus detailed outsourcing agreements) ■ The firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing.
Corporate	■ The firm will need to be registered with the Registre du Commerce et des Sociétés.

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