



How to set up in France

CRD/CRR Bank

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 a bank 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?

- Dedicated “welcome” procedure in English for UK financial institutions
- No material super-equivalent requirements
- Advantages tax regime for foreign employees moving to France

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
- Day to day correspondence with regulators typically in French



Bank

Licence/Passport Process

- Information on the application process is available [here](#)
- As a result of the creation of the EU Banking Union, the ECB (in conjunction with national competent authorities (NCAs)) grants and withdraws any bank authorisation. Therefore, the process should be more streamlined than in the past
- The ECB also takes “fit and proper” decisions – it assesses the suitability of new members of the significant banks’ management bodies
- The process is iterative and involves submission of a template application form plus numerous supporting documents to the Autorité de Contrôle Prudentiel et de Résolution (“ACPR”) for review
- ACPR has launched a dedicated [welcome procedure](#) to help UK banks (and other UK financial or insurance entities) to deal with the French authorisation process with the involvement of English-speaking “coaches”
- The ACPR serves as the entry point for applications and notifications related to all authorisation procedures. A bank should use ACPR’s forms for application or notification where available
- Feedback from the ECB is that it has a backlog of authorisation applications, so delays can be expected (we understand that the ECB is not outsourcing as much to the NCAs as it could)
- In light of Brexit, the ECB is considering its approach and with what guidance it will provide firms
- It usually takes six months from the applicant providing a complete application for a decision to be taken regarding a licence application. A decision should be taken within twelve months of the date of the application if additional information is necessary, but the backlog means that start to finish is more likely to be 12-18 months
- The decisions are made following the ECB and ACPR applying the Common Procedures – which include information as to expectations as to substance and people, including:
 - relevant corporate structure for expected business activities program of operations
 - governance (fit and proper members of management bodies, suitable shareholders)
 - capital, liquidity and solvency
 - internal organisation (risk management, compliance, audit)

Conduct of business Prudential rules

- CRR/CRD IV requirements will apply
- The minimum capital resources requirement for a credit institution is the equivalent of €5,000,000
- There is also an ongoing risk-weighted capital requirement which refers to the firm’s credit, market and operational risks, as applicable

Corporate governance

- Systems and controls requirements are based on CRD IV requirements
- No set requirement on number of directors – but the ACPR will require at least two managers (*dirigeants effectifs*) in charge of the effective determination of the general orientation of the business of the credit institution
- Managers must be able to devote sufficient time to the role in order to ensure sound and prudent management
- The ACPR needs to be satisfied that the applicant firm has staff of adequate quality, skills and experience at all levels and it will consider whether the applicant firm can demonstrate that its staff has appropriate experience
- The ACPR will also consider the extent to which the members of the governing body have experience in the financial services industry
- These individuals and the members of the governing body must not have been convicted in criminal proceedings during the past 10 years
- There is no requirement relating to nationality
- The number of staff required will very much depend upon the services offered by the bank

Regulatory environment

- The ACPR is relatively open to discussion on key issues in the licence application
- Licensing restrictions into other jurisdictions for marketing will need to be considered
- Although delegation is generally possible, this is likely to require that any representative of the UK entity would need to be dual hatted (secondment arrangement probably suffice) to do the marketing into jurisdictions where a licence is required.
- Dual hatting will need to be considered from a corporate perspective

Bank

Tax

- The French standard corporate income tax rate on income is 33.1/3%. Additional contributions are applicable, such as contribution on dividend payments of 3% and the social contribution of 3.3%. In the wake of Brexit vote, the French Prime Minister announced that this rate will be cut to 28%
- No withholding tax on interest
- Regarding royalty payments, without bilateral tax treaty, a withholding tax of 33.1/3% applies to gross amounts paid by French entities to companies without permanent establishment in France (75% if the beneficiary is in 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 beneficiary's state
- 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 (as listed by the French government) 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
- The French transfer pricing legislation is based on the OECD arm's length principles
- Income from employment is subject to personal income tax at progressive rates up to 45%. However, certain qualifying foreign employees ("expatriates employees regime") 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 personal income tax for the portion of their income deriving directly to their assignment to France. It should reduce the effective income tax rate
- This regime currently applies for 5 calendar years following the year of arrival to France of the foreign worker. Following the Brexit vote, the French Prime Minister has proposed to extend it to 8 years.

Employment law

- CRD IV remuneration requirements apply
- 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 3 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 provide a complementary private health insurance scheme (*mutuelle*), a life and disability providence scheme (*prévoyance*). However, there is no mandatory 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 EU General Data Protection Regulation which will be applicable from May 2018

Outsourcing

- Outsourcing is possible to the extent the French entity does not remain an empty shell
- Many French financial institutions have outsourcing arrangements
- Appropriate oversight will be required per CRDIV 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](#)
- A number of French groups have several banking entities currently
- Corporate considerations depending on actual structure
- Not possible to convert branch into new legal entity
- New entity to be established

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