

France

Jean Alisse
Dewey & LeBoeuf

www.practicallaw.com/9-501-3248

MARKET TRENDS AND REGULATORY FRAMEWORK

1. Please give a brief overview of the insurance and reinsurance markets in your jurisdiction, identifying market trends.

Insurance market

- **Overview.** France has a closely regulated insurance market, with a significant proportion of the legal framework deriving from EU legislation. Consequently, the European dimension of the French insurance market is key to understanding its structure and functioning.

All insurance entities established in France are currently subject to prudential supervision by the supervisory authority ACAM (*Autorité de Contrôle des Assurances et des Mutuelles*). Ordinance 2010-76 of 21 January 2010 has merged ACAM and the insurance regulator (*Comité des Entreprises d'Assurance*) (CEA) with the authorities in charge of supervising banking institutions to form the *Autorité de Contrôle Prudenciel* (ACP). The aim of this reorganisation is to enhance control over the different sectors under a single authority, as well as to enable the supervision of financial conglomerates. However, the powers of ACAM and of the CEA have not yet been transferred to the new ACP. Therefore, insurance and reinsurance undertakings remain subject to ACAM's prudential supervision.

There are 1,420 insurance undertakings, including mutuals and provident organisations (*ACAM, 2008*).

Mergers have formed a key trend in the mutual insurance market, which entails a progressive reduction of the number of mutual-type insurance entities.

- **Market access.** The French market is mature and highly competitive. The legal and regulatory framework is considered to limit the scope for innovation, particularly for consumer products. Establishing a subsidiary or buying an existing insurer are typical routes for entering the French market. Insurers established in the European Economic Area (EEA) can also conduct business in France by establishing a branch or on a cross-border basis.
- **International dimension.** About 20% of premiums were written by subsidiaries of foreign companies, 15% of which originated from outside the EU (*ACAM, 2008*).

Reinsurance market

- **Overview.** Since the implementation of Directive 2005/80/EC on reinsurance (Reinsurance Directive), a reinsurer established in France must now obtain a licence from the

CEA and its operations are supervised by ACAM. Insurers may cede their risks to reinsurers established outside the European Economic Area (EEA).

- **Market.** With 4.5% of premiums ceded globally, the French reinsurance market constitutes the fifth largest market internationally (*Association des Professionnels de la Réassurance en France (APREF)* (see box, *Main insurance/reinsurance trade organisations*), 2008).
- **Market access and international dimension.** Except for specific collateral requirements, there are no significant requirements for non-EEA reinsurers who reinsure French cedant companies. The 2008 APREF figures confirm the strong international dimension of French reinsurance business, indicating that French insurers cede their risks primarily to reinsurers established in Germany, the US, Bermuda, Switzerland, the UK, France and Ireland. Reinsurance business can be conducted in France through a subsidiary or branches, or on a cross-border basis.

2. What is the regulatory framework for insurance/reinsurance activities?

The CEA is responsible for granting licences and individual exemptions to insurance companies. The CEA also regulates changes in shareholding structure (particularly in relation to M&A) and changes in management for insurers and reinsurers.

The ACAM is a supervisory authority which ensures that insurers duly comply with laws and regulations in the interest of policyholders, insureds and beneficiaries (*Article L310-12, Insurance Code*). ACAM closely monitors the financial situation of insurers to ascertain their ability to honour their obligations, and therefore has a right to:

- Access all relevant information concerning the insurers (*Article L310-14, Insurance Code*).
- Make investigations (*Article L310-13, Insurance Code*).
- Make recommendations and impose disciplinary sanctions (*Article L310-18, Insurance Code*).

The regulatory framework is provided by the:

- Insurance Code.
- Mutual Code.
- Social Security Code.

General provisions from statutes, regulations and/or from other codes (such as the Civil Code) also apply.

CONTRACTS OF INSURANCE

3. What is a contract of insurance for the purposes of the law and regulation in your jurisdiction?

There is no legal definition of an insurance contract in the Insurance Code or in European legislation. However, it commonly refers to an agreement where one party (the insurer), agrees to provide coverage to another party (the insured), on the occurrence of a specified event that is beyond the control of either party, in exchange for receiving payment of premiums from the policyholder.

4. Are all contracts of insurance regulated in your jurisdiction?

It is prohibited to seek insurance coverage for a risk located in France with insurance companies that are not established and authorised in the EEA.

France is considered the country in which the risk is located if any of the following are in France:

- Goods and property.
- Vehicle registration.
- The policyholder's main residence.
- The head office of the legal entity to which the insurance contract relates.

Life insurance contracts are subject to French law if the policyholder has his usual residence in France at the time of signing the policy.

INSURERS AND REINSURERS

5. Are insurers and reinsurers regulated in the same way in your jurisdiction?

Insurers and reinsurers established in France must obtain a licence from the CEA and are both supervised by ACAM. However, reinsurers are subject to a less restrictive set of rules.

French insurers can be reinsured by non-EEA reinsurers. In this case, non-EEA reinsurers must provide collateral to the ceding insurers to secure their obligations. EEA reinsurers are exempt from doing so (*Decree No. 2008-1154 of 7 November 2008*).

6. Can insurers or reinsurers carry on non-insurance business? Please summarise any restrictions on their business activities.

Insurers can carry on non-insurance business provided this business remains limited in relation to the insurer's overall volume of business (*Article L322-2-2, Insurance Code*). In 1993, the Minister of Economy acknowledged that the term "limited" was ambiguous and called for a case-by-case analysis by ACAM. The intention is to avoid jeopardising the insurer's solvency because of these non-insurance activities. For example, in the banking sector, non-banking activities are allowed to the extent that they remain below 10% of the net banking product (*Article 3, Regulation 86/21*).

7. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

To qualify as insurance, contracts must be subject to an *aléa* (risk). Whether a contract contains sufficient risk to be considered as insurance has been debated, mainly in relation to life insurance contracts under which the insurer assumes no mortality risk. There is no specific regulation concerning this, but a contract which, according to the judge, does not transfer a sufficient degree of risk is not legally treated as an insurance or reinsurance contract.

OPERATING RESTRICTIONS

8. Does the entity or person have to be authorised or licensed in your jurisdiction? If so, please outline the key steps involved in this process and the requirements that must be satisfied.

Insurance/reinsurance providers

Insurance companies must obtain a licence from the CEA before commencing business (*Article L321-1, Insurance Code*). The licence is limited to specific areas of insurance business. The Insurance Code effectively distinguishes between life and non-life insurance activities and generally prohibits an insurer from being licensed for both (*Article L321-1 §3*).

For foreign insurance companies intending to carry on insurance business in France, a distinction between EEA and non-EEA insurers applies. EEA insurers are deemed to have satisfied the licensing requirement provided they have been validly licensed in their home country. However, non-EEA insurers must obtain the licence imposed on French-based entities from the CEA together with certain specific obligations.

Key steps of the licensing process. The CEA bases its decision on a number of criteria including the (*Article L321-10, Insurance Code*):

- Technical and financial means.
- Integrity and experience of the managers.
- Shareholding and the quality of shareholders.
- Details of bye-laws (for mutual entities).

The CEA may grant the licence, conditionally or unconditionally, or refuse it. The grounds for refusal are notified to the applicant who can present its written comments. The applicant can challenge the refusal before the *Conseil d'Etat* (French supreme administrative court).

Once the licence has been granted, ACAM supervises the insurer's activities.

Licence withdrawal. The licence can be withdrawn by the CEA for (*Article L325-1, Insurance Code*):

- Persistent lack of activity.
- Imbalance between financial means and the insurance activities.
- Major changes in the shareholding or in the shareholders' quality.
- Violation of the conditions imposed by the licence.

In addition, practices that can jeopardise the insurer's ability to perform its obligations or violations under applicable laws and

regulations can lead to licence withdrawal by ACAM (*Article L310-18, Insurance Code*).

Reinsurers. Reinsurers established in France must also obtain a licence from the CEA, which bases its decision on criteria similar to insurers. Once licensed, reinsurers established in France are supervised by ACAM.

Marketing insurance/reinsurance services

The law applicable to insurance mediation results from transposing Directive 2002/92/EC on insurance mediation (Insurance Mediation Directive). Insurance and reinsurance intermediaries must register with the Organisation for the Register of Insurance Intermediaries (*Organisme pour le Registre des Intermédiaires en Assurance*) (ORIAS).

Insurance mediation is an activity which comprises introducing, proposing or facilitating the conclusion of insurance contracts (*Article L511-1, Insurance Code*). In addition, the following constitute insurance mediation activities (*Article R511-1, Insurance Code*):

- Proposing or receiving the subscription to an insurance contract.
- Exposing orally or in writing the conditions of cover contained in an insurance contract to a potential policyholder.

Insurance mediation is widely defined to cover traditional brokers and agents as well as more recent intermediaries such as banks, stores and postal services. Any person conducting insurance mediation activity in exchange for remuneration therefore is an insurance intermediary (*Article L511-1, Insurance Code*). Remuneration means any agreed cash payment or any other form of “economic advantage” (*avantage économique*) linked to the insurance mediation activity (*Article R511-3, Insurance Code*).

Other providers of insurance/reinsurance-related activities

Any other provider of services which does not qualify as an insurance intermediary is not subject to licensing requirements. However, when a regulated entity outsources tasks to these providers (for example, claims management), the providers may be subject to ACAM's scrutiny for the outsourced services.

9. Please summarise the main exemptions or exclusions from authorisation or licensing that are available in your jurisdiction, if any.

Insurance/reinsurance providers

There are no exceptions to the rule that insurers and reinsurers established in France are required to obtain a licence and are subject to ACAM supervision.

Insurers established in other EEA member states and conducting insurance or reinsurance business in France by cross-border means or through a branch do not need to obtain a licence in France. Under the European “passporting” system, any insurer or reinsurer licensed in one EEA member state (home member state) can conduct insurance or reinsurance business in any other EEA member state (host member state) through a branch or by cross-border means. The insurer or reinsurer, subject to fulfilling certain requirements, is supervised by their home supervisor for their entire European business without requiring a separate licence for each host member state.

However, insurance contracts can be subject to some of the host member state's legal and regulatory provisions, typically including contract law for retail insurance contracts.

Marketing insurance/reinsurance services

The same rules that apply to insurance and reinsurance providers also apply to insurance and reinsurance intermediaries (see above, *Insurance/reinsurance providers*).

Other providers of insurance/reinsurance-related activities

Not applicable.

10. Are there any restrictions on the ownership or control of insurance-related entities in your jurisdiction (for example, age, nationality, qualification or other restrictions)?

Insurance/reinsurance providers

The owners and persons who control insurance companies are reviewed by the French regulator (CEA) to determine their fitness to control an insurer or a reinsurer. The focus of the review is on the experience, competency and integrity of the owner or controlling person (and its management if a corporation). Regulators also review the finances of an owner or controlling person.

Convicted criminals are prohibited from being involved in the insurance business. Individuals who have been convicted of certain criminal offences may not engage in the business of insurance.

Marketing insurance/reinsurance services

Managers and owners of insurance and reinsurance intermediaries must satisfy requirements of integrity and professional qualification (*Articles L512-4 and L512-5, Insurance Code*).

Integrity. Owners and managers of intermediaries are subject to the same restrictions as those applying to owners and managers of insurance or reinsurance companies. In particular, the commission of a number of criminal offences (*Article L322-2, Insurance Code*) prohibits the management or ownership of an insurance intermediary (for example, money laundering and drug trafficking).

Professional qualifications. Owners and managers of insurance intermediaries are subject to three different degrees (level I to III) of qualification according to their nature (*Article R512-8, Insurance Code*). Brokers and agents are classed as Level I, which requires them to have achieved a certain degree of experience or to have been trained for at least 150 hours. In addition, all intermediaries must take out insurance covering their professional liability (*Article L512-6, Insurance Code*) and must obtain a financial guarantee (*Article L512-7, Insurance Code*).

Other providers of insurance/reinsurance-related activities

There are no specific requirements provided they do not qualify as intermediaries.

11. Do owners or controllers have to be pre-approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?

Insurance/reinsurance providers

The Insurance Code requires insurance and reinsurance companies to notify the CEA of any changes in the shareholding structure (*Articles L322-4 and R322-11-1, Insurance Code*), particularly, any equity acquisition, significant decrease or increase of

ownership in the company. Under certain circumstances, the CEA can veto the change in the shareholding structure.

Marketing insurance/reinsurance services

Pre-approval or notification is not required.

Other providers of insurance/reinsurance-related activities

Pre-approval or notification is not required.

12. Please summarise the key ongoing requirements that the authorised or licensed entity must comply with.

Insurance/reinsurance providers

Insurance companies must submit an annual written report on the solvency of the entity and its ability to perform its obligations in the future (*Article L322-2-4, Insurance Code*). In addition, insurers must communicate various reports each year to ACAM, including a *dossier annuel*, setting out the details of the entity's activities and accounts (*Articles A344-3 and A344-6, Insurance Code*). In addition, any management change in the entity must be notified to ACAM (*Article R321-17-1, Insurance Code*), which also applies to reinsurers (*Article R321-28, Insurance Code*).

Reinsurance companies must also submit various reports similar to the reporting obligations of insurance companies.

Marketing insurance/reinsurance services

There are no ongoing requirements.

Other providers of insurance/reinsurance-related activities

There are no ongoing requirements.

13. Please outline the possible consequences of an entity failing to comply with applicable legal and regulatory requirements (including the disciplinary powers any relevant regulators have, as well possible customer remedies).

Insurance/reinsurance providers

ACAM can impose a range of sanctions for non-compliance with legal and regulatory requirements including (*Articles L310-26 to L310-28, Insurance Code*):

- A warning.
- A reprimand.
- A prohibition on carrying out certain transactions and other restrictions on the pursuit of the activity.
- Temporary suspension of one or more of the firm's corporate officers.
- Total or partial withdrawal of licence.
- *Ex officio* transfer of all or part of the portfolio of contracts.
- Fines up to a maximum of 3% of the gross turnover of the previous year, or 5% in case of repeated breach of statutory obligations.

The sanctions depend on and must be proportional to the gravity of the breaches, with fines imposed only when breaches are considered by ACAM as serious and/or when the insurer has been

acting in bad faith. Similarly, the decision to publicise sanctions depends on the gravity of the breaches.

Marketing insurance/reinsurance services

Intermediaries can be exposed to various criminal sanctions ranging from fines to imprisonment for their managers, if they are found in breach of legal requirements (for example, if the intermediary is not registered) (*Articles L514-1 to L514-4, Insurance Code*).

Other providers of insurance/reinsurance-related activities

There are no consequences as they are unsupervised.

14. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

In theory, any person may take out insurance. Capacity is subject to the general contract law principles under which any person who is not legally declared as incapable can conclude a contract (*Article 1123, Civil Code*). Therefore, any person deemed legally capable can contract with an insurer. However, minors and adults under legal protection are traditionally excluded from this rule. Therefore these persons cannot conclude a life insurance contract alone and require representation.

In addition, the Insurance Code provides for specific prohibitions in relation to capacity matters, minors under the age of 12, adults under wardship or persons in psychiatric hospitals cannot take out life insurance (*Article L132-3, Insurance Code*). Similarly, a death benefit contract cannot be taken out on the life of a minor under the age of 12 without parental, tutorial or guardian authority (*Article L132-4, Insurance Code*).

REINSURANCE

15. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

There is no restriction on the reinsurer's right to monitor the claims, settlements and underwriting of the cedant company. The parties define the practicalities of exercising these rights in the contractual framework. Typically, reinsurance and retrocession contracts include a right of inspection and the cedant company's obligation to provide specific information to the reinsurer for every important claim. The comprehensiveness of these rights depends on whether the:

- Reinsurance is:
 - proportional or non-proportional;
 - facultative.
- Reinsurer is the leading reinsurer.

16. What disclosure/notification obligations does the cedant company have to the reinsurance company?

A cedant must provide the reinsurer with enough technical information on the ceded contracts to allow the reinsurer to assess the risk it intends to underwrite. The reinsurer is also entitled to receive appropriate responses to questions on the underwriting or claims handling by the cedant company.

The reinsurer is entitled to receive specific information from the cedant company on important claims (see *Question 15*).

INSURANCE POLICIES

17. Please outline the main general form and content requirements for insurance policies in your jurisdiction, including a description of the most commonly found clauses.

In addition to the general principle of good faith imposed on contractual parties regulated by French law (*Article 1134, Civil Code*), the Insurance Code provides specific requirements for insurance policies concerning pre-contractual and contractual documents. These requirements constitute a complex set of rules which generally concern retail insurance contracts. The courts enforce these provisions in a particularly stringent manner for life insurance, with severe consequences for insurance undertakings in non-compliance.

18. Please identify any terms found in insurance policies in your jurisdiction that are implied by law or regulation (identifying the applicable laws or regulations and any mandatory provisions).

Apart from good faith, additional terms may be implied by the judge as he sees fit, including those concerning fairness, usages and statutory terms (*Article 1135, Civil Code*).

19. What customer protections are generally included in insurance policies to supplement relief available under general law?

Contract terms define the rights and duties of the parties who are bound to them. In consumer contracts, sellers and suppliers have a considerable advantage by defining terms in advance that are not individually negotiated. However, standard-term contracts facilitate commercial transactions and if abuses can be prevented, they can also be to the consumer's advantage.

Directive 93/13/EEC on unfair terms on consumer contract (Unfair Contract Terms Directive) (transposed into French law by Law No. 95-96 and codified in the Consumer Code) has reinforced the notion of good faith to prevent significant imbalance between consumer rights and obligations, and sellers and suppliers.

Terms found to be unfair under the Unfair Contract Terms Directive are not binding for consumers. The Unfair Contract Terms Directive also requires contract terms to be drafted in plain and intelligible language, and states that ambiguities will be interpreted in favour of consumers (*Article, L133-2, Consumer Code*).

Member states must ensure there is effective national legislation to enforce these rights and that these terms are not used by businesses.

The general requirement of fairness has been supplemented by two lists of example terms (see *Articles R132-1 and R132-2, Consumer Code*). The first list contains 12 unfair terms that are automatically considered unfair, while the second list provides ten terms that are presumed unfair.

In addition, insurance law has developed various additional protections to benefit the insured. For example, insurance policies covering certain risks must specifically mention certain legal pro-

visions concerning limitation periods for bringing a claim against the insurer (*Article R112-1, Insurance Code*). Similarly, exclusion clauses are only enforceable if written very clearly in distinct fonts (*Article L112-4, Insurance Code*).

20. Please identify examples of standard policies or terms produced by trade associations or relevant authorities, if any, and explain how these can be obtained.

Apart from administrative authorities which produce binding standard terms, trade associations such as French Federation of Insurance Companies (*Fédération Française des Sociétés d'Assurances*) (FFSA) (see *box, Main insurance/reinsurance trade associations*) may make recommendations about terms which should be used in insurance contracts. For example, the FFSA published a list of words that should be replaced by simpler terms (for example, using "contract" instead of "policy"). However, on review of Regulation (EC) No. 358/2003 on the application of Article 101 of the Treaty of the Functioning of the European Union (TFEU) (formerly Article 81 of the EC Treaty) to certain agreements, decisions and concerted practices in the insurance sector (Insurance Regulation), which granted an exemption to applying competition rules to certain insurance agreements, the European Commission has recommended prohibiting standard terms and conditions.

21. What must be established to trigger a claim under an insurance policy?

The insured must prove that the claim falls within the scope of the cover. However, the burden of proving that the damage or alleged damage sustained by the insured is excluded lies with the insurer.

An insured can make a claim to the insurer if it incurs a loss which is within the policy limits and is not covered by a policy exclusion. Insurance policies typically have detailed provisions on when a claim must be made and notice provided to the insurer.

22. Please provide brief circumstances in which third parties can claim under an insurance policy?

The victim (and/or their insurer) can directly bring a liability claim against the liable party's insurer (*Article L 124-3, Insurance Code*). Beneficiaries under a life insurance policy are third parties to the contract, and can make claims against the insurer. Further, the French Supreme Court (*Cour de cassation*) has recently given the opportunity to victims of an insured to bring a claim in tort where the damage suffered was caused by the insurer's behaviour (*Cass. Civ 2e, 10 mai 2007, No. 06-13269, "Renaissance des Quais"*). In this case, the judges held that a third party could also sue an insurer in tort under Article 1382 of the Civil Code (the legal basis for generic tort actions) in addition to the claim available to third parties under Article L124-3 of the Insurance Code.

23. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

There is a two-year limitation period on insurance contract claims (*Article L114-1, Insurance Code*). This insurance-specific limita-

tion period cannot be contractually set aside by the parties (*Article L114-3, Insurance Code*). Further, the code's legal provisions must expressly appear in the contract to draw the insured's attention to this (*Article R112-1*). However, although this rule is mandatory, the judge cannot invoke it *ex officio* (*Article 2247, Civil Code*).

24. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

No, the policyholder or a third party cannot enforce the insurance contract against the reinsurer. According to article L111-3 of the Insurance code, the insurer remains solely responsible to its insured. Even in case of insolvency of the insurer, the policyholder will not be entitled to act directly against the reinsurer.

25. What remedies are available for breach of an insurance policy?

Breach of an insurance policy is treated as a breach of a contract giving rise to classic contract law remedies. For example, an insurer who does not obtain the payment of premiums can in theory ask for termination of the contract or specific performance under Article 1184 of the Civil Code. However, given the length and cost of judicial proceedings, the insurer may use a judicial procedure or an extrajudicial procedure provided for in the Insurance Code (Article L113-3 which does not apply to life insurance) (*see Question 28*).

Similarly, the insured can benefit from the same contract law remedies. In particular, he is entitled to damages under Article 1153 of the Civil Code for late performance by the insurer.

INSOLVENCY

26. Please outline the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services.

Safeguard proceedings

Insurance and reinsurance companies are subject to constant scrutiny by ACAM which focuses on respecting the insured's interests. Therefore, ACAM can take all appropriate measures to safeguard the viability of the entity whenever there is a disruption between the solvency and the activity of the insurer (such as appointing a provisional director or requiring an increase of the solvency margin).

Liquidation proceedings

If the entity's financial difficulties become critical and jeopardise the insured's interests, ACAM can withdraw its licence, which triggers liquidation proceedings (*Article L326-2, Insurance Code*). In this case, the general provisions of the Commercial Code dealing with insolvent companies apply, provided they do not conflict with the Insurance Code. In particular, ACAM must appoint a liquidator responsible for checking the insurer's receivables as well as the entity's statement of assets and liabilities. In addition, all contracts that the entity underwrote lapse on the 40th day at 12 noon from publication in the *Official Journal* of the decision concerning licence withdrawal (*Article L326-12, Insurance Code*).

MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

French Federation of Insurance Companies (*Fédération Française des Sociétés d'Assurance*) (FFSA)

Main activities. The FFSA is the leading trade organisation in the insurance sector. It represents 90% of the insurance market. Its role is to represent the interests of this business sector and to facilitate co-operation and consultation with business partners. The FFSA also has an important advisory role through recommendations of other publications.

W www.ffsa.fr

Insurance Mutual Undertakings Group (*Groupement des Entreprises Mutuelles d'Assurances*) (GEMA)

Main activities. GEMA is the trade organisation of insurance mutuals and their subsidiaries. Apart from its representative role of 50 entities, it also carries out studies on the evolution of insurance.

W www.gema.fr/index.php

National Federation of French Mutuals (*Fédération Nationale de la Mutualité Française*) (FNMF)

Main activities. The FNMF represents most French health mutuals. Apart from a representative role of mutuals, the FNMF also supervises more than 2,000 health facilities.

W www.mutualite.fr

Association of French Reinsurance Professionals (*Association des Professionnels de la Réassurance en France*) (APREF)

Main activities. This is the main trade organisation of reinsurers. It focuses on the study of reinsurance issues and serves as a discussion platform.

W www.apref.org

Federation of Insurance Brokers (*Chambre Syndicale des Courtiers d'Assurances*) (CSCA)

Main activities. This institution represents insurance brokers.

W www.cscs.fr

TAX

27. Briefly describe the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services in your jurisdiction.

Corporate tax

The profits relating to the insurance/reinsurance activity deemed to be carried out in France are subject to corporate tax under the

common French tax provisions. The tax rate is currently 33.33% (increased to 34.43% for the share of taxable profits in excess of EUR 2.289 million (about US\$3.44 million)).

Insurance tax

Any insurance or reinsurance contract covering a risk located in France or whose beneficiary is a French tax resident is subject to a specific annual tax (insurance tax). The basis of insurance tax comprises all premiums and related contributions paid to the insurer or reinsurer. The tax rates vary according to the nature of the risk covered and range between 7% and 30%. Tax rules exempt certain types of insurance and reinsurance contracts from insurance tax (such as contracts covering risk relating to farmland or farm products or risk relating to fluvial or airways transportation). Insurance tax applies in place of the transfer tax (*droit d'enregistrement*).

VAT

A VAT exemption applies to insurance and reinsurance transactions and all related services provided by the insurance underwriter or intermediary.

DISPUTE RESOLUTION

28. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes in your jurisdiction?

The resolution of insurance-related disputes can be achieved through two different processes:

- **Extrajudicial procedures.** Disputes relating to insurance matters are often resolved through three alternative dispute resolution mechanisms:
 - mediation (*mediation*);
 - settlement (*transaction*);
 - arbitration (*arbitrage*).

Mediation has been institutionalised with the adoption of a Mediation Charter by each of the main insurance trade organisations, designed to establish a dispute resolution mechanism for insurers and the insured. Under the Mediation Charter of the FFSA, the insurer and the insured can resort to the in-house mediator of the insurer or refer the matter to the FFSA-appointed mediator.

- **Judicial procedures.** If the alternative mechanisms fail, the dispute can be brought before national courts. The traditional procedural rules for venue then apply. Courts of first instance (*tribunaux d'instance* and *de grande instance*) (civil or commercial depending on the claimant's status) are competent to adjudicate the dispute. In certain cases, administrative courts may also be competent.

29. Please give a brief overview of the main dispute resolution methods used to settle reinsurance claims.

Arbitration has traditionally been the most frequently used mechanism to resolve disputes between insurers and reinsurers or between reinsurers. In 1995, several companies decided to create an insurance and reinsurance arbitration centre (*Centre Français*

d'Arbitrage de Réassurance et d'Assurance) (CEFAREA) to promote arbitration, particularly by proposing:

- Rules on the conduct and procedure of the arbitration.
- A comprehensive list of arbitrators.
- Model arbitration clauses.

In 2008, CEFAREA joined the Paris Centre for Mediation and Arbitration (*Centre de Médiation et d'Arbitrage de Paris*) (CMAP) to benefit from CMAP's administrative structure, while remaining fully dedicated to the reinsurance disputes.

REFORM

30. Please summarise any proposals for reform of the law, regulation or rules in your jurisdiction relating to the provision of insurance or reinsurance services.

Several proposals for legal reform are being discussed:

- **Solvency II.** Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) of 25 November 2009 sets out new standards for solvency margins of insurance companies and reinforces the regulation of the insurance sector. It is to be completed by further implementing measures. Solvency II will have a significant impact on the legislative and regulatory framework applicable to insurers and reinsurers in France.
- **Review of the Insurance Mediation Directive.** Directive 2002/92/EC on insurance mediation (Insurance Mediation Directive) introduced a set of requirements for the regulation of EU insurance intermediaries to permit them to operate in other member states on an establishment or freedom of services basis. The Insurance Mediation Directive has been implemented by all 27 member states and is currently under review by the European Commission which intends to investigate lack of transparency and conflicts of interest issues in the remuneration of intermediaries.
- **Review of credit insurance.** In November 2009, Christine Lagarde, Minister of the Economy and Finances, suggested giving borrowers the right to choose their credit insurer (on certain conditions) instead of having to accept the insurer of their lending bank.
- **Regulation and supervision of insurance and banking sectors.** Prudential supervision and regulation of the insurance and banking sectors have been modified by Ordinance 2010-76 of 21 January 2010 (*see Question 1*).

CONTRIBUTOR DETAILS

Jean Alisse
Dewey & LeBoeuf
 T +33 1 53 93 77 00
 F +33 1 42 56 08 06
 E jalisse@deweyleboeuf.com
 W www.deweyleboeuf.com



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Contact:

Jean Alisse

Paris

phone: +33 1 53 93 67 51

fax: +33 1 42 56 08 06

email: jalisse@dl.com