

## MEMORANDUM

**To: Prof. Robert Eccles / UN Global Compact**

**From: - Me Florence RICHARD, Attorney at Law/Founding Partner, CSR Expert on Paris Bar at the Council of Bars and Law Societies of Europe (CCBE)  
- Me Marie Vogt, Attorney at Law**

**In partnership with : Institut RSE Management  
- Mr Patrick d'HUMIÈRES, CEO  
- Miss Victoire d'HUMIÈRES**



**Date: 21 May 2015**

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### **Legal Perspective on an Annual Board “Statement of Significant Audiences and Materiality” – French Law Perspective**

*The information contained in this summary is based solely on the laws and regulations of the Republic of France effective as of the date hereof and does not consider the laws or regulations of any other jurisdiction.*

#### Setting the legal landscape

**1. Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.**

Corporate governance in France is principally regulated by a legislative source that is the Commercial Code (*Code de commerce*).

Additionally, two voluntary corporate governance codes apply in France:

- The corporate governance code for listed companies, referred to as the AFEP-MEDEF Code. It provides a set of recommendations for listed companies relating to board composition, the role of independent directors, board committees, and the remuneration of directors and of general managers.



- The Middenext corporate governance code for small and medium companies, referred to as the Middenext Code. It applies to listed companies with a market capitalisation of less than EUR1 billion. Its structure and scope are similar to that of the AFEP-MEDEF Code.

Both codes are based on the comply or explain principle. It is an approach that positively recognizes that an alternative to a provision is justified if it achieves good governance and if companies are transparent. Failing to comply with a code provision is not a breach as long as the motives are explained.

Several company types exist under French corporate law: joint stock company (*société anonyme* or SA), simplified joint stock company (*société par actions simplifiée* or SAS), limited partnership with shares (*société en commandite par actions* or SCA), limited liability company (*société à responsabilité limitée* or SARL), limited partnership (*société en commandite simple* or SCS) and general partnership (*société en nom collectif* or SNC). Only SA and SAS are structured around a board of directors and can potentially be listed companies.

The board determines the operational strategy for the company and ensures its implementation.

According to article 1832 of the Civil code (*Code civil*), a company is a “partnership” whose objectives are to share “the benefit or profiting from the saving which may result therefrom”. Moreover the article 1833 states that the company must “be created for the common interest of the partners”, those being the shareholders. The primary duty of the company is to those holding the share capital.

This has been the subject of continuous doctrinal discussions, taking into consideration the term corporate interest (*intérêt social*). Indeed case law has forged the concept of corporate interest, standing as a guide and an imperative, which determine the conduct of actions. The term is vague and broadly compels legal representatives to consider the interest of the company as an economic, human and financial entity. With the recognition of the corporate interest emerges a duty of the company towards the stakeholders such as company’s employees, third parties, and others.

However, in the recent 2015 draft law on growth and economy<sup>1</sup>, the proposed amendment of article 1833 to formally consider the corporate interest in its “social, economic and environmental aspects” has been rejected by the legislative bodies.

For more details, please refer to question 7 below.

### Regulatory Framework

## **2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?**

The French legal system, based upon codified law and not primarily upon judicial precedents, belongs to a civil law tradition. **3. Are corporate/securities laws regulated federally/nationally, provincially or both?**

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<sup>1</sup> Projet de loi dit « Macron » sur la croissance et l’activité, 2015 – (article 83)



Corporate and securities Laws are regulated by EU legislation and national laws.

Some national law derives from EU directives which are then transposed into domestic law and regulation.

For instance, the Directive 2014/95/EU regarding disclosure of non-financial and diversity information by certain large undertakings and groups shall be transposed into French law.

Corporate governance rules are included in the Commercial code. The rules related to securities and capital market regulations are laid down in the Monetary Financial Code (*Code monétaire et financier*).

#### **4. Who are the government corporate/securities regulators and what are their respective powers (in summary only)?**

The Ministry of Economics and Finance establishes general rules to govern credit institutions and investment firm operations, including management standards, prudential ratios and the setting of capital requirements.

The Financial Markets Authority (*Autorité des Marchés Financiers* or AMF), an independent administrative authority, regulates participants and products in France's financial markets. The AMF sets rules and authorizes participants, approves disclosures relating to corporate finance transactions and authorizes collective investment products. It also monitors the participants and savings products under its supervision. Additionally it has enforcement powers.

The Prudential Control Authority (*Autorité de Contrôle Prudentiel et de Résolution* or ACPR) is an independent administrative authority attached to the Banque de France, responsible for authorizing and supervising banks and insurers with a view to upholding customers' interests and maintaining the stability of the financial system.

The Banking Commission (*Commission Bancaire*) is responsible for supervising credit institutions and investment firms.

The Committee for Credit Institutions and Investment Enterprises (*Comité des Etablissements de Crédit et des Entreprises d'Investissement* or CECEI) has the authority to grant or revoke banking and investment services licenses.

#### **5. Does the jurisdiction have a stock exchange(s)?**

France currently has one Stock Exchange in Paris, Euronext Paris, which is comprised of the Main Market, and Alternext, the market segment for small and mid-class companies.



## Incorporation and listing

### **6. Do the concepts of “limited liability” and “separate legal personality” exist ?**

The concepts of “limited liability” and “separate legal personality” exist under French Law.

For instance, both SA and SAS are limited liability corporations, meaning that the shareholders’ liability is limited to their own contribution.

Once the company is registered it becomes a legal person with a separate legal personality, distinct from the personality of its shareholders. Hence, the company has rights, is able to engage in litigation and has its own assets.

Wrongdoings of the company’s governance or management bodies in the performance of their duties result in the civil liability of the company (*Cass. com. 3-6-2008 n° 07-12.017 et 07-15.228*). In such cases, wrongdoings of the legal representatives of the company are considered wrongdoings of the company itself and could be prosecuted under article 1382 of the Civil code. According to article 1384 of the Civil code, the company is liable for the wrongdoings of its agents in the conduct of their duties (*Cass. ass. plén. 15-11-1985*).

Companies are criminally liable under the cumulative conditions that such criminal offenses are committed for their benefit by its governance or management bodies or agents<sup>2</sup>.

### **7. Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders?**

No such recognition is or has been required by French Law.

However, listing of a company on Euronext or Alternext requires a prospectus subject to AMF approval. Any information which has a potentially significant financial impact must be included in this prospectus pursuant to European regulation n° 809/2004. If such is the case for extra-financial risks, it must be included in the risk factors section of the document. AMF advises companies who report on social and environmental issues to present precise and assessable information.

Moreover, French companies have the possibility to commit to the French Corporate Governance Code, which contains recommendations and suggestions for good and responsible corporate governance.

Some of the largest companies have applied international and national sustainability best practices on a voluntary basis by adopting codes of conduct and by disclosing, on an annual basis, all activities carried out in relation to CSR.

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<sup>2</sup> Article 121-1 of the Penal code



**8. Do any stock exchanges have a responsible investment index, and is participation voluntary (See e.g. FTSE4Good, Dow Jones Sustainability Index, the Johannesburg Stock Exchange's Socially Responsible Investment Index.).**

Euronext Vigeo France 20 is the French Euronext sustainability index, whose component stocks are the companies rated highest for control of corporate responsibility risk and contribution to sustainable development.

**9. To who are directors' duties generally owed?**

In France, Directors are liable to the Company for any fault in the exercise of its functions.

Directors can be also liable to shareholders and third parties under certain circumstances.

For more details please see the reply to question 13 below.

**10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company's reputation?**

The Commercial code establishes the main duties of the directors.

According to article L. 225-35 of the Commercial code, the board of directors determines the broad lines of “*the company's business activities and ensures their implementation*”.

“*It deals with all matters relating to the conduct of the company's business and decides all pertinent issues through its deliberations*”. Such actions must be “*within the objectives of the company*” as defined in its articles of association.

There are no specific duties to avoid damage to the company's reputation.

However, according to the case law, in fulfilling his/her duty of loyalty, a director shall act in the corporate best interest and does not have the right to reveal information regarding the company (*Cass. Com 12.02.2002*).

These duties shall be conducted with an appropriate standard of care applicable, often described in an ethics code attached to the board's rules of procedure. Meeting the standard of care required is understood as the obligation to prevent, to the extent of director's duties, any potential serious misconduct. Failure to do so can make directors liable for personal misconduct (*Cass. Com. 6.02.1979*) and can give rise to claims for damages.

Directors can also be held liable for any serious misconduct in the exercise of their functions according to the Civil code under article 1992.



According to the article L. 225-100 of the commercial code relative to the AGM, the board of directors shall present as an annual report, “*an objective and exhaustive analysis of the company's business development, results and financial position*”. “*The report shall also include a description of the main risks and uncertainties that the company faces.*”

The Code AFEP-MEDEF, a voluntary corporate governance code, in its article 1.1 states that: “*Regardless of its membership or how it is organized, the Board of Directors is and must remain a collegial body mandated by all shareholders. It carries out the missions that have been assigned to it by the law in order to act at all times in the corporate interest.*”

The board must in all cases comply with the corporate interest of the company. Failure of the board to comply with the corporate interest of the company may trigger liability for acts of mismanagement. In its relationships with third parties the director is bound even by acts exceeding the corporate objectives.

Directors shall comply with the following requirements according to the best practices listed in the AFEP-MEDEF Code and recommended by the IFA :

- Represent all the shareholders and act, in all circumstances, in the best interest of the company - *See question 13;*
- Report to the board any conflict of interest, whether actual or potential, and abstain from voting on any related resolution;
- Devote to his/her role as a member of the board the necessary time and attention;
- Attend meetings of the board and any committees of which he/she is a member;
- Ask for the information that he/she requires in order to participate usefully at meetings with respect to the matters on the board's agenda (the board member shall be liable if he fails to ask for additional information);
- Comply with a duty of discretion and a strict duty of confidentiality;
- Attend shareholders' meetings.

Directors of listed companies shall comply with restrictions on trading in the company's securities and disclosure obligations. Members of the board of directors are presumed insiders and must abstain from using any inside information.

**11. More generally, are directors required or permitted to consider the company's impacts on non-shareholders, including impacts on the individuals and communities affected by the company's operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1))?**

The French law does not provide for such a detailed rule as the UK Companies Act. However, impacts on non-share-holders can be taken into account by listed companies, for example, in application of the non-binding Code AFEP MEDEF.

The answer is the same where the impacts occur outside of French jurisdiction. Indeed, a group of companies does not have a separate legal personality; it only exists through the sum of



companies that forms the group. A “Group” of companies are defined in the Commercial code through their scope of control. The article L. 233-3 defines different ownership thresholds that are determined on the basis of voting rights. Although group companies are independent, the economic dimension of the group often cannot be put aside when determining separate legal personality of individual group companies.

Therefore group directors in their duty to act in the best interest of the company ought to take into consideration the group’s ownership of different companies, including where it may not own more than 50% (and thus the group company may not be considered as a subsidiary, per article L. 233-1 of the Commercial code). The notion of “interest of the group” has been acknowledged by a judgement of the Highest Court (*Cass 4 février 1985 Rozenblum*) on the basis of three cumulative conditions: the existence of an economic group contributing to a common interest, an operation whose objective is necessary to the achievement of such interest, and a “proportionate action”. The corporate interest of the group cannot nullify the corporate interest of a group company.

According to article L. 223-5-1 of the Commercial code, the parent company can, on a voluntary basis, bear the cost of prevention/reparation for any damage caused to the environment by its subsidiary. The procedure for regulated agreements must be respected (unless the subsidiary is owned at 100%).

The parent company can also be compelled to finance the environmental rehabilitation of establishments which stopped their activities, even if they belong to a subsidiary (article L. 512-17 of environmental code).

Moreover, in recent case law (*Cass 2 juillet 2014 n°13-15.208*), the term co-employment has been recognized by the High Court under the cumulative conditions of conflict and confusion of interests, activities and management through the interference in one company in the social and economic management of another related one.

The duty to of the board of directors to ensure reporting of impacts on suppliers and business partners is discussed below in question 16.

A new draft law, currently adopted at first reading in the National Assembly<sup>3</sup>, intends to put an end to the disconnection between economic influence and legal liability in a group of companies, by creating a liability of the parent company for the environmental, societal, health, human rights, and anti-bribery consequences of its subsidiaries and suppliers’ activities.

## **12. If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different factors including**

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<sup>3</sup> Proposition de loi N°1519 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre



**such impacts? What, additional liabilities, if any, do the board or individual directors assume in exercising such discretion?**

Please refer to question 11 above.

There are no rules establishing the extent of the directors' discretion in determining how to balance the different factors within his/her/their duty. Therefore, within the duties and constraints defined in questions 10 and 11 above, directors have broad discretion in determining this balance.

The company can voluntarily apply best practices on sustainability, and in general, relating to interests of stakeholders other than shareholders.

**13. What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defenses are available? Can these issues give rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?**

Under civil law, the company, via its legal representative, can initiate proceedings against a director for any fault in the exercise of its functions.

Shareholders can also take action on behalf of the company against the directors (*action ut singuli*) as compensation for a loss suffered by the company according to article 1843-5 of the Civil code.

They can also take action in their own name (*action individuelle*) against directors to claim compensation for the individual harm suffered by one or more shareholders, as long as it's a direct damage and that it's not be the consequence of a loss sustained by the company (decrease in the value of the stock cannot be claimed).

Directors can be held liable :

- in case of infringement of the law or of the incorporation's articles
- in case of tortious or negligent acts of management (*faute de gestion*)
- in case of breach of their duty of loyalty. Indeed, directors owe a duty to ensure transparency and to enable shareholders to benefit from reported information, hence respecting the shareholders' right to be informed (*Cass. Com 27.02.1996*).

Such action can also be initiated by third parties if directors acted deliberately to cause harm to [whom] or committed a personal fault separable from their governance functions. (*Cass. com., 28 avril 1998 ; Cass. com., 20 mai 2003*).

Directors acting as managers can be liable on the basis of article 1382 of the civil code as de facto manager ("*dirigeant de fait*"). The free and independent performance, alone or in a group, continuously and regularly, of positive acts of management binding the Company (*Cass. Com 12.07.2005 n°03-14.045*) leads to the director being considered de facto manager.



Under criminal law, directors can be held liable by shareholders if they committed deliberately a criminal offence in the exercise of their functions.

However, in most cases the company will indemnify a director against such harmful consequences, unless the director has committed action outside the scope of his/her functions. The aggrieved party must first take action against the company in order to engage action against the director.

As detailed above, the company held liable for its director's actions can pursue redress against him/her in the case of serious misconduct in the exercise of his/her functions.

**14. Are there any other directors' duties which are relevant to the interests of stakeholders?**

There are no other duties that could be material to the interest of the stakeholders of the company, other than the duties mentioned above.

**15. For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures. What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?**

Under French law, the supervisory board in two tier board structures are defined in the Commercial code articles L. 225-57 et seq. and can be found in SA firms with a supervisory board (*conseil de surveillance*) and a management board (*directoire*). The management board exercises its duties under the control of a supervisory board. The supervisory board's role is patterned after the board of directors (*conseil d'administration*).

Members of the supervisory board are liable for any personal misconduct in the exercise of their functions (article L. 225-257 of the Commercial code). They cannot be held liable for acts of mismanagement or for financial results of the company.

In case the supervisory board fails to report any misconduct by members of the management board brought to their attention, the supervisory board members can be faced with a potential civil liability.

Similarly, the supervisory board must comply with a duty of discretion and a strict duty of confidentiality.

Reporting

**16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting**



**route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).**

The *2001 NRE legislation*<sup>4</sup> recognizes the irruption of non-financial values in the annual report of the company. Based on imperatives of transparency, the law provides that SA companies shall include in their report, and in parallel to accountability and financial statements, information on the social and environmental consequences of their activity. In 2011, societal requirements protecting against discrimination and promoting diversity were added.

In 2010, with the Grenelle 2 legislation, these reporting obligations have been extended to non-listed companies provided they exceed certain thresholds in terms of turnover and/or number of employees. The implementing decree<sup>5</sup> entered into force in 2012, and provided detailed information reporting requirements on companies concerned regarding the social and environmental consequences of their activity, while excepting the SAS companies from this expanded reporting requirement.

According to the article L. 225-102-1 of the Commercial code which set the social and environmental reporting obligation, the thresholds are of 100 million euros as balance sheet total, 100 million euros as net turnover and 500 permanent employees during the financial year<sup>6</sup>.

For the group of companies, information on the social and environmental consequences have to be stated on the consolidated accounts of the parent company (Art. L. 233-16 commercial code) and deal with the parent company and its subsidiaries (Art. L. 225-102-1 commercial code). Therefore, subsidiaries are exempted from including in their annual report information of the social and environmental consequences of their activity if their parent company fulfils this obligation already for each of them (C. com. Art. L. 225-102-1).

Please refer also to question 17.

The content of the social and environmental information to be detailed in the annual report is determined by the article R. 225-105-1 of the Commercial code. The board of directors, in charge of drafting such document, is required to mention information relative to :

- Social information (employment variables, working environment, social relations, health and security, continuing education, equality treatment)
- Environmental information (general environmental policy, waste management, sustainability of resources, climate change, biodiversity)
- Societal information (territorial, social and economic impact of the company on suppliers and subcontractors, human rights)

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<sup>4</sup> Loi n°2001-420 du 15 mai 2001 relative aux nouvelles régulations économiques

<sup>5</sup> Décret 2012-557 du 24 avril 2012 relatif aux obligations des entreprises en matière sociale et environnementale

<sup>6</sup> Article R. 225-104 of the Commercial code



Information is published based on the comply or explain principle.

The European Union has adopted recently a Directive<sup>7</sup> on Reporting on non-financial factors and diversity, (EU-CSR-Reporting-Directive) which will now have to be transposed into national law before December 2016.

**17. Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?**

The board of directors must take into consideration in its annual report the activity and results of the company, its subsidiaries and the companies it controls. In case the company has consolidated financial statements, it shall be included in the annual report of the parent company.<sup>8</sup> Therefore legal reporting obligations on environmental and social consequences apply to any company or entity included in the annual report, regardless of the location of that company or entity

**18. Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?**

According to article L. 225-102-1 of the Commercial code, an independent third party body must verify environmental and social information included - or omitted the as the case may be - in the annual report. Following such verification, the environmental and social information included in the annual report are transferred to the general meeting with the annual report of the board. Non-listed companies, meeting the thresholds defined in question 16 above, have until the year end of 2016 to comply.

Legal reporting obligation violations are not punished. However, shareholders could initiate proceedings against a director for tortious or negligent acts of management (*faute de gestion*), if these acts caused a prejudicial outcome.

**19. What is the external assurance regime for reporting on a company's impacts on stakeholders? Please specify any mandatory requirements and also where reporting is**

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<sup>7</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance

<sup>8</sup> Article L. 233-6 of the Commercial Code



**voluntary what the current market practice is as regards third party assurance. Please summarise any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.**

Please refer to questions 17 and 18.

#### Stakeholder engagement

**20. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?**

There are no restrictions on circulating shareholder proposals.

**21. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers - does this facilitate or deter consideration of such impacts?**

Institutional investors are required by law, following the Grenelle 2 - article 224, to inform their shareholders of their CSR criteria within their investment decision making process, even if this reporting remains mostly a formality.

Major public pension funds have a very specific policy requiring the investment of large portions of their assets under management in “socially responsible investments” (SRI). The total amount of SRI in France, due largely to institutional investors and public pension funds, surpasses 350 billion euros with regular growth.

The investment methodology used is conceived to guarantee a minimum level of performance of these investments and to take in account the average performance of the different sectors of the market. The main benefit of this voluntary effort from institutional investors is to achieve a significant investment in the “CSR sector” of the financial markets and to provide, consequently, greater CSR awareness in the business community.

**22. Can non-shareholders address companies' annual general meeting? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?**

Under French law, only shareholders may attend an AGM and are able to raise a question.

However, non-shareholders can address a company's AGM through the workers' committee (*comité d'entreprise*), therefore only employee non-shareholders<sup>9</sup> can request registration to address resolutions or projects on the AGM agenda.

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<sup>9</sup> Article L. 2323-67 al 2 of the Labour Code (*Code du travail*)



Only resolutions or projects already on the agenda can be raised in the form of questions at the AGM (article L. 225-105 and L. 225-121 of the Commercial code).

**23. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?**

Pioneering companies have integrated CSR principles in board control since 2000, but the main formal driver to embed CSR inside corporate governance in France remains the law, voted first in 2001 then extended in 2012 – and soon to be melded with the European directive on non-financial reporting. Please refer to previous question 16. No other formal guidelines, except the OECD principles or UNGC requirements, if such has been brought up by the CEO, has been extended to a legal mechanism. The OECD principles or UNGC requirements are mostly considered as a supplementary exercise of compliance.

The association of Board members which promotes good governance among private companies (IFA, *Institut Français des administrateurs*), has organized a workshop on this issue and published a final recommendation, with 6 main points, to promote the philosophical consideration of integrating CSR into top level decisions :

*“CSR must not be considered as a marketing slogan but has to be part of the company policy; taking in account constantly the stakeholders’ opinions, the role of the board is to identify and understand the CSR issues of the firm and select through material sources the highest priority ones, in terms of risks and opportunities, covering the social, environmental, local, ethical and good governance challenges within the world context, in the enlarged perimeter of the activities controlled. The 6 points to consider are:*

- *Discussion the CSR dimension of every investment and decision;*
- *Deepening CSR challenges inside an appropriate committee of the board;*
- *Link between CSR and creation of value in the business model explained by the chairman of the Board to the other board members every time it’s necessary;*
- *Questions raised to management about its way of applying the rules and organizing the voluntary CSR policy;*
- *Being informed of all the necessary documentation, including reporting, stakeholders’ and expert’s opinions and raters’;*
- *Justifying the mechanisms of linking wages and CSR performance and observing their relevance.”*

These recommendations have been communicated widely and their application will be evaluated soon to provide a new stimulus among the board members community, along with other issues such as competitiveness and globalization.



A new regulation is currently being discussed in the French Parliament<sup>10</sup> to increase the liability of the parent company towards its subsidiaries forcing all listed companies to adopt a formal plan of due diligence to prevent corruption, protect human rights and preserve environmental interests. The role of the board will be to ensure that this plan is value-creating and efficient.

**24. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?**

Under French corporate governance rules, independent directors are recommended because of they are free of any relationships with the company or its group. A director is independent “*when he or she has no relationship of any kind whatsoever with the company, its group or the management either of which could affect his/her judgment*”.

Under the AFEP-MEDEF Code, the ratio of independent board members should be :

- one third of the board members for any listed company with a controlling shareholder;
- half the board members for any listed company with no controlling shareholder.

In SA firms “that employ, at the end of two consecutive financial years, at least five thousand permanent employees in the company and its direct or indirect subsidiaries, the registered office of which is located in France, or at least ten thousand permanent employees in the company and its direct or indirect subsidiaries, the registered office of which is located in France and abroad, and that are obliged to establish a works council according to article L. 2322-1 of the Labour code”<sup>11</sup> must include in the board of directors employee directors.

In companies having over 50 employees, workers’ council representatives sit on the board of the SA firm without voting rights (article L. 2323-67 of the Labour code).

In listed SA companies, whose shares held by the companies' employees represent more than 3% of the company’s share capital, one or more directors shall be elected by the general meeting of shareholders on a proposal from the shareholders<sup>12</sup>. Unlisted SA’s by-laws may authorize employee elected directors to sit on the board without voting rights.

Employee directors have the same status, obligations and liabilities as directors appointed in shareholders’ meetings. Additionally, the workers’ committee has the same information and communication rights as shareholders.

**25. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?**

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<sup>10</sup> Proposition de loi n°2578 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre

<sup>11</sup> Article L. 225-27-1 of the Commercial Code

<sup>12</sup> Article L. 225-23 of the Commercial Code



A fixed gender parity in the board of directors has been introduced by a 2014 law<sup>13</sup>, which decreases thresholds which trigger parity obligations. By January 2017, for companies with more than 500 employees and by 2020 for smaller unlisted companies, each board should reach and maintain a percentage of at least 40% of women. For now the threshold is temporarily at 20%, although the AFEP-MEDEF code recommends compliance with the 40%.

**26. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholders groups? Are there any serious proposals to impose such responsibility?**

French Law provides a specific liability of parent companies. See question 11.

**27. Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.**

The transposition of the Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings, and group companies with EEA relevance, into French law is still pending.

A draft law is currently being debated upon at the National Assembly<sup>14</sup>, and intends to put an end to the disconnection between economic influence and legal liability in a group of companies, by creating a liability of the parent company for the environmental, societal, health, human rights, and anti-bribery consequences of its subsidiaries and suppliers' activities.

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<sup>13</sup> Loi n°2014-873 du 4 août 2014 pour l'égalité réelle entre les hommes et les femmes

<sup>14</sup> Proposition de loi N°1519 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre