

The legislative and regulatory output is not decreasing; on the contrary. Act n°2007-1787 of 20 December 2007 on "the simplification of the law" seems to forget that three years ago (that was on 4 December 2004) a bill had already been passed with the purpose of "simplifying the law". In fact, this oblivion is quite understandable; the first bill did not *simplify* anything at all.

It was merely another disparate piece of legislation to be piled up on the numerous texts already overflowing our legal system, and which already gathers more than 7,500 bills and 90,000 regulations.

"*Plurimae leges, corruptissima republica*" ("The more corrupt the state, the more laws") once wrote Tacite to denounce a proliferation that is neither new, nor an evil that is specific to the French legal system. Yet, this proliferation has now reached excessive proportions. Add to this the fact that our legal system is suffering from an even more pernicious evil as our laws are not even well drafted. The basic rules governing the stages of their elaboration are often forgotten. For instance, many laws attempt to legislate without any normative content, while others use a vocabulary that is either unclear or unfit for the very subject matter they intend to govern.

And yet, "no one is supposed to ignore the law", goes the old saying. Does it still make any sense? Has it not become meaningless? If the currently applicable laws and regulations are within reach to any citizen who has access to the Internet, the overflow of information paradoxically blurs things more than it makes them easy to comprehend.

As legal practitioners, we have adapted ourselves so as to offer to our Clients the *Ariadne's thread* required to navigate through the corridors of the ever changing maze which constitutes the legal environment. As practitioners, we have, about five years ago, decided to combine our diverse and complementary expertise as well as our respective specializations in the field of business law, to create a multidisciplinary entity.

If no one will deny that any well-trained lawyer may easily read and understand a bill or a court order, only an expert may be able to replace that very piece of legislation or court order in an overall, and more global, context, to fully and properly appreciate it and use it, while multiple competences may help have an even better understanding of any of their potential side- or pernicious- effects.

When we first created Alerion, driven by this spirit, we were not more than twenty lawyers and paralegals. We are now thirty five attorneys, backed in our daily tasks by an administrative staff of more than a dozen persons. And we intend to be in control of our development and growth, in order to continue to discharge our duties as counsel and representatives ever more efficiently, while complying with the strict observance of the ethical rules due to our Clients and owed to our profession.

Our ambition is to constantly provide our Clients with an ever more successful legal service, to assist them in the completion of their business projects, help them avoid disputes, and handle any of them, should they ever arise.

Dominique Doise



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REAL ESTATE, CONSTRUCTION, INSURANCE

TAX

LABOR & EMPLOYMENT

BANKING AND FINANCE

LITIGATION (AND DISPUTE RESOLUTION)

COMPETITION, DISTRIBUTION, CONTRACTS

PRODUCTS LIABILITY, INDUSTRIAL RISKS, INSURANCE

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## OVERVIEW OF THE CHANGES THAT OCCURRED IN 2007 WITH RESPECT TO REAL ESTATE TAX



2007 was quite prolific in terms of real estate tax. Among the many changes introduced last year, perhaps the following should be paid a close attention:

### ■ Capital gain resulting from the transfer of shares in companies the assets of which are composed of a majority of real property or rights/interests attached to real property: increased taxation

This section focuses on companies not listed on the stock exchange and the assets of which are, roughly speaking, composed of a majority of real property (hereafter B companies). Should a regular business company that is subject to corporate tax (hereafter A companies) benefit from a capital gain pursuant to the sale of the shares that it owns in B companies, any such capital gain will now be subject to the normal Corporate income tax rate, that is 33.33%, whereas it used to benefit from a reduced tax rate of 15%. It should be noted that this new taxation shall apply to any and all transfers of shares completed as of 26 September 2007. In the same time, long-term capital gains resulting from the sale of equity in B companies are from now subject to a special tax rate of 16.5%. Similarly, any capital gain resulting from the transfer (or contribution) of the shares owned by A companies in B companies as of 31st December 2007, and which benefit (i.e. are paid) to certain property companies, and notably property investment companies listed on the stock exchange (i.e., the French "*Sociétés d'investissement immobilier cotées*"), shall henceforth be subject to a tax rate of 16.5%.

### ■ Real estate dealers: possibility to bill back the VAT on profits and tax instructions on split sales expected to be released shortly

In a rescript dated 24 July 2007, the French Tax Administration confirmed a practice among real estate brokers by accepting that the VAT on profits be invoiced to the purchaser of the property (provided that such purchaser is not a real estate broker), and who may deduct it under certain conditions. Furthermore, the awaited tax instruction on split sales should be coming up soon, most likely within the next few weeks. According to our sources, this tax instruction should confirm that for want of a resale of all lots within two years, the 5.09%-registration tax, increased by late interest penalties, should be limited to the surface of unsold parcels, and not apply in consideration of the overall surface of all parcels, as it was initially planned in the first draft of the tax instruction.

### ■ 3%-tax: French legislature forced to revise after tax failed to pass muster with EC Law before the European Court of Justice

After it was ruled by the ECJ to fail to be in compliance with the free movement of capitals in the Elisa case of 11 October 2007, the Amending Finance Act for 2007 revised the implementation terms of the 3%-tax. As of 1st January 2008, all French, European and foreign entities established in certain countries (notably those which signed bilateral treaties with France) should be subject to the same conditions of exoneration.

STANISLAS VAILHEN

## IN A NUTSHELL

- 1 Capital gain resulting from the transfer of shares in companies the assets of which are composed of a majority of real property or rights/interests attached to real property: increased taxation.
- 2 Real estate dealers: possibility to bill back the VAT on profits and tax instructions on split sales expected to be released shortly.
- 3 3%-tax: French legislature forced to revise after tax failed to pass muster with EC Law before the European Court of Justice.

## CSR: WHY ARE COMPANIES SO CONCERNED WITH IT, AND WHY SHOULD WE BE CONCERNED WITH IT?



Following up to a few well-known acronyms such as PSE, GPEC, CNE or even the CPE, the CSR (originally "RSE" in French, or "*Responsabilité sociale des entreprises*") is not one of those trendy acronyms created by the representatives of the French Labor law just to look innovative and/or in line with the most current concerns of our time.

It is true that CSR ("Corporate Social Responsibility") gets a lot of media attention, and yet, it still remains interesting to look at: take for example the websites of business corporations such as Thalès, Rhodia, or EDF, which give a particular attention to issues pertaining to sustainable development and CSR-related concerns.

CSR originally, and at least partially, comes from the doctrine of the Church of Rome, through the encyclical "*De Rerum Novarum*".

According to the definition given by the European Commission in its Green Paper of July 2001, corporate social responsibility is "**a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis**".

CSR yet remains a mechanism that is, legally speaking, still unclear, while it encompasses business practices of various natures within a transnational environment: soft law, incentive-bearing measures and recommendations, good practice guidance, and so on. To put a long story short, it covers any and all creation of law by private individuals and companies.

In France, as a result of the NRE Act ("*loi relative aux nouvelles régulations économiques*") n°2001-420 of 15 May 2001, the French Commercial code (article L. 225-102-1) provides that a certain type of corporations (the "*Sociétés anonymes*"), when listed on the stock market, have an obligation to submit a special report on a voluntary basis. And many business organizations have in fact enhanced their CSR on this very basis.

So what are the interests at stake when it comes to CSR ? They are:

- Environmental;
- Economic-based (for instance, the contractual relations between a company and its clients and suppliers); and
- Related to the management of Human Resources in companies.

Health and safety at work, the promotion of social rights and entitlements, the prevention of discrimination, professional equality, the development of employment, integration policies, the anticipation of changes and restructurings, professional training, the interests of subcontractors, the observance of collective labor rights, collective bargaining, mobility: these are all current topics that one has to be concerned with today as they bear potential legal issues for employers in the future.

Business entities are offered various ways to implement their own CSR policy and make it known: guidance for leading principles, recommendations, code of conduct, chart of ethics, and collectively bargained agreements.

This means that the company may set-up and implement a CSR policy on its own initiative, thereby giving it "no more" value than that of a unilateral commitment. Alternatively, should the company choose to go through a collectively bargained and negotiated agreement; the burden as well as the legal consequences of the CSR policy would then not be the same.

In our constant concern to inform our Clients of the stakes attached to CSR, we have also developed a unique expertise in this field to help them implement their CSR policy and to make it an integral part of the company's risk management policy.

JACQUES PEROTTO

### IN A NUTSHELL

- 1 According to the European Commission's Green Paper, CSR can be defined as "**a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis**".
- 2 This concern is also present in French law since the NRE Act of 15 May 2001, which gives an obligation to all "*Sociétés anonymes*" when listed on the stock exchange, to submit a special report.
- 3 Companies may setup and implement a CSR policy either on its own initiative, or through a collective bargaining.

## WHAT'S NEW IN THE FIRM ?



**Attorneys admitted in 2007:** Delphine D'Aspe, Céline Burac, Julien Leymarie, Sophie de Marne, Natalia Sklenarikova, and Orianne de Vendun were sworn in at the end of 2007.

Reinforcement of the teams:

- Catherine Robin is assisted by Edwige Mathieu who joined the Competition, Distribution and Contracts Practice Group in 2007;
- Séverine Rizo Sanchez and Karine Khau, two young and dynamic attorneys, joined the Corporate, Mergers & Acquisitions and Private Equity Practice Group in 2007;
- The Corporate team was also reinforced with the arrival of Julie Ménérier among the paralegals attached to the Corporate team.

Key number: 11. Stanislas Vailhen was approved as the eleventh partner of the Firm as of 1st January, 2008. Mr. Vailhen has a Master's degree in Tax law and an LL.M. degree (University of Exeter, UK) in International Business Law. After his professional début in 1999, Mr. Vailhen successively worked in the tax departments of Gide Loyrette Nouel, Bignon Lebray & Associés, and Alerion, which he helped create in July 2003. Mr. Vailhen is now 35 years old.

Mens sana in corpore sano: Géraud Salabelle represented the Paris Bar for the Lawyers' Rugby World cup.

## SPEECHES AND CONFERENCES



Dominique Doise addressed a speech in Utrecht before the Unico Banking Group (an association of more than a dozen European cooperative banks, and among which can be found the Crédit Agricole, Rabobank, and the like) in order to share his "lawyer's insight" on the provisions of articles 7(c), 8(c), and 12(b) of the 2007 Revision of the ICC Uniform Customs and Practice for Documentary Credits (UCP 600).

Pierre-Olivier Brouard and Jacques Bouyssou gave a conference to the students of the Master's degree in the Law of Biotechnology at the University of Evry, to present the very specificities of the business organizations specialized in biotechnology, from their incorporation, to their potential IPO or transfer.

In October 2007, Philippe Mathurin participated in a conference organized by the EFE on the "Vente en l'état futur d'achèvement", commonly known and referred to as the VEFA.

Litigation expert at the service of aspiring attorneys: Sibylle Mareau participated in the jury of the Paris Bar School ("Jury de l'Ecole de Formation du Barreau") as well as the workshops of the National School of Magistracy ("Ecole Nationale de la Magistrature").

## LES PUBLICATIONS



2008 shall kick-off with a new bilingual article by Dominique Doise, entitled "Do structured documentary credits constitute a misleading implementation of financial engineering?", to be released in the first volume of the International Business Law Journal (<http://www.iblj.com>) (the English version was prepared with the participation of Christian Kim).

Catherine Robin will continue to write articles with Pr. Véronique Selinsky in the "Anti-competitive practices" section of the Revue LAMY CONCURRENCE.

Christophe Gerschel was, like previous years, in charge of the "Professional Sports Club (legal status)" section of the "Dictionnaire Permanent Droit du sport 2008".

## OUR PRESENCE WORLDWIDE



Christophe Gerschel conducted, as a representative member of Alerion, a tax investigation in connection with a cooperation between the European Union and Algeria. This mission consisted in assessing the taxation of foreign investments in Algeria, and proposed various modifications in the current legislation and practices, in view of rendering the Algerian taxation more transparent on this matter.

James Joong-Ho Kim and Christophe Gerschel represented the Firm at the 8th annual ASEAN forum in Hanoi in November 2007. The forum offered many workshops organized by the French Chamber of Commerce with the French Ministry of Economy and Finance, and in association with the MEDEF, and to which participated many large French companies with interests in the South East Asian region. The Firm thus reinforces its ties with Asia. Furthermore, Alerion, which already had strong connections in Singapore, decided to open an office in the city nation.

## PRO BONO



Alerion confirmed its involvement and commitment in the repatriation of hundreds of Hmong from Thailand, where they are currently living in very precarious and dangerous conditions, to the French Guiana, where they have an opportunity to join a French community of Hmong that has been present on the island for decades. This repatriation mission received great support from Guiana, and notably from the Bishop of Guiana.