

The new French law, (Officially published the 31st of December 2006)

The main innovations in this law are the following:

1) Profit sharing:

It is possible for a Company to give a complement of bonus if its profits are significantly better than currently, this bonus following the same rules as the basic profit sharing existing in the Company. This bonus is called a “working dividend”.

It will be possible to grant a bonus to employees belonging to the same group or not and who are involved in the achievement of a common project: for instance all the people working for the building of a bridge, whichever is the company in which they work (main contractor or subcontractors).

In the purpose of expanding the financial participation to SMEs, it will be compulsory for any sector of activity (bakery, real estate, food industry, etc...) to enter in agreements (there is a common frame) which could be applicable on a voluntary basis to any company belonging to this sector.

The creation of a saving plan (PEE) will be compulsory as soon as there is a profit sharing scheme: in order to allow the employees to invest their cash in several ways (and not only in current accounts with their company).

The ancient formula of calculation for the basic profit sharing (compulsory as soon as there are more than 50 employees) is only a minimum. It will be possible that a part of the profit sharing is based on the yearly increase in the price of a pre-determined number of shares (it looks like the principle of phantom shares). The bonus may merely be equal to the third of the PBT.

Any Company which has managed a saving plan (PEE 5 years) for more than 5 years will be obliged to introduce a long term saving plan (PERCO) which term is the date of retirement of each employee (it is a kind of French private pension fund).

The ceilings of the company's contribution (concerning voluntary employee contributions in the saving plans) are expressed in % of the yearly social security ceiling, and no longer as absolute figures.

2) Employee shareholding

There exist in France some odd bodies called FCPE which are somehow mutual funds. In a saving plan it is possible to have several FCPE which assets are invested in different ways. One of them can be invested exclusively in shares of the company. It will be possible for such funds to enter shareholder's agreements, if the company or group is not a public one.

The dividends paid on the shares existing in such a fund may be paid directly and immediately to the beneficiaries, depending on the individual choice of the beneficiaries.

These funds will be allowed to receive the free shares which may be granted to the employees.

If the shares are non listed, until now the third of the assets of such funds were necessarily invested in marketable stocks or bonds, etc..It will be possible to avoid this constraint if the company undertakes to buy back up to 10% of its share capital, or if the mutual fund is only created for employees who have undertaken to participate to a further LBO.

As soon as the employees own more than 3% of the share capital of a listed company they should have at least one representative on its Board. This representative will be elected (and not appointed). Any public company will be obliged to include in its by-laws an article stipulating that, and the relevant resolution will be voted at the first extraordinary general meeting after the publication of the law. The mandate of such a representative ends when his working contract is over, for any reason.

Free shares may be granted with a vesting period of 4 years (previously 2 years, with a holding period of 2 further years at least). In such a case there is no holding period. Such a disposition could help companies in launching a sole scheme for all their employees whichever is the country where they are working.

In the case of a takeover, where the payment is exclusively made in shares, there is no break in the share ownership, and the taxes, if any, are only payable when the new shares are sold, and the expiration date of the holding period allowing tax relief for the new shares is not changed.

Concerning the stock-options, there is a new constraint for the top managers who can be forbidden to exercise their options totally or for a given number of them until their resigning, by the board. Or they can be obliged to keep the shares coming from the exercise of their options until their resigning. This disposition applies to the Directors themselves.

3) A few other dispositions:

When entering in a company which practices financial participation, an employee will receive a booklet stating what the company does in this matter and explaining which the outstanding schemes are.

The necessary training of the employees in the financial participation matters will benefit of a tax relief, as it is the case in France for the improvement of employees in other fields. But the amount of that tax relief is far from large: 75€ per hour and per employee, with a maximum amount of 5.000 € per company for the coming two years.

It will be possible to get the prior approval of the administrative Authorities at the same time for profit sharing schemes, saving plans, etc...The French Administration may contest any detail of the presented agreements within a period of 4 months. After this period of time they cannot make any objection. Nevertheless the risk exists of a disagreement in the application of the approved schemes...

The French Government will present, within one year after the publication of the law, a report to the Parliament stating how and to which extent a financial participation policy could be launched in the Public Sector including the State Administration, the local and regional Administration, the Health Public Sector and the state owned companies.

