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## France

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ments of Guideline D-4 in connection with the securitization of its own assets, the transfer can be treated as a sale and the assets removed from the institution's balance sheet. The institution's capital requirements will be reduced accordingly. The Guideline also deals with the balance sheet treatment that will be accorded to a financial institution when and if it provides, in connection with a securitization, (i) first loss protection facilities, (ii) enhancement facilities, or (iii) liquidity facilities.

## France\*

### I. Simplified Business Associations

#### A. SCOPE

Law No. 94-1 of January 3, 1994, has introduced the *société par actions simplifiée* (SAS). Such simplified business association is a type of enterprise exclusively formed by business organizations, not by individuals, or by certain state entities. Its internal rules are dictated in great part by the members themselves. This new type of enterprise was created in response to the wishes of big French industrial corporations, which required a legal vehicle to cooperate among themselves and with foreign partners.

#### B. MAIN TRAITS OF AN SAS

The SAS is a new type of enterprise that falls in between a corporation (*société anonyme*) and a limited partnership (*société en commandite par actions*). An SAS can only be formed by enterprises with a minimum capital equivalent to 1,500,000 French francs (approximately US\$300,000). It can have only two members. Members have full freedom to determine in the articles of incorporation the nature and form of the corporate organs as well as the way of taking collective decisions. However, the corporation can only be effectively represented by a president with power to bind the corporation. Certain decisions (for example, all changes in capital, mergers, dissolutions, and the like) must be approved collectively by the shareholders. Several clauses can be added to the articles of

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incorporation to protect the shareholders' *affectio societatis*, such as agreements not to sell, exclusion clauses, and voting trusts.

### C. ADVANTAGE OF THE SAS

The flexibility of an SAS can be a great asset for those wishing to escape the constraints of regular corporations in France. At the same time, such flexibility demands a greater precision in drafting the articles of incorporation. Otherwise, contradicting interpretations may well cause litigation. In some ways the SAS resembles the U.S. notion of a closed corporation.

## II. Protection of Intellectual Property in France

### A. SCOPE

Intellectual property (copyright and related rights, designs, models, patents, and trademarks) is protected from infringements, known as piracy (*contrefaçon*), against the legitimate holder of the right. Law No. 94-102 of February 5, 1994, amended the Intellectual Property Code by focusing on the treatment of counterfeit goods. This law imposes tougher criminal sanctions, broadens the jurisdiction of French customs authorities, and strengthens the powers of the French judicial police to seize any nonconforming goods.

### B. NEW PENALTIES

The law approaches all intellectual property rights uniformly. It establishes the same maximum penalty for those who infringe these rights: two years' imprisonment plus a 1,000,000 francs (approximately US\$200,000) fine. These penalties are doubled when the infringer was contractually bound to the owner of the right. Additionally in cases where business premises were used to commit the wrongful act, these could be closed down. Finally, as a novelty, juridical persons may acquire criminal liability for piracy of copyright, trademarks, or designs.

### C. POWER OF CUSTOMS AUTHORITIES

All counterfeit goods involving copyright, designs, or registered or pending trademarks can be stopped at customs. The attempt to introduce goods under a counterfeit trademark constitutes a customs infraction and is subject to forfeiture of the goods plus a fine equal to once or twice the value of the objects in question.

### D. POWER TO SEIZE OF THE JUDICIAL POLICE

The previous system only contemplated this power in cases of copyright infringement. The new law extends the power of judicial police to instances of pirated trademarks, designs, and models.