



INVEST IN THE FRENCH LEADING
FAST-GROWING COMPANIES:

10 LEGAL TRICKS IN 5 MINUTES FOR
FRENCH ENTREPRENEURS SETTING
UP THEIR BUSINESS IN THE U.S.

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INVEST IN THE U.S.:

10 LEGAL TRICKS IN 5 MINUTES FOR GROWTH AND MID-CAP BUSINESSES

10 LEGAL TRICKS IN 5 MINUTES

=> You are a French entrepreneur and the founder or Chief Executive of a growth business in the innovation industry (IT, Software, Biotechnologies, etc...)

=> You are coming to or expanding in the U.S.

=> Ten legal tricks to remember

TRICK ONE: BEWARE OF THE LLC!

=> What is an LLC: google will tell you

=> What google won't tell you:

**YOU DO NOT WANT TO SET UP AN LLC WHEN THE MAJORITY
SHAREHOLDER (MEMBER) IS FRENCH**

? Branch Profit Tax Issues

? Liability Issues

=> Use the LLC “Downstream” to bring in new U.S. partners

TRICK TWO: CORP IS BEST

=> Easy to form

=> Easy to manage

=> Capitalization easy to manage

? 1,5 to 1 Debt Equity Ratio,
Augmentation of Capital by way of
“Accrued paid in Capital”

? Disconnect between number of shares and amount of capital

=> If you are not a 100% majority shareholder

? Do not forget the Shareholder’s Agreement

? If you are a minority shareholder

? Do not forget Tag Along Rights

TRICK THREE: U.S. STOCKS FIRST AS INCENTIVES!

=> The problem with stock options plans in the U.S.:

? Comply with both federal tax and securities rules

? Comply with both federal and state laws

=> If you want to set up a French plan in the U.S., you simply add a third level of analysis – French law vs. U.S. Law- that render the whole package even more complicated to manage.

=> Use a U.S. plan anyway, if possible with U.S. stocks of the U.S. sub.

No value at the beginning? Good incentive to create some and then share.

TRICK FOUR: MANAGE YOUR IP

=> When you are a software publisher/distributor you might wish to put IP value at sub level.

? Remember how a software distribution system works: the Reseller is a “distributor” of products or services but the publisher has a license contract with the End-User.

? Create value in the U.S . by granting IP rights to the U.S. sub acting as Reseller.

? Avoid litigation at French Parent Level.

TRICK FIVE: DO NOT GET CONFUSED BETWEEN DISTRIBUTION AND AGENCY NETWORKS

=> The main differences:

By-Sell:

- Distributor has title
- Principal invoices distributor for products sold
- Resale Price Maintenance is *still* prohibited (don't think the new 2007 Supreme Court Decision gives you a free pass)

Agent:

- Agent invoices principal for services rendered
- Agent has no title
- Possibility of Resale Price Maintenance because End-User is Client of Customer

=> But in both cases, set up objectives!

Easier to terminate

TRICK SIX: M&A: ASSETS DEAL VS, STOCK DEAL

=> **Assets Deal: Big difference with French Law: you can “cherry-pick” your employees (no equivalent of French L 122-12 of labor Code)**

=> **Stock Deal: No “Garantie de Passif” in the U.S.**

? **Everything is in “Representations and Warranties” of Seller**

? **Negotiate well you escrow amount**

? **Negotiate well your earn-out payments**

=> **Tax Trick: the 338(h) (10)10 Election under federal and many state laws to treat the stock deal as an assets deal.**

TRICK SEVEN: EMPLOYMENT AND LABOR LAW

=> The concept of discrimination

=> The concept of at-will

=> If you have an executive, you want a contract

? to better deal with compensation issues

? to better deal with termination issues

? to deal with non-competition issues

=> If you merge, beware of 401(K) issues.

TRICK EIGHT: TRADEMARKS AND PATENTS

=> Common law rights to trademarks

=> Better to register at the USPTO

? Do not be afraid of the flow of questions they ask, it is the process and does not mean you will not get the trademark registered

=> Think of patenting your software

TRICK NINE: BIOTECHNOLOGIES AND 501 (c) (3)

=> What does 501 (1) (3) mean?

? Tax exemption for charities/research

=> Applicable in Biotech Sector?

? Yes, under certain circumstances.

=> Don't push too far!

? Use with moderation.

TRICK TEN: IMMIGRATION ISSUES

=> **“Google” does not do the trick**

=> **Have an immigration lawyer**

=> **Main features of L1, H1B and E2 visas**

=> **Think in advance, certain visas lead you to a certain pass**

(E2 quite easy to obtain but conversion to green card difficult)

**Thank you very much for your
attention**

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Attorney Biography



Philippe Manteau, a New York and French attorney, is Of Counsel in the New York office and a member of the Corporate Group of Orrick. His practice focuses on growth and mid-cap companies, governmental organizations and individuals in Europe, the U.S. and Asia in the areas of corporate, business and distribution law, as well as antitrust and technology transactions.

Prior to joining the firm in 2006, Mr. Manteau was working with the French practice of Thelen Reid & Priest LLP from 2003 to 2006. Before that, from 2000 to 2003, he served as manager of the Antitrust and Distribution law team at HSD Ernst & Young, France, before heading the European Union desk of Ernst & Young's legal practice in the U.S., Donahue & Partners. From 1996 to 2000, he worked for Herbert Smith in Paris and Brussels, where he established and developed its Paris based antitrust practice. In 1995, he worked in the Legal Department of Peugeot Germany GmbH.

Mr. Manteau's training and international experience allow him to identify, analyze and resolve issues arising in cross-border transactions for European and U.S. clients.