To: Our Clients and Friends

February 5, 2013

New French Mandatory Rules for Invoices and General Terms and Conditions Intended for Professionals

Beginning on January 1, 2013, every professional who is late in paying an invoice is liable to pay a fixed compensation for collection costs of €40. This compensation must be mentioned both in the invoices and in the conditions of payment set out in the general terms and conditions of the seller/service provider.

The French Department for Competition, Consumption and Repression of Fraud (Direction générale de la concurrence, de la consommation et de la répression des fraudes -- DGCCRF) has set out the conditions of application of this new provision in its Information Memorandum no. 2012-164:

- The fixed compensation of €40 is owed without further formality from the first day of late payment regardless of the payment delay applicable to the transaction and for each invoice.

- The fixed compensation of €40 is owed in addition to penalties for late payment and does not prevent the creditor from asking the courts for additional compensation, upon justification of having paid collection costs higher than the fixed compensation as provided by the Article L. 441-6 I §12 of the French Commercial Code (e.g., the remuneration of commercial debt collection agencies).

- The fixed compensation of €40 is not subject to VAT since its purpose is to compensate the creditor for the damage caused by the late payment from his debtor.

The fixed compensation and its amount must both be mentioned in the conditions of payment set out in the general terms and conditions of the creditor (Article L.441-6 I §12 of the French Commercial Code).

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Commercial Code) and in the invoice (Article L.441-3 §4 of the French Commercial Code). In this regard, the French Department for Competition, Consumption and Repression of Fraud has indicated that in order to prevent any confusion, it would be preferable for companies having both professional and consumer clients to establish two different invoice templates and to avoid mentioning the fixed compensation on the invoices intended to consumers.

Failing to provide the required information is subject to criminal penalties. Indeed, the absence of the mention of the fixed compensation and its amount in the conditions of payment set out in the general terms and conditions and in the invoice is subject respectively to a fine of €15,000 in accordance with the Article L.441-6 I §14 of the French Commercial Code and to a fine of €75,000 in accordance with the Article L.441-4 of the French Commercial Code (this fine of €75,000 may be increased to 50% of the amount invoiced or the amount which would have been invoiced). Moreover, for legal entities these two amounts may be multiplied by five.

Companies should comply with these provisions as soon as possible, especially since the French Department for Competition, Consumption and Repression of Fraud has indicated that the fixed compensation applies to any payment due on or after January 1, 2013, even if the payment is due according to an agreement previously entered into.

For more information on this subject, kindly send your questions to your contact at Bryan Cave, or to:

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