

## Intellectual property clause (employment) Q&A: France

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Status: Law stated as at 30-Jun-2020 | Jurisdiction: France

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France specific information concerning the key legal and commercial issues to be considered when drafting an IP clause for use in the terms of employment between the employer and employee. See [Standard clause, Intellectual Property clause \(employment\): International](#), with country specific drafting notes and [Standard document, Terms of employment: International](#).

This Q&A provides country-specific commentary and forms part of [Cross-border employment](#).

### IP clause

**1. Is a clause such as [Standard clause, Intellectual property clause \(employment\): International](#) included in the terms of employment between employers and employees in your jurisdiction where the employer wants to protect any IP created by an employee?**

The French Intellectual Property Code stipulates a set of legal principles (some of them of public policy, which means that they cannot be overridden by any contractual agreement between the parties) with regard to ownership of certain IP created by an employee.

However, it is common practice to provide expressly in the employment contract for ownership of IP, to protect the employer's ownership of any IP created by an employee.

### Inventions

**2. In the absence of a specific provision in the employee's terms of employment, who owns and can patent any invention that the employee creates during the course of their employment?**

Under French law, either the employer or the employee is deemed to own the inventions created by the employee during the course of their employment, depending on the public policy criteria set out in L. 611-7 of the French Intellectual Property Code. Any contrary terms in the employment contract would be null and void.

### Owner of invention created by employee in course of employment

Ownership of an invention will depend on the scenario into which it fits:

- If the invention is created by an employee in the course of their employment and in connection with the inventive task that was entrusted to them in view of the functions defined in their terms of employment ("inventions under mission"), the employer is the owner of the invention.
- If the invention is created by an employee in the course of their employment but outside the professional duties defined in their terms of employment ("inventions outside mission"), the employee is deemed the owner of the invention. However, on payment of a fair price (see Question 32), the employer can claim ownership of inventions outside mission when those inventions have been created by the employee:
  - during the performance of their functions;
  - within the employer's field of activity;
  - by knowledge or use of documents or studies belonging to the employer; or
  - with materials, equipment or tools belonging to the employer.

(Article L. 611-7, Intellectual Property Code.)

### Who can patent the invention

The owner of the invention is entitled to patent the invention. Therefore:

- The employer can patent the following inventions (the employee's name must appear on the patent

application, without the mention of their name giving the employee any intellectual property rights to the invention, unless the employee expressly requests that their name not appear on the patent application):

- inventions under mission; and
  - inventions outside mission over which the employer claimed ownership.
- The employee can patent inventions outside mission over which the employer could not or did not claim ownership.

### 3. Would your answer to Question 2 above be different if the employee created the invention outside of working hours and/or using their own premises, resources and equipment?

If the invention is created outside working hours and/or using the employee's own premises, resources and equipment, the invention may still be classified as an invention outside mission and therefore claimed by the employer, in particular if it is in the employer's field of activity.

Nevertheless, the terms of employment should expressly specify the employee's function and duties and it should be clear from the wording used that part of the employee's duties is to make inventions.

### Owner of invention created by employee outside employment

The employee is the owner of the inventions created outside employment that do not fulfil the criteria set out by Article L. 611-7 of the Intellectual Property Code (see Question 2); the employer does not have the right to claim ownership over these inventions.

### 4. Is there any wording that should be included to ensure that any statutory requirements are met for the employer to be the owner of an invention by their employee in your jurisdiction?

No specific wording is needed in relation to the ownership of inventions under mission. Nevertheless, the terms of employment should expressly specify the employee's function and duties and it should be clear from the wording used that part of the employee's duties is to make inventions.

For the employer to own inventions outside mission, it must both claim ownership and pay a fair price to the employee. This can be effected by including wording in the IP clause along the lines of the following:

"Invention outside mission: for inventions, patentable or not, realised by you outside your professional duties, the Company shall have an option to claim ownership of all or part of the rights resulting from the patent when such inventions have been realised by you:

- during the performance of your functions; or
- in the field of activity of the Company; or
- by knowledge of documents or studies belonging to the Company or with material or installations belonging to the Company."

For the employer to own any invention created by an employee, other than an invention under mission or an invention outside mission, the employer can arrange for an express assignment in writings.

### 5. In the event of a dispute over ownership of an invention, and in particular whether it was created during the course of employment, what would the courts look at to determine whether the employer is entitled to the invention?

French courts would refer to the terms of the employment contract to identify the employee's mission and professional duties or functions, and particularly whether:

- The employee has an express inventive mission (that is, they were hired for the express purpose of inventing, or part of their duties was to make inventions).
- The employee's functions or duties are related to research and development activities.

Absent an inventive mission or R&D functions, the courts would have to consider whether the invention meets the criteria for employers to be able to claim inventions outside mission, and whether a fair price was paid by the employer for the invention.

## Copyright

### 6. In the absence of a specific provision in the employee's terms of employment, who will own the copyright in anything that the employee produces during their employment?

Under Article L. 111-1 of the French intellectual property code, if there is no agreement to the contrary, the copyright in a work is owned by the author of the work.

This means that, if there isn't a specific provision in the employee's terms of employment, the copyright

in anything that the employee creates during their employment will be owned by the employee.

### 7. Would your answer to Question 6 above be different if the employee produced the copyright work outside of working hours and/or using their own premises, resources and equipment?

No; the copyright created by an employee outside their employment is owned by the employee.

## Trade mark

### 8. In the absence of a specific provision in the employee's terms of employment, who is entitled to apply to register any trade mark that the employee creates during their employment?

If there is no specific provision in the employee's terms of employment:

- An employee who creates a trade mark composed of graphic and/or figurative elements owns the copyright on those elements and may therefore apply to register them as trade marks.
- An employee who creates a verbal trade mark is the owner of the potential copyright in it, and may apply to register it as a trade mark.

(Article L. 131-3, Intellectual Property Code; Cour de cassation, Com, 16 February 2010, No 09-12.262.)

However, in the event that an employee applies to register a trade mark composed of verbal, graphic or figurative elements similar to the employer's name and/or a trade mark owned by the employer, the employer may bring an action for infringement of its rights before the courts.

## Definitions

### 9. Is the definition of "Employment IPRs" in Standard clause, Intellectual property clause (employment): International valid in your jurisdiction?

The definition of "Employment IPRs" in [Standard clause, Intellectual property clause \(employment\): International](#) is valid in France (although it should be noted that some of those rights included in the definition of Employment IPRs will need to be dealt with in a particular way to ensure their validity, as some of the

rights contained in the Employment IPRs definition will be owned from the start by the employer, while others are owned by the employer if the employee expressly assigns them to the employer).

### 10. Is it advisable in your jurisdiction to include in the definition of "Employment IPRs" the IPR that may not necessarily come into existence whilst the employee is carrying out their regular duties but nonetheless arises during their employment?

Yes, it is advisable to include this type of IPR in the definition of "Employment IPRs".

### 11. Is the definition of "Intellectual Property Rights" in Standard clause, Intellectual property clause (employment): International valid in your jurisdiction?

The definition of "Intellectual Property Rights" in [Standard clause, Intellectual property clause \(employment\): International](#) is valid in France. However, certain rights listed in this definition do not arise in France (see Question 12).

### 12. Do all the rights listed in the definition of "Intellectual Property Rights" in Standard clause, Intellectual property clause (employment): International arise in your jurisdiction?

The following rights listed in the definition of "Intellectual Property Rights" in [Standard clause, Intellectual property clause \(employment\): International](#) are not recognised in France:

- Rights in get-up.
- Goodwill.
- Topography rights.

### 13. Is it permissible to include rights that will subsist in the future in the definition of "Intellectual Property Rights"?

It is permissible to include rights that will subsist in the future in the definition of "Intellectual Property Rights".

However, an assignment of rights to copyright in future works is not permissible under Article L. 131-1 of the Intellectual Property Code, the language in the assignment provision of the employment contract

should provide that the assignment of future rights to copyright occurs on the creation of the corresponding work and not as of the date of the employment contract. This approach has been validated by case law (*Cour de cassation, Civ 1st, 4 February 1986*), and it is common practice to include the wording in employment contracts (see Question 17).

### 14. Are there any other rights in your jurisdiction that should be included in the definition of "Intellectual Property Rights" in Standard clause, Intellectual property clause (employment): International?

In France, the following other rights could also be included in the definition of "Intellectual Property Rights" in [Standard clause, Intellectual property clause \(employment\): International](#):

- Supplementary protection certificates.
- Utility models.
- Rights related to copyright ("*droits voisins*").
- Soleau envelopes (this is a French system to ascertain the date of an invention, idea or creation of the work; it involves putting evidence in a sealed envelope to demonstrate the applicant's knowledge or creation of the work at the date of stamping, without any disclosure of the content).
- Sui generis database rights.

## Assignment of IPR

### 15. In your jurisdiction, can the IP rights, inventions and materials set out in Standard clause, Intellectual property clause (employment): International: clause 1.2 be stated to automatically belong to the employer, without any further steps being taken by either party?

No. Intellectual property rights cannot be stated as belonging automatically to the employer, except for:

- Inventions under mission (see Question 2).
- Software created by the employee in the course of their employment (*Article L. 113-9, French Intellectual Property Code*).

An agreement to transfer intellectual property rights must include express language that refers to the specific IP being assigned to the employer (see Question 17). It may also be advisable to obtain confirmatory agreement

to assignment from the employee for those Employment IPRs which have not yet arisen at the date of the agreement, following their creation (see Question 17).

### 16. Can the employer create an effective assignment of the Employment IPR in its terms of employment with its employees as set out in Standard clause, Intellectual property clause (employment): International: clause 1.3(a)?

The employer can create an effective assignment of the Employment IPR in its terms of employment with its employees as set out in [clause 1.3\(a\)](#).

### 17. Is the language used at Standard clause, Intellectual property clause (employment): International: clause 1.3(a) sufficient to constitute an assignment from the employee to the employer of all Employment IPRs, present and future? If not, how does this need to be amended in order to be valid and enforceable in your jurisdiction?

## Assignment of present Employment IPR

The use of the expression "hereby assigns" is sufficient to constitute an assignment of existing Employment IPRs.

However, the valid assignment of some types of intellectual property requires mandatory explicit mention to be included in the assignment clause (*Article L. 131-3, French Intellectual Property Code; Cour de cassation, Civ 1st, December 16, 1992, No 91-11.480*).

A valid assignment of copyright must expressly mention:

- The assigned rights.
- The assigned territory (this may be global).
- The duration of the assignment (this may be for the whole duration of intellectual property rights as defined by applicable laws, including any future term extension).

With regards to patents, the priority right must be mentioned expressly to be validly covered by the assignment.

[Standard clause, Intellectual property clause \(employment\): International: clause 1.3\(a\)](#) is not therefore sufficiently detailed to create a valid assignment of copyright or patent rights, unless these additional details are included.

### Assignment of future Employment IPR

Future Employment IPRs can be assigned, except for works protected by copyright (see Question 13). Therefore, the use of the expression “hereby assigns” will be valid for assignment of future Employment IPRs, except for future copyright.

Regarding future copyright, the following expressions can be used to create a valid future assignment (see Question 13):

- “Agrees to assign by way of future assignment”.
- “Assigns as of their creation”.

It would however be advisable to include:

- A provision that requires the employee to enter into a subsequent and/or confirmatory agreement at the time of the assignment of future Employment IPRs, in particular copyright IPR.
- A provision that requires the employee to enter into any necessary subsequent agreements, or to provide any required assistance, that would facilitate, or that would be required for, the transfer of legal rights on Employment IPRs to the benefit of the employer (the wording of [clause 1.7](#) would be sufficient here, as long as the mention of waiver of all moral rights is deleted).

As is the case for present Employment IPRs, the valid assignment of future copyright and patent Employment IPRs needs specific additional wording (see above).

**18. Is the concept of the employee holding any IP rights, inventions or materials “on trust” for the employer, if they do not automatically vest in the employer as set out in [Standard clause, Intellectual property clause \(employment\)](#): [International: clause 1.3\(b\)](#), recognised in your jurisdiction?**

This concept is not recognised in France.

**19. If holding “on trust” is not recognised in your jurisdiction, is there any equivalent wording or concept that could be used in [Standard clause, Intellectual property clause \(employment\)](#): [International: clause 1.3\(b\)](#) to increase the protection available to the employer in respect of the IP rights, inventions and materials that have not automatically vested in the employer and that are yet to be assigned to them?**

There is no specific wording or concept under French law that could be used to increase the protection available to the employer in respect of IP rights, inventions and materials that have not automatically vested in the employer. (However, see Question 17 on the recommendations for wording to help secure assignment of future rights.)

### Obligations on employees

**20. Are the obligations on the employee as set out in [Standard clause, Intellectual property clause \(employment\)](#): [International: clause 1.4](#) valid and enforceable in your jurisdiction?**

The obligations on the employee as set out in [Standard clause, Intellectual property clause \(employment\)](#): [International: clause 1.4](#) are valid and enforceable in France.

**21. Is the specific confidentiality obligation as set out in [Standard clause, Intellectual property clause \(employment\)](#): [International: clause 1.4\(d\)](#) recommended in your jurisdiction so as to maintain the ability for an invention to be patentable?**

The specific confidentiality obligation as set out in [Standard clause, Intellectual property clause \(employment\)](#): [International: clause 1.4\(d\)](#) would be a minimum in France to maintain the ability for an invention to be patentable. It would, however, be advisable to include wider and stronger confidentiality language, or a separate clause setting out the terms of confidentiality obligations, which would include a specific definition of what is considered “Confidential Information”, in the employment agreement to take into account the novelty requirement for patentability of inventions.

### Moral rights

**22. Does your jurisdiction recognise moral rights? If not, is there an equivalent personal right that accrues in your jurisdiction to the author of a copyright work?**

Certain moral rights for the author of a copyright work are recognised in France.



### 23. If the answer to the question above is “yes”:

- How are these rights defined?
- What do they comprise?
- If copyright is registrable in your jurisdiction, can these rights be registered or recorded against the copyright work?

### How are moral rights (or equivalent) defined

The moral rights of the author of a copyright work are defined in Articles L. 121-1, L. 121-2 and L. 121-4 of the Intellectual Property Code.

The moral rights of performers are defined in Article L. 212-2 of the Intellectual Property Code.

### What do moral rights (or equivalent) comprise

Moral rights comprise:

- The right to the integrity of the work, which allows the author to prevent and oppose changes with regard to the form of their work.
- The paternity right, which is the right to be associated with the work by name (or pseudonym) and as the author, or to remain anonymous.
- The right of disclosure, which enables the author solely to decide whether or not to disclose their work to the public, and under what conditions (*Article L. 121-2*).
- The right of repentance, which allows the author to modify their work after publication, and the right of withdrawal, which allows the author, after the work's publication and in the event they assigned their rights to exploit the work, to terminate that assignment unilaterally (*Article L. 121-4*).

### Moral rights (or equivalent) registered or recorded against copyright of work

Moral rights are not registered nor recorded in any form in France.

### 24. In your jurisdiction, do moral rights (or equivalent) arise automatically upon creation of the copyright work, or must the author assert them in order for them to take effect?

Moral rights arise automatically on creation of the copyright work and are perpetual. However, since moral

rights are not recorded nor registered in any form, they will have little practical effect unless the author asserts them (for example, in the context of an action for infringement of moral rights).

### 25. Can present moral rights (or the equivalent) be waived in your jurisdiction as set out in **Standard clause, Intellectual property clause (employment): International: clause 1.5?**

Under French copyright law, present moral rights cannot be waived, in whole or in part. Any provision or agreement to the contrary would be deemed null and void.

### 26. Can future moral rights (or the equivalent) be waived in your jurisdiction as set out in **Standard clause, Intellectual property clause (employment): International: clause 1.5?**

Under French law, future moral rights cannot be waived, in whole or in part. Any provision or agreement to the contrary would be deemed null and void.

### 27. Who can waive moral rights (or the equivalent) in your jurisdiction?

N/A.

### 28. In your jurisdiction, if the copyright owner can waive moral rights (or the equivalent), do they need to:

- Obtain the author's consent, or
- Give the author prior notice, before doing so?

N/A.

### 29. Can moral rights (or the equivalent) be licensed or assigned in your jurisdiction?

Under French copyright law, moral rights cannot be licensed nor assigned. Any contrary provision or agreement would be null and void. However, moral rights are imprescriptible (that is, they do not lapse for any reason) and they may be:

- Transferred to the author's heirs after the author's death.
- Exercised by a third party in accordance with testamentary provisions (when the author of a copyrighted work dies and does not have any heirs,

they may authorise in their will a third party to exercise their moral rights on such work).

### 30. If moral rights (or the equivalent in your jurisdiction) can be licensed or assigned:

- Is the author the only party entitled to license or assign them or (if not the same person) is the copyright owner also entitled to?
- If the copyright owner is also entitled, do they need to obtain the author's consent, or give them prior notice, before granting the licence or making the assignment?
- Are any terms or conditions typically placed upon the third party receiving the benefit of any such licence or assignment?

N/A.

## Compensation

### 31. In your jurisdiction, is the employee entitled to any compensation from the employer if the employer registers or exploits (by licensing or assigning to third parties, or granting security over) any IP that has been created by the employee during their employment?

In France, employees are entitled to additional remuneration for any invention under mission (Article L. 611-7, *Intellectual Property Code*).

Employees must also receive a "fair price" for any invention outside mission over which the employer claimed ownership (see Question 2 and Question 4) (Article L. 611-7, *French Intellectual Property Code*).

Employees are also entitled to compensation for assignment to the employer of any IP that does not fall under the two categories above.

### 32. If so, what and how much compensation is the employee entitled to in your jurisdiction?

#### Inventions under mission

Additional remuneration for inventions under mission can be either:

- Royalties based on the revenues generated by the invention.
- One or several lump sums.

The payment conditions and amounts are set out in:

- The applicable collective bargaining agreement.
- The company policies.
- The employment contract.

#### Other types of invention

The compensation for an assignment to the employer of any IP created during the employment (whether the "fair price" for inventions outside mission, or any other assignment price) can be determined by the parties.

The only legal constraint relates to the assignment of copyright:

- In principle, the author's remuneration should be proportional to the revenues earned by the employer from the exploitation of the corresponding work.
- As an exception, in some limited cases (including the assignment of rights in software) the remuneration may be a lump sum (Article L. 131-4, *French Intellectual Property Code*).

The rights of representation and reproduction may be assigned for free (Article L. 122-7, *Intellectual Property Code*). However, this carries a high risk of the assignment being deemed a donation (in which case, the courts will pay very close attention to the author's capacity to assign their IP rights for free; if the judges have any doubt as to the author's capacity and awareness, the assignment/donation may be deemed null and void (*Paris Court of Appeal, 25 November 2005, No. 04/02005*)).

### 33. In your jurisdiction, can a clause such as **Standard clause, Intellectual property clause (employment): International: clause 1.6** be included in the terms of employment to establish that no compensation other than that contained in the agreement will be payable to the employee in respect of any IP rights?

This clause may be included, but in practice it will have little effect, as the requirements for additional remuneration for inventions under mission, the fair price for inventions outside mission, and the agreed assignment price for other inventions are all provisions that are of public policy, so they apply regardless of contractual provisions. If these public policy provisions are not included expressly in the terms of employment, they will be carved out by the wording of "except as provided by law".

### Further assurance

**34. Is the undertaking given in Standard clause, Intellectual property clause (employment): International: clause 1.7 valid and enforceable in your jurisdiction, that is, an undertaking to execute all documents and do anything to assist in vesting the IP rights in the employer?**

This clause is a typical provision in French employment contracts. The authors are not aware of any case law validating such a clause; however, there is no reason why it should not be valid and enforceable in France, except in relation to the waiver of moral rights (see Question 25).

**35. Is it permissible in your jurisdiction for future assignments to be included in such an undertaking as set out in Standard clause, Intellectual property clause (employment): International: clause 1.7?**

Yes. Since the assignment of some future IP rights is not permissible under French law, undertakings in relation to future assignments are often seen in employment contracts (see Question 17).

**36. Is it usual in your jurisdiction for the employer to agree to reimburse the employee for expenses incurred in complying with this undertaking as set out in Standard clause, Intellectual property clause (employment): International: clause 1.7?**

Yes, it is usual for the employer to reimburse the employee for reasonable expenses incurred in complying with this undertaking, as set out in [clause 1.7](#).

**37. Is the term “best endeavours” as set out in Standard clause, Intellectual property clause (employment): International: clause 1.7 understood in your jurisdiction? If not, is there an alternative or equivalent concept?**

The use of the term “best endeavours” would be understood in France as meaning “best efforts”.

### Assistance with infringement claims

**38. Is Standard clause, Intellectual property clause (employment): International: clause 1.8 permitted and commonly included in terms of employment with employees in your jurisdiction to try to ensure that the employee gives valuable witness evidence as required by the employer in any IP litigation that arises around the world, even after their employment with the employer has come to an end?**

A clause such as [clause 1.8](#) is permitted, and these are commonly included in the terms of employment in France. It is allowed based on the employee’s duty of loyalty (*Articles L. 1222-1 and 226-13, French Labour Code; Cour de Cassation, 10 May 2006, No. 05-210*); this duty persists after termination of employment (*Cour de Cassation, 19 March 2008, No. 06-45322*). However, in practice it may be difficult to enforce.

**39. What are the main defences to copyright and design right infringement claims in your jurisdiction?**

### Main defences to copyright infringement

The main defences to copyright infringement are:

- Disputing the validity of the copyright.
- Disputing whether infringement occurred.

For example, the defendant may claim:

- Copyright invalidity (that the claimant’s work is not “original” and therefore there is no copyright in the work; a work is considered original if it reflects the author’s creative spirit (*Cour de Cassation, Civ 1st, 13 November 1973*)).
- Copyright ownership (that the claimant does not own the copyright over the work allegedly infringed, and therefore does not have the standing to claim for infringement).
- Absence of reproduction (that the defendant’s work does not constitute a reproduction or imitation of the work allegedly infringed (copyright infringement is assessed by similarities and not by differences), or



that the allegedly infringing work was independently created).

- Authorised use (French law provides for several exceptions to copyright, listed in Article L. 122-5 of the Intellectual Property Code (for example, among other things for the purposes of research, education, parody and private representation)).

Good faith is not an admissible defence to copyright infringement in France. However, the defence of independent creation puts the burden of proof of independent creation (that is, having had no access to the allegedly infringed work) on the defendant; as a result, the burden of proof in this scenario has an element of proof of good faith (*Cour de cassation, Civ 1st, May 16, 2006, "Djobi Djoba"; Cour de cassation, Civ 1st, October 2, 2013 "Plus Belle La Vie"*).

### Main defences to design right infringement

Similarly, the main defences to registered design right infringement are:

- Disputing the validity of the design right/copyright on that design.
- Disputing whether infringement occurred.

For example, the defendant may claim:

- Design right invalidity (that the claimant's design is not novel and does not have a unique character (*Articles L. 511-2-L. 511-5, French Intellectual Property Code*)).
- Expiration of the registered design right (in France a design may be registered for a five-year period, renewable for a maximum duration of 25 years).
- Design right ownership.
- Absence of reproduction (that the defendant's work does not constitute a reproduction or imitation of the work allegedly infringed (the infringement assessment is based on the overall visual impression) or that the allegedly infringing work was independently created).
- Authorised use (French law provides for a few exceptions to design right protection, listed in Article L. 513-6 of the Intellectual Property Code (for example, private use, teaching and experimentation)).

Unregistered designs may be protected by copyright if they fulfil the copyright protection criteria. If so, the potential defences to unregistered design infringement will be identical to the defences to copyright infringement.

#### 40. Is the defence that the allegedly infringing work was independently created, and that it is a mere coincidence that it resembles closely the claimant's copyright work or design, available in your jurisdiction (see [Standard clause, Intellectual property clause \(employment\): International: clause 1.8](#))?

The defence that the allegedly infringing work was independently created, and that it is a mere coincidence that it resembles closely the claimant's copyright work or unregistered design, may be argued before French courts (see Question 39). However, the defendant must provide evidence that the allegedly infringing work was independently created, and that it would have been impossible for them to have had access to the allegedly infringed work.

#### 41. In practice, how difficult would [Standard clause, Intellectual property clause \(employment\): International: clause 1.8](#) be to enforce in your jurisdiction?

As there is little case law considering this type of clause in France, it is uncertain how difficult in practice it would be to enforce.

### Powers of attorney

#### 42. Can the employee appoint their employer as their attorney in [Standard clause, Intellectual property clause \(employment\): International](#) for the purpose of executing any documents that might be required in relation to the IPR under this clause?

Although it may not be invalid, there would be a risk of dispute regarding the legality of the employee's consent, due to the inherent inequality in the employment contract. As a result, it would not be advisable to do so.

#### 43. Are there any formalities that must be adhered to in relation to the creation or execution of such a power of attorney to ensure that it is valid and enforceable in your jurisdiction?

In France, the formalities related to the creation or execution of a power of attorney in labour law are identical to those in civil law, and must fulfil the requirements of: capacity, competence, authority, means, precision and evidence.

In the event the employee appoints their employer as their attorney, it would be unusual to require an authenticated signature of an authentic act (through notarisation). A delegation of power included in writing directly in the employment agreement or by way of an amendment to it would be sufficient (and advisable, as it would allow the employer to demonstrate and specify the extent of the delegation of power, and to make it enforceable against third parties).

### Execution and other formalities

**44. Do the terms of employment/contract into which [Standard clause, Intellectual property clause \(employment\): International](#) is inserted need to be executed in any particular manner in order for the assignment set out in this standard clause to be valid and enforceable in your jurisdiction?**

No.

**45. If [Standard clause, Intellectual property clause \(employment\): International](#) is included in the employee's terms of employment/contract in your jurisdiction, are there any other specific execution or registration formalities or other requirements that would be necessary for this clause to be valid and enforceable?**

No (except if, for example, the terms of employment require confirmatory assignment agreements to be

registered with trade mark offices for instance, in which case, such steps would need to be taken).

### General

**46. Are any of the clauses set out in [Standard clause, Intellectual property clause \(employment\): International](#) not legally valid and enforceable or not standard practice in your jurisdiction?**

The waiver of moral rights in [clause 1.5](#) would not be legally valid or enforceable in France (see Question 25).

**47. Are there any other IP clauses that would be usual to see in such standard IP clauses and/or that are standard practice to include in your jurisdiction?**

No.

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