

January 8, 2013

**Practice Group(s):**  
**Labor, Employment**  
**and Workplace Safety**

## Dividend Premiums – Status Quo

*By Olivia Lê Horovitz, Julie Bouchard, and Noémie Birnbaum*

Most companies close their accounts at the end of the fiscal year on December 31<sup>st</sup>. It is thus the moment to determine whether payment of a “dividend premium” to employees is required. Since January 1<sup>st</sup>, 2011, a decision to distribute dividends to shareholders generally requires payment of a dividend premium to employees. Although the French Prime Minister announced last July that this law would be repealed, it remains in place. Companies therefore must remain vigilant as to its application.

### Which companies are eligible?

The obligation to pay a “dividend premium” applies to French commercial companies whose workforce is composed, on a regular basis, of at least 50 salaried employees. Employee count is made according to the same rules as for the existing compulsory profit sharing scheme as defined in the Labor Code.

Commercial companies controlled by the State are also subject to the dividend premium rule, under specific conditions.

### When is the payment due?

The obligation is triggered by the declaration of a dividend which is higher per share than the average dividend declared over the last two financial years. Companies closing their accounts on December 31<sup>st</sup> of each fiscal year should therefore bear in mind that they might be under the obligation to pay their employees dividend premiums. Apart from dividend distributions, no other payments to shareholders trigger this obligation. For example, a payment made as a result of share redemption or purchase by a company or an exceptional distribution drawn from the reserves which qualifies as an asset allocation, do not qualify as a dividend and should not require a dividend premium to employees.

Pursuant to the Labor Code different rules regarding the triggered event apply when the qualifying company is part of a group controlled by a French company.

In such a case, the qualifying company is considered to be the French company controlling the group. As a result, the triggering event is the aforementioned declaration of the dividend (or “Qualifying Dividend”) by the French company controlling the group. Hence, the French subsidiary of such a company may have to grant a dividend premium to its employees even if it has not declared any dividend for years. The reverse is also true: such subsidiary may not be under any obligation to pay a premium if the controlling company does not declare a Qualifying Dividend, even though the subsidiary itself declares one.

A company need not pay a dividend premium if it has granted an additional and non-compulsory financial benefit to all its employees connected in whole or in part with the increase of dividends.

## Dividend Premiums – Status Quo

### What should be paid?

The dividend premium must be paid in addition to the salary and other compulsory components of employee remuneration. No specific amount or formula for determining the dividend premium is included in the law. Rather, an agreement must be entered into between the qualifying company and the employees' representatives, including the Works Council, within three months from the decision of the shareholders meeting declaring the dividends.

Such collective agreement must provide (i) the rules for determining the premium's amount, (ii) the allocation of the premium among the employees (premium may either be the same for all employees or depend on their seniority or salary) and (iii) the date of payment.

If no agreement is reached within three months, the amount and other details of the premium are determined unilaterally by the employer, once it has obtained the opinion of the Works Council or employees' representatives, if any.

The amount of the premium must not merely be a token. The dividend premium's amount may either be a lump sum or subject to a calculation formula. In either case, it is recommended that the premium's amount be consistent with the aggregate amount of the dividend distributed.

The dividend premium is exempt of social security charges (except for specific exceptions) for both the employee and the employer, up to a maximum premium gross amount of €1200 per employee per year. Certain administrative filings must be made by the employer to enjoy that exemption.

The exemption from social charges should be taken into account by employers as other employee incentives are currently subject to higher social charges and taxation. As a result, the dividend premium may be considered as an incentive.

### Beneficiaries?

All employees of a qualifying company who were employed by the company during the relevant financial year in which the dividends are paid are entitled to the dividend premium. However, the entitlement may be conditioned on a minimum length of service that may not exceed three months, to the extent that such condition is provided in the collective agreement relating to the premium.

### Sanctions?

Payment of the dividend premium is mandatory. Failure to pay may result in sanctions including a fine amounting to €3750 and one year of imprisonment for the company representative and a fine amounting to €18750 payable by the company itself. In addition, the employer may be liable to pay damages to penalized employees.

### For how long?

The law on dividend premium is currently applicable but was construed as a temporary measure, pending the adoption, on December 31<sup>st</sup>, 2013 at the latest, of a new law with respect to the sharing of “added value”, as a result of national industry wide (*interprofessionnel*) negotiations. In the meantime, the Government should have, by December 31<sup>st</sup>, 2012, filed a report with the Parliament assessing the agreements and measures taken in connection with the dividend premium and suggesting, if need be, amendments to the law. However, such report has not been issued yet.

This may be explained by the fact the French Prime Minister intends to put an end to such law.

## Dividend Premiums – Status Quo

---

### Authors:

**Olivia Lê Horovitz**

olivia.lehorovitz@klgates.com

+33.(0)1.58.44.15.27

**Julie Bouchard**

julie.bouchard@klgates.com

+33.(0)1.58.44.15.10

**Noémie Birnbaum**

noemie.birnbaum@klgates.com

+33.(0)1.58.44.15.36

## K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai Fort Worth Frankfurt Harrisburg Hong Kong London Los Angeles Melbourne Miami Milan Moscow Newark New York Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Diego San Francisco São Paulo Seattle Seoul Shanghai Singapore Spokane Sydney Taipei Tokyo Warsaw Washington, D.C.

K&L Gates includes lawyers practicing out of 46 fully integrated offices located in North America, Europe, Asia, South America, Australia, and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information about K&L Gates or its locations and registrations, visit [www.klgates.com](http://www.klgates.com).

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2013 K&L Gates LLP. All Rights Reserved.