



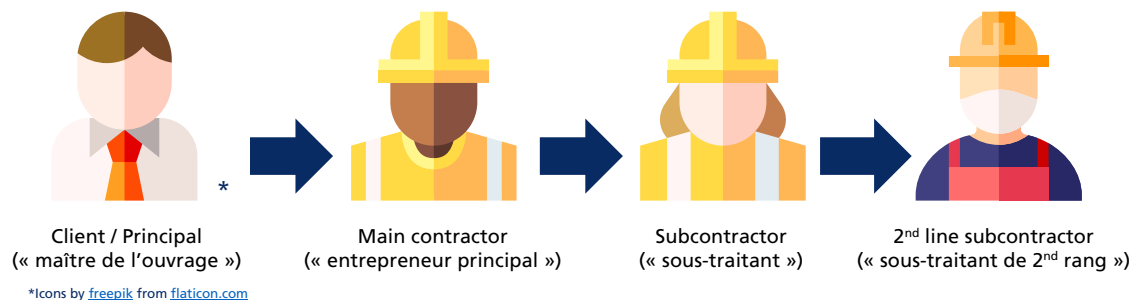
BMHAVOCATS

LEGAL TOOLBOX #1
SUBCONTRACTING: RULES & CONDITIONS IN FRANCE

QUESTION

ANSWER

How does a subcontracting setup look like in France?



Are the French rules on subcontracting mandatory?

Yes, the French Law N° 75-1334 dated 31 December 1975 (and its subsequent amendments) on subcontracting is **mandatory**, and therefore **any contractual provision contrary to the 1975 Law is null and void**. This means that the 1975 Law applies notwithstanding the law (by choice or default) applicable to the contract or the nationality of the parties.

The 1975 Law applies to both private subcontracts and public subcontracts (in relation to a public procurement contract).

Is my contract a subcontract within the meaning of French law?

Pursuant to the 1975 Law, subcontracting shall be understood as the **process by which a contractor entrusts, by means of a subcontract, and under their responsibility, all or part of the execution of a works contract or public contract** concluded with the client to another person known as the subcontractor.

Subcontractors shall be considered as the main contractor with regard to their own subcontractors (see above: the subcontractor must comply with the same obligation as a contractor towards its own 2nd line subcontractor).

What are the main rules for subcontracting under French law?

- Contractors planning to execute a contract using one or more subcontractors must, when the contract is concluded and throughout its duration, **have all subcontractors accepted** by the client
- Contractors must have **the conditions of payment for each subcontract approved** by the client



What if the subcontractor is not accepted or its payment conditions are not approved?

Should the subcontractor not be accepted, or its conditions of payment not be approved by the client, the contractor remains nevertheless obligated to the subcontractor but is **deprived of the possibility to invoke the subcontracting agreement against the subcontractor**.

In addition, in case of breach of the 1975 law, the contractor is exposed to be fined by Labour Inspectors, police officers, customs agents and various other public authorities up to an amount of €7,500 for each breach.

What is the main risk for the client?

Should the main contractor fail to pay the amounts due by virtue of the subcontract, the subcontractor shall address a final notice to the contractor, a copy of this notice being sent to the client.

If the subcontractor is not paid by the contractor **within one month after notice** to pay is given, the **subcontractor shall be able to take direct action against the client**. Any waiver of direct payment shall be considered invalid. This applies even if the main contractor faces insolvency.

Faux amis :

"sous-traitance" ≠ "cotraitance"

"Sous-traitance" (subcontracting) means that the main contractor remains the sole responsible for all the works under the works contract towards the client, including all works that have been performed by a subcontractor. The subcontractor has no contractual relationship with the client.

"Cotraitance" (co-contracting) is when several contractors apply jointly for a tender as part of a "temporary grouping", each contractor being entrusted a specific part of the works under the works contract. The grouping having no legal personality, each contractor is directly responsible for the execution of its part of the works towards the client.

Want to learn more?

See...

- Official translation of the 1975 Law (link to third website)
- 1975 Law (French version)
- Articles (French version)

About this factsheet

This "Legal toolbox" factsheet was created by a team of **BMHAVOCATS** lawyers. Find more factsheets from the same series on our website: <http://bmhavocats.com/en/publications-en> under the tab "Legal toolbox". To contact one of our lawyers, click on their photo below.

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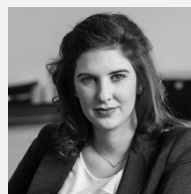
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