

GRAMOND

Foreign Investment in French Private Companies: Recent Developments and Key Issues

Foreign investment in France may take many forms – from the acquisition of shares to the acquisition of a business or assets – and raises a wide range of legal, tax, employment and regulatory issues. Such investments raise key areas of attention to be anticipated from the outset of the transaction structuring, particularly regarding foreign investment screening and merger control, tax, employment law, anti-corruption and economic sanctions. Identifying these issues at an early stage is essential to securing both the transaction and the investment timetable.

This study focuses on investments in solvent, unlisted companies and does not address capital markets issues or matters specific to distressed companies. It sets out some of the main legal, tax, employment and regulatory issues that may arise in this context, without aiming to be exhaustive. It does not constitute legal, employment, tax or financial advice and cannot replace a case-by-case analysis taking into account the specific features of the transaction, the target company and the investor.

I. Economic and Political Environment

An environment that remains favourable to foreign investment

Despite an international context marked by economic and geopolitical uncertainty, France retains a leading position in terms of foreign investment. For the seventh consecutive year, France ranked first in Europe in 2025 by number of foreign investment projects, with 852 projects recorded, ahead of the United Kingdom (730) and Germany (548)¹.

This attractiveness rests on solid fundamentals, including the size of the French market, its capacity for innovation, the quality of its infrastructure and workforce, and access to largely decarbonised energy. In particular, France remains the leading European destination for foreign industrial investment.

Investment is increasingly concentrated in strategic, high-growth sectors. Software and IT services remain the leading sector for foreign investment in France, while artificial intelligence, defence, low-carbon energy and logistics are experiencing particularly strong momentum. In 2025, France established itself as Europe's leading hub for foreign investment in artificial intelligence, with 53 projects recorded, up 26% year on year. At the same time, certain traditional industrial sectors, such as automotive, chemicals and metallurgy, are slowing down.

France's attractiveness therefore remains strong, but cannot be taken for granted. Investors attach growing importance to political and regulatory stability, cost competitiveness and the predictability of public policy.

Attractiveness and protection of strategic interests: a strengthened balance

French foreign investment policy seeks to strike a balance between maintaining the country's attractiveness and protecting its strategic national interests.

While France pursues an active policy of welcoming foreign capital, public authorities also have several tools at their disposal that may affect the completion of a transaction, especially through foreign investment screening, merger control and certain sector-specific regulations.

¹ Source: EY Attractiveness Survey published on 21 May 2026.



Such intervention is particularly pronounced where the investment concerns strategic or sensitive sectors. In 2025, 418 filings were submitted to the French Treasury (“*Direction générale du Trésor*”) under the French foreign investment screening regime (“*FDI*”). Of the 167 authorisations granted, 49% were subject to conditions designed to safeguard national interests².

More recently, the French State authorised the sale of EDF’s subsidiary Exaion to the US group MARA Holdings, subject to several binding undertakings, including the removal of a non-compete clause and the entry of a French investor as part of a strategic partnership – illustrating the authorities’ ability to shape, in concrete terms, the conditions under which a foreign investment in a strategic sector may be completed³.

This trend now forms part of a broader movement at European level, marked by the strengthening and harmonisation of foreign investment screening mechanisms.

II. Legal and Regulatory Framework

Foreign investment in France is governed by a legal framework combining French law and European Union law. Depending on the nature and structure of the contemplated transaction, several bodies of rules may apply, including business law, contract law, tax law, employment law and competition law.

In addition to these general rules, specific regimes apply to cross-border transactions. Certain transactions may be subject to merger control, to French screening of foreign investment in sensitive sectors or, for transactions falling within its scope, to the EU Foreign Subsidies Regulation.

Structuring a foreign investment therefore requires identifying, ahead of the transaction, the various applicable regimes and any prior authorisations or notifications, as these may affect the timetable and the conditions for completing the investment.

Beyond acquisitions of shares or assets, some cross-border investments take the form of reorganisations between companies established in different Member States. These transactions are governed by a specific framework that has recently been harmonised within the European Union.

Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019, known as the “Mobility Directive”, amending Directive (EU) 2017/1132 relating to certain aspects of company law, extended and harmonised the European framework applicable to cross-border transformations, mergers and splits. It supplemented the existing cross-border merger regime with common rules applicable to transformations and splits. It was transposed into French law by Ordinance No. 2023-393 of 24 May 2023.

These transactions enable companies established in different Member States to carry out a cross-border merger, either by absorption of one or more companies or by formation of a new company, with the transfer of all their assets and liabilities to the absorbing company. The new European framework also enables a company to transfer its registered office to another Member State while retaining its legal personality by way of a cross-border transformation, or to carry out certain cross-border splits in favour of beneficiary companies located in one or more other Member States.

² Source: Annual report on FDI screening in 2025. Filings include applications for authorisation, requests for prior review and notifications for crossing the 10% voting rights threshold in a listed company.

³ Source: “Acquisition of Exaion: the State imposes binding conditions, the removal of the non-compete clause and requires the entry of a French investor to create a strategic partnership” – Press – French Ministry of Finance. The US group MARA Holdings acquired 64% of the share capital of the French subsidiary Exaion (a cloud and high-performance computing specialist) for approximately USD 168 million, a deal approved by the French State in early 2026 subject to strict sovereignty conditions.



These transactions remain subject to the provisions and formalities laid down by the national laws applicable to the participating companies, within the framework harmonised at European level. Their completion requires compliance with rules designed to protect shareholders, creditors and employees, as well as a review of the legality of the transaction by the competent authorities of the Member States concerned.

III. Structuring and documenting the Investment: Equity Investment or Asset Acquisition

Preliminary agreements

In mergers and acquisitions (M&A), negotiations are frequently framed, ahead of the definitive documentation, by a letter of intent (“LOI”), which may be preceded or accompanied by confidentiality and exclusivity agreements. The LOI records the main points of agreement and sets the framework and timetable for negotiations.

Particular care must be taken in drafting the LOI in order to clearly distinguish binding provisions, in particular confidentiality and exclusivity, from those that remain subject to the signing of the definitive documentation. Under French law, merely stating that the document is non-binding is not sufficient: the courts will look to the common intention of the parties. An LOI that sets out the subject matter and the price in firm terms may be recharacterised as an offer, a promise or even a completed sale.

Pre-contractual negotiations remain subject to a duty of good faith. While the parties are in principle free to enter into, pursue or break off negotiations, the conduct and termination of those negotiations must not be wrongful. Particular care is therefore required in the conduct of competitive processes, the management of exclusivity and the termination of advanced negotiations.

Gramond Tips: Expressly specify in the LOI which provisions are intended to be binding and which are not, and identify the main points remaining to be negotiated. Particular attention should be paid to exclusivity and confidentiality clauses, to the conditions for completing the transaction and to the terms on which negotiations may be terminated.

Choosing the acquisition structure

Foreign investments in France may be structured in various ways, the most common being the acquisition of shares (“share deal”) and the acquisition of a business or certain assets (“asset deal”), the latter possibly taking the form of a transfer of a going concern (fonds de commerce). The choice of structure generally depends on the scope of the contemplated investment, the assets and liabilities the acquirer intends to take over, and the tax and regulatory considerations specific to the transaction.

The acquisition of shares is the most frequently used structure. It may relate to all or part of the target company’s share capital, thus allowing either a takeover or a minority investment. Generally documented in a share purchase agreement (“SPA”), this structure nevertheless presents a major drawback for the purchaser: it takes over the target company’s liabilities.

Where the parties wish to exclude certain specific liabilities, assets or contracts, they may opt for the sale of the entire going concern or the sale of individual assets, thereby allowing a tailor-made transfer. The sale of a going concern is subject to a specific regime and to more stringent formalities than those applicable to a simple share sale.

The sale of a going concern requires publication formalities enabling the seller’s creditors to object to the payment of the price, as well as, where applicable, notifications to registered creditors. It is also subject to a specific tax regime, particularly with regard to registration duties.



Owing to its complexity and rigidity, this procedure is often avoided in favour of a prior contribution of the assets to a newly incorporated company, followed by the sale of that company's shares. Such a structure must nevertheless be assessed in light of its economic objectives and its tax consequences.

Gramond Tips: Where an “asset deal” is structured as a prior contribution of the assets to a newly incorporated company followed by the sale of its shares, make sure to document the economic and operational reasons justifying the chosen structure. A structure pursuing a purely tax-driven objective, in particular to obtain more favourable treatment than that applicable to a direct sale of the going concern, may be challenged by the tax authorities on the grounds of abuse of law.

In a “share deal”, the acquirer indirectly takes over all the target company's assets and liabilities. To secure its acquisition, it has two main tools: conducting thorough due diligence, with the assistance of its advisers, in order to identify and assess the risks attached to the target; and negotiating appropriate contractual warranties and indemnities with the seller in order to allocate the risks identified or likely to materialise after completion of the transaction.

In the case of a minority investment, negotiate the rights protecting the investment upon entry into the share capital: representation on governance bodies, enhanced information rights, reserved matters, veto rights, exit clauses and anti-dilution mechanisms. **In the case of a majority takeover**, ensure that voting rights are exercised in the corporate interest and do not prejudice the rights of minority shareholders, to prevent any risk of majority abuse.

The growth M&A insurance

In line with Anglo-Saxon practice, the use of M&A insurance, in particular “Warranty & Indemnity” or “W&I” insurance, has grown significantly in France as a means of securing acquisitions. This insurance allows all or part of the financial risk arising from a breach of the representations and warranties given by the seller in the acquisition documentation to be transferred to an insurer. It thus supplements, or even partly replaces, the traditional warranty and indemnity package (“*garantie d’actif et de passif*”).

Two types of policy can be distinguished depending on the identity of the insured. A seller-side policy covers the seller against the financial consequences of a claim by the buyer under a covered warranty. A buyer-side policy, now the most common, allows the buyer to be indemnified directly by the insurer in the event of a covered breach. The insurer generally waives any recourse against the seller, except in the event of fraud.

This mechanism enables the seller to significantly limit its post-completion exposure, sometimes to a nominal amount, and to achieve a “clean exit”. The buyer, for its part, benefits from a solvent counterparty without having to require an escrow or a bank guarantee. The extent of cover nevertheless depends on the terms of the policy (retention, cap, exclusions) and on the quality of the due diligence carried out beforehand, which insurers review before agreeing to underwrite the risk. Risks identified during that review or known to the buyer are generally excluded. They must then be addressed through specific indemnities or dedicated policies.

IV. Foreign Investment Screening in France (FDI)

Financial relations between France and other countries are, in principle, unrestricted. However, certain foreign investments in sensitive activities are subject to prior authorisation from the Minister for the Economy where the conditions relating to the investor, the contemplated transaction and the activity of the target entity are met. Separately from this screening, certain direct investment transactions exceeding €15 million must be reported to the Banque de France for statistical purposes.



The French Monetary and Financial Code makes foreign investments in activities likely to undermine public order, public security or national defence interests subject to prior authorisation from the Minister for the Economy. This authorisation must be obtained before the investment is completed. The Minister may authorise the transaction unconditionally or make the authorisation subject to undertakings designed to safeguard the national interests protected by the regime. These sectors include, in particular:

- activities relating to arms, ammunition, powders and explosive substances intended for military purposes, as well as war material and similar equipment;
- activities relating to the dual-use items and technologies listed in Annex IV to Regulation (EU) 2021/821;
- certain activities relating to cryptology means and services, as well as equipment or technical devices enabling the interception of correspondence, the remote detection of conversations or the capture of computer data;
- certain activities relating to information systems security, as well as activities relating to means intended to counter the unlawful use of pathogenic or toxic agents or to prevent their health consequences;
- activities relating to infrastructure, goods or services essential to the integrity, security or continuity of energy or water supply, the operation of transport or electronic communications networks and services, space operations, certain public security missions, the protection of public health – including certain activities in the pharmaceutical and healthcare sectors – national food security, political and general news media, and the extraction, processing and recycling of critical raw materials;
- research and development activities relating to the dual-use items and technologies listed in Annex I to Regulation (EU) 2021/821 or to critical technologies, including cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, quantum technologies, energy storage, biotechnologies, low-carbon energy production technologies and photonics.

Screening triggers

The French foreign investment screening regime varies according to the nature of the transaction and, for certain transactions, according to the nationality, place of domicile or chain of control of the investor.

For any foreign investment, irrespective of its geographical origin, investments in the sectors listed above are subject to prior authorisation where they result in:

- acquiring control, within the meaning of Article L. 233-3 of the French Commercial Code, of an entity governed by French law or of a branch registered with the Trade and Companies Register in France. It is not necessary to hold more than 50% of the share capital or voting rights, as French law recognises de facto control; or
- acquiring all or part of a business line of an entity governed by French law.

For investors who do not benefit from the exclusion provided for certain individuals or entities falling entirely within the European Union or the European Economic Area, the following also constitute an investment for the purposes of the FDI regime⁴:

- crossing, directly or indirectly, alone or in concert, the threshold of 25% of the voting rights of an entity governed by French law; or

⁴ Article R. 151-2 of the French Monetary and Financial Code, last paragraph.



– crossing, directly or indirectly, alone or in concert, the threshold of 10% of the voting rights of a company governed by French law whose shares are admitted to trading on a regulated market.

French Decree No. 2026-718 of 30 July 2026, applicable since 17 August 2026, introduces a much more targeted change. It extends screening to companies governed by French law whose shares are admitted to trading on a regulated market located in a non-EU country. The Order (*arrêté*) of 30 July 2026 sets out the list of regulated markets concerned for the purposes of this screening⁵.

Reporting obligations

Separately from French foreign investment screening, certain cross-border transactions must be reported to the Banque de France for statistical purposes where their amount exceeds €15 million⁶. These include, in particular, foreign direct investments in France and their liquidation, acquisitions or disposals of non-resident companies by residents, and acquisitions or disposals of real estate abroad by residents or in France by non-residents. This report must be filed within twenty business days following completion of the transaction.

Procedure and sanctions

Where an investment falls within the scope of foreign investment screening, the investor must obtain prior authorisation from the Minister for the Economy before completion. In an acquisition, obtaining this authorisation is therefore generally provided for as a condition precedent to completion of the transaction.

The review comprises an initial phase of 30 business days (Phase I), at the end of which the Minister may find that the investment does not fall within the scope of screening, authorise it unconditionally or decide that a further review is required. In the latter case, a second phase is opened and the Minister has 45 business days from the investor's receipt of the decision stating that a further review is required to authorise the investment unconditionally, authorise it subject to conditions designed to safeguard national interests, or refuse it.

A specific procedure applies to the crossing of the 10% voting rights threshold in a company governed by French law whose shares are admitted to trading on a regulated market meeting the applicable criteria. The investor must notify the transaction to the Minister in advance. Unless the Minister objects within 10 business days of the notification, the investor is exempt from filing an application for authorisation under the ordinary procedure.

Completing an investment without authorisation may result in the transaction being declared null and void, injunctions (possibly accompanied by periodic penalty payments), interim measures, and financial and criminal penalties. In the event of non-compliance with the conditions attached to the authorisation, the Minister for the Economy may withdraw the authorisation, impose financial penalties and issue injunctions.

European framework for foreign investment screening

The European framework for foreign investment screening was recently strengthened by Regulation (EU) 2026/1386 of 17 June 2026, which will replace Regulation (EU) 2019/452 following an eighteen-

⁵ The Order of 30 July 2026 specifies that the markets concerned include, in particular, EU/EEA regulated markets, certain non-EU markets recognised as equivalent, and a list of expressly designated markets: the London Stock Exchange, SIX Swiss Exchange, Toronto Stock Exchange, Singapore Exchange, Japan Exchange and Korea Exchange.

⁶ Article R. 152-3 of the French Monetary and Financial Code.



month transitional period, i.e. from 17 January 2028⁷. It aims in particular to harmonise the screening criteria and sectors and to strengthen European coordination.

All Member States will be required to have a national foreign investment screening mechanism. As a minimum, they will have to screen certain common categories of sensitive activities. The Regulation establishes a common list of sensitive sectors for which screening is mandatory: the “must screen” sectors⁸.

The Regulation also broadens the scope of investments that may be screened by covering investments made through an EU subsidiary of a foreign investor. Regulation (EU) 2019/452 only covered direct investments made by investors established outside the European Union. Accordingly, the acquisition of a German semiconductor company by a French company controlled by a non-EU investor may now fall within the European foreign investment screening framework.

The new regime provides for an ex post review mechanism: Member States will be able to call in, on their own initiative, foreign investments falling within the scope of national screening that were not subject to prior review, for a period of at least fifteen months and not exceeding five years after completion, where they have reason to believe that the investment is likely to affect security or public order. This development will need to be taken into account when assessing the legal certainty of cross-border transactions.

For France, this regulation builds on standards that have already been widely incorporated into the national framework and now harmonises them at the European level. As noted in the Plassard-Rodwell-Thiériot report on economic security, “[...] in Europe, France has by far the most mature regime”⁹.

Gramond Tips: Anticipate FDI screening from the outset of the transaction structuring: check whether the target’s activity falls within a sensitive sector and analyse the investor’s chain of control and its ultimate beneficial owners. Where there is doubt as to whether the target’s activity falls within the scope of FDI screening, the foreign investor or the French entity may submit an advance request to the Minister for the Economy for a review of the activity. This streamlined procedure, which results in a decision within two calendar months, makes it possible to secure the analysis before the transaction and to anticipate its timetable. Where prior authorisation is required, include it among the conditions precedent and adjust the transaction timetable accordingly.

V. Merger Control and Foreign Subsidies Control

Separately from foreign investment screening, the investment may also be subject to merger control and foreign subsidies control, at French or European level.

Ex ante merger control eased by higher thresholds

Concentrations include, in particular, mergers between previously independent undertakings, the direct or indirect acquisition of control of all or part of an undertaking, including through the acquisition of assets, and the creation of certain joint ventures performing on a lasting basis all the functions of an autonomous economic entity.

⁷ This new Regulation entered into force on 16 July 2026 and will, for the most part, apply from 17 January 2028.

⁸ The common core of investments subject to prior authorisation in all Member States covers, in particular: dual-use items and military equipment, certain critical technologies (AI, semiconductors, quantum), strategic raw materials, certain critical infrastructure in energy, transport and digital, certain electoral infrastructure and certain systemic financial infrastructure or entities.

⁹ The parliamentary report entitled “The Economic Security of France”, submitted to the Government in July 2026 by Members of Parliament Christophe Plassard, Jean-Louis Thiériot and Charles Rodwell, indeed highlights France’s lead in this area.



A recent reform has significantly raised the French notification thresholds. Since 1 September 2026, a transaction falls within the scope of ordinary national merger control where the combined worldwide turnover of the parties exceeds €250 million excluding VAT, compared with €150 million previously, and at least two of the parties each achieve turnover in France exceeding €80 million excluding VAT, compared with €50 million previously (provided that the transaction does not fall within the scope of EU merger control).¹⁰

This increase is expected to significantly reduce the number of transactions subject to prior notification to the French Competition Authority (“*Autorité de la concurrence*”), particularly among acquisitions of mid-sized unlisted companies. According to the French Competition Authority’s estimates, around 20 to 30% of the transactions previously notified should now fall outside this obligation.

In an acquisition, the notification obligation generally lies with the purchaser. The cooperation of the target company and the seller nevertheless remains essential, as preparing the filing requires detailed information on the parties’ activities and the markets concerned.

Where a transaction has an EU dimension and meets the thresholds laid down in Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, it falls in principle within the jurisdiction of the European Commission, subject to the referral mechanisms provided for under EU law. Absent an EU dimension, the transaction may fall, at European level, within the jurisdiction of one or more national competition authorities, depending on the thresholds and criteria applicable in the States concerned. The competent authorities and any notification obligations must therefore be identified well ahead of the transaction.

Where notification is required, the transaction may not, in principle, be implemented before it has been cleared. Obtaining clearance from the competent competition authority or authorities is therefore generally provided for as a condition precedent to completion of the transaction. Depending on the case, one or more national competition authorities or the European Commission may clear the transaction, clear it subject to commitments designed to remedy the competition concerns identified or, in the most problematic cases, prohibit it.

Any early implementation of the transaction (“gun jumping”) – in particular by taking effective control of the target, exercising decisive influence over its management or coordinating the parties’ commercial conduct before the required clearance has been obtained – exposes the parties to fines of up to 5% of the turnover excluding VAT achieved in France under national merger control, and 10% of total worldwide turnover under EU merger control.

In France, the Minister for the Economy also retains a power to intervene following the review conducted by the Competition Authority. Following a Phase I decision by the Competition Authority, the Minister has 5 business days to request the opening of an in-depth review. Following a Phase II decision (after an in-depth review), the Minister has 25 business days to call in the case and rule on the transaction on public interest grounds other than the maintenance of competition. At the end of Phase II, the Minister may therefore, on such public interest grounds, adopt a decision different from that of the Competition Authority and, where appropriate, attach conditions to the clearance. Although rarely exercised in practice, the Minister’s powers of intervention must be taken into account in the transaction timetable, since clearance granted by the Competition Authority does not rule out subsequent ministerial intervention within the statutory time limits.

The increase in thresholds does not, however, mean that transactions falling below them escape all scrutiny. Since the CJEU’s *Towercast* judgment of 16 March 2023, a concentration that is not subject

¹⁰ The French merger control reform, introduced by Article 24 of Law No. 2026-403 enacted in May 2026, significantly raises the thresholds for notification to the French Competition Authority as from 1 September 2026. These new criteria apply to transactions notified from that date.



to prior notification may, in certain circumstances, be reviewed ex post on the basis of the prohibition of abuse of a dominant position. Following that judgment, the Paris Court of Appeal held on 27 June 2024 that the mere strengthening of an undertaking's dominant position is not sufficient to establish an abuse, which requires in particular a substantial impediment to competition. That judgment is, however, the subject of an appeal before the French Supreme Court (*Cour de Cassation*).

Gramond Tips: Anticipate notification obligations and clearance timelines. In acquisitions between competitors, strictly control exchanges of sensitive information and preserve the parties' commercial independence until completion of the transaction, in order to prevent the risks of gun jumping and anti-competitive practices.

Even where there is no notification obligation under merger control, the competition risk of an acquisition should be assessed, particularly where it is carried out by an undertaking in a dominant position, in order to anticipate any ex post challenge on the basis of Article 102 TFEU.

Foreign subsidies control

Separately from merger control, certain transactions may also be subject to Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market (the "Foreign Subsidies Regulation" or "FSR"). This regime enables the European Commission to review financial support granted by non-EU States to undertakings engaged in an economic activity in the European Union. A transaction must, in particular, be notified to the Commission where, first, the acquired undertaking, at least one of the merging parties or the joint venture is established in the European Union and generates turnover there of at least €500 million and, second, the undertakings concerned have received, over the preceding three years, combined financial contributions from non-EU countries exceeding €50 million. The transaction may then not be completed before clearance by the Commission. The Commission also has an ex officio review power and may, in certain circumstances, request the notification of a transaction falling below those thresholds where it suspects the existence of foreign subsidies likely to distort the internal market.

Gramond Tips: From the outset of the transaction, check whether a notification obligation may arise under the FSR, independently of merger control, in order to anticipate clearance timelines.

VI. Tax Matters

Taxation is a decisive factor in structuring an investment in France and should be considered as early as possible in order to anticipate the tax regime applicable throughout the entire "lifecycle" of the investment, which encompasses (i) the making and financing of the investment as such, (ii) the management of cross-border flows and (iii) the investor's future exit.

- **Making the investment in France:**

- **Acquisition structured as a "share deal" or an "asset deal":**

- **Share deal:** The acquisition of shares in French companies is subject to transfer duties of 0.1% (shares in an SA or SAS, in particular), 3% (shares in an SARL, in particular) or 5% (for real estate-focused companies) of the purchase price.
 - **Asset deal:** The acquisition of a going concern is subject to transfer duties of 5% on the portion of the price exceeding €200,000.



Gramond Tips: It may be advisable (i) to convert an SARL into an SAS prior to its acquisition, or (ii) to contribute the assets of a going concern to a special purpose vehicle (“NewCo”) prior to its acquisition, provided that caution is exercised in order to avoid any risk of reassessment by the tax authorities on the grounds of abuse of law.

- **Financing the investment in France**
 - Where the investment is made through a French subsidiary (the most common case), the subsidiary is subject to several rules limiting the deductibility of financial expenses, in particular (i) for payments made to individual shareholders, (ii) for payments made to related companies, (iii) under the general limitation calculated by reference to “tax EBITDA” or (iv) in the case of “hybrid” cross-border arrangements.
 - It should be noted that a French NewCo held by a foreign shareholder may elect to form a French tax-consolidated group with its French subsidiaries, which is generally required by banks where the NewCo is financed through bank debt.
- **The “life” of the investment in France:**
 - **Management of financial flows between France and other countries**
 - French tax law provides in certain cases for a withholding tax on French-source dividends, which may be avoided if the conditions of the parent-subsidiary regime are met.
 - Any cross-border flow (dividends, interest, royalties) must also be analysed in light of the provisions of the applicable double tax treaty. A foreign investor subject to withholding tax in France will, in most cases, be able to benefit from a tax credit that may be offset against its own taxable income in order to avoid any double taxation of its income.
 - **Transfer pricing**
 - Cross-border supplies of goods and services must be carried out at market value, in accordance with the arm’s length principle under transfer pricing rules.
 - Where appropriate, a detailed analysis of the transfer pricing policy should be carried out in order to prevent the French tax authorities from taking the view that part of the income generated should have been taxed in France. Tax reassessments in this area can be substantial.
- **End of the investment in France (“Exit”):**
 - **Exit by way of a sale of the French shareholding:** The capital gain may be subject to withholding tax in France in the case of (i) the sale of a substantial shareholding or (ii) the sale of a real estate-focused company. French tax generally gives rise to a tax credit that may be offset against foreign tax.
 - **Exit by way of a cross-border merger:** A tax-neutral regime is generally available, subject to certain conditions and provided that the cross-border transaction has a sound business rationale and does not have tax fraud or tax evasion as its principal objective (“anti-abuse rule”).



Gramond Tips: Factor in the tax consequences from the choice of acquisition structure and anticipate, as early as possible, the organisation of cross-border flows and the future “Exit”

VII. Employment Matters

In an acquisition or business combination in France, several employment law issues must be anticipated. These mainly relate to the information and consultation of the Social and Economic Committee (*comité social et économique*, “CSE”) in companies with 50 or more employees and, for certain transactions, to the prior information of employees.

First, the consultation of the CSE plays a central role in the transaction timetable. Under the French Labour Code, in companies that have reached the statutory threshold of 50 employees, the CSE must be informed and consulted on all matters relating to the organisation, management and general running of the company¹¹. A proposed acquisition, disposal or equity investment may therefore, depending on its features and its consequences for the company concerned, trigger an information and consultation procedure with the CSE. This obligation applies not only to the purchaser’s CSE, but also to that of the target company, depending on the company’s headcount and the potential consequences of the project for the target.

The information and consultation procedure raises significant practical issues in terms of confidentiality and timing. The parties to the transaction are often reluctant to inform and consult the CSE – particularly that of the target company – before the transaction is made public. However, the CSE must be consulted in advance on a contemplated project that is still capable of being amended. This prior consultation must therefore take place at a stage when the project is sufficiently developed to enable the CSE to give a meaningful opinion, but before the relevant decision has been finally taken and implemented¹² (in practice, the consultation must take place before the signing of the SPA or of any firm purchase commitment). In a complex transaction, a further consultation may be required if a subsequent step substantially alters the initial project or gives rise to new consequences for employees.

Although the CSE has no power to block or approve the transaction, it must give an opinion, whether favourable or unfavourable (express or implied). The statutory provisions, possibly supplemented by the CSE’s internal rules or a specific company-level agreement, set strict time limits for delivering this opinion¹³: failure to comply with this timetable may delay completion of the transaction, or even suspend it if the CSE applies to the court for interim relief on the grounds that the information provided is insufficient, that implementation of the project has already begun or that the company intends to proceed before a proper consultation has been completed, and/or may constitute the criminal offence of obstruction (“*délit d’entrave*”).

¹¹ Article L. 2312-8 of the French Labour Code.

¹² Article L. 2312-14 of the French Labour Code provides that “the employer’s decisions shall be preceded by the consultation of the social and economic committee”.

¹³ Articles R. 2312-5 and R. 2312-6 of the French Labour Code. Unless a specific time limit or agreement applies within the company, the CSE generally has one month to give its opinion. This period is extended to two months where an expert is involved and to three months where the consultation takes place at several levels and involves one or more expert reviews. On expiry of the applicable period, the CSE is deemed to have been consulted and to have given a negative opinion.



In the absence of collective agreement provisions or internal rules providing otherwise, the CSE has a maximum period in which to give its opinion, ranging from one to three months depending on the circumstances (appointment of an expert, existence of a central CSE and establishment-level CSEs, etc.). If the CSE has not given its opinion by the end of the statutory period, it is deemed to have given a negative opinion. It is important to check whether the companies concerned have agreements providing for time limits different from those set by law.

The CSE consultation must be completed before the seller can take the final decision to sell. In practice, the parties may use a unilateral purchase undertaking (“*put option*”). The purchaser undertakes to acquire the company on the agreed terms, while the seller may only exercise the option and finalise the contemplated sale once the CSE information and consultation procedure has been properly completed, irrespective of the opinion given. In this scenario, no exercise of the option, completion, transfer of ownership or implementation of the transaction may take place before that date. This mechanism thus makes it possible to secure the main terms of the contemplated transaction upfront while complying with the requirement that the CSE be consulted beforehand on the contemplated project.

In parallel with the CSE information and consultation procedure, the French Commercial Code also provides for a procedure for informing employees in advance in certain limited cases (in particular, the sale of a going concern).

The regime for informing employees in advance of a sale was revised by Law No. 2026-403 of 26 May 2026.

Accordingly, for sales concluded on or after 27 July 2026:

- In companies with at least 50 employees that are required to set up a CSE exercising the powers provided for such companies, individual information of employees has been abolished: only the CSE must be informed and consulted on the proposed sale;
- In companies that are not required to set up such a CSE, in particular those with fewer than 50 employees, employees must be informed of the proposed sale and of their right to submit a purchase offer no later than one month before the sale¹⁴. This information may be provided by any means that gives certainty as to the date of receipt. The sale may nevertheless take place before the expiry of this period if each employee has notified their decision not to submit an offer.

This regime applies to the sale of a going concern and to the sale of a shareholding representing more than 50% of the shares of a limited liability company (SARL) or of securities giving access to a majority of the share capital of a joint-stock company¹⁵. In the event of non-compliance, a civil fine of up to 0.5% of the sale price may be imposed at the request of the public prosecutor.

Gramond Tips: From the outset of the transaction structuring, check whether the sale falls within the scope of these regimes and determine whether a CSE consultation is required or whether employees must be informed in advance. Compliance with these obligations must be built into the transaction timetable, taking into account the contemplated dates of signing and completion of the sale. These consultation and information procedures must therefore be anticipated in the transaction timetable and coordinated with the various stages of the transaction.

¹⁴ Article L. 141-23 of the French Commercial Code.

¹⁵ Article L. 23-10-1 of the French Commercial Code.



Protection of employee data

The protection of employees' personal data is a significant issue during due diligence and post-acquisition integration. Employee information must be disclosed only to the extent strictly necessary, in compliance with the principles of lawfulness, transparency, data minimisation, security and storage limitation. Where possible, data should be anonymised, particularly at the initial due diligence stage. The parties should also regulate access to the data, its retention and any transfer outside the European Economic Area.

Transfer of existing contracts

The employment consequences of the transaction depend on its structure. In a share sale, the employer generally remains the same legal entity and the transaction does not, in itself, entail the transfer of existing employment contracts between the seller and the purchaser. By contrast, in an asset sale, a merger or any other transaction involving the transfer of an autonomous economic entity that retains its identity, the existing employment contracts within the transferor are automatically transferred to the transferee, which becomes the new employer on the completion date pursuant to Article L. 1224-1 of the French Labour Code.

VIII. Governing Law and Dispute Resolution

Choice of governing law

In cross-border transactions, the parties enjoy broad freedom in choosing the law governing the transaction documentation. Under Regulation (EC) No 593/2008 ("Rome I"), a contract is governed by the law chosen by the parties, which may be that of an EU Member State or of a non-EU State. In practice, agreements relating to the acquisition of a French company are frequently governed by French law. French law offers a comprehensive and well-established legal framework, providing the parties with a high degree of predictability and legal certainty. This framework encompasses contract law, business law and other areas relevant to complex transactions.

A key feature of French law is its flexibility and its recognition of the party autonomy principle. This principle allows contracting parties to freely choose the law governing their contract, whether French law or the law of a foreign jurisdiction.

In certain international transactions, however, the parties may agree to submit the acquisition agreement to a foreign law with which they are familiar or which they regard as neutral. This choice may be driven by various factors, such as the wish to refer to a legal system familiar to the parties or the desire to benefit from more advantageous specific statutory provisions offered by another jurisdiction.

The choice of a foreign law does not, however, exclude mandatory French or European provisions and regulatory rules that may apply to the transaction in France. Certain French or European provisions remain applicable irrespective of the law chosen to govern the contract, in particular in the areas of employment law, merger control, foreign investment screening and formalities relating to the transfer of French shares and assets. The Rome I Regulation itself preserves the application of overriding mandatory provisions and, in certain situations, of mandatory rules from which the choice of a foreign law cannot derogate.



Dispute resolution

The choice of governing law must be distinguished from the choice of dispute resolution mechanism. Where the parties choose French law to govern the contract, they may also agree to submit any disputes to the French courts, unless they prefer arbitration. The jurisdiction clause must be drafted with precision and clearly identify the competent courts in order to limit the risk of subsequent challenges to jurisdiction.

In the absence of a choice of forum, the applicable jurisdiction rules generally lead to the courts of the place where the defendant is domiciled or has its registered office, subject to any special jurisdiction rules that may apply.

Paris, a forum of choice for international dispute resolution

For international commercial disputes, Paris has specialised chambers within the Paris Economic Activities Court (“*tribunal des activités économiques*”) and the Paris Court of Appeal. Since 1 March 2018, a specific protocol has notably allowed extended use of English before the international chamber of the Paris Economic Activities Court. Subject to the terms of that protocol, the parties may submit documents in English without translation, plead in English and have parties, witnesses or experts heard in that language, including in examination and cross-examination. French nevertheless remains the language of the proceedings, and judgments are delivered in French, accompanied by an English translation.

These chambers thus offer international operators a procedural framework suited to cross-border commercial disputes, while benefiting from the European mechanisms for the recognition and enforcement of judgments applicable between EU Member States.

The parties may also provide for arbitration, which is frequently chosen in cross-border transactions owing in particular to the flexibility of the procedure, the possibility of appointing arbitrators with expertise suited to the transaction and the relative ease of enforcing arbitral awards internationally. Confidentiality is not, however, an automatic feature of every arbitration: it must be provided for in the arbitration agreement or result from the chosen arbitration rules.

In this respect, Paris is a leading seat of international arbitration. France has a particularly well-developed legal framework that is favourable to international arbitration and to the recognition and enforcement of foreign arbitral awards. Paris is also home to the headquarters of the International Chamber of Commerce (ICC) and its International Court of Arbitration, and concentrates significant expertise in arbitration and alternative dispute resolution. The parties may choose Paris as the seat of arbitration and organise the procedure largely as they see fit, in particular as regards the choice of arbitrators, the language of the arbitration and the applicable procedural rules. The choice of forum, seat of arbitration and language of the proceedings should be coordinated with the choice of governing law from the outset of the negotiation of the transaction documents.

Gramond Tips: In a cross-border transaction, distinguish the law chosen to govern the SPA from the mandatory rules and conflict-of-laws rules specific to the transaction. Even where an SPA is governed by a foreign law, check in advance the French provisions likely to apply directly to the target, the employees, the shares or the assets concerned, employment and regulatory matters, investment screening, transfer formalities and enforceability against third parties. For dispute resolution, also take advantage of Paris as a legal centre and of its dedicated mechanisms for international disputes, notably the international commercial chambers of Paris and, for arbitration, the ICC International Court of Arbitration.



IX. Anti-Corruption and Economic Sanctions Issues

In France, as in many other jurisdictions, the prevention of corruption and influence peddling and compliance with economic sanctions play a decisive role in business combinations. These matters are governed by a combination of national and international rules. The main points of attention in such transactions can be summarised as follows:

- **National legislation:** The “Sapin II” Law of 9 December 2016 requires, in particular, companies meeting the statutory thresholds¹⁶ to implement a programme for the prevention and detection of corruption and influence peddling. In an acquisition, due diligence should make it possible to assess the target’s compliance programme and to identify any past breaches. This vigilance is particularly important in the case of a merger by absorption: since the reversal of case law by the French Supreme Court on 25 November 2020¹⁷, clarified and extended by a judgment of 22 May 2024¹⁸, the absorbing company may, under certain conditions, be sentenced to a fine or confiscation in respect of an offence committed by the absorbed company before the merger.
- **Compliance and anti-corruption due diligence:** During the due diligence phase of a business combination, it is recommended to carry out thorough checks in order to identify any risk or breach within the target company. This involves verifying the company’s compliance with anti-corruption laws, analysing its key contracts and reviewing its relationships with public officials and third-party intermediaries.
- **International reach of anti-corruption regimes:** In a cross-border transaction, any foreign legislation likely to apply should also be identified, in particular the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, whose scope may, under certain conditions, extend to conduct occurring, or companies established, outside the United States or the United Kingdom.
- **Economic sanctions:** European Union sanctions regimes are directly applicable in France and may, in particular, impose asset freezes or restrictions on certain transactions. Particular attention must therefore be paid to the identity of the target, its ultimate beneficial owners and its business partners, as well as to the jurisdictions in which it operates.
- **Export controls:** Activities involving sensitive goods or technologies, in particular dual-use items, may be subject to European export control rules. These constraints should be identified during due diligence in order to anticipate any authorisations or restrictions likely to affect the target’s business after the acquisition.
- **AML/CFT and know-your-customer:** For professionals subject to anti-money laundering and counter-terrorist financing obligations, the transaction requires due diligence on the identity of the parties and their ultimate beneficial owners and, depending on the level of risk, on the source of the funds involved.
- **Post-acquisition compliance:** Once the transaction has been completed, it is essential to monitor the compliance programme and integrate it within the combined group. This involves harmonising internal control procedures, continuing third-party due diligence, rolling out appropriate training and integrating whistleblowing systems.

¹⁶ In practice, at least 500 employees and turnover exceeding €100 million.

¹⁷ Cass. crim., 25 Nov. 2020, No. 18-86.955, published in the Bulletin.

¹⁸ Cass. crim., 22 May 2024, No. 23-83.180, published in the Bulletin.



- **Whistleblower protection:** French law grants protected status to whistleblowers reporting facts likely to fall within the scope of the statutory protection regime. In a business combination, companies must therefore ensure the integration and, where appropriate, the adaptation of their internal procedures for receiving and handling reports in accordance with the applicable legal requirements.

Gramond Tips: Include compliance due diligence on the same footing as legal, tax and employment due diligence. In particular, review the target's anti-corruption programme, its relationships with public officials and intermediaries, the identity of its ultimate beneficial owners and sensitive partners, and its exposure to economic sanctions and export control rules. The risks identified should be reflected in the contractual warranties and indemnities and, where appropriate, in the post-acquisition integration plan.

Our firm is by your side to help you anticipate the legal, tax, employment and regulatory challenges associated with your investment projects in France, ensure the secure structuring and execution of your transactions, and guide you through the applicable formalities and procedures.

Please do not hesitate to contact us for tailored legal support, adapted to the nature of your investment, your industry and the specific characteristics of your transaction.



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