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France
Investing In

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in France.

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France: Investing In

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1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

France has grown as one of the most attractive destinations for foreign investors. Over the last three years, the number of foreign investments made in France has reached, respectively, 1,215 (in 2020), 1,607 (in 2021), and 1,725 (in 2022). The trend for 2023 is consistent, allowing France to rank (i) as the n°1 EU destination for foreign (both EU and non-EU) investments and (ii) in the top 3 of EU-destinations for non-EU foreign investments. The top foreign investors are the United States, Germany, the United Kingdom, the Netherlands, Belgium, and Italy, which invest mainly in manufacturing, decision-making centers, and business services projects. These figures demonstrate that foreign investors consider France a secure place to invest in and set up businesses despite the current and continuing uncertainty in the global economic environment.

In such an environment, France has improved attractiveness through significant political actions such as lowering corporate or production taxes and simplifying certain administrative procedures for foreign actors. France intends to maintain and strengthen this trend by promoting and encouraging investments in the French ecosystem through programs or brands such as Choose France, Taste France, La French Tech, La French Fab, French Healthcare or France 2030.

Regarding foreign investments in sensitive industries, which are subject to the scrutiny of the French Ministry of Economy ("**MoE**"), please refer to Question 8 below. In 2021, 328 transactions were filed with the MoE, among which 124 were authorized by the MoE. In 2022, 325 transactions were filed (including both applications for investment authorization and requests for opinion), among which 131 were authorized by the MoE, including 70 with conditions. The decisions issued by the MoE are not public.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

FDIs in France may take the form of setting up new branches, companies, or facilities -either by building new facilities in France under a greenfield (building on undeveloped land) or a brownfield (redeveloping an existing site) project- or of acquisitions by foreign investors of existing French businesses, through asset or share deals. Joint ventures, although feasible, are not standard vehicles dedicated to FDIs in France since foreign investors are in principle allowed to, directly or indirectly, control and own 100% of a domestic company or business (see Question 3 below).

According to 2022 figures, out of 1,725 FDIs in France (i) 870 pertained to the creation of new establishments, companies or facilities in France (i.e., greenfield or brownfield projects), (ii) 798 to expansion operations and (iii) 57 to takeovers. The data available at the EU level regarding non-EU foreign investments in France for 2022 also reports an increase of 20.4% in greenfield investments received by France.

Regarding foreign investments subject to the scrutiny of the MoE, out of the 2022 screened transactions, approx. 47% were led by financial investors, 39% by industrial investors and approx. 14% by individuals.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is

the maximum percentage that a foreign investor can own?

From a French law perspective -and therefore subject to any contrary provision under any foreign law governing the concerned foreign investor-, no general principle prevents a foreign investor from controlling or acquiring 100% of a French company or business. However, certain specific regulations may constrain the shareholding of a foreign investor in a French entity or business, such as within the press industry where -save for some exceptions- a foreign investor cannot hold more than 20% of the share capital or voting rights of a company editing a French language publication.

Further, certain investments made by foreign investors in so-called "sensitive" industries may require the prior authorization of the MoE to be obtained (see Question 8). Comparable sector-specific rules could also apply regarding transactions involving banking or insurance activities subject to the scrutiny of the French Prudential Supervisory Authority.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

From a French law perspective -and therefore subject to any contrary provision under any foreign law governing the concerned foreign investor-, foreign investors may invest in all types of stocks or securities. There is no restriction as to the type of stocks or securities to be issued by a French domestic company, either private or public, to the benefit of a foreign investor, as compared to those issued to the benefit of a domestic investor. Accordingly, a foreign investor can invest in any kind of shares (including ordinary or preferred stocks) and any other type of financial instruments (such as warrants or bonds).

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Foreign investors usually incorporate a specific and dedicated French vehicle to acquire or set up a domestic business. Although such vehicles' structure may differ based on legal and tax considerations and depending on the characteristics of the underlying transaction, foreign investors opt, in most cases, for the SAS (see Question 6 below).

Save for some exceptions about specifically regulated businesses or activities, a French company can be managed and represented towards third parties by foreign individuals and entities. Non-EU.EEA nationals who intend to establish residence in France must however obtain a specific permit document allowing them to manage a French company before being appointed. For practical reasons, the management of a French business or entity on a day-to-day basis is usually -in all or part- entrusted to an individual based in France, either appointed as a corporate officer of the concerned company or granted with a specific delegation of authority to act for and on behalf of the French entity. In both cases, the entrusted person may have to comply with internal rules limiting their authority within the French entity. These limitations of powers are however unenforceable against third parties, even when included in the company's bylaws.

While the bylaws of certain companies (e.g. SARL) mandatorily include the details of their shareholding -making the allocation of the shares and the identity of the shareholders accessible to the public-, most domestic private companies, including those preferred by foreign investors such as the SAS, do not publicly disclose their shareholding details. This opacity poses a challenge in determining whether the ultimate owners maintain an offshore presence. According to the most recent data available in 2022, offshore financial centers like Bermuda, British Virgin Islands, Cayman Islands, Mauritius, and UK Channel Islands have emerged as the third most prominent origin jurisdiction for greenfield investments into the European Union by non-EU investors.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Usually, limited liability companies are contrasted with unlimited liability companies. Limited liability entities include the *société anonyme (SA)*, *société par actions simplifiée (SAS)*, *société à responsabilité limitée (SARL)*, *société en commandite par actions (SCA)*, and the *société européenne (SE)*. *All are* governed by the French Commercial Code. By contrast, unlimited liability entities are primarily different types of partnerships or non-commercial companies governed by the French Civil Code.

The main distinction between these types of entities lies

in the extent of personal liability for business debts. In limited liability companies, the members' liability is typically limited to their investment. By contrast, members of an unlimited liability company are, potentially, personally liable for all business debts without limitation, placing their own assets at risk. For this reason, foreign investors favor limited liability companies.

Among French limited liability companies, the SAS is the most commonly used vehicle for investments or acquisitions. It is governed by a flexible corporate governance and convenient restrictions to share transfers. It cannot be listed, but -where required- it could be converted into a SA just before an IPO. The SAS therefore offers the opportunity to (i) issue any type of securities (see Question 4), (ii) set up any type of governing bodies (such as managing directors, board of directors, supervisory or strategic or other boards or no board at all, with or without internal limitations of authority and possibly with a co-signature process) and (iii) efficiently regulate the securities' transfers (e.g., lock-up period, right of first refusal, tag and drag along rights) as the concerned parties wish, subject to complying with a limited number of mandatory provisions of the French Commercial Code such as the appointment of a *président*.

Subject to limited exceptions, the composition, functioning rules, and identity of the members of an SAS' corporate bodies, as well as restrictions on securities' transfers, may alternatively be provided in the bylaws (publicly available to the public for all companies) or in a shareholders' agreement (non-publicly available for non-listed companies).

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

The process for forming a company is generally consistent across all business structures, albeit with minor distinctions in each instance. We outline below the key requirements for incorporating an SAS which stands out as the most favored corporate form among foreign investors.

Key steps for incorporating an SAS involve identifying at least one shareholder (legal or natural person) and drafting comprehensive bylaws including information such as the corporate name, purpose, registered office, governance structure and securities transfer principles. The process includes opening a bank account (hence, cleaning some KYC processes) and depositing the initial share capital (with no minimum requirement for an SAS), obtaining a depositary statement from the bank confirming such payment, executing the bylaws and filing the incorporation documentation with the trade and companies registry to obtain an incorporation certificate (*Kbis extract*) and a registration number. The incorporation documentation can be privately executed without the involvement of a public notary or public officer.

The incorporation of an SAS (including by a foreign actor) is not subject to any governmental oversight, except if it is intended to perform a regulated activity and without prejudice to the constraints that could apply at a later stage if the vehicle acquires a business or another entity in France.

The shareholding of an SAS is not publicly available, except for the incorporation shareholding, which must be disclosed. Furthermore, some limited information relating to the ultimate beneficial owners (UBO) of the company must also be made available to the public: name, month and year of birth, country of residence and citizenship. A UBO is any individual who (i) ultimately holds, directly or indirectly, at least 25% of the share capital or voting rights of the company, or (ii) exercises, by any other means, the authority to control certain functions including corporate management and governance, or control of executive bodies of the company.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

As a matter of principle, financial relationships between France and foreign countries are unrestricted, save for the French Foreign Investment Regulation (FFIR), provided in the French Monetary and Financial Code (FMFC) and under which completion by specific categories of “investors” of certain “investments” in “sensitive industries” in France may require the prior approval of the MoE. The FFIR aims at protecting public order, public security, and national defense interests and ensuring France's independence regarding sensitive activities or

products, especially following the COVID-19 pandemic.

For the FFIR, as recently amended by the Decree n°2023-1293 and the subsequent Ministerial Order both dated 28 December 2023:

each of the following persons qualifies as an "investor": (i) any non-French individual; (ii) any French national who does not reside in France; (iii) any entity governed by foreign laws; or (iv) any entity governed by French laws that is, directly or indirectly, controlled by one or more of the persons or entities referred to in subsections (i), (ii) or (iii) above.

each of the following situations qualifies as an "investment": (i) for all investors irrespective of their origins, *(x)* the direct or indirect acquisition of the control (exclusive, joint, or *de facto*) of a French entity, or a branch or an establishment registered with the French trade and company registry, and *(y)* the acquisition of all or part of a business activity (*branche d'activité*) of an entity governed by French laws; and (ii) for non-EU.EEA investors, the acquisition, directly or indirectly, alone or in concert, *(x)* of more than 25% of the voting rights of an entity governed by French laws or *(y)* of more than 10% of the voting rights of a listed entity governed by French laws.

each of the following activity is considered a "sensitive industry" under article L. 151-3-I of the FMFC: any activity which -even occasionally- (i) participates in the performance of public authority, (ii) is likely to jeopardize national interests, public order, and public safety or (iii) belongs to the research, production or marketing of weapons, munitions, powders and explosive substances sectors. The nature of those activities is further detailed under article R. 151-3 of the FMFC, including as follows:

(a) Activities participating in the performance of public authority or likely to jeopardize national interests, public order, and public safety:

1. Activities relating to weapons, ammunition, powders and explosive substances intended for military purposes, or war or war-assimilated materials;
2. activities relating to dual-use goods and technologies;
3. activities carried out by entities entrusted with national defense secrets;
4. activities carried out in the information systems security sector, including as subcontractor, for an operator referred to in articles L. 1332-1 or L. 1332-2 of the French Defense code (FDC);
5. activities carried out by companies contracting, directly or as subcontractor, with the French Ministry of Defense, in respect of supplying a good or providing a service referred to under points (a)1 to 3 above or (a)6 below;
6. activities relating to cryptology resources and services;
7. activities relating to equipment or technical devices intercepting correspondence or designed for remotely detecting conversations or capturing information technology data;
8. activities relating to services provided by duly certified evaluation centers for the purpose of auditing and certification of security provided by information technology products and systems;
9. activities within the gambling industry (except for casinos);
10. activities relating to the means to deal with the illicit use of pathogenic or toxic agents or preventing the public health impact of such use;
11. activities relating to processing, transmission or storage of data of which the compromise or disclosure is likely to jeopardize activities referred to in points 1 to 10 above, or under (b) below.

(b) Activities participating in the performance of public authority or likely to jeopardize national interests, public order, and public safety, where those activities relate to infrastructures, goods or services essential to ensuring:

1. integrity, security, and continuity of (i) water and energy supplies, (ii) transport and telecommunication networks, (iii) space operations, (iv) electronic communications networks and services, (v) operating an establishment, facility or structure of vital importance within the meaning of the FDC;
2. the performance of the missions of the national police, the national gendarmerie, the civil security services, the prison security services, as well as the public security missions of the customs and those of authorized private security companies;
3. protection of public health;
4. production, processing or distribution of some agricultural products;
5. editing, printing or distributing political and general information press publications and online political and general information press services;

6. integrity, safety or continuity of the extraction, processing and recycling of critical raw materials.

(c) Activities participating in the performance of public authority or likely to jeopardize national interests, public order, and public safety, where performed in the context of any activity referred to under (a) or (b) above and relating to research and development in critical technologies (cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, quantum technologies, energy storage and biotechnologies, technologies involved in the production of low-carbon energy and photonic), or on dual-use goods and technologies.

If completion of the intended investment requires the prior approval of the MoE, a dedicated filing procedure must be initiated (See Question 19). The MoE recently issued FAQs, notification form templates, and guidelines and launched the *Plateforme IEF* website in order to make the FFIR more comprehensive. The guidelines, which could be qualified as a FFIR-related soft law, provide insights on how to construe and apply the FFIR, including the notions of (i) "chain of control" to qualify an "investor" (see Question 19), (ii) "investor" in respect of investment funds, or (iii) "all or part of a business activity" to qualify an "investment." The MoE also annually reports on the application of the FFIR.

Save for some exceptions, an investor is exempted from requiring prior authorization from the MoE if the investor, at the ultimate level of the chain of control, had previously acquired control of the entity involved in the contemplated investment. Additionally, if the investment involves crossing the 10% voting rights threshold in a listed entity governed by French laws, the investor is exempt from prior MoE authorization if (i) the investor notifies the MoE of the intended transaction and (ii) the MoE does not object to the transaction within a 10-business day period following such notification.

At the EU level, a regulation (EU 2019/452) has been enacted to establish a cooperation-based framework for FDI's screening. This framework facilitates collaboration among Member States, enabling them to assist each other and exchange information concerning specific FDIs. Additionally, the regulation grants the EU Commission the authority to issue a consultative opinion when an FDI has the potential to impact security or public order or undermine a strategic project or program of interest to the entire EU. The EU Commission reports annually on such regulation. Its latest report, dated 19 October 2023, states that "*It firmly expects that all Member States will have a comprehensive national FDI screening mechanism in place in the near future*" and "*the Commission is evaluating the current framework and will propose a revision of the FDI Screening Regulation before the end of 2023*". If such regulation is cooperation-based, it still creates pressure to meet the conditions or fill in the reserves that might be expressed in the Member States or the EU Commission's comments/opinion on such FDIs.

In addition to the FFIR requiring potential FDI filing (see Question 19), a foreign investment in a French entity may also be subject to (i) merger control clearance from the French competition authority (*Autorité de la Concurrence*) or the EU Commission (depending on the thresholds), (ii) any applicable sector-specific regulations depending on the sector of the target company (e.g., banking and insurance, agricultural cooperative companies, government-owned companies) and (iii) scrutiny of the EU Commission under the newly enforceable EU Foreign Subsidies Regulation for larger transactions (a) qualifying as a foreign financial contribution distorting the internal market-which could be the case of a capital injection made by non-EU public authorities or non-EU state-owned entities within the EU- or (b) involving parties that were granted financial contributions by non-EU governments of more than EUR 50 million over the last three years.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

The acquisition of shares in a French public company may be subject to the same statutory restrictions as those of a private company depending on the context of the transaction (see Question 8 above). French securities law, however, imposes specific constraints on acquiring shares in a public company if the investor initiates to launch a takeover bid over this company (e.g., compliance with the insider trading rules and the French general takeover principles, such as the equality of treatment and information of the shareholders or the market transparency and integrity). If the investor initiates a public takeover bid (mandatory in certain circumstances – see Question 10 below), the French financial markets authority (*Autorité des Marchés Financiers – AMF*) must review the bidder's offer. The AMF could either grant its approval (*decision de conformité*) -which happens in most cases- or deny its approval. Furthermore, various disclosure obligations apply to any investors crossing, whether upwards or downwards, certain thresholds in share capital or voting

rights of listed companies.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

Generally, if a person or a group of persons acting in concert (i) acquire more than 30% of the share capital or voting rights of a target company listed on Euronext Paris or (ii) hold between 30% and 50% of the target's share capital or voting rights and increase their stake by at least 1% within 12 months, the buyer(s) are required to launch a tender offer over the entire issued share capital and securities of the target. For target companies listed on Euronext Growth, a tender offer is generally mandatory only when the threshold of 50% of the target's share capital or voting rights is crossed.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

The approval process for building a new facility in France, whether it is a greenfield or brownfield project has three components:

1. Preventive Archaeology Procedure. The investor must check whether the land contains resources of interest to archaeological and cultural heritage. If there is a likelihood of discovering valuable cultural and archaeological heritage on the site, the investor must ensure that the project does not negatively impact such resources, in liaison with the relevant public authorities. Specific archaeological works might be required, such as in-depth excavations, monitoring, or other methods depending on the project's impact on archaeological heritage. Changes to the project might also be requested.

To avoid delays in the construction schedule, investors are advised to conduct archaeological research and liaise with the relevant public authorities early in the project timeline. This ensures that adequate measures, if necessary for the protection of archaeological and cultural heritage, are taken early enough. Otherwise, public authorities may prescribe specific archaeological works during the environmental or urban planning approval procedures (see below), potentially delaying the whole process, as construction cannot start until the archaeological works are completed.

2. Environmental Procedure. In a nutshell, the scope of the environmental procedure depends upon the project's environmental impact. The investor must assess the project's compatibility with environmental requirements to evaluate its potential environmental impacts, notably under the regime knows as “classified installations" (*installations classées pour la protection de l'environnement – ICPE*).

High-risk facilities will normally require prior approval from the relevant public authorities based on a detailed inquiry by governmental services and a public survey. In practice, large-scale industrial projects are often subject to fully-fledged authorization regime. The environmental authorization procedure generally consists of four successive stages:

- An optional preliminary exchange phase between the investor and the local administration, allowing the investor to gather initial feedback, coordinating with relevant local stakeholders to collectively identify applicable procedures and optimize the project's approval process.
- An examination phase of the investor's application by local state services and various contributors, with a minimum duration of four months.
- A public consultation phase, lasting generally three months, designed to involve the public in the decision-making process for projects with environmental impacts.
- A decision-making phase leading to the formal issuance of the authorization by the relevant public authorities, with a minimum duration of two months and resulting in the publication of a local decree (*arrêté*) setting forth the specific environmental framework for the facility concerned.

This nine-month indicative timeframe may vary depending on local factors and conditions. Requests for additional information during the file review phase of an environmental authorization are common, and other regulatory deadlines (including third-party recourses) may be added, depending on the project's scale and sensitivity, which can extend the appraisal time. Investors often underestimate the time required to compile an environmental permit application. Therefore, it is essential to anticipate potential delays, notably induced by the need to conduct specific technical studies in line with local environmental constraints.

Projects involving less polluting and dangerous facilities will sometimes follow a mere registration regime, which is a simplified authorization regime for sectors with well-known risk prevention measures. The initial review process of the registration regime mirrors that of an

environmental authorization, but the application's examination is less detailed, as facilities subject to registration generally pose lower risks than those requiring authorization and typically fall into more 'standardized' categories of installations and regulations.

For very low-risk projects, a simple declaration regime applies, requiring only an online declaration about the contemplated project.

3. Urban Planning Approval Procedure: The investor will also need to request urban permits authorization from the local mayor of the municipality where the future site is located. A building permit is required for projects involving the creation, modification, or substantial extension of an industrial site. The issuance of a building permit usually takes three months but can -here again- be extended depending on the project's specificities and third-party recourses. For major projects requiring an environmental authorization, urban planning permission is typically obtained before the environmental authorization. However, construction can in any event only proceed after the required environmental authorization is secured.

In greenfield or brownfield projects, foreign investors are advised to engage specialists with the required expertise, such as engineering firms, to assist technically and methodologically. They should also be cautious about project timing, as the project can only start once all required procedures are completed, and the timing for obtaining authorizations may vary significantly depending on the project's scale and nature and local specificities, including environmental group prevalence or resistance of the local population.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Payments by foreign investors within the context of international transactions can be freely made in the domestic currency, the Euro (EUR), or another currency. The obligation to use the Euro for payment in France is mainly limited to internal transactions. Accordingly, once the foreign investor has incorporated a local company in France to carry out its business in the country, local transactions carried out by the vehicle will, in principle, be made in Euro, except in limited cases (e.g., French-based businesses remain free to use foreign currencies for specific transactions in which certain foreign currencies are commonly used).

There is no limit on the amount of foreign currency that can be used in any transaction or series of related transactions. There are also no approval requirements or limits on how much foreign currency a foreign investor can transfer into the country, nor is there an approval requirement or a limit on how much domestic currency a foreign investor can buy. This, however, remains subject to requirements from the intermediaries and banks, in particular under anti-money laundering rules and regulations aiming at countering the financing of terrorism (see Question 13 below). Furthermore, international restrictions relating to certain currencies may also have an impact (e.g., many banking institutions are currently reluctant to engage in transactions involving the Iranian rial or Russian ruble).

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

There are no approval requirements for foreign investors that could block the transfer of funds out of France, including the repatriation of profits earned in France to foreign countries. However, banks may require foreign investors to provide supporting documentation for reporting and compliance purposes (e.g., under anti-money laundering and countering the financing of

terrorism regulations) as a prerequisite for transferring the funds. The investigations of the banks can be very detailed for significant cross-border transfers of funds.

Additionally, individuals physically carrying more than €10,000 (or the foreign currency equivalent) worth of cash or cash equivalent in or out of France are required to declare the transfer to French customs. Failing to declare or providing false information can result in a fine of 50% of the unreported amount and a confiscation by the French Customs of the whole amount.

14. Is there a tax or duty on foreign currency conversion?

There is currently no tax or duty on foreign currency conversion into Euros.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

There is currently no tax or duty on bringing foreign or domestic currency into France, except for very specific situations which are not relevant in our context (i.e., on the transfer of a collection's coins or banknotes).

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

On a buyer's side, the main tax difference between acquisition of assets and acquisition of shares relates to registration duties, for which the buyer is, in principle, liable. Acquisition of shares generally triggers minimal registration duties of 0.1% of the sale price, except for (i) certain forms of companies such as *SARL*, which are subject to a 3% duty, and (ii) any companies, irrespective of their form, whose assets are mainly real estate or equivalent assets, which are subject to a 5% duty. By contrast, the transfer of a business is subject to registration duties of up to 5%, and the direct acquisition of a real estate property to registration duties and notary fees amount to approximately 7%.

From the seller's perspective, there is also a difference in capital gains taxation. In the usual case where the seller is a company subject to corporate income tax (CIT), the sale of a business is subject to CIT at the ordinary 25% taxation rate. In contrast, a sale of shares may benefit, subject to minimum holding percentage and duration requirements and except for certain types of shares (e.g., shares held in non-operational real estate companies), from a CIT exemption of 88% of the gain, which reduces the effective taxation rate from 25% to 3%. As a result, where the structure allows it, a seller will often prefer a share deal to an asset deal.

Other tax considerations (e.g., the possibility of carrying over tax losses in the case of a share deal or potential impacts on a tax consolidation group) may also be considered when determining the most relevant structure for a transaction. They must be analyzed on a case-by-case basis. Similarly, determining an acquisition structure for the buyer (e.g., the opportunity to set up an acquisition holding in France) should also be carefully reviewed from a French tax perspective.

17. When is a stamp duty required to be paid?

Registration duties are generally due within one month following the transfer of ownership of the assets or shares. However, when an unconditional contract providing for a deferred date for the transfer of ownership is executed, the registration duties become due within one month following the execution of the contract.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

Shareholders can freely transfer securities in a domestic company, subject to (i) specific regulations in certain sectors and compliance with the FFIR, (ii) restrictive provisions included in the company's bylaws or a shareholders' agreement, or (iii) a prior approval from the shareholders under applicable law in certain forms of companies, including SARL or SCA. These restrictions must be addressed prior to any securities transfer. Furthermore, with few exceptions, the documentation for such transfers involving private (unlisted) companies can be very simple and may be privately executed without the involvement of a public notary or any public officer.

In most domestic commercial companies, changes in the shareholding must be recorded in physical share transfer register and shareholders' individual accounts (when the company holds a physical register) or on an electronic ledger technology (when the shares are registered through blockchain technology). In non-commercial companies and in certain forms of commercial

companies -rarely chosen by foreign investors, like the SARL-, shareholding details are publicly available in the bylaws and amending the bylaws is required for any change in shareholding. Regardless of the company type, any change in shareholding must be reflected in the UBO register should it change any UBO or the extent of the level of shareholding of any UBO.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Should a transaction fall within the scope of the FFIR (see Question 8), the foreign investor will be required to file an authorization request with the MoE, electronically on the online *Plateforme IEF* recently made available to investors.

Any foreign entity within a chain of control may qualify as an "investor" under the FFIR; therefore, a holding entity located outside France and ultimately controlled by a French entity may nevertheless result in the whole chain of control falling under the FFIR and be subject to the MoE's prior approval. The same principle applies to the indirect acquisition of a French entity or branch or establishment registered with the French trade and company registry, through the acquisition of a foreign group of companies having a French subsidiary. The MoE's guidelines provide more insights on all types of transactions that might fall under the FFIR.

The MoE has 30 business days to decide if the FFIR applies to the contemplated transaction and, if it does, to authorize it or start an additional 45-business-day scrutiny period. At the end of this additional scrutiny period, the MoE can authorize the transaction, potentially subject to commitments or undertakings from the foreign investor, or forbid it.

The target or the investor (with the approval of the target) may also file an advance ruling request with the MoE to decide whether the contemplated transaction pertains to a sensitive industry falling within the scope of the FFIR (please refer to Question 8), with the MoE having two months to decide if the FFIR applies to the contemplated transaction.

Any investment falling within the scope of the FFIR completed without first clearing the prior approval of the MoE under the FFIR would be null and void and may be further subject to important financial sanctions. Under the guidelines, a regularization of past transaction is possible and avoids the risk of nullity but not the risk of financial sanctions.

Further, any non-French resident acquiring or disposing of more than (or crossing the threshold of) 10% of share capital or voting rights of a French entity for an amount exceeding EUR 15 million will be required to disclose the transaction with the Banque de France for statistical purposes. The investor must complete this reporting obligation within 20 business days from the completion of the transaction.

Even if the contemplated transaction is not subject to the FFIR, such transaction may have to be notified to, and then reviewed by, the EU Commission under the EU FDI Screening Regulation (see Question 8). However, any opinion issued by any Member State of the EU Commission will -so far- remain non-binding.

20. What are typical exit transactions for foreign companies?

Numerous avenues for exit can be envisaged. The sale of the business or controlling shares, whether through a share deal or an asset transaction, would be the usual exit route. In some instances, the French business may be taken over by current management through a management buyout, potentially in concert with private equity funds. Liquidation or insolvency proceedings might be an interesting option for businesses facing financial distress or lacking viability. Theoretically, Initial Public Offerings (IPOs) remain a viable exit strategy for investments in large-scale companies. However, this option may be difficult in the context of unfavorable market conditions. IPOs are, in practice, somewhat more scarce in France than in certain other jurisdictions.

Overall, the choice of an exit strategy will mainly depend upon the specific circumstances applicable to the French

business. It will strongly depend on the objectives of the exiting foreign investor and whether or not it intends to maintain a presence in the French market following exit.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

As is typical in many countries, French private companies favor conducting IPOs on their domestic markets, Euronext Paris for France. French small and medium-sized enterprises (SMEs) may also explore the pursuit of IPOs on multilateral trading facilities such as Euronext Growth and Euronext Access. These platforms provide a simplified listing process and lighter regulatory requirements, enabling companies that do not yet meet the criteria for admission on Euronext Paris to join a stock exchange, secure funding for growth, and enjoy the reputational benefits associated with being listed.

Concerning foreign stock markets within Europe, the most commonly chosen are Euronext Amsterdam, which is increasingly popular, and the London Stock Exchange. Beyond European markets, achieving a dual listing on Euronext and the New York Stock Exchange or Nasdaq, for instance, remains a widely sought-after position for French private companies (notably private tech companies concerning Nasdaq). While dual listings expand a company's investor pool, increase liquidity, and often enhance its reputation, they can also create regulatory, legal, and financial complexities that many companies cannot handle.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

Both domestic courts and international arbitrations are common methods for resolving disputes in M&A, investment, and joint venture agreements. Domestic courts in France offer a well-established legal framework but can be characterized by slow and time-consuming proceedings conducted publicly. Conversely, international arbitration provides a confidential and expedited means of dispute resolution, although it may entail relatively higher costs. Choosing the most suitable dispute resolution method depends on the specific circumstances of the transaction and the preferences and powers of negotiation of the parties involved.

In addition to these options, mediation is a valuable alternative, especially in business matters like M&A, investments, or joint ventures. Mediation enables parties to seek an amicable settlement before court or arbitration, which can lead to a faster resolution and cost savings. International investors may consider resorting to mediation for its complete confidentiality and its ability to facilitate agreements that resolve disputes and preserve the business relationship and long-term interests of all parties involved.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

Contract disputes in France typically fall under the jurisdiction of commercial courts, known as "*tribunaux de commerce*." The duration of proceedings at this initial stage can vary, ranging from one to one-and-a-half years, depending on the number of written submissions filed. In the event of an appeal, the process before the court of appeal generally takes approximately two years. Thus, a typical contract dispute involving an appeal generally requires around three to three-and-a-half years for a final resolution. Cases may nevertheless experience delays for various reasons, such as applications for provisional measures or suspensions of proceedings.

In rare cases meeting specific legal criteria, decisions of the court of appeal may undergo review by the *Cour de cassation*, France's highest judicial court specializing in reviewing legal issues. A case before the *Cour de cassation* usually takes around one-and-a-half years. If the *Cour de Cassation* rejects the claimant's arguments, the case concludes, and the court of appeal's decision stands. However, if the *Cour de cassation* overturns the decision, it refers the case to another court of appeal to finally decide on the case (although in exceptional circumstances, the decision of this new court of appeal may undergo another review by the *Cour de cassation*).

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Cases of foreign investors willing to enforce their rights in France are almost always resolved through arbitration proceedings, given that France is bound by numerous investment treaties that enclose arbitration provisions.

Foreign investors can nevertheless trust French courts to enforce their rights, as they have a strong tradition of upholding the rule of law and honoring contractual obligations. Additionally, to enhance court accessibility for foreigners, international chambers have been established at the Paris Commercial Court and the Paris

Court of Appeal, where proceedings can be conducted in English. These chambers have jurisdiction over international commercial cases.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

France has a robust legal and regulatory framework, ensuring that foreign investors' rights, interests, and investments are thoroughly safeguarded. Foreign investors are treated equally with domestic counterparts, fostering a level playing field. France's dedication to investor protection is exemplified through its participation in numerous treaties (see Question 27 below). This not only reinforces its status as a premier destination for foreign investments but also highlights the nation's ongoing efforts to provide a secure and attractive environment for global capital.

26. Are international arbitral awards recognized and enforced in your country?

International arbitral awards are recognized in France and considered to have *a res judicata* effect if their existence is proven and their recognition does not contravene public policy rules. In practice, international arbitral awards must first obtain *exequatur* from a French judge to be enforceable in France.

The process of obtaining *exequatur* involves a limited *prima facie* review of the arbitral award by the French judge, which ensures that the award is not contrary to French public policy and complies with fundamental legal principles. If the award meets these criteria, the French judge typically grants *exequatur*, which allows the award to be enforced in France as if it were a domestic court judgment.

27. Are there foreign investment protection treaties in place between your country and major other countries?

France has signed over a hundred bilateral investment treaties, most of which are in full force and effect. France is also a party to multilateral trade agreements within the framework of international organizations, such as the World Trade Organization or the OECD. Furthermore, as a member of the European Union, France is also bound by treaties concluded and administered by the EU which contain investment provisions, more than 50 being currently in force. This extensive body of international agreements underscores France's commitment to providing a favorable legal environment for investors, offering them a stable and secure framework for their business activities.

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