iclg

Mergers & Acquisitions 2025

19th Edition

Contributing Editors:

Lorenzo Corte & Denis Klimentchenko

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

glg Global Legal Group

Expert Analysis Chapter

1 2025 M&A Outlook: Legal Trends, Risks and Opportunities
Lorenzo Corte, Denis Klimentchenko & John Friess, Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Q&A Chapters

5 **Austria**
Christian Herbst, Sascha Hödl & Sascha Schulz, Schoenherr

17 **Bulgaria**
Katerina Kaloyanova-Toshkova, Schoenherr

27 **Canada**
Markus Viirland & Richard Turner, Blake, Cassels & Graydon LLP

37 **Cayman Islands**
Suzanne Correy, Louise Cowley & Akshay Naidoo, Maples Group

45 **Croatia**
Zoran Vukić, Iva Sunko & Ema Vukić, Vukić and Partners

52 **Cyprus**
Maria Pavlou & Valando Kavazi, Kinanis LLC

60 **Denmark**
David Moalem, Emil Steenberg & Esben Moesgaard Ludvigsen, Bech-Bruun

67 **France**
Lisa Becker, Julien Koch & Chloé Canal, Vivien & Associés

75 **Gibraltar**
Alan Buchanan, Chris Davis & Johnluis Pitto, Triay Lawyers Limited

83 **Greece**
Dafni Sfyri, Konstantina Daskalopoulou, Archontoula Tsogia & Anna Virginia Poulimenou, Psarakis & Kefalas

90 **Indonesia**
Marshall Situmorang, Andhitta Audria Putri, Mia Sari & Muhammad Fadhil Ramadhan, Nusantara Legal Partnership

97 **Ireland**
Inez Cullen & Rebecca McEvoy, Philip Lee LLP

107 **Japan**
Tomohiro Takagi & Shuntaro Shimizu, Nishimura & Asahi (Gaikokuho Kyodo Jigyo)

117 **Liechtenstein**
Judith Hasler & Vivianne Auer, Ospelt & Partner Attorneys at Law Ltd.

124 **Luxembourg**
Marcus Peter & Kate Yu Rao, GSK Stockmann

132 **Malaysia**
Wan May Leong, Wai Kin Leo, Wan Yi Lim & Aron Quek, WM Leong & Co

144 **Montenegro**
Slaven Moravčević & Marija Marinović, Moravčević Vojnović i Partneri in cooperation with Schoenherr

152 **Netherlands**
Alexander J. Kaarls, Willem J.T. Liedenbaum & Kasper P.W. van der Sanden, Houthoff

162 **New Zealand**
Cath Shirley-Brown & David Raudkivi, Russell McVeagh

171 **North Macedonia**
Vedran Lalicic & Martin Boskoski, Lalicic & Boskoski Law Firm

179 **Norway**
Ole Kristian Aabø-Evensen, Aabø-Evensen & Co Advokatfirma

196 **Portugal**
Miguel Brás da Cunha & Mariana da Silva Esteves, Bandeira, Reis Lima & Brás da Cunha – Sociedade de Advogados, SP, RL

203 **Romania**
Cristina Gavrila & Alexandru Pruteanu, Glodeanu si Asociatii SPARL

210 **Serbia**
Matija Vojnović & Vojimir Kurtić, Moravčević Vojnović and Partners in cooperation with Schoenherr

218 **Singapore**
Marcus Chow & Luke Oon, Bird & Bird ATMD LLP

227 **Slovakia**
Lucia Matejovová & Jozef Boledovič, NOMUS Law Firm

233 **Slovenia**
Vid Kobe & Bojan Brežan, Schoenherr Attorneys at Law

244 **South Africa**
Benjamin Meadows, Jason Goodison & Randhir Naicker, Cox Yeats

252 **Spain**
Ferran Escayola Meranges & Elisabet Terradellas Serra, Garrigues

260 **Switzerland**
Mariel Hoch, Bär & Karrer

269 **United Kingdom**
David Avery-Gee & Murray Cox, Weil, Gotshal & Manges (London) LLP

277 **USA**
Ann Beth Stebbins & Thad Hartmann, Skadden, Arps, Slate, Meagher & Flom LLP

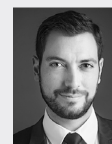
297 **Zambia**
Sharon Sakuwaha & Sampa Kang'ombe, MOIRA Legal Practitioners

304 **Zimbabwe**
Simbarashe Absolom Murondoti & Shepherd Machigere, Absolom & Shepherd Attorneys

iclg

France

Lisa Becker


Julien Koch

Chloé Canal

Vivien & Associés

1 Relevant Authorities and Legislation

1.1 What regulates M&A?

M&A transactions are primarily governed by the French Civil and Commercial Codes, which establish the general rules applicable to the acquisition of companies, assets and business activities. The French Labor Code may also mandate prior information and consultation of the employee representatives as part of an M&A transaction (see question 2.10).

Further, M&A transactions may be subject to the: (i) prior review of the French Competition Authority (*Autorité de la Concurrence*) or of the EU Commission under applicable merger control regulations, depending on the turnover of the companies involved in the transactions; (ii) prior approval of other relevant French regulatory authorities in specific industries (see question 1.4); or (iii) scrutiny of the EU Commission under the EU foreign subsidies regulation (see question 1.3).

In addition, investments in sensitive industries require the prior approval of the French Ministry of Economy (MoE) under the French Foreign Investment Regulation (FFIR) provided in the French Monetary and Financial Code (see question 1.3).

Should an M&A transaction involve a listed company, French stock market regulations, as outlined in the French Commercial Code, the French Monetary and Financial Code and the General Regulation (*Règlement Général*) of the French Financial Markets Authority (*Autorité des Marchés Financiers* (*AMF*)), will apply.

1.2 Are there different rules for different types of company?

Usually, **limited liability companies**, including 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*), are mainly governed by the French Commercial Code, are contrasted with **unlimited liability companies**, including different types of partnerships or non-commercial companies primarily governed by the French Civil Code.

Each type of company is subject to specific rules governing various aspects, including the extent of shareholder liability, the authority of legal representatives, the operation of corporate bodies, and the transfer of securities.

Private M&A transactions mainly involve SAS, which are governed by flexible corporate governance and convenient restrictions to share transfers but cannot be listed on a stock exchange. Public M&A transactions involve listed SA, SCA and SE and are regulated by the French stock market regulations.

1.3 Are there special rules for foreign buyers?

As a matter of principle, financial relationships between France and foreign countries are unrestricted and even encouraged. Foreign buyers may invest in and acquire a French business or all types of stocks or securities issued by a French company, subject to, where applicable, (i) the **FFIR**, (ii) the **EU foreign subsidies regulation**, or (iii) the **EU sanctions regime**. Comparable sector-specific rules could also apply (see question 1.4).

The **FFIR** aims to protect public order, public security, and national defence interests and ensure France's independence regarding sensitive activities or products.

For the purposes of the FFIR, and save for some limited cases of exemption:

- a foreign investor is: (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. It is specified that the "foreign investor" is qualified with regard of its whole chain of control;
- an "investment" is: (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; and
- a "sensitive industry" (under articles L. 151-3-I and R. 151-3 of the French Monetary and Financial Code) is any activity involving public authority or likely to jeopardise national interests, public order, and public safety, including, among others: national defence-related activities; facilities, goods or services necessary to maintain integrity, security, and continuity of water and energy supply, transport and telecommunication networks services; production, processing or distribution of certain agricultural products; or research and development in critical technologies (cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, quantum technologies, energy storage and biotechnologies, production of low-carbon energy and photonic) or on dual-use goods and technologies.

The MoE has issued FAQs, notification form templates and guidelines to make the FFIR more comprehensive, which also provide valuable insights on how to construe and apply the FFIR.

Where the FFIR applies, the foreign investor must electronically file an authorisation request with the MoE.

The MoE has 30 business days to decide if the FFIR applies to the contemplated transaction and, if it does, to authorise it or start an additional 45-business day scrutiny period at the end of which it can authorise 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 determine whether the contemplated transaction is subject to the FFIR. The MoE has two months to answer.

Any investment falling within the scope of the FFIR completed without the prior approval of the MoE would be null and void and could be further subject to important 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, within 20 business days as from completion of the transaction. At last, transactions that are not subject to the FFIR may have to be notified to and then reviewed by the EU Commission and Member States under the EU FDI screening cooperation-based regulation (EU 2019/452). Any opinion issued by a Member State or the EU Commission, however, remains non-binding at this stage. Note, however, that, on 24 January 2024, the EU Commission proposed a revised version of said regulation to make this EU level procedure compulsory.

Additionally, under the **EU foreign subsidies regulation**, applicable since 12 July 2023, transactions must be notified to the EU Commission when they involve target companies, merging entities, or joint-ventures generating a turnover in the EU of at least EUR 500 million and when such involved parties have benefitted from foreign financial contributions exceeding EUR 50 million in the last three years. Such transactions cannot be completed pending review of the EU Commission.

1.4 Are there any special sector-related rules?

Some specific regulations may: (i) restrict or prohibit foreign investors from controlling French entities operating in certain regulated sectors, such as the press industry; or (ii) require prior approval from regulatory authorities. For example, in the banking and insurance sectors, M&A transactions may be subject to the prior approval of the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel et de Résolution*), which oversees the stability of the financial system and the protection of customers.

Finally, some atypical entities, such as agricultural cooperative companies or government-owned companies, may be subject to further specific regulations.

1.5 What are the principal sources of liability?

In the negotiation phase of an M&A transaction, parties must always act in good faith and with loyalty. This duty encompasses compliance with legal pre-contractual information obligation and basic discretion. While parties remain free to decide whether to proceed with or terminate the negotiation prior to the execution of binding agreements, they remain bound by the principle of good faith throughout the process.

To secure their positions during the pre-contractual phase, parties often enter into specific agreements that may include provisions for exclusivity, strict confidentiality, or access to target-related information provisions. A penalty clause setting forth dissuasive penalties in case of a breach could also be agreed on.

The legal representatives of a company are also bound by a duty of loyalty, preventing them, for instance, from intentionally purchasing stocks at a lower price if they are aware of a future transaction to be completed at a higher price.

Once a binding agreement is signed, a party may seek its cancellation or enforcement, or claim damages in case of a breach by the other party.

After completion of the M&A transaction, the parties' liability is essentially on the seller's side in the case of breach of contractual provisions such as non-compete or representations and warranties with specific thresholds, caps and durations negotiated by the parties.

If the M&A transaction is structured as a merger, the surviving entity inherits all liabilities of the merged entity, including criminal liability. In a share deal, the buyer acquires the target with all its potential liabilities. Conversely, in an asset deal, the buyer generally does not receive liabilities associated with the acquired assets, except in limited cases, such as environmental liabilities.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

M&A transactions can consist of share deals, in which a buyer purchases or subscribes for shares of the target. If the buyer does not acquire 100% of the target's share capital, the parties will often execute call and put option agreements allowing the buyer to purchase the remaining share capital of the target later.

In public M&A, generally, if a person or a group of persons acting in concert (i) acquires more than 30% of the share capital or voting rights of a target listed on Euronext Paris, or (ii) holds between 30% and 50% of the target's share capital or voting rights and increases 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. 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.

M&A transactions can also be structured as mergers, whereby the target (the absorbed company) is merged into the buyer (the merging company). In such cases, the absorbed company ceases to exist as a separate legal entity, and all of its assets and liabilities are transferred to the merging company.

Finally, M&A transactions can also take the form of asset deals, involving the purchase of specific assets, goodwill, or business activities.

2.2 What advisers do the parties need?

The involvement of external advisors in an M&A transaction depends on the size, complexity and structure of the contemplated transaction.

Sellers often engage M&A advisors, such as investment banks, to structure the deal on the sell side, coordinate the process and assist in negotiations. Buyers can also resort to M&A advisors to help structure the deal, manage the process and critically analyse the documents and financial information shared by sellers.

Sellers may also appoint financial advisors, such as international accounting firms, to prepare financial vendor due diligence reports to share with potential buyers.

Both parties rely on lawyers to assist them in the process, which includes legal and tax due diligence reviews, negotiation, drafting transactional documents, completing the conditions precedent, and closing operations and deliverables.

Should the transaction involve real estate or manufacturing facilities, collaboration with a notary may be required, along with the appointment of specialists to conduct due diligence in areas such as environmental, health and safety, technical reviews, or financial valuations.

In light of growing environmental concerns, the appointment of ESG advisors is increasingly sought out.

2.3 How long does it take?

Duration of an acquisition depends on the deal's complexity and structure. Should there be no condition precedent, the signing of the purchase agreement and the closing of the transaction may occur on the same day, following a brief negotiation period.

In more structured processes involving significant due diligence and conditions precedent, such as prior merger control or regulatory clearances, the transaction typically takes six to nine months to complete.

It is also important to consider that employees' rights in M&A transactions (see question 2.10) may further delay the completion date.

2.4 What are the main hurdles?

In the case of complex M&A transactions, keeping the deal confidential may be a hurdle, as well as obtaining all clearances and promptly satisfying all conditions to meet the client's expectations.

2.5 How much flexibility is there over deal terms and price?

In private M&A transactions, the parties are free to negotiate the deal terms and price, subject to complying with mandatory laws and regulations.

In public M&A transactions, general principles governing public offers apply and must be complied with by bidders and target companies (see question 8.2). There is, in principle, no mandatory minimum price for voluntary tender offers, but certain exceptions apply. For example, the offered consideration must be at least equivalent to the highest price paid by the offeror over the last 12 months for the target's shares.

2.6 What differences are there between offering cash and other consideration?

Offering a consideration in kind is often complex. It requires a thorough review of the value of the offeror's shares and of the offeror itself. Appointing *ad hoc* auditors or experts may be necessary. In certain situations, the bidder must offer an alternative consideration in cash.

2.7 Do the same terms have to be offered to all shareholders?

Shareholders transferring the same class of securities usually receive the same price. Under certain circumstances, it could be possible to offer a different price to certain shareholders depending on their capacity (majority *vs.* minority shareholders) or specific commitments undertaken only by some shareholders (representations and warranties, for instance).

2.8 Are there obligations to purchase other classes of target securities?

In public M&A transactions, tender offers must be launched over all the securities giving access to the target's share capital or voting rights. Only limited exceptions apply.

In private M&A transactions, purchasing other securities classes is not mandatory. The buyer may, however, be willing to acquire, at a later date, certain securities that are, for instance, not fully vested on the transaction's completion date. Put and call options can secure future purchases.

2.9 Are there any limits on agreeing terms with employees?

Employee incentive plans can be implemented to align the interests of directors and employees with those of investors. These plans usually include mechanisms such as the allocation of free shares, stock options or founders' options, known as "*Bon de Souscription de Parts de Créateur d'Entreprise*" (*BSPCE*). Employee incentive plans are subject to some statutory restrictions. For example, free shares only vest after a specified minimum period and may also be subject to a mandatory retention period. Finally, employees are generally required to enter into a shareholders' agreement governing their securities (lock-up period, pre-emption right, and leaver put and call options).

2.10 What role do employees, pension trustees and other stakeholders play?

Companies with less than 250 employees qualifying as small and medium-sized enterprises (SMEs) must inform their employees of any contemplated transaction involving the transfer of the company, its business (*fonds de commerce*), or a majority stake in the company. The employees have the right to offer to acquire the shares or the business, but they do not benefit from any pre-emption or priority rights.

If the target company has a social and economic committee (*comité social et économique* (*CSE*)) and has more than 50 employees, this committee is required to be both informed and consulted, and, where applicable, provide a consultative opinion before any binding agreement is finalised. In the context of a public takeover bid, the CSE of the target company must receive the draft offer documents. The target's board is obligated to withhold its opinion on the takeover bid until after the CSE has issued its own opinion.

In the event of a merger, the creditors of the parties are entitled to file objections with the commercial court against the proposed merger. This legal recourse may enable them to either secure repayment of their claims that predate the publicity of the merger or obtain specific guarantees from the target company to safeguard these claims.

2.11 What documentation is needed?

Typical private M&A documents, from negotiations to closing, include non-disclosure agreements (usually giving access to

a teaser or information memorandum), non-binding offers (usually providing access to a data room), binding offers upon which employees and the CSE are informed/consulted, and share or asset purchase agreements (usually including representations and warranties). Where applicable, shareholders' agreements, transitional services agreements and employees' incentive documents can also be executed.

In public M&A transactions, the bidder issues a draft offer prospectus, while the target company releases a draft response prospectus. Additionally, both entities issue press releases and an information memorandum, detailing all the key characteristics of the offer for the investors.

2.12 Are there any special disclosure requirements?

In respect of private M&A transactions, a good faith standard applies, following which minimum disclosure is required to ensure the informed consent of the buyer. The situation is different in public M&A transactions and specific disclosure obligations apply (see questions 4.2, 4.3 and 5.3, for example).

2.13 What are the key costs?

The key costs incurred pertain to legal fees (lawyers), financial fees (e.g., M&A advisors, financial auditors, lenders' fees) and taxes arising from the completion of the transaction (e.g., registration duties, capital gains).

2.14 What consents are needed?

The shares of most limited liability companies, such as SAS or SA, are freely transferable. However, in private M&A transactions, most bylaws and shareholders' agreements provide for prior approval or pre-emption rights, as well as tag-along rights benefitting some or all shareholders.

Completion of an M&A transaction may also require the consent of any relevant corporate body of the seller or the buyer, the consultative opinion of the CSE, and the clearance of any relevant authorities (e.g., French Competition Authority, EU Commission, *Autorité de Contrôle Prudentiel et de Résolution* (*ACPR*), MoE).

2.15 What levels of approval or acceptance are needed to obtain control?

Certain approvals are **statutory** (for instance, merger control clearance, MoE authorisation where the FFIR applies or, where applicable, opinion of the CSE), while others are **contractual** (for example, consent from internal bodies or other approvals or procedures provided in bylaws or shareholders' agreements – such as pre-emptive right or tag- and drag-along clauses – or change of control provisions provided in material agreements entered into by the target, such as financial agreements). For public M&A transactions, see question 7.1.

2.16 When does cash consideration need to be committed and available?

It depends on the deal terms agreed upon by the parties in private M&A. Should the agreed price be fixed and final, the cash consideration must be available on the closing date upon completion of the transaction (transfer of ownership is usually subject to crediting the purchase price onto the seller's bank account).

If the purchase price is contingent upon the target's closing accounts, the parties can negotiate the following terms: (i) an initial partial payment of the estimated purchase price upon closing; (ii) placement of the remaining portion of the estimated price in an escrow account or retention by the buyer; and (iii) a subsequent price adjustment mechanism to establish the final purchase price once the closing accounts are finalised.

In both cases, the seller may require the buyer to provide commitment letters before closing, confirming that the funds are already committed to the buyer and will be available upon closing, notably when the buyer relies on third-party funds.

Finally, the initial closing price may later be increased by an earn-out payment based and conditioned upon the target achieving specific financial objectives.

In public takeover deals, the bidder must commit the funds when filing the draft offer prospectus with the AMF.

3 Friendly or Hostile

3.1 Is there a choice?

Public takeover bids can be friendly or hostile, depending on the consent of the target's board of directors. Hostile bids have become very rare in France, and bidders usually only launch an offer with the approval of the target's board of directors.

3.2 Are there rules about an approach to the target?

Although there are no specific rules, bidders usually approach either the controlling shareholders or the target's legal representatives and board of directors, subject to confidentiality under the AMF General Regulation (see question 4.2).

3.3 How relevant is the target board?

The board of directors has an essential role in the process, mostly in initiating discussions with the bidder and assessing its interest in the target. The board must give its opinion on the bidder's offer and can declare it hostile. If it believes the offer is not in the interest of the target or its shareholders, it can deploy defensive tactics (see question 8.1).

Overall, the position of the board of directors profoundly affects the bid's outcome considering that most friendly takeovers are successful. The board of directors must, in any case, act in compliance with the company's corporate interest.

Should some directors have a conflict of interests due to their relationship with the bidder, the board should appoint (i) an independent *ad hoc* committee responsible for drafting a report on the proposed takeover bid, and (ii) an independent expert to assess the financial adequacy of the offer.

3.4 Does the choice affect process?

Yes. In friendly takeover bids, the bidder typically engages in negotiations with the target and its principal shareholders to refine and improve its offer. As part of this process, the bidder and the target generally execute an agreement containing the key terms and conditions of the proposed offer, undertakings from the parties, and additional matters to facilitate

the conduct of the process. In addition, the bidder may secure commitments from key shareholders to tender their shares and receive broader information regarding the target (see question 4.1). The bidder and the target may also publish a joint offer prospectus (instead of a separate offer with a different response document from the target).

4 Information

4.1 What information is available to a buyer?

Any buyer will have access to the target's publicly available documents, such as corporate documents (bylaws, certain shareholders' minutes, certificate of incorporation, non-bankruptcy certificate, etc.) or simplified financial statements. For listed companies, numerous additional documents and information are available on the company's and AMF's websites.

The availability of non-public information will depend on the nature of the transaction (see question 4.2).

4.2 Is negotiation confidential and is access restricted?

Private M&A transactions are usually governed by a non-disclosure agreement during the negotiation phase. Private buyers tend to have rather extensive requests for information and documents compared to public buyers, although due diligence focuses primarily on red flags.

In friendly takeover deals, confidential negotiations are typically held prior to any market information. The target may allow due diligence and open a data room containing information not otherwise available to the public, provided that the transaction is deemed significant for the target (as is the case for acquisition of control), and the bidder shows serious and significant interest in the transaction. Consequently, the bidder must provide a letter of intent and confidentiality undertakings. The information remains limited as compared to a private transaction due to the fact that any material non-public information provided to the bidder must then be disclosed in the offer documentation. Throughout this period, insider trading rules must be complied with.

4.3 When is an announcement required and what will become public?

A bidder must make a mandatory announcement when initiating a transaction that is expected to significantly affect the target securities' price, unless temporary confidentiality is necessary for transaction implementation and the involved parties can effectively preserve such confidentiality. The AMF can also require an announcement in case of leaks, market rumours, or public statements leading to the belief that a person is preparing a takeover bid.

The announcement must, in any event, include rather precise information, such as the characteristics of the contemplated offer.

The target itself is also bound to disclose any negotiations regarding a public takeover bid, unless delaying disclosure is in its interest and not harmful to the public.

4.4 What if the information is wrong or changes?

The AMF may request any modification to the draft prospectus if it finds that the information is erroneous or untrue.

Furthermore, any additional information not included in the offer prospectus or the response from the target must be made public in a press release.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Subject to certain limitations, the bidder is not prohibited from purchasing shares before the announcement of a public offer (see question 5.4).

Between the public announcement and the filing of the offer (pre-offer period), the bidder cannot acquire any of the target's securities.

From the filing of the offer until the publication of the results (offer period), the bidder can buy the target's securities outside the offer process, provided the offer is unconditional and the offered consideration is entirely in cash. The number of shares that can be bought outside the offer process is limited by the AMF General Regulation.

Bidders must proceed carefully during this offer period. If they purchase shares for a price superior to the offer price, this price will automatically increase to reach the higher of (i) 102% of the opening price, or (ii) the highest price paid for the shares outside the offer.

5.2 Can derivatives be bought outside the offer process?

The bidder can buy derivatives for stakebuilding purposes, but the strategic interest of such a move is now limited. All shares an investor can acquire under any financial agreement or instrument must be disclosed (see question 5.3), and derivatives count toward the 30% threshold triggering a mandatory takeover bid.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

French law and the AMF General Regulation impose disclosure obligations when an investor crosses, whether upwards or downwards, the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 33.33%, 50%, 66.66%, 90%, and 95% in the share capital or voting rights of a company listed on Euronext. For companies listed on Euronext Growth, only the crossing of the 50% or 90% thresholds requires public disclosure. The target's bylaws may also provide additional disclosure obligations if certain thresholds between 0.5% and 5% are exceeded.

In addition, the crossing of any of the 10%, 15%, 20%, and 25% thresholds requires the buyer to publicly declare in sufficient detail the objectives and strategy it intends to pursue over the next six months, including whether it plans to continue to purchase shares and take control of the target.

5.4 What are the limitations and consequences?

Any investor who fails to comply with the aforementioned disclosure requirements (see question 5.3) will have their voting rights in the target temporarily revoked. The AMF can also impose administrative sanctions.

Bidders must be cautious when trading shares or derivatives on the market before launching a public offer to avoid breaching general takeover principles such as equal treatment

of shareholders and market integrity compliance. It should abide by insider trading rules and immediately cease trading target shares if it receives any privileged information. Insiders may be exposed to significant criminal and administrative sanctions.

6 Deal Protection

6.1 Are break fees available?

Break fees are common in public takeover transactions. They must be made public and not be excessive to allow for counter offers. Break fees are rarer in private transactions.

6.2 Can the target agree not to shop the company or its assets?

The target can provide exclusivity undertakings to the bidder, but the board of directors remains obligated to consider any offer from alternative bidders.

6.3 Can the target agree to issue shares or sell assets?

The target's shareholders can decide to issue new shares provided that the required majority (a two-thirds majority vote with a quorum of at least 25% of the voting rights) is reached during a general meeting. The target can sell assets, subject to the board's authorisation and compliance with its corporate interest (see question 8.1). If the assets in question represent the majority of the target's assets, the general meeting of the shareholders shall be consulted before the sale.

If such actions are deemed to frustrate the offer, make it more costly, or modify the substance of the target, the bidder is allowed to withdraw its offer with prior authorisation from the AMF.

6.4 What commitments are available to tie up a deal?

Undertakings from key shareholders to tender their shares are lawful and must be disclosed to the public and the AMF; however, they automatically terminate if a competing bid is launched. Purchasing a stake of shares from these key shareholders before the offer is usually seen as a more efficient way of securing the deal for the bidder.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

Tender offers for public companies must be made for 100% of the shares and must be unconditional, subject to limited exceptions for voluntary offers. For instance, a bidder can condition the bid on obtaining merger control clearance where applicable or reaching a minimum acceptance level, typically falling within the range of above 50% to two-thirds of the share capital and voting rights.

For voluntary offers targeting multiple companies, the bidder can condition each offer on the success of the others. If the offer includes securities from the bidder as consideration, it can be made conditional in some instances on the approval by the bidder's shareholders' meeting.

Any offer shall be null and void if the bidder fails to hold more than 50% of the target's share capital or voting rights, although the AMF may agree to waive or lower this threshold in certain situations.

7.2 What control does the bidder have over the target during the process?

The bidder does not have control over the target *per se*. However, if the bidder and the target have executed an agreement before a friendly takeover bid, it can include provisions such as non-solicitation by the target of counter offers from third parties or undertakings regarding the target's conduct of its business until closing.

7.3 When does control pass to the bidder?

Control passes to the bidder only if the offer is successful. The shares are transferred, and the offered consideration is paid after the AMF has published the offer results. In the case of a simplified offer procedure (i.e., mainly when the bidder already holds more than 50% of the share capital and voting rights of the target), transfers of securities are carried out either under the conditions stipulated at the opening of the offer or, in any case, before the results are published.

7.4 How can the bidder get 100% control?

Upon completion of a takeover bid (voluntary or mandatory), the bidder may initiate a squeeze-out procedure to acquire all remaining minority shareholders' securities, provided that the bidder: (i) holds, alone or in concert, at least 90% of the share capital and voting rights of the target after the bid; and (ii) reserves the right to do so in its bid.

8 Target Defences

8.1 What can the target do to resist change of control?

Except where the bylaws provide otherwise, the non-frustration rule does not apply in France. The board of directors is competent to take anti-takeover defensive measures, provided they are not against the corporate interest of the target and do not fall within the powers reserved to shareholders.

The target can resort to a wide variety of takeover defences, such as disposal of essential assets (Crown Jewel defence), acquisition of new assets increasing the target's liability (Fat Man defence), launching a hostile bid on the bidder's shares (Pac-Man defence), warrants allowing shareholders to subscribe for shares at a discounted price (Poison Pill defence), the assistance of a third party to repel the bidder (White Knight defence), share capital increases or share buy-back programmes.

8.2 Is it a fair fight?

Fundamental principles regulating public takeovers are designed to uphold the equity and fairness of transactions and competition. These include equal treatment obligations amongst shareholders and alternative bids, public disclosure obligations, market transparency, and principles of integrity.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

The offered price is the key factor, especially in hostile bids, where success typically depends on persuading shareholders to tender their shares, which is often driven by an attractive price, as adjusted during the tender process as the case may be. Obtaining the approval of the target's board of directors (friendly offer) and securing commitments from key shareholders to tender their shares are also pivotal for the success of public takeover bids.

9.2 What happens if it fails?

Should a failure arise during the negotiation phase before the bidder's interest becomes public, confidentiality will safeguard the negotiation, averting adverse outcomes.

If a bidder fails to obtain control of the target at the end of the takeover bid, it retains the option to make a new offer for the same target.

9.3 Is the use of special committees common and when are they relevant?

Special committees can play a pivotal role in M&A transactions, providing guidance, oversight and strategic input throughout the process. The audit committee, required for listed companies and certain regulated sectors such as credit institutions and insurance companies, supports management in financial reporting, risk management, and statutory audits. During M&A transactions, it contributes by reviewing the target's valuation and assessing associated risks.

Other committees, such as nomination, compensation, risk, or corporate social responsibility committees, offer valuable input within their respective domains during the M&A process or the post-acquisition integration phase. Establishing some of these committees is strongly recommended for listed companies and, in some cases, mandatory for regulated sectors.

Many large private companies also voluntarily establish similar committees or create *ad hoc* strategic committees to approve acquisitions, divestments, and key transaction terms. Such *ad hoc* committees are usually requested by investors.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

The "*French Attractiveness*" law enacted on 13 June 2024 aims at simplifying French corporate law to reinforce the financing and attractiveness of French entities. In respect of public M&A, companies can now create preference shares with multiple voting rights at the time of their initial public offering (IPO), enabling their founders to raise funds while retaining control over the company's strategic choices after the IPO.

Additionally, the law introduces measures aimed at simplifying decision-making processes within French companies and facilitating more efficient governance, particularly through the use of videoconference and other remote telecommunication means at the shareholders' and board of directors' meetings levels.

Furthermore, Corporate Sustainability Reporting Directive 2022/2464 (EU CSRD) was transposed into French law through the Ministerial Order n°2023-1142 dated 6 December 2023, and the sustainability report will be mandatory for certain listed companies for the 2024 financial year as from 2025.

Lisa Becker is a Partner in the M&A/Corporate department of Vivien & Associés. Lisa has been an Attorney-at-Law and member of the Paris Bar since 2013.
Focusing her practice on corporate law and M&A, Lisa advises French and international groups in the context of domestic and cross-border acquisitions (both buy-side and sell-side), restructuring (including mergers, spin-offs or partial asset contribution) and joint-venture transactions. She also regularly focuses on capital-investment transactions either alongside companies working on their development and growth, or investors.

Vivien & Associés
3, rue de Monttessuy
75007 Paris
France

Tel: +33 1 45 02 39 50
Email: lisa.becker@va-fr.com
LinkedIn: www.linkedin.com/in/lisa-becker-99489849

Julien Koch is a Partner in the M&A/Corporate department of Vivien & Associés. Julien is of French nationality and has been an Attorney-at-Law and member of the Paris Bar since 2014.
Julien regularly acts on behalf of French and international clients in cross-border and domestic M&A transactions (including acquisitions, disposals and intra-group restructuring), in capital-investment transactions and in industrial joint ventures and strategic alliances.
In addition to his transactional work, Julien intervenes in the negotiation of strategic commercial contracts and participates in alternative dispute resolution processes as a mediator, mainly in the field of inter-company mediation.

Vivien & Associés
3, rue de Monttessuy
75007 Paris
France

Tel: +33 1 45 02 39 50
Email: julien.koch@va-fr.com
LinkedIn: www.linkedin.com/in/julien-koch

Chloé Canal is an Associate in the M&A/Corporate department of Vivien & Associés. Chloé is of French nationality and has been an Attorney-at-Law and member of the Paris Bar since 2018.
Focusing her practice on corporate law and M&A, Chloé advises French and international groups in the context of domestic and cross-border acquisitions (both buy-side and sell-side), restructuring (including mergers, spin-offs or partial asset contribution), joint-venture transactions and capital-investment transactions (either alongside companies working on their development and growth, or investors), as well as day-to-day corporate issues.

Vivien & Associés
3, rue de Monttessuy
75007, Paris
France

Tel: +33 1 45 02 39 50
Email: chloe.canal@va-fr.com
LinkedIn: www.linkedin.com/in/chlo%C3%A9-canal-23b579a6

Vivien & Associés is a French law firm, headquartered in Paris with additional office in Brussels. The firm specialises in a variety of practice areas including M&A, private equity and venture capital, corporate law and governance, tax, litigation and dispute resolution, commercial contracts, employment relations and labour law, banking and financial regulation law, compliance and restructuring and insolvency.
Established in 1999 by experienced lawyers from leading international firms, the firm was founded with the vision of providing legal services marked by responsiveness and true independence to cater to the needs of a sophisticated domestic and international corporate clientele. Over the course of more than two decades, Vivien & Associés has garnered experience in cross-border and multi-jurisdictional transactions. Serving international clients has been an integral part of the firm's identity since its inception. Vivien & Associés frequently serves clients from various countries, including the USA, Canada, India, China, Japan, Australia and Korea. Moreover, the firm also assists French clients with its international ventures, such as joint ventures, investments and infrastructural projects.
The firm is deeply committed to delivering efficient, pragmatic and competitive legal advice. This commitment is upheld through a hands-on, partner-led approach, where small and solution-oriented teams are created to meet the specific needs of clients.

Having worked on a diverse range of matters over the years, Vivien & Associés has built strong relationships with leading, independent law firms across five continents. Through international non-exclusive partnerships, the firm collaborates with highly qualified foreign counsel in overseas jurisdictions, carefully selected to suit clients' specific needs and maintain the commitment to providing efficient solutions.
Vivien & Associés has garnered recognition from various legal organisations, including *Best Lawyers*, *The Legal 500*, *Chambers and Partners Europe* and *Décideurs Magazine*.

www.va-fr.com

VIVIEN & ASSOCIES

iclg International Comparative Legal Guides

The **International Comparative Legal Guides** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Mergers & Acquisitions 2025 features one expert analysis chapter and 34 Q&A jurisdiction chapters covering key issues, including

- Relevant Authorities and Legislation
- Mechanics of Acquisition
- Friendly or Hostile
- Access to Information
- Stakebuilding
- Deal Protection
- Bidder Protection
- Target Defences
- Other Useful Facts
- Updates

The International Comparative Legal Guides are published by: glg Global Legal Group