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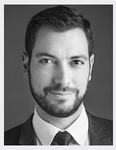
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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions?

Private equity (PE) transactions refer to investments achieved by PE investors at different stages of a company's life, from venture capital (VC) investments (pre-seed or seed stage), growth or expansion capital investments (early or late stage), to buyout investments (leveraged buyout (LBO), leveraged management buyout, buy-in management buyout, family buyout, etc.) and exit transactions. The French PE landscape, which has always encouraged PE transactions, comprises PE funds focusing on LBO transactions involving mature companies and a multiplicity of VC funds interested in venture and growth capital transactions.

After the 2021 post-COVID peak, the LBO and VC transaction flow remained strong until 2022, when it began to slow down and then fell from Q4 2022, with lower deal valuations, lower quantities of funds raised, and lengthier negotiation timeframes. This trend continued in 2023 and Q1 2024, where the number of deals lessened, especially in the upper mid-market, whereas smaller operations remained constant. The reduction of deals is mostly due to the gap between the sellers' and buyers' price expectations.

1.2 What are the most significant factors currently encouraging or inhibiting private equity transactions in your jurisdiction?

The French economy has been able to show signs of resilience and maintain its appeal for PE transactions notwithstanding the current uncertain global economic environment (i.e., inflation, invasion of Ukraine, energy crisis, supply chain issues, increased market interest rates). Indeed, the political will to swiftly relocate strategic industries, the urgency of global warming, the rise of Web3, AI and deep tech companies, and the advancement of environmental, social and governance (ESG) goals, coupled with the French government's recent and promising initiatives (French Tech, France 2030, Choose France, etc.), have been encouraging factors to PE transactions, despite global inhibiting factors and some additional regulations (such as recently strengthened foreign direct investment or antitrust, even if the thresholds triggering the applicable regulation may increase in the near future) that may have curbed or prevented the completion of certain transactions.

1.3 Are you seeing any types of investors other than traditional private equity firms executing private equity-style transactions in your jurisdiction? If so, please explain which investors, and briefly identify any significant points of difference between the deal terms offered, or approach taken, by this type of investor and that of traditional private equity firms.

Industrial companies use the completion of build-up/PE or VC-like transactions to adapt their activity to the market's new expectations (e.g., relocation of production activities, reduction of carbon footprints, or diversification of activities) by acquiring other companies or taking stakes in start-up companies. These transactions may combine M&A transaction philosophy and deal terms with PE or VC transactions financing and structure.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction?

Usually, acquisition vehicles (used for completing a transaction) are incorporated under the form of traditional companies such as "*société anonyme*" (SA) or "*société par actions simplifiée*" (SAS) or specific companies such as VC companies (*société de capital-risque* (SCR)), enjoying legal personality but still delegating the management of their funds to a management company.

Under French law, investment funds can be incorporated under the form of specific legal structures governed by the French Monetary and Financial code and the French Financial Market Authority (*Autorité des Marchés Financiers* (AMF)), known as "alternative investment funds" (FIA). FIAs raise capital from investors for investment in accordance with a predefined investment policy. The most commonly known structures are PE mutual funds, including VC mutual funds (*fonds commun de placement à risque* (FCPR)), innovation capital mutual funds (*fonds commun de placement dans l'innovation* (FCPI)) and other professional funds, such as professional PE funds (FPCI). These funds do not have a legal personality and managed by a management company (*société de gestion*).

2.2 What are the main drivers for these acquisition structures?

The acquisition vehicles' structure may differ based on legal and tax considerations and depending on whether the transaction is organised as an assets deal, a share deal, a merger, etc., but are mainly incorporated under the corporate form of SAS (see questions 2.3 and 3.1 below).

The structure of investment funds is mainly driven by: (i) the nature of their ultimate funders (i.e., structures opened to non-professional funders, including FCPR, FCPI and fonds *d'investissement de proximité*, can be distinguished from those opened to professional funders, including FPCI and *société de libre partenariat*); (ii) the tax regime attached to the subscription of the securities issued by those structures and the capital gains achieved by said structures; and (iii) the sector, area of industry and type of assets into which the investments are to be made, as specific types of funds must comply with certain investment ratios.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

Regarding LBO transactions, PE investors usually acquire the entire issued share capital of the target company to fund its growth through, for instance, completion of build-up transactions. The acquisition is completed through a dedicated holding company (HoldCo), usually incorporated under the form of a SAS (see question 3.1 below), funded by the PE investor and other financial partners (such as banks) to acquire the target company.

PE investors often require the key managers to significantly invest or reinvest in HoldCo on a *pari passu* basis. PE investors may also invest in quasi-equity/debt-like securities, such as convertible or redeemable bonds, to allow the managers to benefit from a wider portion of the share capital of HoldCo with the same investment amount (sweet equity mechanism). The manager can also be granted free shares of HoldCo.

Managers' investments may be directly in HoldCo, or indirectly in a dedicated company (ManCo) itself investing in HoldCo on behalf of the managers. In this case, the managers can be issued free shares in ManCo (instead of HoldCo).

Carried interest securities may benefit the PE investors' managers, allowing them to have a share of the capital gain achieved by the funds upon exit. Under certain strict conditions, favourable capital gains tax exemptions may apply to these interests. Otherwise, they are tax-treated as regular compensation.

2.4 If a private equity investor is taking a minority position, are there different structuring considerations?

Under VC transactions, PE investors usually take a minority shareholding in the target company (start-up company) to fund the development of its business and activities, which are not yet mature, alongside other types of investors (business angels or family offices, for instance). Such investment is riskier than a buyout transaction involving an already mature company.

Therefore, PE investors usually subscribe to complex securities, such as shares with ratchet warrants attached, granting either protection of their investment against failure of the target company to achieve its project, or the opportunity to participate in the next fundraising round at preferential conditions. The investment can also be made by subscribing to so-called "BSA Air", which are warrants convertible by PE investors into shares at the next liquidity event (mainly fundraising round) under preferential conditions.

For PE investors taking a minority position, it is important to negotiate specific rights under a dedicated shareholders' agreement (e.g., specific voting rights, reinforced financial information, tag-along right, anti-dilution). In particular, PE investors can be granted veto or supervisory rights, either provided in the shareholders' agreement and/or the company's articles of association or attached to preferred shares.

In such situations, the management/founders remain the majority shareholders and may benefit from free shares or founders' options (so-called "BSPCE").

2.5 In relation to management equity, what is the typical range of equity allocated to the management, and what are the typical vesting and compulsory acquisition provisions?

In LBO transactions, the package offered to managers aims at aligning their interests with those of the financing parties. Management is often requested to invest (either directly or through ManCo) in HoldCo on a *pari passu* basis with the PE investor regarding securities, capital gain perspective, and exit horizon. Market practice is for managers to usually hold between 5% and 15% of the equity.

If it is intended to grant free shares (*actions gratuites*) to key employees/managers, these shares cannot represent more than 15% of the issued share capital (*vs* 10% prior to 1st December 2023), and no individual may hold more than 10% of the issued share capital (based on securities held for less than seven years since 1st December 2023). Such allocation becomes definitive upon the expiry of a compulsory vesting period (which cannot be less than one year), and – if the shareholders so decide – a holding period. The combined vesting and holding periods may not be less than two years. Some exceptions may, however, apply to the 15% threshold and the vesting/holding period (e.g., percentage can be increased up to 40% if the allocation of free shares is made to all salaried employees).

In VC transactions, BSPCE allocations are generally preferred. They must comply with certain conditions laid down in the French tax code. The BSPCE have no mandatory vesting and holding conditions or allocation cap, but market practice generally considers a four-year vesting period (with a one-year cliff) to be appropriate.

2.6 For what reasons is a management equity holder usually treated as a good leaver or a bad leaver in your jurisdiction?

Usually, resignation or termination – for any reason – before the initial period agreed with the financial investor, or termination of the manager's functions for gross or wilful misconduct or the violation of provisions of the articles of association or shareholders' agreement, are considered a bad leaver departure. When the departure results from an unintended event (death, invalidity, termination without cause) or when the resignation takes place after the expiry of the initial time-period, it is usually treated as a good leaver departure.

Good and bad leaver provisions are less prevalent following the recent decisions of the French Tax Court on management incentive plans (see question 10.4 below).

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

Portfolio companies are commonly structured as an SAS, benefitting from the limited liability of shareholders and great freedom in corporate governance. The main drawback is that the shares of an SAS cannot be listed on stock exchanges – but the SAS can be converted into an SA just before an initial public offering (IPO).

A board with oversight powers is usually established to oversee the management, comprising members appointed by the investors (PE investors are generally reluctant for their nominees to have management powers). Subject to limited exceptions, the functioning rules of the board and the identity of its members can remain fully confidential by exclusively being dealt with in a shareholders' agreement. The board can also be fully regulated in the articles of association of the company, which are publicly available.

3.2 Do private equity investors and/or their director nominees typically enjoy veto rights over major corporate actions (such as acquisitions and disposals, business plans, related party transactions, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

Board veto rights on major corporate actions are typically granted to director nominees of PE investors with significant shareholdings. PE investors holding only a few percentage points of share capital do not typically enjoy veto rights. This, however, is normally a matter for negotiation on case-by-case basis.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

Veto arrangements are rather uncommon at the shareholder level because they are usually exercised at the board level through the nominees of the PE investors. Violations of veto arrangements are strongly sanctioned. Managers can be held liable for the breach and/or be dismissed. Should the breaching party be shareholder, the shareholders' agreement usually includes specific penalties, such as bad leaver clauses or financial sentences.

As a matter of principle, limitations of management's powers (such as veto arrangements) are, however, unenforceable against third parties, even when included in the company's articles of association. This means that any transaction entered into by a manager with a third party in breach of a veto is nevertheless valid, including if the third party was aware of such breach. Management decisions made in violation of veto arrangements can only be cancelled if: (i) they do not fall within the corporate purpose of the company, as stipulated in the articles of association; and (ii) the third party was aware – or, in view of the circumstances, could not have been unaware – that the decisions were beyond the corporate purpose of the company.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

All shareholders are prohibited from acting in their own interest for a purpose that goes against the company's interest and with the aim of negatively affecting other shareholders (*abus de majorité* and *abus de minorité*).

In addition, managers have, a duty of loyalty towards the shareholders, which originates from case law. This duty of loyalty is, however, restricted to information known by the manager and that is likely to have a significant influence on the shareholders' consent.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Shareholders' agreements can deal with a wide range of matters and situations, but they should refrain from conflicting with or derogating from the company's articles of association to avoid legal challenge. Opting for a foreign law is feasible but not advisable, as it would introduce complexity and the shareholders' agreement would in any case remain subject to mandatory provisions of French corporate law and French public order provisions. Shareholders' agreements may include non-competition and non-solicitation clauses, provided such clauses comply with the requirements of French law (i.e., they must notably be carefully tailored to protect the company and remain reasonable in their scope).

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

PE investors must always ensure that their nominees have the legal capacity to act as board members.

The liability of board members is mostly collective: should a decision made by the board be improper and a source of liability, all the board members are deemed jointly and severally liable unless they can prove that they behaved with proper care and opposed the contested decision. This is the primary reason why PE investors sometimes avoid appointing representatives to the board. If they must appoint, they generally require the portfolio company to subscribe to liability insurance covering the board members' liability (see question 11.6 below for insurance protection mechanism).

As far as PE investors are concerned, they are not exposed to liabilities as such, being shareholders, provided they do not excessively interfere with the company management and have not commingled their assets with those of the portfolio companies, otherwise the corporate veil providing limited liability may be pierced.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

French law provides a basic procedure to handle conflicts of interests from the angle of related-party agreements (*conventions réglementées*). However, this procedure is insufficient to deal with all conflicts of interest. We advise portfolio companies to set up internal rules regarding conflicts of interest.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including antitrust, foreign direct investment and other regulatory approval requirements, disclosure obligations and financing issues?

The main issues impacting the timetable for French transactions generally are:

- before signing (binding agreement): prior-consultative opinion of the employees' representative bodies and/or prior information of employees (in companies with less than 250 employees qualifying as SMEs);
- before closing: clearances from (i) the French Competition Authority (*Autorité de la Concurrence*) or the EU Commission as the case may be, (ii) the AMF for listed companies, or (iii) the Ministry of Economy, Finance and Recovery in the case of investment in companies operating in sensitive industries; and
- usual practical issues, on a case-by-case basis, such as due diligence or financing structures (requiring equity and debt commitment letters with certain funds commitments).

4.2 Have there been any discernible trends in transaction terms over recent years (i.e. trends in terms of regulatory approval)?

Recent trends in French PE transactions include a rise in the use of warranties and indemnities (W&I) insurance, increased regulatory scrutiny, sector-specific investment strategies, and the prevalence of minority investments and growth capital deals. Additionally, the market has seen enhanced due diligence focusing on ESG criteria and a rise in club deals and co-investments.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

Although PE actors have expressed more interest in publicly listed companies (mainly due to lower valuation than non-listed assets), these transactions remain uncommon in France because the AMF will generally reject any offer conditional upon reaching the squeeze-out threshold. Indeed, PE investors would usually carry out public-to-private transactions by: (i) acquiring shares of the target listed company to reach the 90% threshold of the share capital and voting rights, typically by resorting to leverage; and then (ii) triggering the squeeze-out procedure to acquire the remaining shares of the listed company.

5.2 What deal protections are available to private equity investors in your jurisdiction in relation to public acquisitions?

Unlike private acquisitions (see question 6.8 below), break fees are common in public transactions. The target can provide exclusivity undertakings to the bidder, but the board of directors must consider any offer from alternative bidders. Undertakings from key shareholders to tender their shares are also lawful, but they must be disclosed and automatically terminated if a competing bid is launched.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

While the completion accounts' structure remains the most used, the locked-box mechanism has become increasingly popular. Most of the transactions involving PE investors are based on locked-box whereas trade sellers generally use completion accounts.

Sellers tend to prefer the locked-box due to the simplicity and increased certainty of this mechanism, while purchasers tend to prefer the completion accounts, ensuring the price's accuracy. In situations where the closing date is expected to be very distant, the completion accounts mechanism makes more sense for all parties.

Regardless of price structure, deferred purchase price through earn-out clauses is common in PE transactions but is a fertile ground for litigation.

6.2 What is the typical package of warranties / indemnities offered by (i) a private equity seller, and (ii) the management team to a buyer?

PE sellers typically refuse to provide warranties and indemnities beyond fundamental representations (such as title to shares, power and authority, or the company's capital structure). Managers are usually key as part of the transaction. Negotiating warranties with them is a sensitive matter, and they tend to offer rather limited warranties to the buyer.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

As a principle, PE sellers try to resist providing any kind of restrictive undertakings. Leakage covenants in case of "locked-box" deals and undertakings in connection with the conduct of business until closing are typical. Managers are commonly bound by non-competition and non-solicitation undertakings.

6.4 To what extent is representation & warranty insurance used in your jurisdiction? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such insurance policies, and what is the typical cost of such insurance?

Representation & warranty insurance used to be very rare but has become much more popular, although there remains a significant margin for development. The cost and conditions of the insurance vary depending on target companies. We have nevertheless noticed that most insurance companies offering such insurance have a list of non-negotiable exclusions (e.g., criminal matters or risks identified in the due diligence) and that specific risks are excluded depending on the deal or target's industry.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

Fundamental warranties are usually not subject to any limitations except a cap at the purchase price level. PE sellers and management teams usually refuse to be bound by other liabilities. If additional liabilities are necessary for the deal to go through, PE sellers and management teams will endeavour to restrict their liabilities as much as possible.

In the case of "locked-box" deals, any leakage will be recoverable from the sellers without a cap.

6.6 Do (i) private equity sellers provide security (e.g., escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

PE sellers are strongly opposed to providing security.

PE buyers usually request extensive representations and warranties from sellers and the management team, backed by a security such as escrow accounts or first-demand bank guarantees. However, in the case of purchase from PE sellers, such as in the context of a secondary buyout, the representations and warranties tend to be very limited and, accordingly, securities are very rarely provided.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain in the absence of compliance by the buyer (e.g., equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

PE buyers can provide comfort regarding the availability of financing by providing the sellers, together with their binding offers, with equity and/or debt commitment letters with certain funds' commitments.

The extent of the enforcement rights depends on the contractual arrangements with the banks and investors. Investors generally irrevocably undertake to fund the acquisition vehicle under equity commitment letters. If the acquisition vehicle is found liable by a court to pay damages for default/breach of its contractual obligations, as per the equity commitment letter, the financial sponsors will be required to pay such damages. This risk is remote, however, as French courts are reluctant to award significant damages.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees are not prevalent in the context of PE transactions.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

French IPOs are generally considered a time-consuming and costly process, subject to various legal and regulatory constraints and specific rules regarding acquisition or disposal of shareholdings.

French listed companies are also subject to higher scrutiny in terms of transparency requirements, including their corporate governance practices.

Sellers must pay particular attention to financial market conditions. French IPOs are subject to market fluctuations and volatility, sometimes leading to a delay or termination of the process due to insufficient pricing conditions.

In terms of sellers' rights, any existing shareholders' agreement would be terminated as a result of the IPO. Accordingly, sellers' governance, financial and other specific rights would not be maintained, and share transfer restrictions would be terminated. A new shareholders' agreement, including sometimes board veto rights and potential shares transfer restrictions (such as lock-up – see below), may be implemented post-IPO.

Regarding selling conditions, the company must declare in the IPO prospectus certain disclosures, based on which its shareholders may obtain indemnification post-completion in case of misleading disclosures.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

Terms and duration of lock-up provisions vary depending on the company's particulars, market conditions and parties' negotiations, but sellers are generally asked to grant lock-ups for a 180-day period (which can vary depending on the specifics of the IPO). They usually apply to majority shareholders and management. The AMF ensures that these are disclosed in the IPO prospectus.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

In France, PE exits mostly occur through M&A transactions or secondary buyouts. Exits through IPOs have been limited on the French market in the past years. However, as the case may be, PE sellers often pursue a dual-track exit process, where they simultaneously prepare for an IPO and a sale, to choose the most relevant exit route, based on market conditions.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (including the syndicated loan market, private credit market and the high-yield bond market).

The most common sources of debt finance used to fund PE transactions in France are debts provided by traditional lenders (banks) through syndications or clubs. This financing generally involves various types of loans including term loans to refinance the company's existing debt and revolving credit facilities.

Other debt products are increasingly used to fund PE transactions (exclusively or in addition to traditional senior secured bank loans), such as mezzanine loans, uni-tranche financing, second lien loan and/or quasi-equity instruments such as bonds (straight bonds or bonds into shares).

Transactions can alternatively be financed by private placements and/or high-yield bonds provided by institutional investors, such as pension funds, insurance companies, and asset management firms.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

French law prohibits the acquired companies and their subsidiaries from providing any financing or granting any guarantee or security interest over their assets to secure the purchase or subscription of their own shares (financial assistance). Therefore, it is generally the acquiring vehicle that provides guarantees or security interests over its own assets (including the target company's shares) and sometimes downstream guarantees. In addition, capitalisation rules and banking regulations are generally applicable.

8.3 What recent trends have there been in the debt-financing market in your jurisdiction?

The reduction of banking monopoly prohibitions has led to a surge in competition among lenders in the debt-financing market in France. Furthermore, as interest rates have recently increased in France, it has become costlier for PE funds to borrow and leverage expensive LBOs. This mainly explains the increase in the number of private debt funds and alternative lenders, providing additional sources of debt to support PE investments.

Uni-tranche financings (providing a simplified debt structure, which combines senior and subordinated debt into a single facility) and payment-in-kind notes (interest payments can be deferred and paid in kind rather than cash) are also increasingly popular in France, offering additional flexibility for borrowers.

Environmental and ESG considerations have gained importance in the debt-financing market with certain lenders increasingly incorporating sustainability criteria into their investment decisions and financing terms.

Ongoing implementation of Basel III and forthcoming Basel IV regulations have influenced banks' lending practices, particularly in terms of capital requirements and risk assessment.

9 Alternative Liquidity Solutions

9.1 How prevalent is the use of continuation fund vehicles or GP-led secondary transactions as a deal type in your jurisdiction?

General Partner (GP)-led secondary transactions (where GPs decide to sell one or more portfolio companies from a fund they manage to a new investment vehicle (continuation fund) managed by the same GPs) have been increasingly considered recently, mainly due to downward valuation trends. This deal structure, however, remains challenging to execute mostly due to difficulties in establishing a market price (allowing a return) and in dealing with management teams and investors.

9.2 Are there any particular legal requirements or restrictions impacting their use?

Before implementing this process, it must be ensured that the assets transferred to the continuation fund are free from any third-party rights (whether under any shareholders' agreement or otherwise) and that the consent of the primary fund's advisory board is secured. Certain customary provisions of the contractual documentation (including tag-along and drag-along provisions) must be adjusted to cover risks related to the use of continuation funds and the potential for conflicts of interests to arise.

Managers must then identify which of the LPs are willing to sell and receive their sale price in cash or to reinvest all or part of their proceeds – before determining the valuation.

More generally, GPs managing continuation funds must ensure that their funds are registered with the AMF and comply with the Alternative Investment Fund Managers (AIFM) Directive reporting requirements.

10 Tax Matters

10.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

PE transactions in France usually benefit from the combination of two favourable tax provisions:

- the buying and target companies may elect for the tax consolidation regime, notably subject to a minimum 95% holding requirement, under which: (i) the operational benefits of the subsidiaries are compensated with the tax losses usually incurred by the acquiring company; and (ii) the subsidiaries contribute the equivalent of the tax they would have incurred, had they not been included in the tax consolidated group, to the buying entity that can use that cash flow to pay the interest and/or principal of its acquisition loans; and
- interest incurred by the buying company, as well as acquisition and financing costs, are tax deductible even though dividends or capital gains derived from its investments are mostly tax exempt. Anti-hybrid measures, thin capitalisation rules and transfer pricing requirements may, however, limit the effective amount of deductible interest.

Buying companies are frequently activated (holding *animatrice*) to allow VAT recovery on acquisition costs.

Off-shore structures are expected to become less and less frequent, following the implementation of several European directives including DAC6 reporting obligations, ATAD III measures against shell entities or Pillar II rules, designed to ensure that a minimum level of tax is paid in every jurisdiction where a large group operates, and the evolution of domestic case law enhancing tax authorities' powers to discard foreign holding companies lacking substance.

10.2 What are the key tax-efficient arrangements that are typically considered by management teams in private equity acquisitions (such as growth shares, incentive shares, deferred / vesting arrangements)?

Free share plans and, for start-ups, BSPCEs benefit from a relatively advantageous and, more importantly, reliable tax and social security regime.

Outside these regimes, a choice must be made between ordinary salaries, which are subject to high employer and employee social charges and up to 45% income tax, and capital investment, for which profits are only subject to a 30% flat tax (or an even lower one in certain investment plans (*plan d'épargne en actions*)). A 3% or 4% exceptional tax on high income may also apply in any case. Whilst very efficient, caution must be taken in structuring investment schemes aimed at applying the capital gains taxation regime, as these are often considered disguised remuneration by the French tax authorities, notably in the context of sweet equity schemes, preferred shares, deferred/vesting arrangements, or good/bad leaver put and call options.

10.3 What are the key tax considerations for management teams that are selling and/or rolling over part of their investment into a new acquisition structure?

Rolling over part of their investment usually benefits from a tax deferral regime in the hands of the management teams. Selling shares triggers capital gain tax under the 30% flat tax regime; earn-out payments are usually efficient as they are only subject to tax when effectively due.

In the context of MBOs especially, the sale of shares to the new HoldCo by initial managers who retain a controlling interest in the new structure can trigger the application of an additional limitation rules, if a tax consolidation regime is implemented, on the tax deductibility of interest (*Amendement Charasse*).

10.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

Recently, the French tax environment has been relatively stable.

In 2018, business-favourable measures were adopted (e.g., the 30% flat tax on all investment income for individuals and the progressive reduction of corporate income tax).

PE deals were substantially impacted by recent decisions of the French highest Court on management incentive plans, which ruled that capital gains realised by managers qualify as employment income even when they invested money, at fair market value and at risk, if the gain realised is directly or indirectly linked to the existence or execution of the employment/management contract. PE actors are thus increasingly turning to free share plans.

11 Legal and Regulatory Matters

11.1 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

The antitrust and foreign investment regulations have been enhanced over the past few years and now apply to a larger scope of transactions, including PE transactions. Further, recent French case law relating to the tax treatment of management packages may cause difficulties in PE transactions. Finally, the current trend for ESG considerations, the implementation of the duty of vigilance regulation in France, the issuance of the EU taxonomy and Sustainable Finance Disclosure Regulations (SFDR), and the EU Corporate Sustainability Reporting Directive (CSDR) are likely to drive PE investments.

11.2 Are private equity investors or particular transactions subject to enhanced regulatory scrutiny in your jurisdiction (e.g., on national security grounds)?

As part of the growing interest in ESG considerations and the development of the socially responsible investment movement, PE funds are subject to further scrutiny regarding their application of the Taxonomy/SFDR regulations, which provide for a self-classification system to distinguish "green" investments from others. The AMF has issued proposals for a more rigorous regulation implementing at the EU level minimum environmental requirements, which financial products would have to meet to be classified as a green investment under Taxonomy/SFDR regulations to avoid any greenwashing practices.

11.3 Are impact investments subject to any additional legal or regulatory requirements?

Impact investments are primarily regulated by soft law under which PE actors or companies are looking to comply with some labels, such as Bcorp label, which is awarded to commercial companies that meet societal, environmental, governance, and public transparency requirements, or GreenFin label, which guarantees the green quality of investment funds. However, under the influence of the EU, the impact investment sector is increasingly subject to hard law regulations.

11.4 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g., typical timeframes, materiality, scope, etc.)?

Usually, PE investors require full due diligence reviews before buyout investments but may fix different materiality thresholds depending on the reviewed areas. Such DD reviews may last from four to six weeks. Regarding VC transactions relating to early-stage companies, DD reviews may focus on specific areas, such as IP about tech companies, and are usually shorter (usually three to four weeks). Scope, materiality, and areas of the DD reviews may always vary from investor to investor.

11.5 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g., diligence, contractual protection, etc.)?

Anti-bribery and anti-corruption French regulation has been strengthened over the past few years, including with the French act known as "Sapin II", which requires large companies to implement a compliance programme to prevent acts of bribery and corruption. The EU Commission is also currently seeking to harmonise the anti-bribery between all its members, by setting minimum standards. Therefore, PE actors are paying greater attention to such compliance, as is the case for ESG compliance/considerations.

11.6 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

PE funds are careful and unlikely to exercise any management duties over the activities of the portfolio companies, to avoid attracting any liability (see question 3.6 above).

PE investors usually implement several protection mechanisms preventing them from being liable due to a breach of a portfolio company. HoldCo is usually incorporated under the form of a limited liability company. Further, the investor's representative may be appointed as a member of supervisory bodies within a portfolio company with limited powers, excluding any managerial power or function.

PE investors may require the portfolio company to, in any case, subscribe to liability insurance covering the members of its corporate bodies.

12 Other Useful Facts

12.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

The French market presents numerous opportunities but requires that PE investors meticulously plan their strategies in advance to navigate the local regulatory framework and fully capitalise on these opportunities. The economic climate and political activism in France can render certain sectors particularly lucrative investments. It is advisable for PE investors to engage in thorough preparation and conduct market-specific analysis. This approach will enable them to effectively assess their opportunities and efficiently organise the completion of their investments.

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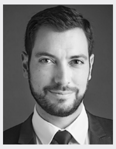

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Vivien & Associés is a French law firm, headquartered in Paris with additional offices in Brussels and Bordeaux. The firm specialises in a variety of practice areas including M&A, PE and VC, corporate law and governance, tax, litigation and dispute resolution, commercial contracts, employment relations and labour law, banking and financial regulation law, 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 more than two decades, Vivien & Associés has developed extensive experience in cross-border and multi-jurisdictional transactions. Serving international clients has been an integral part of the firm's identity since its incorporation. Vivien & Associés frequently works for clients from various countries, including the USA, India, China, Japan, Australia, and Korea.

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