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Private Equity 2025

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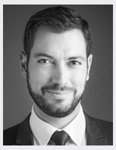

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1 Overview

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.

The 2024/2025 M&A landscape was impacted by high interest rates fixed by central banks, global geopolitical events, and political uncertainties. More specifically, the electoral climate in France and Europe combined with the announcement of new US tariff policies created anxiety among market players, resulting in a low level of buyout activity and a standstill in VC investments, as well as a postponement of VC exits.

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, political uncertainties). While the major trends from 2024 are still relevant (political will to swiftly relocate strategic industries, the urgency of global warming, the rise of Web3, AI and deep tech companies, the advancement of environmental, social and governance (ESG) goals, and the French government's recent and promising initiatives (French Tech, France 2030, Choose France, etc.)), French political instability has impacted the global PE sector by delaying the issuance of new initiative policies and reviving former reluctance on certain key topics usually accelerating PE (e.g., tax restrictions regarding management packages included in the February 2025 French Finance Law).

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. Particularly this year, we have seen industrial companies using build-up/PE- or VC-like transactions to accelerate their growth. These transactions may combine M&A transaction rationale 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 to complete 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 are 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 open 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, the capital gains achieved by said structures and the tax liability inherent to cash circulation incurred by those 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 an 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).

Both first-tier managers and second-tier managers usually also benefit from an equity incentive that is often structured by the grant of free shares directly by HoldCo to such managers or indirectly by a dedicated company (ManCo) gathering all or part of the managers. 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. However new tax regulations introduced by the 2025 French Finance Law have implemented strict conditions that limit the appeal of such securities by increasing the risk of reclassification into 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 (i) shares with ratchet warrants protecting the investor in the case of a down-round, (ii) "BSA Air", which are warrants convertible by PE investors into shares at the next liquidity event (mainly fundraising round) under preferential conditions (discount and cap valuation), often combined with (iii) interest-bearing convertible bonds securing a portion of the investment.

Another focus of the PE investors is the negotiation of specific rights in the shareholders' agreement (e.g., enhanced voting rights, reinforced financial information, tag-along rights, anti-dilution, *pari passu* clauses, liquidation preference).

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 1 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 1 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., the 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 as they require a cash investment from the beneficiaries, both at subscription and exercise of the BSPCEs. They must comply with certain conditions laid down in the French tax code. The BSPCEs 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 end of 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) and the 2025 French Finance Law.

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 supervisory powers and/or prior approval rights is usually established to supervise 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; however, in such cases, the clerk's office of the Commercial Court may request the board members to be publicly disclosed in the company's commercial extract.

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 systematically enjoy veto rights, except for in certain instances such as securities issuance, restructuring and change of business.

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, even if the third party was aware of the 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*).

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's interests 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, which includes verifying that nominees are not disqualified under French law, such as being prevented from holding directorial positions due to previous (legal or financial) misconduct.

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; do not exercise undue influence over management decisions; and have not commingled their assets with those of the portfolio companies, otherwise the corporate veil providing limited liability may be pierced and PE investors risk being considered the "*de facto*" manager, thereby losing the protection of limited liability. PE investors can be held accountable for nominees' decisions if they approve actions that breach legal or contractual obligations.

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?

Related-party transactions must receive prior authorisation from the board, excluding the conflicted director from voting. Even though French law provides a basic procedure to handle conflicts of interests from the angle of related-party agreements (*conventions réglementées*), such procedure is insufficient to deal with all conflicts of interest. We therefore advise portfolio companies to set up internal rules regarding conflicts of interest, for example: (i) implement governance and ethics training to stay informed about best practices and legal requirements; or (ii) maintain comprehensive records of all disclosures and decisions related to conflicts of interest. In particular, most shareholders' agreements require that a director (i) discloses any potential conflict of interest at the time of his/her appointment, then (ii) in the course of his/her duties, voluntarily steps down and refrains from participating in related discussion and decisions.

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 small and medium-sized enterprises);
- 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 (DD) or financing structures (requiring equity and debt commitment letters with certain funds commitments).

Other regulatory clearance may be required depending on the activity of the target company.

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

Over the past two years, the scope of FDI screening in France has been significantly extended, entailing the French authorities' increased scrutiny of foreign investments. Recent trends in French PE transactions also include a rise in the use of warranties and indemnities (W&I) insurance, sector-specific investment strategies, and the prevalence of minority investments and growth capital deals. Additionally, the market has seen enhanced DD 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 used to be most common, the locked-box mechanism has become prevalent over the past two years. Most of the transactions involving PE investors are based on the locked-box mechanism, whereas non-PE purchasers tend to consider the completion accounts structure first.

Sellers tend to prefer the locked-box mechanism due to its simplicity and increased price certainty, while purchasers tend to prefer the completion accounts, ensuring price 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 W&I beyond fundamental representations (such as title to shares, power and authority, or the company's capital structure). Managers are usually required to grant business representations of a limited scope and substance, considering they are a key element for a smooth transition not to be antagonised by the purchaser in the context of the negotiation of the transaction.

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. In "locked-box" deals, leakage covenants are common for PE sellers, and undertakings relating to the conduct of business in its ordinary course until closing are typically granted by managers (and sometimes PE investors on a best effort basis). Managers are also 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?

W&I insurance used to be very rare but has become predominant in PE transaction in the context of auction bids. The cost and conditions of the insurance vary depending on target companies. A typical cap varies from 10% to 30% of the transaction value. Enhancements focus on knowledge qualifier scrapes, data room disclosure scrapes and specific areas of interest (depending on target industries). Standard non-negotiable exclusions include anti-bribery and corruption, environment, transfer pricing, tax secondary liability, pensions under funding and known risks.

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. A buyer would typically not request security (such as an escrow account) if a W&I insurance policy is in place.

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, unitranche financing, second lien loan and/or quasi-equity instruments such as bonds (straight bonds or bonds into shares). Mezzanine and payment-in-kind (PIK) financing have increased over the past few years, as these financing solutions provide more flexibility.

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?

In 2024, interest rates, which had recently increased in France, remained high despite the European Central Bank initiating a rate reduction cycle mid-year. 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 the Basel III and Basel IV regulations influenced banks' lending practices, particularly in terms of capital requirements and risk assessment, with a view to reducing excessive variability of the outcomes of risk calculations.

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 management buyouts 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.

Following these decisions, the 2025 French Finance Law adopted a specific regime under which capital gains realised under a management package that qualify as employment income: (i) are exempt from social security charges in the hands of the employer; and (ii) may be taxed under the more favourable capital gains taxation rates, but only for up to three times the increase in value of the underlying company's equity, above which the gains may be taxed at a marginal 59% rate. For these purposes, the company's value is subject to certain adjustments aimed notably at neutralising the advantages resulting from sweet equity mechanisms. 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 and 2025 French Finance Law relating to the tax treatment of management packages may cause difficulties in PE transactions. Also, 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 minimum environmental requirements at an EU level, which financial products would have to meet in order to classify as a green investment under the Taxonomy/SFDR regulations to avoid any greenwashing practices. Finally, the French FDI regulation requires systematic filing in certain areas in the event of a direct or indirect investment by a foreign acquirer.

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 the 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 DD reviews before buyout investments but may fix different materiality thresholds depending on the reviewed areas. Such DD reviews may last from two to four weeks. Regarding VC transactions relating to early-stage companies, DD reviews may focus on specific areas, such as IP relating to tech companies, and are usually shorter (usually two weeks). Scope, materiality, and areas of DD reviews do vary from investor to investor. Anti-money laundering, sanctions, AI and open-source matters are now often covered by DD.

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. AML clauses are now systematically included in shareholders' agreements with PE investors and are frequently included in the fundamental warranties of the guarantee granted under the sale and purchase agreement.

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, particularly in the digital and healthcare sectors, despite its regulatory landscape potentially appearing cumbersome to foreign investors. It is advisable for PE investors to seek legal advice from specialist lawyers in order to meet clients' expectations.

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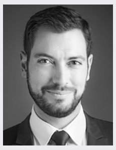

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