

Foreign Investment Review 2021

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Oliver Borgers
McCarthy Tétrault LLP

Lexology Getting The Deal Through is delighted to publish the tenth edition of *Foreign Investment Review*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the European Union, France, Italy, Pakistan, Spain, Sri Lanka and Uzbekistan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Borgers of McCarthy Tétrault LLP, for his continued assistance with this volume.



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Contents

Australia	5	Laos	80
Deborah Johns Gilbert + Tobin		Dino Santaniello Tilleke & Gibbins	
Austria	12	Myanmar	86
Isabella Hartung and Julia Schönhuber Barnert Egermann Illigasch Rechtsanwälte		Nwe Oo and Ross Taylor Tilleke & Gibbins	
Cambodia	17	New Zealand	89
Jay Cohen and Nitikar Nith Tilleke & Gibbins		Ben Paterson and Lance Jones Russell McVeagh	
Canada	21	Pakistan	99
Oliver Borgers, Dominic Thérien, Jonathan Bitran and Erin Keogh McCarthy Tétrault LLP		Sarjeel Mowahid and Ahmed Reza Mirza ABS & Co	
China	33	South Korea	107
May Liu Global Law Office		Joo Hyoung Jang, Rieu Kim, Kyunghun Kim and Youjin Hwang Barun Law LLC	
European Union	39	Spain	112
Charles Pommiès, Dominic Long and Jonathan Benson Allen & Overy LLP		Juan Manuel de Remedios and Laura del Olmo White & Case LLP	
France	45	Sri Lanka	117
Orion Berg and Camille Grimaldi White & Case LLP		Nirosha Peiris Tiruchelvam Associates	
Germany	51	Switzerland	123
Roland M Stein and Leonard von Rummel BLOMSTEIN Partnerschaft von Rechtsanwälten mbB		Stephan Erni, Astrid Waser and Eric Olivier Meier Lenz & Staehelin	
India	58	Thailand	131
Hardeep Sachdeva and Priyamvada Shenoy AZB & Partners		Jirapong Sriwat and Apinya Sarntikasem Nishimura & Asahi	
Italy	68	United Arab Emirates	136
Francesco Salerno and Kathleen Lemmens Gianni & Origoni		Silvia Pretorius Afridi & Angell	
Japan	74	United Kingdom	142
Koki Yamada and Dai Iwasaki Tokyo International Law Office		Tim Cowen and Claire Barraclough Preiskel & Co LLP	

United States 148

Paul Marquardt, Chase Kaniecki, Nathanael Felix Kurcab,
Nora McCloskey and Elise Lane
Cleary Gottlieb Steen & Hamilton LLP

Uzbekistan 154

Mahdi Magdiev
Winfields

Vietnam 159

Phuong Thi Minh Tran and Nam Ngoc Trinh
Tilleke & Gibbins

France

Orion Berg and Camille Grimaldi

White & Case LLP

LAW AND POLICY

Policies and practices

- 1 | What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

In principle, foreign investments are free in France. However, the French Ministry of Economy (MOE) reviews certain types of foreign investments involving France's national interests. In this regard, certain transactions projected by foreign investors (ie, EU and EEA investors as well as non-EU and EEA investors) in French entities active in 'sensitive activities' must obtain the MOE's prior approval.

Main laws

- 2 | What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals and investors on the basis of the national interest?

Since 1966, pursuant to Law No. 66-1088 of 28 December 1966 regarding financial relations with foreign countries, foreign investments that are likely to adversely interfere with France's national interests are subject to a prior declaration or approval of the MOE. This Law was later supplemented by Law No. 2004-1343 of 9 December 2004, which empowered the MoE to further regulate foreign investments, notably by injunctive relief.

France recently reinforced foreign investment control through the adoption of Law No. 2019-486 of 22 May 2019 on Business Growth and Transformation (the PACTE Law). This Law reinforced the MOE's powers in the case of breach of prior authorisation requirements.

In addition, Decree No. 2019-1590 of 31 December 2019 (the Decree of 2019) and the Ministerial Order of 31 December 2019 relating to foreign investments reformed the French foreign investment control regime. This reform implemented the legislative modifications introduced by the PACTE Law and adapted the French legal framework to the coordination system introduced by EU Regulation 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investment into the EU, which entered into force on 10 April 2019 and became effective on 11 October 2020. The main objective of the reform was to include new strategic sectors, refine certain concepts and provide a clearer review framework for foreign investors.

Finally, Decree No. 2020-892 of 22 July 2020 temporarily reduced the threshold triggering the MOE review of non-EU or EEA investments when targeting French listed companies in the context of the covid-19 pandemic. Foreign investments falling within these new provisions must be notified following a fast-track procedure.

The relevant provisions are currently codified in articles L151-1 to L151-7 and R151-1 to R151-17 of the French Monetary and Financial Code (MFC).

Scope of application

- 3 | Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

The scope of the MOE review includes the following types of foreign investments:

- acquisitions by foreign investors of a direct or indirect controlling interest in a French entity, including in the case of acquisitions of joint control;
- acquisitions by foreign investors of all or part of a branch of activity of a French entity that would cover asset deals; and
- for non-EU and EEA investors only, the acquisition of more than 25 per cent of the voting rights of a French entity whether made, directly or indirectly, by a sole investor or by several investors acting in concert; in view of the covid-19 pandemic, Decree No. 2020-892 of 22 July 2020 lowered this voting rights threshold to 10 per cent for investments in listed companies (this measure is temporary and should be in place only until 31 December 2020).

Acquisitions of joint control may also be captured.

The MOE only reviews foreign investments in the sensitive activities listed in the MFC. Previously, the scope of the review differed depending on the origin of the investor. The Decree of December 2019 abandoned this distinction.

Therefore, for both EU and EEA investors and non-EU and EEA investors, the list of strategic sectors includes the following:

- a first block of defence and security-related activities:
 - relating to arms, ammunition, powders and explosive substances intended for military purposes or for war materials and assimilated materials;
 - relating to dual-use goods and technologies, or of undertakings holding national defence secrets or that have concluded a contract or subcontract to the benefit of the French Ministry of Defence; and
 - relating to the interception or detection of correspondence or conversations, capture of computer data, security of information systems, and electronic systems used in public security missions, treatment, storage and transmission of sensitive data;
- a second block of activities relating to infrastructure, goods or services essential to guaranteeing the following: energy supply, water supply, transportation networks, telecom networks, space operations, public security, public health and vital infrastructure; and
- a third 'block' of critical technologies: research and development activities in cybersecurity, artificial intelligence, robotics, additive

manufacturing, semiconductors, certain dual-use goods and technologies, sensitive data storage, energy storage and quantum technologies. A Ministerial Order of 27 April 2020 broadened the list to include biotechnologies. These critical technologies must be related to activities listed in the first and second blocks above.

Since the Decree of 2019, under the influence of EU law, the screening obligations also cover the editing, printing and distribution of print and digital political press as well as activities relating to the production, transformation or distribution of agricultural products enumerated at Annex I of the Treaty on the Functioning of the European Union when they contribute to food security objectives (ie, ensure access to safe, healthy, diversified food; protect and develop agricultural lands; and promote France's food independence).

Definitions

4 How is a foreign investor or foreign investment defined in the applicable law?

A 'foreign investor' is defined as:

- any natural person of foreign nationality;
- any natural person of French nationality who is not domiciled in France;
- any foreign entity; or
- any entity incorporated under French law controlled by one or more persons or entities mentioned above.

All the entities controlling the direct investor shall be considered as investors. Therefore, in practice, an investor will be considered as a 'foreign investor' insofar as its chain of control includes a non-French investor, whether intermediate or ultimate.

The concept of 'control' must be interpreted by reference to article L233-3 of the French Commercial Code. This covers situations, inter alia, where the investor holds the majority of voting rights in a company, where it can solely determine the decisions at general meetings or where the investor holds the power to appoint or dismiss the majority of the members of the administrative, management or supervisory bodies of a company.

The concept of 'control' may also be interpreted in light of the merger control rules provided in article L430-1 of the French Commercial Code. This includes rights, contracts or other means conferring the possibility to exercise a decisive influence on the activity of an undertaking (ie, rights of ownership or use on the assets of the undertaking, rights or contracts conferring a decisive influence on the composition, deliberation or decision of the undertaking bodies).

Finally, it is specified that the definition of an 'EU or EEA investor' covers:

- any legal person whose chain of control contains only entities incorporated under the laws of an EU or EEA member state or entities that are nationals of, and domiciled in, this state; or
- any natural person who is a national of an EU or EEA member state and has his or her domicile in this state.

Any investor that does not fall within this definition must be considered as a non-EU and EEA investor.

Special rules for SOEs and SWFs

5 Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

There are no specific rules relating to investments made by foreign SOEs and SWFs. However, the MOE may take into consideration in its

review the investor relationship with foreign governments or foreign public entities, eventually to veto the investment.

Relevant authorities

6 Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

The competent authority to review foreign investments on national interest grounds is the MOE. The Bureau Multicom 4 within the MOE's Treasury Department is formally in charge of the review. A foreign direct investment review may also entail the consultation of other ministries or public agencies, depending on the relevant sectors affected by the investment. Since January 2016, a commissioner of strategic information and economic security (attached to the MOE) also assists the Treasury when coordinating inter-ministerial consultations. The MoE may also seek the cooperation of other national authorities.

7 Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

The MOE must verify that the foreign investment will not contravene France's public order, public security or national defence.

The MOE does not need to give detailed reasoning when it approves a foreign investment or when it considers that the foreign investment is outside the scope of review.

The MOE should provide its reasoning when it refuses to clear a foreign investment. The MOE has rather wide discretion to decide whether an investment contravenes France's national interests. The Decree of 2019 specified that the MOE may take into consideration the ties between the foreign investor and a foreign government or foreign public entity. In addition, the MOE may refuse to grant authorisation if there is a 'serious presumption' that the investor is likely to commit or has been punished for committing certain enumerated infringements (eg, drug trafficking, procuring, money laundering, financing terrorism, corruption or influence peddling). The MOE may also take into account the investor's previous track record in breaching prior authorisation requirements or non-compliance with MOE injunctions and interim measures.

PROCEDURE

Jurisdictional thresholds

8 What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

The target's involvement in a strategic activity listed in the Monetary and Financial Code triggers the review of the Ministry of Economy (MOE). There is no specific threshold in terms of turnover, asset size, purchase price or enterprise value. Therefore, even minor transactions may be subject to screening.

The filing is mandatory, and the transaction cannot be closed before clearance has been granted ('standstill effect'). The MOE may impose injunctions and interim measures in the case of breach of the notification requirements.

National interest clearance

9 What is the procedure for obtaining national interest clearance of transactions and other investments? Are there any filing fees? Is filing mandatory?

Any investment falling within the scope of the review must be filed with the MOE for prior authorisation. There are no filing fees. A form template is available on the MOE's website.

The Ministerial Order of 31 December 2019 specifies the information that must be provided in a request for authorisation. The filing must notably contain information on the identity of both the foreign investor (including the identity of its chain of control members) and the target entity, as well as their corporate structure, activities, markets, competitors, etc. Information on the projected investment must also be provided, notably regarding its financial modalities, the transaction size and the investment strategy of the investor.

Furthermore, when applicable, investors will have to provide information regarding any potential significant capital ties or financial support received from a state or public body outside the European Union over the last five years. The investor must also certify that itself and, to the best of its knowledge, the members of its executive body in the case of legal persons, have not been convicted of certain listed offences in the last five years. If an investment fund is part of the chain of control, the request for prior filing must specify the identity of its manager and controlling shareholders (natural or legal persons).

In addition, prior to formally filing an authorisation request, the investor or the target may elect to approach the MOE through a formal comfort process to obtain its position on whether a particular transaction falls within the scope of the review. The target may submit such a request ahead of any investment project to obtain comfort on whether its activities should be considered strategic in the sense of the regime.

Finally, the MOE has the power to order an investor to file for review a transaction that has already been implemented that should have been subject to prior approval.

10 | Which party is responsible for securing approval?

Only the foreign investor is responsible for submitting an application for authorisation. In the case of a chain of control involving several foreign investors, any foreign investor may make the application on behalf of all the other members of the chain.

Review process

11 | How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

The MOE has 30 business days from the date of the notification of a complete file to indicate whether a transaction falls outside the scope of the review, is cleared unconditionally or requires further analysis.

Where further analysis is required and conditions are necessary, the MOE has an additional period of 45 business days to provide the investor with its final decision (ie, refusal of the investment or clearance with conditions).

In the absence of a response from the MOE within the stated time limit, the application is deemed to be rejected.

Furthermore, Decree No. 2020-892 of 22 July 2020 introduced a fast-track procedure for investments in French listed companies beyond a 10 per cent threshold in voting rights. The investor must give prior notice to the MOE of the projected investment. Unless the MOE objects, the authorisation is deemed granted within 10 days of the notification. If the MOE objects, the foreign investor should request prior approval under the normal route. The foreign investor should implement the transaction within six months of the notification. This procedure is temporary and will be in force until 31 December 2020.

The investor is exempted from filing an application for prior approval in the following situations:

- intra-group investments: the investment is made between entities belonging to the same group, (ie, entities with the same shareholder holding directly or indirectly more than 50 per cent of their capital or voting rights); or

- situations where the foreign investor already obtained the MOE's prior approval for investing in the target:
 - if the investor previously acquired a controlling stake in an entity following a transaction that was authorised by the MOE, the investor is exempted from filing a second application for the subsequent acquisition of 25 per cent of the voting rights (directly or indirectly, alone or in concert) in this entity; or
 - if the investor has previously acquired 25 per cent of voting rights (directly or indirectly, alone or in concert) in an entity following a transaction that was authorised by the MOE, the investor is exempted from filing a second application for the subsequent acquisition of control of this entity; nevertheless, the investor should still notify the MOE of the transaction in advance (unless the MOE objects, the new authorisation is deemed granted within 30 days from the notification).

12 | Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?

The transaction cannot be implemented until clearance is granted or the MOE confirms that the transaction is out of the scope of review (standstill effect). A foreign investment falling within the scope of the review that is completed without the MOE's prior authorisation is null and void.

Law No. 2019-486 of 22 May 2019 on Business Growth and Transformation (the PACTE Law) reinforced the MOE's enforcement powers in the case of breach to the standstill effect. As such, the MOE may enjoin the investor to:

- file for prior authorisation – this measure is not simply punitive, but may also be used by the MOE to give the foreign investor the possibility to cure the situation;
- unwind the transaction at his or her own expense; or
- amend the transaction.

In addition, if the protection of public order, public security or national defence is compromised or likely to be compromised, the MOE also has the power to pronounce the following interim measures:

- suspend the investor's voting rights in the target company;
- prohibit or limit the distribution of dividends to the foreign investor;
- temporarily suspend, restrict or prohibit the free disposal of all or part of the assets related to the sensitive activities carried out by the target; and
- appoint a temporary representative within the company to ensure the preservation of national interests.

The MOE may also impose monetary sanctions amounting to twice the value of the investment at stake, 10 per cent of the annual turnover achieved by the target company, €1 million for natural persons or €5 million for legal entities.

More generally, pursuant to articles 458 and 459 of the French Customs Code, infringement of the foreign investments control requirement may be subject to the following criminal penalties:

- up to five years' imprisonment;
- confiscation of the property and of the assets that are the proceeds of the offence; and
- a fine ranging from the amount in question to twice the sum to which the offence or attempted offence relates.

Involvement of authorities

13 Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?

The MOE may be approached informally to seek general guidance.

In addition, the investor may elect to approach the MOE through a formal comfort process to obtain its position on whether a particular transaction falls within the scope of the review. Potential foreign investors are also entitled to obtain comfort from the MOE at an earlier stage in the context of bid processes (eg, before they enter into exclusive discussions with the seller).

In the context of a contemplated transaction, the target may also submit such request to obtain comfort about whether its activity falls in the scope of the foreign direct investment review. This is an important tool for sellers of potential sensitive targets who would like to obtain better visibility into the process.

14 When are government relations, public affairs, lobbying or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?

There is no specific framework for informally approaching the MOE, including with the assistance of public affairs specialists.

Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life requires lobbyists to register on a public register for transparency purposes. As of September 2020, nearly 2,100 lobbyists have registered and have declared more than 27,000 lobbying activity reports.

15 What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to pre-merger review?

The transaction cannot be implemented until clearance is granted or the MOE confirms that the transaction is out of the scope of review (standstill effect). A foreign investment falling within the scope of the review that is completed without the MOE's prior authorisation is null and void.

The PACTE Law reinforced the MOE's enforcement powers in the case of breach to the standstill effect. As such, the MOE may enjoin the investor to:

- file for prior authorisation – this measure is not simply punitive, but may also be used by the MOE to give the foreign investor the possibility to cure the situation;
- unwind the transaction at his or her own expense; or
- amend the transaction.

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- suspend the investor's voting rights in the target company;
- prohibit or limit the distribution of dividends to the foreign investor;
- temporarily suspend, restrict or prohibit the free disposal of all or part of the assets related to the sensitive activities carried out by the target; and
- appoint a temporary representative within the company to ensure the preservation of national interests.

The MOE may also impose monetary sanctions amounting to twice the value of the investment at stake, 10 per cent of the annual turnover achieved by the target company, €1 million for natural persons or €5 million for legal entities.

More generally, pursuant to articles 458 and 459 of the French Customs Code, infringement of the foreign investments control requirement may be subject to the following criminal penalties:

- up to five years' imprisonment;
- confiscation of the property and of the assets that are the proceeds of the offence; and
- a fine ranging from the amount in question to twice the sum to which the offence or attempted offence relates.

SUBSTANTIVE ASSESSMENT

Substantive test

16 What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?

The Ministry of Economy (MOE) investigates whether the projected investment may harm France's national interests, in particular whether the target carries out, even incidentally, activities participating in the exercise of public authority or activities likely to undermine public order, public security or national defence, or relating to the research, production or marketing of arms, ammunition, explosive powders and substances. The MOE has wide discretion to appreciate whether an investment contravenes French national interests. The foreign investor may identify in its request for prior approval the reasons why the transaction is not likely to jeopardise France's national interest.

The substantive test focuses on determining whether the projected investment can be cleared unconditionally or clearance should be granted subject to conditions (mitigation requirements). The conditions should be proportionate and ensure the preservation of French national interests. The main types of conditions are:

- to ensure the continuity and security of the French target's sensitive activities on the French territory, notably regarding the application of any foreign regulation that would contravene their implementation (eg, export control regulation);
- to protect the knowledge and know-how of the French target company;
- to adapt the governance and the exercise of rights in the French target company; and
- to define the modalities of the investor's post-closing reporting obligations.

In extreme cases, the MOE may require divestment of the sensitive activities.

Since Decree No. 2019-1590 of 31 December 2019 (the Decree of 2019), the MOE may take into consideration the following elements to veto the investment:

- ties between the foreign investor and a foreign government or foreign public entity;
- 'serious presumption' that the investor is likely to commit or has been punished for committing certain enumerated infringements (eg, drug trafficking, procuring, money laundering, financing terrorism, corruption and influence peddling); and
- the investor's previous breach of prior authorisation requirements or of MOE injunctions and interim measures.

17 To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?

The MOE may have recourse to international cooperation to verify the accuracy of the information provided by foreign investors, in particular that relating to the origin of the funds related to the projected investments. In addition, the MOE implements the coordination system introduced by EU Regulation 2019/452 of 19 March 2019 establishing a framework for

the screening of foreign direct investment into the EU, which entered into force on 10 April 2019 and has been effective since 11 October 2020.

Under the EU Regulation, the MOE must notify the Commission and the other member states of any foreign direct investment in France that is subject to screening. The Commission may issue an opinion and the other member states may make comments if they consider that a screened foreign direct investment is likely to undermine the security or public order of more than one member state. The MOE must take due consideration of these opinions and comments.

Other relevant parties

18 | What other parties may become involved in the review process? What rights and standing do complainants have?

There are no specific rights for third parties such as competitors or customers to be involved in the review process, which remains confidential. However, ministries concerned by the projected transaction are consulted by the MOE through a confidential inter-ministerial process.

Prohibition and objections to transaction

19 | What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Once the review is completed, the MOE may:

- authorise the transaction without condition (rather rare);
- authorise the transaction subject to conditions aimed at ensuring that the transaction will not adversely affect public order, public safety or national security (most of the cases when the MOE decides to review the investment); or
- refuse to authorise the transaction if adverse effects cannot be remedied (very rare).

In addition, if the investor fails to notify the transaction, the MOE may enjoin the investor to:

- file for prior authorisation – this measure is not simply punitive, but may also be used by the MOE to give the foreign investor the possibility to cure the situation;
- unwind the transaction at his or her own expense; or
- amend the transaction.

20 | Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings or agreeing to other mitigation arrangements?

The MOE may require the clearance to be conditional upon certain conditions undertaken by the foreign investor. The MOE will require that a specific entity within the chain of control of the foreign investor be responsible for the implementation of the conditions.

Following the Decree of 2019, the purpose of conditions is to:

- ensure the continuity and security of the French target's sensitive activities on the French territory, and notably regarding the application of any foreign regulation that would contravene their implementation (eg, export control regulation);
- protect the knowledge and know-how of the French target company;
- adapt the governance and the exercise of rights in the French target company; and
- define the modalities of the investor's post-closing reporting obligations.

In practice, the conditions may include maintaining existing contracts with French public entities, maintaining research and development capabilities, and maintaining production in France. They may also include corporate requirements such as ensuring that sensitive activities are

carried out by a French legal entity, or imposing information-access and governance requirements involving French authorities. Although the MOE indicated that it was a marginal hypothesis, it may also impose the divestment of shares acquired in the target entity or branch of activity of the target entity.

The conditions may be subsequently modified at the investor's request, notably in the case of an unforeseeable change in economic and regulatory commitments, or in its shareholding structure. Under certain circumstances, the subsequent modification of conditions may also be initiated by the MOE. The MOE must inform the investor of the reasons justifying such a modification and give him or her an opportunity to present observations within 45 business days.

If an investor fails to comply with the conditions imposed by the MOE in its clearance decision, the following injunctions may be pronounced:

- withdrawal of the clearance;
- compliance with the initial conditions; or
- compliance with new conditions set out by the MOE, including unwinding the transaction or divesting all or part of the sensitive activities carried out by the target.

These measures may be issued only after the foreign investor has been given 15 days' notice to submit observations. In the case of an emergency, exceptional circumstances or an imminent threat to public policy, public security or national defence, the investor must still be given a minimum of five days' notice. The MOE may also subject the measures to a daily penalty that may not exceed €50,000.

In addition, the MOE may impose monetary sanctions amounting to twice the value of the investment at stake, 10 per cent of the annual turnover achieved by the target company, €1 million for natural persons or €5 million for legal entities.

Challenge and appeal

21 | Can a negative decision be challenged or appealed?

The MOE's decisions may be appealed before the French administrative courts following a full judicial review.

Confidential information

22 | What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

The MOE review is a confidential process. All agents of the MOE and other competent administrative services are subject to professional secrecy and liable to criminal sanctions in the case of violation.

RECENT CASES

Relevant recent case law

23 | Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

The Ministry of Economy (MOE) does not publish clearance decisions or refusal decisions issued in individual cases. However, some cases are reported in the press. For example, in March 2020, the press reported that the MOE issued an informal objection to the US company Teledyne Technologies Inc's contemplated investment in Photonis, a French company developing advanced photon and electron multipliers used in technology for night vision in defence and aerospace applications as well as detection instruments directly related to nuclear deterrence.

This projected investment is the first officially reported foreign investment to have been put on hold by the MOE. One of the MOE's main concerns was that it could harm French technological sovereignty. After withdrawing its offer in September 2020, Teledyne announced in October 2020 that it had renewed its offer. The negotiations are still ongoing to date.

UPDATES AND TRENDS

Key developments of the past year

24 | Are there any developments, emerging trends or hot topics in foreign investment review regulation in your jurisdiction? Are there any current proposed changes in the law or policy that will have an impact on foreign investment and national interest review?

In recent years, the list of sensitive sectors subject to French foreign investments control review has been substantially expanded following three reforms.

- Decree No. 2014-479 of 14 May 2014 expanded the scope of activities reviewed, notably to energy, water supply, transportation, telecoms and public health.
- Decree No. 2018-1057 of 29 November 2018 expanded the list of sensitive sectors to activities relating to the interception and detection of correspondence and conversations, capture of computer data, security of information systems, space operations and electronic systems used in public security missions. This Decree also expanded the scope of review to research and development (R&D) activities in cybersecurity, artificial intelligence, robotics, additive manufacturing, semiconductors, certain dual-use goods and technologies, and sensitive data storage. A Ministerial Order of 27 April 2020 broadened the list to include R&D activities in biotechnologies.
- Decree No. 2019-1590 of 31 December 2019 supplemented the list by adding the editing, printing and distribution of print and digital political press as well as activities relating to the production, transformation or distribution of agricultural products enumerated at Annex I of the Treaty on the Functioning of the European Union when they contribute to food security objectives (ie, ensure access to safe, healthy, diversified food; protect and develop agricultural lands; and promote France's food independence).

In May 2019, Law No. 2019-486 of 22 May 2019 (the PACTE Law) strengthened the powers of the French authorities in the case of breach of the filing requirement or conditions imposed in the context of a clearance decision. The PACTE Law also introduced some transparency into the French review system by requiring the Ministry of Economy (MOE) to issue yearly public general statistics (on a no-name basis) in relation to French national security reviews. This serves as a relevant tool to get a better sense of the general approach adopted by the MOE.

Subsequently, Decree No. 2019-1590 and the Ministerial Order of 31 December 2019 relating to foreign investments in France, which entered into force on 1 April 2020, amended the regime to include new strategic sectors, refine certain concepts and provide a clearer review framework for foreign investors. The MOE indicated orally that the new regime is meant to provide more flexibility in the follow-up and revision of the conditions imposed on foreign investors. We do not expect substantive reform to be adopted in the coming years. The MOE is currently working on guidelines clarifying the rules, notably from a sectorial standpoint.

The French legal framework is now subject to the coordination system introduced by EU Regulation 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investment into the EU, which entered into force on 10 April 2019 and became effective on 11 October 2020.

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Coronavirus

25 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The French government adopted two measures to circumvent the effects of the covid-19 pandemic on the buyout of French strategic companies. First, a ministerial order of 27 April 2020 included biotechnology in the list of critical technologies likely to be subject to screening. Second, Decree No. 2020-892 of 22 July 2020 lowered the voting rights threshold from 25 per cent to 10 per cent to review investments in French listed companies of non-EU and EEA investors only under a fast-track procedure. This second measure is temporary and should be in place until 31 December 2020.

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