

Public mergers and acquisitions in France: overview

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M&A ACTIVITY

1. What is the current status of the M&A market in your jurisdiction?

While 2014 was a game-changer for European M&A, with France being the most active European country, M&A transactions announced in the first nine months of 2015 and involving a French company declined 41% to US\$114 billion. The largest announced transactions were:

- Nokia's US\$16.6 billion proposed combination with Alcatel-Lucent, by way of a public exchange offer.
- CRH plc acquisition of certain assets from Lafarge S.A. and Holcim Ltd for a total of US\$6.5 billion.
- Capgemini's US\$4 billion acquisition of the US listed technology and services company IGATE.

2. What are the main means of obtaining control of a public company?

Control of a French public company is most frequently obtained through a voluntary or mandatory public tender offer (see *Question 7*).

Business or asset contributions in consideration for shares (*apports partiels d'actifs*) are also used, although less frequently in cross-border transactions. Statutory mergers (*fusions*) are generally used in intra-group transactions.

HOSTILE BIDS

3. Are hostile bids allowed? If so, are they common?

Unsolicited or hostile bids are permitted but not common. Three unsolicited bids were launched in 2014:

- SMABTP's cash tender offer for the shares of Société de la Tour Eiffel.
- Global Resorts' cash tender offer for the securities of Club Méditerranée.
- Prologue's exchange offer for the securities of O2i.

REGULATION AND REGULATORY BODIES

4. How are public takeovers and mergers regulated, and by whom?

Public takeovers are mainly regulated and supervised by the Financial Markets Authority (*Autorité des Marchés Financiers*) (AMF) (see *box, The regulatory authorities*).

In public takeovers, the AMF can declare or deny the conformity of the offer with applicable legal and regulatory provisions. The AMF's declaration of conformity encompasses the approval (*visa*) of the draft prospectus filed in relation to that offer.

The main rules and principles governing public takeovers are set out in the AMF's General Regulation (Book II, Title III) (General Regulation). The key principles governing public offers are:

- A level playing field between alternative bids.
- Equal treatment of, and access to, information by holders of securities concerned by the offer.
- Market transparency and integrity.
- Fairness in transactions and in competition among bidders.

Directive 2004/25/EC on takeover bids (Takeover Directive) was transposed into French law by the Takeover Act of 31 March 2006. The French parliament had initially elected to apply the board passivity rule provided for under Article 9 of the Takeover Directive, but this election was reversed by a law of 29 March 2014 known as the Florange Law (see *Question 23*). Among other things, the Florange Law:

- Materially altered the timetable for public takeover bids by requesting the prior consultation of the target's works council (see *Question 12*).
- Introduced a mandatory minimum acceptance threshold set at 50% of the share capital or voting rights (see *Question 13*).

PRE-BID

Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

In recommended bids, the bidder's review may include non-public information provided by the target in a data room. Financial Markets Authority guidelines provide that data rooms should only be set up if a target shareholder contemplates selling a significant stake and recommend that access to the data room be limited to

bidders showing a serious interest set out in a letter of intent and previously entering into a confidentiality agreement.

To comply with the principle of a level playing field between alternative bids, a listed target would be expected to allow under similar conditions any competing bidder to review material non-public information disclosed in a data room.

Hostile bid

In hostile bids, due diligence enquiries are typically limited to publicly available documents, including:

- Corporate documents, such as the target's certificate of incorporation (*extrait K-Bis*) or its bye-laws, which may contain information on takeover defence mechanisms. These documents are publicly available from clerks of commercial courts and generally available on the company's website.
- Annual accounts and annual management reports, which are available in the finance section of the company's website. Management reports provide information on:
 - the target's capital breakdown;
 - statutory restrictions on voting rights and share transfers;
 - direct and indirect shareholdings in the company;
 - shares carrying special controlling rights;
 - control mechanisms of collective employee shareholding schemes;
 - agreements among shareholders restricting any share transfers and voting rights;
 - rules governing the appointment of the board of directors (board);
 - powers of the board;
 - agreements which include change of control provisions; and
 - potential retention packages for directors and executives that may be payable in connection with a takeover.
- Draft shareholder meeting resolutions published in the *Bulletin des Annonces Légales Obligatoires* (BALO), which inform the bidder of any intended adoption of takeover defence mechanisms. These documents are publicly available on the BALO website (www.journal-officiel.gouv.fr/balo). Results of the votes of shareholder meetings are published on the company's website within 15 days of the relevant meeting.
- Financial statements published by the company and available in the finance section of the company's website.
- Total numbers of outstanding shares and voting rights, which are published on the company's website on a monthly basis (provided that they have changed compared to the previous month).
- Statements of shareholders crossing certain thresholds in the share capital or voting rights of the target (see *Question 8*). These are published on the Financial Markets Authority's (AMF) website.
- Summaries of certain shareholders' agreements (see *Question 23*), which are published on the AMF's website.
- Stock exchange filings (annual reports and prospectuses), which contain, among other things, information on previous transactions, bids or offerings, and the target's shareholder structure. These documents are available on the AMF's website.

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

A bidder must publicly and promptly announce that it is considering a potential offer, unless it is able to keep its intentions confidential. Similarly, discussions between a potential bidder and the target or its shareholders may remain confidential only where measures are taken to ensure (and do in fact preserve) such confidentiality. This is most often done through non-disclosure agreements covering the existence and content of ongoing negotiations, information exchanged among the parties or undertakings to tender shares (see *Question 7*).

However, the General Regulation authorises the Financial Markets Authority (AMF) to require from any person that it reasonably believes is preparing a public offer (for instance, where the AMF observes significant and unusual variations in the price or trading volume of a company's shares) to disclose its intention. It is the French equivalent of the "put up or shut up" rule. If the potential bidder declares that it intends to make an offer, the AMF requires it to issue a press release detailing its terms, or to file the offer itself, within a time frame set by the AMF.

If the potential bidder declares that it does not intend to make an offer or remains silent, it cannot make an offer for six months following its declaration or the end of the initial AMF deadline, unless significant changes occur in the market environment or in the situation or share ownership of the parties concerned. Up until the end of that period, the potential bidder must both:

- Not put itself in a position in which it would be required to file a mandatory tender offer.
- Immediately disclose any purchase representing at least a 2% increase of its prior holding of voting target securities, and its objectives until the end of the six-month period.

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

Bidders can approach the target's key shareholders to secure undertakings to tender their shares (*engagements d'apport*).

The enforceability of such undertakings remains unsettled under French law. For instance, undertakings that would significantly undermine a competing bid's chances of success (especially where they relate to a controlling or significant block of target securities) may be deemed to breach the key principle of equality between alternative offers and declared null and void by a court. Bidders seeking these undertakings generally allow the concerned shareholders to tender their target securities to a Financial Markets Authority-approved competing bid in exchange for a (reasonable) break fee, typically in the form of a percentage of the upside offered by the competing bidder. These undertakings must be disclosed in the offer prospectus.

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply?

Disclosure requirements

If a person's shareholding (including any concert parties), in any company listed on a regulated or non-regulated stock market and having its registered office in France, crosses (either by exceeding or going below) the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, one-third, 50%, two-thirds, 90% or 95% of that company's share capital or voting rights, disclosure requirements (*déclaration de franchissement de seuil*) apply, subject to certain exceptions.

A person crossing any of these thresholds must inform the company within four trading days of doing so, giving the total number of securities and voting rights it holds. If the company is listed on a regulated stock market, the person crossing these thresholds must also inform the Financial Markets Authority (AMF) within four trading days. The AMF then discloses this information to the public.

If a person crosses the 10%, 15%, 20% or 25% thresholds in any French company listed on a regulated stock market, it must also inform the company and the AMF, within five trading days, of its objectives for the following six-month period, by stating:

- The means of financing the share purchases.
- Whether it is acting alone or in concert.
- Whether it intends to continue to purchase shares or not.
- Whether it intends to take control of the target.
- Whether it intends to request the appointment of new board members.
- Its planned strategy relating to the target and the actions required to implement it.
- Any temporary securities transfer agreement.
- Its intentions with respect to the settlement of any equity or cash-settled derivatives it may own.

If the acquirer's stated objectives change during the six-month period, it should file a new statement to run for a further six-month period.

Generally, failure to make the required disclosures:

- Results in the shares exceeding the relevant threshold being deprived of voting rights for a two-year period following the date of the regularisation of the disclosure.
- May result in all or part of the shares held by the defaulting shareholder being deprived of voting rights for a maximum period of five years, if the competent Commercial Court decides this following a motion to that effect from the AMF, the company's chairman or any of its shareholders.
- May expose the defaulting shareholder (as well as its officers) to administrative sanctions by the AMF.
- May, after consultation of the AMF by the public prosecutor, expose the defaulting individuals, as well as the chairman, executive officers and directors of a defaulting company, to a criminal fine of EUR18,000.

The target's bye-laws may provide additional disclosure requirements when thresholds as low as 0.5% of the share capital or voting rights are crossed (see *Question 23*). These must be sent to the company but are not required to be made public by the relevant shareholder.

Additional requirements may apply if the bidder is a non-French company (see *Question 26*).

Derivatives

Existing shares of the target that a person is entitled to acquire at its own initiative under an agreement or a financial instrument must be taken into account when calculating shareholding thresholds, including:

- Bonds exchangeable into shares.
- Forward contracts.
- Options that can be exercised immediately or in the future, regardless of their strike price.
- Barrier options when the barrier has been reached.
- Cash-settled derivatives which have an economic effect similar to the ownership of the underlying shares, such as cash-settled equity swaps, contracts for difference or any financial instrument exposed to an equity basket or index comprising several issuers unless they are sufficiently diversified.

The same derivative aggregation principles apply to the calculation of the 30% mandatory offer threshold (see *Question 16*) with the exception of cash-settled derivatives.

In addition, when required to file a threshold crossing declaration, the declarant must separately disclose the following derivatives which do not need to be included in the threshold calculations:

- Securities granting deferred access to the share capital, such as equity warrants, convertible bonds, OCEANE bonds (bonds that are convertible into and/or exchangeable for new or existing shares), bonds with attached equity warrants.
- Barrier options where the barrier is not reached.

Insider trading

Bidders should be extremely cautious in trading a potential target's shares on the market before launching a public tender offer. For example, preliminary discussions for a recommended bid or due diligence reviews may be deemed privileged information for the purposes of insider trading rules and expose the bidder, the target, their respective directors and officers, and certain other persons to criminal liability. In most instances, insiders may be exposed to imprisonment of up to two years and a fine of up to EUR1.5 million, which can be raised to up to ten times the profit realised by the insider and must not be less than the amount of that profit. Mere disclosure of privileged information to third parties outside the normal course of the insider's functions is also punishable by imprisonment of up to one year and a fine of up to EUR150,000 or ten times the profit realised by the person who benefited from the privileged information and must not be less than the amount of that profit. In addition to criminal sanctions, insiders may be exposed to administrative sanctions, including fines up to EUR100 million or ten times the realised profit.

Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Bidders in a recommended offer may enter into an agreement (tender offer agreement or memorandum of understanding) with the target company in relation to the proposed offer and its terms and conditions. The target's board must justify its decision not to solicit or recommend other offers in the context of the broad French concept of corporate interest (*intérêt social*). French courts and scholars interpret corporate interest to include not only

shareholder interests but also, among other things, the protection of the target's employees and the operation of the business activities of the company.

Break fees

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

Break fees are not prohibited as such. Although used more frequently in recent years, they can be challenged on the basis that they constitute an unlawful deterrent against possible third-party counter-offers if they are excessive in amount. In addition, break fees payable by the target can raise issues in relation to compliance with the target's corporate interest and may trigger liability for misuse of the company's assets.

Break fees payable to a preferred bidder by a listed company or its shareholders is disclosed to the Financial Markets Authority at the date of filing of the offer and generally disclosed to the public in the offer prospectus.

Committed funding

11. Is committed funding required before announcing an offer?

Committed funding is required at the time when the offer letter and draft offer prospectus are filed with the Financial Markets Authority. The sponsor must guarantee that the bidder's commitments with respect to the offer are irrevocable (see *Question 12*). The offer cannot be conditional on obtaining sufficient funding (see *Question 13*).

ANNOUNCING AND MAKING THE OFFER

Making the bid public

12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

Offer procedures

Public offers generally take the form of a cash tender offer (*offre publique d'achat*), an exchange offer (*offre publique d'échange*), or a combination of both.

There are three main procedures for public offers:

- **The standard procedure (*procédure normale*).** This procedure applies where the bidder, acting alone or in concert with others, holds less than 50% of the share capital or voting rights of the target. Acceptances from persons wishing to tender their securities under the standard procedure are revocable at any time until the end of the last day of the offer and are centralised by Euronext Paris (see box, *The regulatory authorities*) or a financial intermediary.
- **The simplified procedure (*procédure simplifiée*).** This procedure may be used where the bidder already, or following an acquisition, holds directly or indirectly, alone or in concert, 50% or more of the target's share capital and voting rights, or where it wishes to acquire up to 10% of the target's share capital and voting rights. A shorter timetable applies.
- **The public buyout offer procedure (*offre publique de retrait*) and squeeze-out (*retrait obligatoire*).** See *Question 20*.

Requirements

A potential bidder should weigh, on a case-by-case basis, the merits of consulting the Financial Markets Authority (AMF), as well

as sector-specific bodies, on a no-name or confidential basis before the offer's intended launch date.

Filing of bidder's offer prospectus. At least one financial services provider (*prestataire de services d'investissement*), acting as sponsor on behalf of the bidder (usually one or more French or European banks, or an investment bank duly licensed in France), must file the draft offer prospectus with the AMF. The sponsor must guarantee that the bidder's commitments in relation to the offer are irrevocable (see *Question 11*) and set out the draft terms of the public offer in a letter to the AMF setting out:

- The bidder's objectives and intentions.
- The number and type of the target's securities that the bidder already holds (alone or in concert) or that it could potentially hold at its own initiative, as well as the date and the terms and conditions of any acquisition of the target's securities over the preceding 12-month period.
- Information relating to the proposed price or exchange ratio.
- Any condition attached to the offer (see *Question 13*).
- When the mandatory minimum acceptance threshold applies to the offer, the number of shares and voting rights that it represents at the date of filing of the offer and, if applicable, the reasons why the bidder is asking the AMF to waive the threshold.
- The specific procedures by which the target securities will be acquired and, if applicable, the identity of the investment service provider hired to acquire them on the bidder's behalf.
- If the offer was announced in advance of its filing, whether the consultation of the target's works council has already been launched.

The letter must also enclose:

- The draft offer prospectus (*projet de note d'information*).
- Copies of any relevant preliminary filings with regulatory authorities.
- If applicable, documents relating to the public offer that the bidder is required to launch on any French or foreign listed company in which the target holds more than 30% of the equity or voting rights and which constitutes an essential asset of the target.

On receipt of the offer prospectus, the AMF publishes the draft offer prospectus and the summary terms of the offer on its website.

The draft offer prospectus must include certain information (see *Question 14*).

Press release. On filing of the draft offer prospectus with the AMF (at the latest), the bidder must post the draft offer prospectus on its website and issue a press release, summarising the main terms of the offer and indicating that the offer and the draft offer prospectus are subject to the AMF's approval.

The target's board (or equivalent body) can give its reasoned opinion (*avis motivé*) on the benefits of the offer to the company, its shareholders and its employees, in a press release (at this time or later on in the process).

Decision of conformity (*décision de conformité*). The AMF has, in principle, ten trading days in which to grant its decision of conformity of the offer, which includes the approval (*visa*) of the draft offer prospectus. When the target's work council is consulted (see *Question 15*) or an independent expert is appointed by the target's board (see *Question 18*), the AMF does not grant its decision of conformity until at least five trading days after the filing of the target's response prospectus.

Consultation with works councils. The works councils (*comité d'entreprise*) or, if any, the group committee (*comité de groupe*) of

the target and of the bidder (if it has a French works council or group committee) must be informed of the takeover process and consulted (see *Question 15*).

Target's response prospectus (*note en réponse*). The target's response prospectus is of particular importance in a hostile takeover and must contain certain information (see *Question 14*).

In a recommended offer, the bidder and the target may prepare a joint offer prospectus provided that no independent expert has been appointed by the target's board (see *Question 18*). If there is no joint offer prospectus, the target's response prospectus must be filed with the AMF no later than either:

- Five trading days after the publication by the AMF of its declaration of conformity, if no independent expert has been appointed and the target's works council does not need to be consulted.
- 20 trading days after the filing of the draft offer prospectus, if an independent expert has been appointed.
- 15 trading days after the filing of the draft offer prospectus, if the target's works council needs to be consulted but no independent expert has been appointed.

In any event, when the consultation of the target's works council is required, the target cannot file its response prospectus before the works council renders its opinion (see *Question 15*). It is published in the same way as the bidder's prospectus. For additional disclosure requirements, see *Question 28*.

Legal, financial, accounting, and other information. Descriptions of the bidder and the target must be provided in separate disclosure documents. These documents must provide information on the legal, financial and accounting characteristics of the bidder and the target, respectively, and must be published on the day preceding the opening of the offer at the latest. Information to be provided is more extensive if the bidder's securities are offered as consideration, but may be included in such document by reference to a reference document (*document de référence*), or a listing prospectus (*prospectus d'admission*).

The AMF is not required to approve these disclosure documents. The statutory auditors examine the disclosure documents in accordance with a standard issued by the national institute of statutory auditors (*Compagnie Nationale des Commissaires aux Comptes*) and provide a completion letter for their work. A copy of the completion letter must be provided to the AMF. The bidder, the target and at least one of the sponsors must also file a declaration certifying that all the information required has been filed and published.

Alternative bids. Alternative or improved offers can be filed (by counter-bidders or the initial bidder) no later than five days before the closing of the offer (see *Question 18*). The AMF determines the timetable for each competing bid and ensures that the closing dates of all offers coincide with the closing date of the last offer filed.

Offer timetable

The offer timetable is set in each case by and under the responsibility of the AMF. The standard offer acceptance period lasts 25 trading days but it can be extended under certain circumstances, in particular where competing bids are launched or the clearance decision of the AMF is challenged.

The following is a summary timetable for a standard offer procedure where the consultation of the works council begins on the filing of the offer and lasts one month (periods referred to in the timetable are expressed in trading days unless otherwise stated):

- **Day 0.** The sponsor, on behalf of the bidder, files the offer letter and the draft offer prospectus with the AMF, which posts the summary terms of the offer and the draft offer prospectus on its website. The bidder also posts the draft offer prospectus on its

website and issues a press release. The trading of the target's (and/or the bidder's) shares can be temporarily suspended at the AMF's request. The target can (immediately or at a later point in time) issue a press release in response. The target's and the bidder's chief executive officers must inform their respective works council about the proposed offer.

- The target's works council meets and decides to audition the bidder and to appoint a chartered accountant.
- **Day 5.** The target's works council auditions the bidder (within one week after the filing of the offer).
- **Day 15.** The chartered accountant appointed by the works council delivers his report (no later than three weeks following the filing of the offer).
- **Day 20.** The target's works council issues its opinion (no later than one month after the filing of the offer). The target's board of directors issues its opinion (*avis motivé*). The target files its draft response prospectus with the AMF (including the report of the chartered accountant appointed by the works council, the opinion of the works council, and the opinion of the board of directors). The draft response prospectus is released on the AMF's and the target's websites.
- **Day 25.** The AMF clears the offer by publishing its decision of conformity, including the approval of the offer and response prospectuses, making them available online.
- **Day 26.** Publication of the offer and response prospectuses. The documents presenting the legal, financial and accounting characteristics of the bidder and the target are formally filed with the AMF and made publicly available.
- **Day 27.** Commencement of the tender offer (date d'ouverture de l'offre).
- **Day 46.** Last day for competitors to file alternative bids.
- **Day 51.** Last day of the public offer (*date de clôture de l'offre*). However, the duration of the offer can be extended beyond this time if:
 - litigation is brought against the AMF's decision to approve the offer prospectus; or
 - a competing offer is filed;
 - the AMF notices any material omission or misrepresentation in the information describing the bidder or the target; or
 - the offer was made subject to approval by competition authorities.
- **Day 60.** The AMF publishes the results of the offer no later than nine trading days after the final offer day. •
- **Day 63.** Closing date. Euronext transfers the shares tendered to the bidder and the consideration to the tendering shareholders, through their account holders, typically three to five trading days following publication by the AMF of the results of the offer.
- **Between day 61 and day 70.** A successful bidder must re-open the offer within ten trading days of the publication of the final results. The AMF publishes the timetable for the re-opened offer, which lasts at least ten trading days, the results of which are in turn published within nine trading days.

Offer conditions

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

A tender offer for a public company must be unconditional, with the following exceptions:

- **Minimum acceptance threshold.** The Florange Law (see *Question 4*) has introduced a mandatory minimum acceptance threshold under which an offer, whether voluntary or mandatory, lapses automatically if the bidder does not reach at least 50% of the capital or voting rights of the target at the closing of the offer. If the offer is voluntary, the bidder may set a higher minimum condition but in practice the AMF rarely allows conditions at a level higher than two-thirds. The voluntary minimum condition can be waived by the bidder until the publication of the offer results by the AMF. The minimum acceptance threshold does not apply to simplified offers.
- **Multiple offers.** A bidder launching tender offers on two or more different companies can make each offer conditional on the success of the other offer(s). The bidder may withdraw this condition at any time up until the publication of the offer results by the AMF. This may be done to improve its original offer in the case of a counter-bid or a higher offer for one of the targets.
- **Competition approvals.** The offer can be conditional on obtaining competition clearance from the relevant authorities in the EU (European Commission, national competition authorities in France or other European Economic Area (EEA) member states), the US or any other jurisdiction provided that the applicable competition review can be completed within ten weeks of the opening of the offer (see *Question 25*). If the competent competition authorities decide to launch a Phase II investigation or an equivalent type of in-depth anti-trust examination, the offer will automatically lapse.
- **Corporate authorisation.** If the offer involves a share component, it may, under certain circumstances, be made conditional on obtaining the approval of the issuance of the new shares by the bidder's extraordinary shareholders' meeting.

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

In certain recommended bids, the bidder and the target may choose to publish a joint offer prospectus or separate offer and response prospectuses (see *Question 12, Requirements: Target's response prospectus (note en réponse)*). In a hostile bid or when the appointment of an independent financial expert is required, the target and the bidder must publish separate offer and response prospectuses.

The approved prospectuses must be published in one of the following ways:

- The whole prospectus is published in at least one national financial newspaper.
- The whole prospectus is made available, at no cost, at the headquarters of the relevant party or parties (for non-French bidders, the prospectus must be made available by a financial services provider in France) and its sponsors, and either:
 - a summary is published in a national financial newspaper; or
 - a press release is issued, clearly indicating how the relevant prospectus can be obtained or accessed. In practice, the

Financial Markets Authority (AMF) will request this press release to be published in a national financial newspaper.

In addition, an offer prospectus must be sent, at no cost, to any person who requests it and to the AMF, which will post it on its website.

The bidder's offer prospectus. The offer prospectus must include:

- The identity of the bidder.
- Information relating to the terms of the offer, including:
 - the proposed price or exchange ratio;
 - the proposed number of securities to be purchased;
 - the number of target securities already held by the bidder or that it may hold at its initiative;
 - if applicable, the quantity and type of securities offered as consideration by the bidder;
 - the means of financing the offer and their impact on the assets, business and earnings of the target and the bidder;
 - any condition attached to the offer by the bidder;
 - when the mandatory minimum acceptance threshold applies to the offer, the number of shares and voting rights that it represents at the date of filing of the offer and, if applicable, the reasons why the bidder is asking the AMF to waive the threshold; and
 - the projected offer timetable;
 - the number and nature of the securities offered in exchange by the bidder (if applicable).
- The bidder's intentions for at least the upcoming 12-month period in relation to the relevant companies' financial and industrial strategy (including any commitments made by the bidder in the context of the consultation of the target's works council) and the likelihood of a de-listing of the target's shares.
- Information relating to any undertaking by the target's shareholders, any agreement or other undertaking providing for concerted action (*action de concert*) and any other agreement relating to the offer to which the bidder is a party or of which it is aware.
- The law applicable to the agreements entered into between the bidder and the target's shareholders, as well as the competent jurisdictions.
- Any statements by the bidder's board (or equivalent body) regarding the benefits of the offer or its consequences for the bidder, its shareholders and employees. This statement must contain details of the board's vote, as well as the identity and opinion of any dissenting board member, if that member so requires.
- The bidder's intended policy with respect to the workforce, including any foreseeable changes in relation to the size and organisation of labour in accordance with the financial and industrial strategy outlined in the offer prospectus.
- If applicable, the bidder's commitment to launch a public offer for any French or foreign listed company in which the target holds more than 30% of the equity or voting rights and which constitutes an essential asset of the target.
- The report of the independent financial expert if the bidder has voluntarily appointed such an expert.
- The specific procedures by which the target securities will be acquired and, if applicable, the identity of the investment service provider hired to acquire them on the bidder's behalf.

- The signature of the bidder (or its legal representative) certifying the accuracy of the information provided in the offer prospectus.
- A statement of the legal representative of the presenting bank certifying the accuracy of the information relating to the presentation of the offer or used to appraise the proposed price or exchange ratio.

The target's response prospectus. The target's response prospectus is of particular importance in a hostile takeover as it must contain:

- Information relating to the target's share capital breakdown, including:
 - any statutory restrictions on voting rights and share transfers;
 - direct or indirect shareholding in the target;
 - shares carrying special controlling rights;
 - the control mechanism of any collective employee shareholding scheme;
 - any agreements between the target's shareholders restricting share transfers and voting rights;
 - the rules governing the appointment of the board;
 - the powers of the board;
 - agreements which include change of control provisions; and
 - retention packages for directors and executives.
- A description of all agreements entered into by the bidder, the target or their respective shareholders which could have an influence on the outcome of the public offer (for example, any agreements providing for preferential terms of sale or acquisition of shares). If, at any time after the launch of the offer, such agreements are entered into (and were, therefore, not mentioned in the target's response prospectus), they must be disclosed to the public by a press release.
- If applicable, the report of the independent financial expert (the target may decide not to disclose certain information that would prove harmful to its legitimate interests provided its omission is not misleading the public).
- When the consultation of the target's works council is required, its opinion and, if applicable, the report of the chartered accountant appointed by it.
- The reasoned opinion of the target's board on the benefits of the offer or its consequences for the target, its shareholders and its employees and, if applicable, the defence measures implemented or decided by the target's board. In recommended takeovers, the reasoned opinion (which must be substantiated) often logically results in a target board's recommendation of the general terms of the offer. In the case of a hostile takeover attempt, an aggressive reasoned opinion can have a significant impact on the target's shareholders and influence the outcome of a hostile bid. In addition, in politically sensitive industries (for example, banking, defence and the media), strong opposition from the target's board, reflected in the reasoned opinion, increases the pressure on the public authorities' conduct in connection with the relevant offer.
- The comments of the target's works council, provided that they are available and different from the reasoned opinion of the board.
- Whether the target's board members intend to tender their shares.

- The signature of a legal representative of the target certifying that all information contained in the response prospectus is accurate.

The "other information documents". A description of the bidder and the target must be provided in additional separate documents. These documents must provide information relating, in particular, to the legal, financial and accounting characteristics of the bidder and the target.

Employee consultation

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

The Florange Law (see *Question 4*) has significantly reinforced the role of the target's works council in the context of a public tender offer.

Consultation of the target's works council

As soon as the bidder has filed the offer prospectus with the Financial Markets Authority (AMF), the target's chief executive officer must immediately convene a meeting to inform its works council (or, if any, its group committee) about the offer. If the takeover bid is made public before its formal filing with the AMF, the bidder can request that the target convenes its works council within two business days of the announcement. In that case the deadlines mentioned below are computed from the announcement of the bid (although a new information-consultation must be conducted if the information presented to the works council changes materially between the announcement and the filing of the bid). During the meeting, the target's works council decides whether to hear the bidder at a subsequent works council meeting (see *below*), and to appoint a chartered accountant (at the expense of the target) to both:

- Assist the works council during the hearing of the bidder.
- Deliver a report within three weeks of the filing of the offer.

If the works council decides to hear the bidder, the hearing should be held within one week of filing of the draft offer with the AMF. At the hearing, the bidder, who may be assisted by its advisers, must present its industrial and financial policy and strategic plans for the target, as well as their implications on the employment, business sites and the location of decision-making centres of the target.

The works council must deliver its opinion on the offer at a meeting to be held within one month of the filing of the offer. The position of the target's works council is purely informative and cannot result in interruption or suspension of the offer.

If the works council believes it has not received sufficient information, it can petition the President of the competent Tribunal de Grande Instance, ruling within eight days, to enjoin the bidder and the target to provide the requested information. This procedure does not usually extend the one-month period afforded to the works council to render its opinion, except in the event of specific difficulties in accessing the information.

The bidder must send the approved offer prospectus to the target's works council no later than three calendar days following its publication.

Information of the bidder's works council

If the bidder has a French works council, the bidder's chief executive officer must convene a meeting to inform its works council on the content of the offer and its potential impact on employment within two trading days following the:

- Publication of the offer.
- Announcement of the offer, if the bidder has asked the target to start its works council consultation from the announcement.

Mandatory offers

16. Is there a requirement to make a mandatory offer?

30% threshold

Individuals or legal entities that come to hold (alone or in concert, directly or indirectly) more than 30% of a listed company's share capital or voting rights must immediately inform the company and the Financial Markets Authority (AMF) and file a tender offer for all the outstanding equity securities and any securities giving access to the company's share capital or voting rights.

The mandatory tender offer price must be at least the highest price paid by the bidder for securities of the target during the 12-month period preceding the crossing of the 30% threshold. The AMF can, however, impose or authorise a different offer price in the case of a material change in the characteristics of the target or of the market for its securities (in particular in the case of an ailing target or of a transaction supported by ancillary agreements between the bidder and a seller of target's shares).

In addition, a bidder launching a tender offer for a French target must extend its offer to any subsidiary of the target that is listed either on a regulated market within the EEA or on an equivalent foreign market, and provide the AMF with the appropriate documentation showing that a fair and irrevocable offer has been or will be launched for that listed subsidiary (French or non-French), if both:

- The target holds more than 30% of capital or voting rights of the subsidiary.
- The relevant subsidiary constitutes an essential asset of the target.

1% "acquisition speed" limit

Mandatory tender offers also apply to persons (acting alone or in concert) who hold, directly or indirectly, between 30% and one-half of a listed company's share capital or voting rights and increase that holding by 1% or more within less than 12 consecutive months.

Failure to reach the 50% mandatory threshold

If a mandatory tender offer fails to reach the 50% mandatory minimum acceptance threshold (see *Question 13*), it lapses automatically with the following consequences:

- The shares held by the bidder before filing the bid are deprived of voting rights for the portion exceeding:
 - 30% if the mandatory bid was triggered by the crossing of the 30% threshold; or
 - the bidder's percentage of voting rights before launching the bid, increased by 1%, if the mandatory bid is due to exceeding the 1% "acquisition speed" limit.
- The bidder is not permitted to acquire any additional shares of the target (even within the 1% limit) unless:
 - prior notice is given to the AMF; and
 - a new mandatory tender offer is filed.

Exceptions

The above rules on mandatory tender offers will not apply where the AMF, among other things:

- Authorises the temporary breach of the applicable threshold (30% or +1%) if it relates to a transaction that does not purport to effect a change in control or an increase in control and lasts no longer than six months (voting rights in excess of the applicable threshold cannot be exercised during this period).

- Grants an exemption to persons who show, among other things, that they crossed the relevant threshold in connection with either:
 - certain corporate or other events (including gifts between individuals, distribution of assets by a legal entity pro rata according to the interests of its members, reduction in the number of equity securities or voting rights in the company and intra-group re-sales);
 - certain transactions that are subject to shareholder approval (including mergers, capital increases resulting from an asset contribution or from the restructuring of a distressed company); or
 - the acquisition of a holding company owning more than 30% of the capital or voting rights of a listed company but for which such stake does not constitute an essential asset.

Squeeze-out

See *Question 20*.

Non-compliance

Non-compliance with the obligations to file a mandatory tender offer will result in the shares exceeding the relevant thresholds being deprived of voting rights. It could also give rise to damages and result in an injunction to file the offer enforced by way of periodic penalty payments.

CONSIDERATION

17. What form of consideration is commonly offered on a public takeover?

A bidder may offer:

- Cash.
- Existing or new shares.
- Other securities (such as convertible bonds or warrants).
- A combination of any of these.

If the securities offered in exchange for the target shares are not themselves listed, then the bidder must offer a cash alternative. A cash alternative must also be offered if the bidder (alone or in concert) has acquired in cash, during the 12-month period preceding the filing of the offer, 5% or more of the target's capital or voting rights.

18. Are there any regulations that provide for a minimum level of consideration?

Voluntary tender offers

In principle, the price of a voluntary tender offer is set freely by the bidder. However:

- In a simplified tender offer, the price offered by the bidder (holding 50% or more of the target's share capital and voting rights) cannot, except with the AMF's approval, be lower than the volume weighted average share price over the 60 trading days preceding the filing of the offer (see *Question 12*).
- An alternative or improved all cash offer must be at a price at least 2% higher than the preceding bid. An offer at the same price may however be considered to constitute an alternative or improved bid if the voluntary minimum tender condition applicable to the existing offer is waived or lowered. Where part or all of the consideration offered consists of shares, the AMF verifies that the alternative or improved bid presents a significant improvement of the conditions offered to the target's

shareholders. Each new bid requires a prospectus, which must be approved by the AMF (see *Question 12*).

Mandatory tender offers

The price offered by a bidder must be at least the highest price paid by the bidder for shares of the target during the 12-month period preceding the crossing of the relevant mandatory tender offer threshold (see *Question 16*). In the absence of share acquisitions during that period, the price is determined by way of the multi-criteria analysis.

Public buyout offer

The price proposed by the bidder is assessed by the AMF in light of the state of the market for the targeted securities and the information provided by the bidder (see *Question 20*).

Squeeze-out

The compensation of the squeeze-out must be equal to the:

- Price offered in the prior public buy-out offer or tender offer; or
- Result of a valuation of the securities of the target company made according to the multi-criteria analysis.

Multi-criteria test

In the case of a standard tender offer, the AMF merely verifies that the information set out in the offer prospectus relating to the proposed price or exchange ratio, in particular the multi-criteria valuation prepared by the bidder and its financial advisers, is complete and coherent.

Independent expert valuation

In cases of potential conflict of interests or risk of breach of the requirement for equal treatment of the target's shareholders, the target's board must appoint an independent expert who will prepare a report on the financial condition of the offer, to be included in the target's response prospectus (see *Question 12*). In this case, the AMF reviews the financial terms of the offer and, in particular, verifies that the bidder's valuation methods are clear and acceptable.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

If securities form all or part of the offer, and the bidder's securities are not traded on a regulated market in France, the Financial Markets Authority (AMF) usually requires the bidder to list the securities offered on Euronext Paris. In practice, the bidder is also required to provide significantly more detailed legal, financial and accounting information. In particular, foreign bidders must appoint a statutory auditor, with AMF approval, to:

- Verify the translation of the financial statements and notes as well as the relevance of any supplements and adaptations.
- Send the AMF a declaration regarding the work that it has completed.

POST-BID

Compulsory purchase of minority shareholdings

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

Public buyout offer

A controlling shareholder, holding (alone or in concert) at least 95% of the voting rights of a company whose securities are

currently, or were formerly, listed can file a public buyout offer for the remaining securities.

In addition, the 95% controlling shareholder must make a public buyout offer for the securities of minority shareholders if required by the Financial Markets Authority (AMF), acting on the request of minority shareholders that are able to demonstrate that, among other things, there is insufficient liquidity to sell their securities on the market.

Squeeze-out

Following a public buyout offer, or within three months following the closing of a successful tender offer, a controlling shareholder can automatically acquire the remaining target securities, provided that:

- Concurrently with the filing of the offer letter for the public buyout or the tender offer, the bidder informed the AMF either that:
 - it reserved the right to implement the squeeze-out procedure following completion of the public buyout offer or the tender offer, depending on its results; or
 - the public buyout or the tender offer would automatically be followed by a squeeze-out procedure.
- Securities not tendered by minority shareholders during the buyout offer or tender offer do not exceed 5% of the concerned company's share capital or voting rights.
- The bidder provides the AMF with an independent expert valuation (see *Question 18*) except if the squeeze-out is made following a standard cash tender offer.

The proposed price of the squeeze-out must not be lower than that of the prior public buyout offer or tender offer. The remaining securities of minority shareholders will be de-listed and automatically transferred to the bidder.

Restrictions on new offers

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

An unsuccessful bidder can make another offer for the same securities immediately following the publication of the results of the initial tender offer.

De-listing

22. What action is required to de-list a company?

The company must send a written request to Euronext Paris, which makes a decision based on several criteria, including the average daily volume of transactions and the percentage of floating capital. In practice, delisting decisions are rare outside the context of a squeeze-out and implies, therefore, that a shareholder holds at least 95% of the share capital and voting rights of the company.

However, since the amendment of the rules of Euronext Paris in June 2015, a company can apply for a delisting of its shares following a simplified public tender offer, if the:

- Bidder holds at least 90% of the voting rights of the company as of the filing date of the delisting application.
- Total value traded on the company's shares over the last 12 (calendar) months before the filing of the delisting application represents less than 0.5% of the company's market capitalisation.

- Filing of the application is made after a delay of 180 (calendar) days between any previous public tender offer and the simplified public tender offer has expired.
- Bidder undertakes, for a period of three months following the end of the simplified public tender offer, to acquire at the same price as such simplified public tender offer the shares of remaining shareholders who have not tendered them into such offer.
- Bidder undertakes for a transitional period of one financial year following the year when delisting takes place to publish any crossing up above or below the 95% threshold of the share capital or voting rights of the company, and to submit no proposal to the general meeting of the target's shareholders to amend the corporate form to become a simplified joint stock company (*société par actions simplifiée*).
- Treasury shares (*auto-détention*) and auto-control shares (*auto-contrôle*). The company shares owned by the company itself (treasury shares) and the company shares owned by the company's subsidiaries (auto-control shares) can be transferred to a white knight or white squire in the event of a hostile bid.
- Authorisation to use share buy-back programs during the offer period. Conducting share-buy backs during the offer period can reduce the number of shares available for the bidder (who can also be tempted to purchase shares on the market during the offer) or hedge funds that are likely to tender into the offer.
- Employee shareholder base. The reinforcement of the employee shareholding base of a company constitutes an irrevocable political decision but experience has shown that salaried employees are generally the most loyal allies of a target company.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

Preventive defence mechanisms

France has decided not to implement Article 11 of the Takeover Directive, which calls for the unenforceability of restrictions on the transfer of securities and on voting rights during a takeover bid, as well as for the suspension of multiple voting rights. However, French companies can voluntarily opt in to the provisions of Article 11 by amending their bye-laws accordingly. In addition, the following provisions in the target's bye-laws are unenforceable:

- Provisions restricting the transfer of shares during the offer period.
- Provisions suspending or limiting voting rights provided for in the target's bye-laws at the first shareholders' meeting following the offer (if the bidder holds more than two-thirds of the target's share capital).

Identification mechanisms. Advance preparations for potential hostile takeover attempts can, to a certain extent, be enhanced by doing one or both of the following:

- Adopting share ownership notification thresholds in the company's bye-laws for ownership of between 0.5% and 5% (or more) in addition to the mandatory notification mechanisms (see Question 8).
- Requiring shareholders to disclose their identity by requiring shares to be held in registered form or performing regular enquiries with Euroclear to identify the owners of bearer shares (*titres au porteur identifiable*).

Concentration of power techniques. To prevent a hostile takeover attempt, companies can increase the power of friendly shareholders, for example by:

- Generally limiting voting rights. Companies which adopt a statutory limitation of voting rights structure usually have a widely spread shareholder base and no real controlling shareholder.
- Concluding shareholders' agreements (for example, pre-emption agreements (*pactes de préemption*) or concertation agreements (*pactes de concertation*) in the case of an announcement of a tender offer). Agreements providing for preferential conditions relating to the sale or purchase of at least 0.5% of the share capital or voting rights of a company listed on a regulated market in France must be disclosed to the Financial Markets Authority (AMF) within five trading days of their execution. Without this disclosure, the effects of these agreements will be suspended during the course of a tender offer.

Shareholder authorisations to issue equity securities or defence warrants. The Florange Law (see Question 4) removed the rule according to which delegations of powers granted to the board of directors by the shareholders' meeting (including delegations to issue shares, securities giving access to shares or defence warrants) were suspended during the offer period. As a result, by seeking broad shareholder authorisations from their annual shareholders' meeting, companies can equip themselves with an efficient tool to mount active defence in due course (see below, *Active defence measures*).

Active defence measures

Under the relevant provisions of the Florange Law, the board of directors of a French listed company is expressly authorised to take frustrating action without shareholder approval, provided that the defence measures both:

- Do not fall within the competence of the shareholders' meeting.
- Are not contrary to the corporate interest of the target.

Capital increases. While French law does not generally allow shareholders to grant discretion to the board to reserve a capital increase in cash to a person of its choice (depriving the board of the possibility to issue shares exclusively to a white squire (that is, a person who takes a significant stake in a company either by purchasing existing shares or subscribing for new shares, therefore acquiring a stake large enough to block (or impede) a hostile takeover bid)), certain of the delegations permitted by French law can prove useful in a hostile bid context. Examples include:

- Allowing for a defensive recapitalisation (if the bidder is trying to take advantage of the target's financial difficulties).
- Favouring a group of friendly shareholders through the private placement delegation (capped at 20%).
- A white squire (see above) making an asset contribution (capped at 10%) and launching an exchange offer.

In any event, the issuance of new shares generally renders the acquisition of the target more costly to the hostile bidder.

Defence warrants (*bons Breton*). If the target has the necessary shareholder authorisation in place, its board can issue a poison pill in the form of free subscription warrants allowing shareholders to subscribe for target shares at a discount and, on exercise, dilute the bidder's shareholding in the target.

Acquisition, disposals or ring-fencing of assets. The board can seek to modify the substance of the target, to make it less attractive for the bidder, including by:

- Acquiring new assets or businesses (that is, the "fatman" defence).
- Selling those of its assets which are of most interest to the bidder (that is, the "crown-jewel" defence).

- Ring-fencing assets which the bidder intends to resell for regulatory, refinancing or other purposes.

However, the target must comply with the guiding principles governing takeover bids provided for in the General Regulation, including:

- A level playing field between alternative bids.
- Equality among shareholders.
- Fairness in transactions and in competition among bidders.

Further, as required by the Takeover Directive, French companies remain at liberty to introduce the board passivity rule (with or without a reciprocity exemption) in their bye-laws.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

A financial transaction tax at a rate of 0.2% is due on the acquisition of equity securities issued by a listed company with both:

- Its registered office in France
- A market capitalisation in excess of EUR1 billion on 1 December of the year preceding the transfer.

No transfer duties are payable on the sale of shares of a listed entity, unless a written share transfer agreement has been entered into and the financial transaction tax is not due, in which case duties amount to 0.1% of the consideration paid.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Merger control

Even when, the notification thresholds for a notification to the European Commission are not met, a transaction may still be notifiable under the French merger control regime.

Mandatory pre-closing filings must be submitted to the French Competition Authority (*Autorité de la Concurrence*) (see box, *The regulatory authorities*) when all the following thresholds are met:

- The combined aggregate worldwide turnover of all parties involved in the concentration exceeds EUR150 million.
- The aggregate individual turnover generated in France by each of at least two parties involved in the concentration exceeds EUR50 million.
- The transaction does not fall under the scope of Regulation (EC) 139/2004 on the control of concentrations between undertakings (EU Merger Regulation).

For the retail distribution sector and for transactions contemplated by companies operating in the French overseas departments and territories (DOM-TOM) the thresholds are as follows:

- The combined aggregate worldwide turnover of all parties involved in the concentration exceeds EUR75 million.
- The aggregate individual turnover generated in France or, in the DOM-TOM by each of at least two parties involved in the concentration exceeds EUR15 million.

Notifications must be made before the completion/closing of the transaction and can be submitted as soon as the party (or parties) concerned is (or are) in a position to submit a sufficiently advanced proposal. Parties are encouraged to engage in pre-notification contacts with the Competition Authority. The Competition Authority issues the final decision either:

- **Phase I.** Within 25 business days of receipt of a complete notification (this can be extended for an additional 15 business days if remedies are offered).
- **Phase II.** If the Competition Authority has serious doubts as to the effects on competition and decides to investigate the case further, it must adopt a final decision within 65 business days of the opening of the Phase II procedure (this can be extended for an additional period of time of up to 20 business days, depending on when remedies, if any, are offered).

Since January 2011, parties can benefit from shorter review periods (approximately 15 business days) under the simplified procedure, provided that there are no horizontal or vertical links between the parties' activities.

The Ministry of Economy has a veto right over the decisions of the Competition Authority allowing it to either:

- Request a Phase II where the Competition Authority has approved a transaction after a Phase I procedure. In this case the Competition Authority will first assess the validity of such a request before deciding whether to open a Phase II investigation.
- Cancel the Competition Authority's approval or prohibition of the transaction following a Phase II procedure, based on public interest grounds (for example, industrial development, international competitiveness of the undertakings at stake and access to employment). The Ministry of Economy can do so within 25 business days of receipt of the Competition Authority's decision.

If no decision is issued at the expiration of the time limits allowed for the Ministry of Economy to exercise its veto right, the transaction is deemed approved without conditions.

The substantive test used to assess transactions is whether the transaction significantly lessens competition, in particular by creating or strengthening a dominant position. The Competition Authority will examine both the co-ordinated and unilateral effects of a transaction, and will review horizontal overlaps, vertical and conglomerate links.

Clearance of the transaction is automatically suspended on a worldwide basis until the Competition Authority or the Ministry of Economy adopts a final decision. When requested by the parties', exemptions can be granted provided that they are necessary and duly justified (for instance, in case of bankruptcy or court debt restructuring proceedings). However, the Competition Authority will still have the ability to impose remedies or prohibit the transaction.

If the public offer is conditional on obtaining competition clearance in France in Phase I (see *Question 13*), the offer will be null and void (*caduque*) if the Competition Authority or the Ministry of Economy decides to launch a Phase II investigation (see *above*). However, the investigation will be launched in the event the offeror informs the Competition Authority that he intends to maintain the offer. If the public offer is not conditional on obtaining competition clearance in France, (that is, not listed as a condition precedent to the closing of the transaction) the bidder can acquire the shares or complete the exchange under the terms of the offer before it receives the competition approval, but cannot exercise the voting rights attached to the target's shares until it receives such clearance.

Banking and insurance

If a company (either French or foreign) wishes to acquire, directly or indirectly, alone or in concert, more than 10%, 20%, one-third or

50% of the voting rights of a French financial institution (*établissement de crédit*) it must file a request for authorisation with the French banking regulator (*Autorité de Contrôle Prudentiel et de Résolution*) (ACPR) who is responsible for performing a first assessment and submitting a draft proposal decision to the European Central Bank (ECB) who will ultimately decide (*non objection*).

In case of change of control of an insurance company (the same thresholds apply) or if the insurance company otherwise becomes a subsidiary of the acquirer, the authorisation must be obtained from ACPR only.

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

Prior authorisation (*autorisation préalable*) from the Ministry of Economy is specifically required for investments in sensitive sectors that are deemed to be of national interest (in addition to the general notification requirements set out in *Question 25*). The list of sensitive sectors was significantly expanded by a decree published by the French government on 15 May 2014.

Sensitive sectors for non-EU acquirers include:

- Gambling activities (excluding casinos).
- Research, development or production of pathogenic and toxic agents.
- Private security services.
- Communication interception and cryptology technologies.
- Auditing and certifying services relating to the security of information technology systems and products.
- Dual-use technologies.
- Activities involving companies privy to classified information.
- Research, manufacturing and sale of weapons, munitions, powder or explosive substances used for military purposes.
- Other activities essential to any of the following:
 - supply of energy (including electricity, gas and oil);
 - supply of water;
 - operation of transport networks and services;
 - operation of electronic communication networks and services;
 - operation of an installation, facility or structure of vital importance;
 - protection of public health.

The scope of the prior authorisation regime is less broad with respect to EU investors both in terms of type of investments and list of sectors.

Failure by the Ministry of Economy to respond within two months of a request triggers the automatic approval of the transaction. The Ministry of Economy may grant an approval under specific conditions and may require the divestiture of all or part of the sensitive portion of the business.

In practice, the ministry overseeing the particular sector concerned (for instance the Defence Ministry where assets to be sold involve national security) will be involved in discussions held and any conditions imposed relating to an approval by the Ministry of Economy.

Completion without authorisation or in violation of the conditions imposed by the Ministry of Economy may result in an injunction to cancel, rescind or modify the transaction. If that injunction is not complied with, the acquirer may be subject to a fine of up to twice the amount of the completed transaction in addition to the obligations to restore the previous situation.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

There are no such restrictions under French law.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

Disclosure requirements

From the announcement of an offer until the publication of its results, the following parties must disclose to the Financial Markets Authority (AMF), on a daily basis, any transaction resulting, or capable of resulting, in an immediate or future transfer of the target's securities or voting rights including through securities or agreements having an economic effect similar to the ownership of the underlying shares:

- The bidder.
- The target.
- The bidder's and target's respective directors, officers, sponsors or company advisers (*établissements-conseils*).
- Any individual or legal entity (acting alone or in concert) holding directly or indirectly at least 5% of the target's share capital, voting rights or securities other than shares targeted by the offer.
- Any individual or legal entity who acquires after the announcement of the offer, directly or indirectly, at least 1% of the target's share capital or 1% of the securities other than shares targeted by the offer, for as long as they hold such number of securities.

In the case of exchange offers, the above requirements also apply to purchases or sales of the bidder's securities.

In addition, any individual or legal entity increasing its stake in the target's capital or voting rights by more than 2% or increasing its stake by any measure if already holding more than 5% must immediately publish its intended objectives in relation to the pending offer.

Restrictions on market trading

Market trading in target or bidder securities by the target, the bidder, or any person acting in concert with them, is strictly regulated and depends on the nature of the tender offer:

- In case of an exchange tender offer or a mixed cash and exchange tender offer:
 - between the announcement of the offer and until the publication of the offer results, no trade by the bidder and the target is allowed in the securities of the target or the company whose shares are offered in exchange.
 - as an exception, the bidder which offers its securities in exchange can continue to trade on its own shares as part of a share buy-back programme implemented in accordance with the provisions of Commission Regulation (EC) No. 2273/2003 of 22 December, 2003, or an equivalent

regulation. For this exception to apply, it is not sufficient that the bidder's board of directors has a shareholder authorisation in place to implement share buy-backs, it must also have started to use it before the announcement of the offer.

- In case of a cash tender offer:
 - trading made by the target: between the announcement of the offer and until the publication of the offer results, the target can trade on the securities of the bidder. During that same period, the target can also trade on its securities, unless the target company restated the board neutrality principle in its bye-laws and provided that this principle is not set aside by the reciprocity principle. However, in case of a normal procedure and if the board neutrality principle has been restated, the target can continue to execute a share buy-back programme, provided that this was expressly authorised by the shareholders' meeting resolution which authorised the programme and, if such ongoing execution may result in the frustration of the offer, provided that its implementation is confirmed by the general shareholders' meeting.
 - trading made by the bidder: between the announcement of the offer and until the publication of the offer results, the bidder can trade on its securities. However, between the announcement of the offer period and until the filing of the offer, no trade by the bidder is allowed on the securities of the target. After the filing of the offer and until the publication of the offer results, the bidder can trade on the securities of the target subject to certain exceptions and restrictions. The bidder cannot acquire any of the securities of the target if the offer:
 - relates to two or more different companies and the bidder has stated that if the threshold is reached in one of the offers, it will declare the offer to have succeeded only if the threshold is reached in the other offer(s);
 - is conditional on the obtaining of necessary clearance by the relevant competition authorities.

These restrictions also apply to market trading by the bidder's financial advisers for their own account. However, they are permitted to continue existing arbitrage, market-making or position-hedging activities subject to certain conditions (namely, share trading in the ordinary course of business and the implementation of Chinese walls). As a general rule, trading restrictions do not apply to the purchase of securities resulting from an arrangement entered into prior to the announcement or filing of the offer.

REFORM

29. Are there any proposals for the reform of takeover regulation in your jurisdiction?

Major asset disposals

Regarding major asset disposals, following a public debate in 2014, the AMF set up a working group and, following a public consultation, issued a position-recommendation on 17 June 2015 regarding major asset disposals. In its position-recommendation, the AMF prescribed a prior consultation of the shareholders for major asset disposals by a listed company, irrespective of the size of the company and whether or not the company is controlled by a shareholder, and invited the French business organisations to amend their corporate governance code accordingly.

In November 2015, the AFEP-MEDEF Code, which contains non-binding recommendations that are followed by the AMF as an asset representing a vast majority of France's largest listed companies, has been amended and provides that the board of directors must present to the shareholders' meeting, prior to its realisation, a report about the context and the progress of any disposal concerning at least half of the company's assets over the past two financial years, regarding two of the five following ratios:

- Turnover recorded by the assets or activity transferred/consolidated turnover.
- Sale price of the assets/market capitalisation of the group.
- Net value of the transferred assets/total consolidated balance sheet.
- Net operating income before tax generated by the assets or activities transferred/consolidated net operating income before tax.
- Number of employees in the divested business/worldwide workforce of the group.

This presentation is followed by a consultative vote of the shareholders (by a majority of the votes of the present or represented shareholders), and if a negative vote is issued, the board must meet as soon as possible and immediately publish a notice indicating how it intends to proceed with the transaction on the company's website.

Court appeals against AMF decision

Since a law of 30 December 2014, applicable from 1 January 2015, if an AMF clearance decision (*décision de conformité*) is challenged, the Court of Appeal must issue a decision within five months.

THE REGULATORY AUTHORITIES

Financial Markets Authority (*Autorité des marchés financiers*) (AMF)

W www.amf-france.org

Main area of responsibility. The Financial Markets Authority is an independent public authority with extensive regulatory and enforcement powers to:

- Effectively protect investment in financial products.
- Ensure investor information.
- Monitor and control the proper operation of the domestic financial markets.
- Ensure the proper application of its General Regulation (Book II, Title III) during public tender offers by all parties concerned.

Euronext Paris (now part of NYSE Euronext)

W www.euronext.com/fr

Main area of responsibility. Euronext Paris controls the daily operation of the main French stock exchange. In the context of a standard tender offer, Euronext will centralise all tender orders following the closing of the offer period, communicate the results to the AMF and transfer the shares tendered to the bidder and, simultaneously, the consideration offered by the bidder to the shareholders.

Competition Authority (*Autorité de la Concurrence*)

W www.autoritedelaconcurrence.fr/

Main area of responsibility. The Competition Authority is responsible for merger control and investigating unlawful economic practices.

Prudential Supervision Authority (*Autorité de contrôle prudentiel et de résolution*) (ACPR)

W <https://acpr.banque-france.fr>

Main area of responsibility. Established in 2010, the ACPR combines the regulatory scope of the four former banking and insurance regulators which were merged into it. It is essentially in charge of the licensing and ongoing supervision of financial institutions and insurance companies.

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