

# France Issues Interim Rules on Certain Foreign Investments in Response to COVID-19

Skadden

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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## Pascal Bine

Partner / Paris  
33.1.55.27.11.01  
pascal.bine@skadden.com

## Wesley Laine

Associate / Paris  
33.1.55.27.11.73  
wesley.laine@skadden.com

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One Manhattan West  
New York, NY 10001  
212.735.3000

68, rue du Faubourg Saint-Honoré  
75008 Paris, France  
33.1.55.27.11.00

On July 23, 2020, the French government issued decree n° 2020-892 of July 22, 2020 (the Decree), and a ministerial order of the same date (together, the Interim Rules), which lowered the applicable threshold that triggers French foreign investment control for investments by non-European investors in certain French publicly listed corporations. The Interim Rules were initially announced by the French minister of the economy (the Minister) on April 29, 2020, as part of the French government's policy response to the economic implications of the COVID-19 pandemic for French strategic assets.<sup>1</sup> The Interim Rules apply only to foreign investors who are not part of the European Union or the European Economic Area (EEA). They will apply on a temporary basis until December 31, 2020.

### Extension of Scope of Covered Investments

Under French foreign investment rules, investors qualifying as foreign investors are required to file a request with, and obtain authorization from, the Minister prior to making certain investments (Covered Investments) in business activities in France deemed to be sensitive (Covered Activities). The prior authorization regime applied to the following Covered Investments:

- the acquisition of control over a French company;
- the acquisition, in whole or in part, of a branch of business of a French company; and
- for non-EU or non-EEA foreign investors, the acquisition of more than 25% of voting rights (directly or indirectly) in a French company (the Threshold Test).

The Interim Rules extend the Threshold Test to any non-EU or non-EEA foreign investor that crosses, directly or indirectly, acting alone or in concert with any other investor, 10% of voting rights in a French corporation involved in a Covered Activity and whose shares are admitted to trading on a regulated market.

The Interim Rules do not apply to EU or EEA foreign investors, provided that the chain of control of the European foreign investor does not include any non-EU or non-EEA persons or entities.

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<sup>1</sup> Please see our May 1, 2020, client alert, "[France Moves To Protect Strategic Assets Amid COVID-19 Pandemic.](#)"

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## Prior Notification Requirement

For any Covered Investment falling under the scope of the Interim Rules, these rules require the foreign investor to file a prior notification with the Minister. The notification must be drafted in French and include the following information:

- the total number of voting rights held by the foreign investor prior to the proposed investment, and the total number of voting rights (or an estimate thereof) that the foreign investor will hold after completion of the proposed investment;
- the number of securities held by the foreign investor giving the right to acquire shares in the future and related voting rights;
- the number of outstanding shares and related voting rights that the foreign investor may acquire pursuant to contractual or financial instruments; and
- other information required to be disclosed by any investor crossing the 10% threshold under French beneficial ownership disclosure rules (*i.e.*, the financing of the transaction; whether the investor is acting alone or in concert with other investor(s); the investor's intention to pursue the acquisition of additional shares, to seek control and/or to request the appointment of new board member(s); the investor's planned strategy with respect to the French company and contemplated actions to implement such strategy; any temporary securities transfer agreement entered into by such investor and its intentions with respect to the settlement of any equity or cash-settled derivatives held by it).

## Simplified Review Process

Under the Interim Rules, a foreign investor is exempt from the French foreign investment prior authorization process (which involves a Phase I review of up to 30 business days and, when necessary, a Phase II review of up to 45 business days) if such foreign investor files the above-described prior notification and completes the proposed investment within six months following the notification.

The Minister may reject the exemption within 10 business days following the receipt of the notification and require the foreign investor to submit a full prior authorization request. However, if the Minister does not respond within 10 business days following the prior notification submission, the investment is deemed authorized.

## Temporary Rules

The Interim Rules do not apply to Covered Investments completed within 10 days following the publication of the Decree. The Interim Rules will apply until December 31, 2020, but it is possible that these rules will be extended beyond that date.