

Foreign Investments in France

by Jean-Gabriel Flandrois, Bénédicte Mazel and Pierre-Antoine Degrolard at Gide Loyrette Nouel

Status: **Published: 19 February 2021** | Jurisdiction: **France**

This document is published by Practical Law and can be found at: uk.practicallaw.tr.com/W-027-2947
Request a free trial and demonstration at: uk.practicallaw.tr.com/about/freetrial

This note considers how foreigner investors can enter the French market and the legal framework that applies in doing so.

Scope of this note

The foreign investment control (FIC) regime was tightened under the following regulations:

- Decree no 2019-1590 of 31 December 2019.
- Ministerial order (arrêté du Ministre) of 31 December 2019.

These regulations implement the principles set out in [Law no 2019/486 of 22 May 2019 on the Action Plan for Business Growth and Transformation of Companies](#) (PACTE Act). This new legal framework applies to all applications filed since 1 April 2020.

The regime has also been strengthened during the 2019 novel coronavirus disease (COVID-19) crisis both in terms of scope and in terms of thresholds (see COVID-19 pandemic specific procedures).

As a result, the scope of the prior authorisation regime has been substantially extended (see [Foreign investments in France](#)), the procedure to obtain the authorisation from the Minister of the Economy and Finance (MINEFI) has been clarified (see [Procedure for clearance](#)) and the remedial and sanction powers of the MINEFI have been dramatically reinforced (see [MINEFI other remedial powers and Monetary sanctions](#)).

Foreign investments in France

General rule

As a general principle, foreign investments in France can be freely carried out. The French government is however entitled to require prior authorisation for investments in France by foreign individuals and entities in sectors considered to be strategic (see [Definition of strategic sectors](#)).

Foreign investments requiring the prior authorisation of the MINEFI are those made for any activity that,

even if only occasionally, involves or participates in the exercise of public authority or pertains to activities that either:

- May jeopardize public order, public safety or national defence interests.
- Relate to research in, manufacture or commercialisation of weapons, ammunitions, gunpowder or explosive substances.

(*Article L.151-3, Monetary and Financial Code (Code monétaire et financier).*)

Under the new legal framework, the prior authorisation of the MINEFI is required for any investment (see [Definition of investment](#)) made by an investor (see [Definition of investor](#)) in an entity operating, or a business relating to, a strategic activity (see [Definition of strategic sectors](#)) in France. Certain exceptions apply to the prior authorisation (see [Exceptions to the prior authorisation](#)).

Definition of investor

For the purpose of the FIC regulations, an investor can be:

- A non-French individual.
- A French individual who is not a resident of France within the meaning of tax regulations.
- A legal entity governed by foreign laws.
- A legal entity, governed by French law, that is controlled by one or more person(s) or entity(ies) mentioned in any of the bullet points above.

In addition, any person or legal entity belonging to a chain of control (see [Definition of chain of control](#)) is deemed to be an investor within the meaning of FIC regime.

For the purposes of this note, "Investor" means an investor in accordance with the FIC regime's definition.

Definition of chain of control

A chain of control is the group formed by:

- Any entity mentioned in the third or fourth bullet points in Definition of investor above.
- And any person or legal entity that directly and indirectly controls it.

(Article R.151-1, Monetary and Financial Code.)

This definition means that in an investor's chain of control, if one person or entity falls within the definition of Investor above, then the FIC regime may apply to the contemplated investment, even if that Investor is both French and French resident. For example, a French entity, whose chain of control is entirely French, except for one link of the chain of control that is foreign, will qualify as Investor.

A situation of control is deemed to exist when a person or an entity holds, directly or indirectly, more than 50% of the voting rights of a company. Control might also be held jointly when two shareholders act in concert and have in practice control over the votes in shareholders' meetings. Furthermore, if a shareholder has the right to appoint the majority of the corporate officers, it also qualifies as control. Finally, control is presumed if the shareholder holding the highest stake in the share capital of a company holds more than 40% of the voting rights in the company.

When no control can be established based on the definition above, a situation of control is also deemed to exist when a person or an entity holds through rights, contractual arrangements, or other means, and based on the factual or legal circumstances, the ability to exercise a significant influence on the activity of an entity, in particular (but not limited to) through either:

- Property or usage rights on all or parts of the assets of that entity.
- Contractual arrangements or rights that provide its holder with decisive influence on the composition and votes at the level of the governance bodies of that entity.

(Articles L.233-3 and L.430-1, section III, Commercial Code (Code de commerce)).

Definition of investment

The investments that require the prior authorisation of the MINEFI are those made by an Investor (see Definition of Investor) that result in:

- The acquisition of control of a legal entity governed by French law within the meaning of article L.233-3 of the Commercial Code.
- The acquisition of all or part of a line of business of an entity governed by French law.

- The crossing (upward), directly or indirectly, alone or as part of a concerted action, of the threshold of 25% of the voting rights of a legal entity governed by French law. The crossing of the 25% threshold does not apply to an Investor being:
 - an individual who is both a citizen of an EU member state or of a member state of the European Economic Area (EEA) that has signed an administrative co-operation agreement with France with respect to certain tax matters and a resident of one of these states; or
 - a legal entity, whose entire chain of control (including that entity) is composed of legal entities and individuals which are either governed by the laws of one of the states mentioned above or are citizens and resident of those states.
- On a temporary basis only (until 31 December 2021), the crossing (upward), directly or indirectly, alone or as part of a concerted action of the threshold of 10% of the voting rights of a legal entity governed by French law whose shares are listed on regulated markets. The exceptions applying to the 25% threshold also apply to the 10% threshold.

(Article R.151-2, Monetary and Financial Code and article 1 Decree n°202-892 of July 22, 2020 and Decree n°2020-1729 of 28 December 2020).

Given that the definition of control in article L.233-3 of the Commercial Code includes direct and indirect control, the acquisition by an Investor of the control of a non-French company controlling a French company may also require the prior authorisation of the MINEFI.

Definition of strategic sectors

Any investment made by an Investor in a strategic sector requires the prior authorisation of the MINEFI. For more information, see List of strategic sectors (Article R.151-3, Monetary and Financial Code).

Exceptions to the prior authorisation

By way of exception to the prior authorisation of the MINEFI rule, the authorisation is deemed granted for:

- Investments made among entities belonging to the same group (this means among affiliated entities the share capital or voting rights of which are held, directly or indirectly, for more than 50% by the same shareholder).
- The crossing (upward), directly or indirectly, alone or as part of a concerted action, of the threshold of 25% of the voting rights of a French entity by an Investor who has previously acquired the control of that entity by virtue of an authorisation granted on the basis of article R.151-2 1° of the Monetary and Financial Code

(the acquisition of control within the meaning of article L.233-3 of the Commercial Code).

- The acquisition of the control within the meaning of article L.233-3 of the Commercial Code of a French entity by an Investor who has previously crossed, directly or indirectly, alone or in a concert, the threshold of 25% of the voting rights of that entity by virtue of an authorisation granted on the basis of article R.151-2 3° of the Monetary and Financial Code. Nevertheless, this exception may only apply if:
 - the Investor does notify the MINEFI before completing the acquisition;
 - And the MINEFI fails to respond or does not oppose the acquisition within a 30-day period for the date of notification.

(Article R.151-7, Monetary and Financial Code.)

These exceptions cannot apply either if:

- The contemplated investment may result in the Investor breaching one of the covenants that was taken by it as part of a previous authorisation.
- The contemplated investment aims at transferring outside France all or part of an activity listed as a strategic sector (see List of strategic sectors (Article R.151-3, Monetary and Financial Code)).

COVID-19 pandemic specific procedures

Temporary threshold

The regime has been strengthened during the COVID-19 pandemic in terms of thresholds, the 25% threshold for foreign investors being temporarily lowered to 10% as regards investments in listed companies ([Decree 202-892 of July 22, 2020](#)). The temporary threshold will apply until 31 December 2021 ([Decree n°2020-1729 of 28 December 2020](#)). For more information on COVID-19 legislation in France, see [Practice note, COVID-19: corporate FAQs \(France\)](#).

The threshold applies to a direct or an indirect crossing, by a foreign investor acting alone or in concert, of the 10% threshold of the voting rights of a company governed by French law and which shares are listed on regulated markets (Euronext Paris).

Although initially presented by the French Government as lowering the 25% threshold, both thresholds currently coexist. Any foreign investment above the 10% threshold will still be subject to the applicable rules of the ordinary foreign investments control regime.

This procedure applies if the French listed target company falls within the list of strategic sectors (see

List of strategic sectors (article R.151-3, Monetary and Financial Code)).

Lighter control procedure

A lighter control procedure applies to the temporary threshold. The investment made by a foreign Investor falling within the scope of the temporary threshold is not subject to approval of the MINEFI if the following conditions apply:

- The foreign Investor sends a prior notice of its investment to the MINEFI.
- The foreign Investor completes its investment within a six-month period following the prior notice.

The lighter control procedure will apply until 31 December 2021, but it is possible that these rules will be extended beyond that date.

The following information must be provided:

- Details of the shareholding and of any instruments or financial contracts that are treated as equivalent to the possession of shares.
- the Investor's intentions, and in particular whether the Investor intends to increase its shareholding, to request the appointment of a representative on the issuer's corporate bodies, or more generally its strategy vis-à-vis the issuer.

([Ministerial Order of 22 July 2020](#) and [Decree n°2020-1729 of 28 December 2020](#).)

Prior notice period

At the end of a period of ten business days from receipt of the prior notice, the authorisation is deemed granted (silence is equivalent to acceptance).

During this ten-day business period, the MINEFI may oppose this simplified procedure and force the Investor to apply for authorisation under the standard procedure (See Procedure for Clearance). This will significantly delay the investment, given the time required to file for authorisation and the initial 30 business days available to the MINEFI to review the application.

Six months period following prior notice

The foreign Investor must complete its investment within a six-months period following the prior notice.

Procedure for clearance

Preliminary request

If there is uncertainty regarding the applicability of the FIC rules and if the target company wants to determine whether all or part of its activities fall within those

rules, the regulation provides for a preliminary ruling procedure.

For this purpose, any French entity (in the process of an investment even at an early stage) or an Investor (subject to the prior approval of the French entity) can file a request for a written opinion from the MINEFI, on whether or not all or part of the activities of the French entity fall within the scope of the FIC regulations. The request must contain the information and documents listed in Article 1 of the [Ministerial order of 31 December 2019](#). The required documents include a copy of all documents evidencing there is a proposed investment.

The MINEFI must reply within two months of the filing of the request.

If the request is filed by the Investor, it must obtain the consent of the target entity before filing. The ruling is provided to both the requesting Investor and the target entity.

This filing is made on a confidential basis.

Prior authorisation request

The foreign Investor must file a request for authorisation with the MINEFI's Foreign Investment Bureau (the Foreign Investment Bureau) before the completion of the proposed transaction.

The request must include the information and documents listed in the [Ministerial order of 31 December 2019](#), including:

- General information about the foreign Investor and the target company or business.
- A brief summary of the terms and conditions of the proposed transaction, together with a description of the financing of it and an indicative timeline.

The filing is made on a confidential basis and the information and documents provided to the Foreign Investment Bureau are not made available to the public.

Filing usually takes place after the parties have entered into a definitive agreement. However, given that the Foreign Investment Bureau only requires to provide "a copy of any document evidencing a project of investment mature enough" alongside the filing of the formal request, that filing may take place once the purchase agreement is in agreed form. This allows both processes (pre-signing processes, if any, and foreign investment review) to run in parallel.

The MINEFI must inform the Investor by notice, within thirty (30) business days of receiving a complete request for authorisation, that one of the following applies:

- The contemplated investment does not fall within the scope of FIC regulations.

- The contemplated investment falls within the scope of FIC regulations and is rejected.
- The contemplated investment falls within the scope of FIC regulations and is duly authorised without any condition or covenant.
- The contemplated investment falls within the scope of FIC regulations but further investigations are necessary to determine whether the protection of the national interest can be guaranteed by attaching covenants and conditions to the authorisation.

(Article R.151-6, Monetary and Financial Code.)

If no response has been received by the end of the 30-business day period, the authorisation is deemed rejected.

If the MINEFI requires further investigations, it has 45 business days from the date of receipt by the Investor of the notice of the MINEFI mentioned above to either:

- Refuse the contemplated investment.
- Authorise the contemplated investment subject to the provision of certain covenants and conditions.

Conditions and covenants imposed by the MINEFI

Conditions and covenants

The MINEFI may impose conditions and covenants on its authorisation to protect national interests. These conditions may be imposed for the primary purposes of:

- Ensuring the long-term preservation and security, on the national territory, of the target company's business activities and their related information, including by ensuring that those activities do not fall within the scope of any foreign regulation susceptible to preventing its operation.
- Ensuring the maintenance of the target company's capability and know-how and preventing their capture.
- Adapting the target company's internal governance and organisational principles, as well as the terms and conditions attached to the exercise of the rights to be acquired by the Investor.
- Setting forth the reporting obligations of the Investor and/or the target company to the authorities.

(Article R.151-8, Monetary and Financial Code.)

For the purposes set out in the above bulleted list, the MINEFI may subject its authorisation to the subsequent sale by the Investor of all or part of the shares acquired in the target company or the divestment of any strategic activity conducted by the French company, to another company independent from the foreign Investor and duly approved by the MINEFI.

These conditions must be imposed in accordance with the proportionality principle, and the MINEFI defines who of the Investors is responsible for the satisfaction of the conditions.

Request for revision

The Investor(s) can request the revision of any conditions that may have been imposed by the MINEFI, if either of the following events occurs:

- A change in the economic and regulatory environment of the activities.
- A change in the shareholding of the target company or in its chain of control.

This request must be filed by the Investor(s) alongside all documents evidencing those changes and the MINEFI must inform the Investor(s) within a 45-business day period from the date of the filing. Failure for the MINEFI to respond is deemed to constitute a rejection of the request.

Amendments to conditions

The MINEFI can also decide to amend some of the conditions. The Investor then has 45 business days to present any observation or provide its comments.

Refusal

The MINEFI may refuse to grant an authorisation by a reasoned decision if it considers that any of the following apply:

- The implementation of conditions described in Conditions and covenants above would not be sufficient to guarantee the protection of the national interests at stake.
- There are serious grounds to believe that the Investor may perpetrate certain criminal offences (including drug trafficking, abuse of an individual's state of ignorance or weakness and procuring prostitution, acts of terrorism, money laundering or certain offences in relation to tax matters).
- If the Investor has been found guilty of one of those criminal offences, either in France or on the basis of equivalent foreign regulations, in the previous five years.
- If the Investor has been convicted of carrying out an investment in violation of the FIC regime in the previous five years. This last ground of refusal has been added by the new regime.

This means that the track record of the Investor will be taken into consideration by the MINEFI in its decisions to grant or refuse an authorisation.

The decision of the MINEFI can be challenged before the administrative courts.

Sanctions

The MINEFI's panel of possible sanctions have been expanded and its enforcement powers have been reinforced. Any transaction that closes without the MINEFI's authorisation is null and void. The MINEFI can also:

- Impose administrative sanctions (see Administrative sanctions) on the foreign Investor.
- Take protective measures (see Protective measures)
- Impose financial penalties (see Monetary sanctions).

Criminal sanctions can apply in certain cases (see Criminal sanctions).

Transaction null and void

If a transaction is completed without the MINEFI's prior authorisation, any agreement, covenant or contractual provision that directly or indirectly implements a FDI without due authorisation is null and void.

MINEFI other remedial powers

Administrative sanctions

- In the event of closing without authorisation, the MINEFI may issue three types of injunctions against the Investor:
 - submit a request for authorisation;
 - restore the previous situation at its own expense; or
 - modify the contemplated investment.
- In the event of breach by the Investor of conditions and covenants (see Conditions and Covenants), the MINEFI may issue three types of injunctions against the Investor:
 - withdraw the previously granted authorisation from the Investor and require the Investor to apply for a new authorisation;
 - comply with the commitments within a specified timeframe; or
 - comply with new commitments within a specified timeframe and include restoring the previous situation at its own expense or selling the strategic activity.

If the MINEFI considers that the protection of national interests is at stake, it may also pair its administrative sanction with a daily financial penalty (not exceeding EUR50,000 per day) or take interim protective measures (see Protective measures).

Protective measures

In addition to the administrative sanctions, the MINEFI can take the following interim protective measures:

- Suspend the exercise of the voting rights attached to the securities which the Investor acquired without prior authorisation.
- Prohibit or restrict the distribution of dividends attached to the securities which the Investor acquired without prior authorisation.
- Temporarily restrict or prohibit the disposal of assets related to the activities subject to authorisation.
- Appoint a company representative (*mandataire*) who could oppose any decision of the corporate bodies likely to undermine national interests.

If the MINEFI contemplates to take any of the measures abovementioned, the Investor must be given a 15-day delay to present its arguments, except in case of an emergency, exceptional circumstances or imminent break of public order, public security or national defence.

The decisions may be challenged before the administrative courts.

Monetary sanctions

The MINEFI also has the power to impose monetary sanctions for:

- Completion of the investment without prior authorisation.
- Procurement of the prior authorisation by fraud.
- Breach of the covenants and conditions provided under the MINEFI authorisation.
- Partial or complete failure to comply with the injunctions or remedial actions imposed by the MINEFI.

(Article L.151-3-2, *Monetary and Financial Code*.)

The infringing Investor may be imposed a fine up to the highest of the following amounts:

- Twice the value of the investment at stake.
- 10% of the target company's annual turnover (excluding taxes).
- EUR1 million for individuals or EUR5 million for legal entities.

Criminal sanctions

Criminal sanctions can also apply in the event of a breach of foreign investment laws, including:

- Imprisonment (of up to five years).
- Seizure of the investment.
- Fine of at least the amount of the investment and up to twice the amount of the investment (which may be multiplied by five for legal entities).
- For legal entities, exclusion from public procurement.

Information obligations

The new regime entitles the MINEFI to receive from the target company or the Investor, at its request, any documents or information which are deemed necessary for the performance its mission (including documents and information covered by legally protected secrets).

Declaration

Once the authorised foreign investment is completed, a declaration must be filed with the MINEFI within two months after completion.

In addition, any foreign investment above 15 million euros must be reported to the Banque de France via online declaration within twenty days of completion.

List of strategic sectors (Article R.151-3, *Monetary and Financial Code*)

Activities that may jeopardize national defence interests, involved or participating in the exercise of public authority or that may jeopardize public order and public safety are:

- Activities, including those mentioned in article L.2332-1 of the *Defence Code* (*Code de la défense*), relating to weapons, ammunitions, gunpowder and explosive substances to be used for military purposes, or to warfare materials and assimilated items subject to title III or title V of book III of the second part of the *Defence Code*.
- Activities relating to certain dual-use items and technology listed in Annex IV of [Council Regulation \(EC\) No 428/2009 of 5 May 2009](#) setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.
- Activities operated by entities with access to classified information for national defence purpose.
- Activities relating to the security of the information systems exercised, including as a sub-contractor, to the benefit of an operator as defined in articles L.1332-1 or L.1332-2 of the *Defence Code*.
- Activities operated by companies that have entered into a contract, whether directly or as a subcontractor, with the Defence Ministry, for the purpose of providing goods or services pertaining to an activity listed in the first, second, third and sixth bullet point in this list.
- Activities related to the provision of cryptology goods and services mentioned in paragraphs III and IV of articles 30 and 31, paragraph I of [Law 2004-575 of 21 June 2004 on confidence in the digital economy](#).

- Activities related to means or technical devices that enable the interception of correspondences or designed for the remote detection of conversation or capture of electronic data, as defined at Article 226-3 of the [Criminal Code](#) (*Code pénal*).
- Activities related to services provided by entities licensed to assess and certify the security of information technology systems and products pursuant to [Decree N°2002-535 of 18 April 2002](#).
- Activities related to gambling, except for casinos.
- Activities related to means aiming at combating the illegal use of pathogens or toxic agents and substances or to the prevention of the adverse health-related consequences of that use.
- Activities related to the processing, the transmission or the storage of data, the corruption or disclosure of which is likely to harm the exercise of activities falling within the scope of paragraphs 1 to 10 of section I or to falling within the scope of section II.

Activities that may jeopardize national defence interests, involved or participating in the exercise of public authority or that may jeopardize public order and public safety, when they are related to infrastructures, goods or services which are of an essential nature to safeguard are:

- The integrity, security and continuity of the supply of energy.
- The integrity, security and continuity of the supply of water.
- The integrity, security and continuity of the operation of transport services and networks.
- The integrity, security and continuity of the space operations mentioned in paragraph 3° of article 1 of [Law 2008-518 of 3 June 2008 relating to space operations](#).
- The integrity, security and continuity of the operation of services and networks for electronic communications.
- The operation of the missions of the national police, national gendarmerie, civilian security services, as

well as the operation of the public safety missions by the customs and by the accredited private security entities.

- The integrity, security and continuity of the operation of facility, building or structure of critical importance within the meaning of articles L.1332-1 and L.1332-2 of the Defence Code.
- The protection of public health.
- The production, transformation and distribution of agricultural products as far as they contribute to national food security objectives (aiming to ensure access to safe, healthy, diversified, quality food in sufficient quantity, to protect and enhance agricultural land and to support the protein supply autonomy of France and the EU).
- Editing, printing, distribution of political and general information print and online press services.

Activities that may jeopardize national defence interests involved or participating in the exercise of public authority or that may jeopardize public order and public safety, when they are implemented or operated for the purpose of the activities listed in sections I and II.

- Activities of research and development related to the following to critical technologies:
 - Cybersecurity;
 - Artificial intelligence;
 - Robotics;
 - Additive manufacturing;
 - Semiconductors;
 - Quantum technologies;
 - Energy storage; or
 - Biotechnologies.
- Activities of research and development related to critical technologies listed in Annex 1 to the Dual-Use Regulation (Regulation 428/2009).

Legal solutions from Thomson Reuters

Thomson Reuters is the world's leading source of news and information for professional markets. Our customers rely on us to deliver the intelligence, technology and expertise they need to find trusted answers. The business has operated in more than 100 countries for more than 100 years. For more information, visit www.thomsonreuters.com