

client alert

INVESTMENT LAW | FRANCE |

MAY 2014

FRANCE EXTENDS RESTRICTIONS ON FOREIGN INVESTMENTS

On May 14, 2014, the French government issued a new decree (the “**New Decree**”) that extends the list of protected sectors for foreign investments. From May 15, all new foreign investments in these areas will require prior authority approval (the “**Approval**”).

NEW ACTIVITIES SUBJECT TO APPROVAL

The French Financial and Monetary Code (the “Law”) provides for the free financial relationship between France and other countries. However, it also authorises the Minister in charge of the Economy (the “**Minister**”) to restrict certain foreign investments that may endanger national security.

In this respect, the New Decree adds six areas to the list of protected sectors. They are:

- Energy (oil, gas and electricity);
- Water;
- Transportation;
- Communications;
- Facilities of vital importance; and
- Public health.

Other sectors under a previous decree issued in December 2005 and modified in May 2012 remain protected. Such sectors notably include gambling, regulated private security, some communications equipment, weapons for military purposes, and national defence.

The New Decree enlarges a protection that was previously limited to activities participating in the exercise of public authority, likely to endanger public order, public safety or national defence, or linked to weapons. While the language of the New Decree is very broad, the newly protected sectors should nevertheless still be limited to those whose protection is “essential” for safeguarding the nation’s interests.

THE APPROVAL

Existing investments in these sectors do not need to obtain Approval under the New Decree. However, investors looking to implement any new project after the New Decree went into effect on May 15 must now first submit their project to the Minister for Approval.

The Minister may sometimes subjoin his Approval with special conditions to ensure that the planned project does not jeopardise national interests.

To ensure that such requirements are met, the Minister may take action against any foreign investment when it is being, or has been, made in violation of the Law. For example, the Minister may order investors to stop the transaction, to make changes to the nature of their investments or restore the status *quo ante* at their own expense. Failure to comply with such orders may result in a fine of up to twice the amount of the illegal investment.

Moreover, any undertaking, agreement, or contractual clause leading to a foreign investment that does not comply with the Approval is null and void.

CONCLUSION

The New Decree seems to be intentionally wide in scope, and many investors may now find themselves affected by its broad reach. Indeed, legal requirements may become more burdensome, particularly in the new restricted activities.

We will continue to follow the developments as the New Decree takes effect and keep you updated as the Minister and the French government issues more guidance and clarify the scope of the New Decree. In the meantime, please feel free to contact us if you have any questions regarding this or any other issue.

CONTACTS

Beijing

THOMAS URLACHER
urlacher@gide.com

GUO MIN
guo@gide.com

Hong Kong

GILLES CARDONNEL
cardonnel@gide.com

REBECCA FINN
rebecca.finn@gide.com

Shanghai

ANTOINE DE LA GATINAIS
gatinais@gide.com

PAUL-EMMANUEL BENACHI
benachi@gide.com

FAN JIANNIAN
fan@gide.com

Paris

CHARLES-HENRI LEGER
leger@gide.com

GUILLAUME ROUGIER-BRIERRE
rougier@gide.com

STÉPHANE VERNAY
vernay@gide.com

DAVID BOITOUT
boitout@gide.com

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).