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Hervé de Kervasdoué has been a member of the New York Bar since 1995 and of the Paris Bar since 1996. He holds a Master in International Economic Law and an LL.M. from Cornell University, New York, United States.

Hervé advises companies, both listed and unlisted, regarding their strategic merger-acquisitions transactions and/or joint ventures, as well as investment funds and entrepreneurs in private equity transactions. He is also notably involved in the media, internet, luxury, sports and bio/medtech industries.

He has recently worked on behalf of M6 in connection with the acquisition of the French division of RTL radio, the divestiture of the League 1 Football Club Les Girondins de Bordeaux (after advising QSI for its acquisition of PSG Football Club) and the acquisition of William Saurin's assets for COFIGEO.

Hervé de Kervasdoué has been recognised by the Best Lawyers in France Guide for corporate practice since 2013.

BG2V is an independent French business law firm founded in 2010. With nearly 35 lawyers, including 11 partners, all from major Parisian business law firms, BG2V provides its clients with high quality, tailored services in business law.

BG2V's entrepreneurial model, the size of its structure, the personal involvement and the dynamism of each of its lawyers, allows them to be responsive, creative and to offer their clients tailor-made services, adapted to their needs.

The training received by some of the lawyers of the firm in major business schools (HEC, ESSEC) and their experience in renowned companies (IBM, Crédit Lyonnais, Groupe Casino, etc.) contribute to their dynamism and allows them to offer their clients pragmatic solutions adapted to their operational and strategic issues in the main areas of business law: Mergers & acquisitions/private equity; Distressed companies; Tax law; Intellectual property and new technologies; Litigation; Commercial law; Criminal law; Labour law; Real estate.

The combined practice of consulting and litigation also gives them a transversal vision of their respective practices, which is crucial to providing an effective response to BG2V's clients.

FOREIGN DIRECT INVESTMENT

Foreign Investment in France: navigating increasing regulatory requirements

Foreign investments in France are becoming increasingly regulated, handing more control to the French Government.

More foreign investments will be subject to prior authorisation, thanks to a new decree dated November 29, 2018 which provides for the expansion of the 2014 decree. In addition, the Action Plan for Business Growth and Transformation (the 'PACTE'), which is a bill set to pass in the coming weeks, reinforces the control the French Government and Finance Minister has over the French economy, particularly via a strengthening of sanctions.

As a result, foreign investors should familiarise themselves with these changes and remain vigilant for more regulatory decrees in France.

How does this new development affect foreign investors?

Foreign investors must obtain the Economy and Finance Minister's prior authorisation to invest in certain sectors, such as private security services, counter-terrorism, wiretapping, IT, national security secrecy, cryptology, weapons, energy, public health, transport, telecommunication, and the gambling industry (excluding casinos).

Under these provisions, (i) the acquisition of control of a French company under Article L. 233-3 of the French Commercial Code or (ii) the acquisition of all or part of a French business' branch of activity or (iii) the acquisition of more than 33.33 per cent of the share capital or voting rights of a French company, in the sectors listed above, are considered as falling under a foreign investment subject to prior authorisation from the French Economy and Finance Minister.

In order to obtain this authorisation, the investor must notify the foreign planned transaction to the French Economy and Finance Minister. Upon receipt, the Minister will conduct a review and make a decision within two months (past this deadline, the authorisation is deemed granted). The foreign investor may request an advance ruling concerning the foreign planned investment before beginning negotiations with the French target business.

The government appointed by the French President, Emmanuel Macron, considers these provisions to be insufficient and is seeking to update these provisions to new technologies and to put in place a more flexible prior authorisation mechanism.

Under the new decree, dated 29 November 2018, the prior authorisation mechanism is expanded to include new sectors, in particular, data capture and storage, cyber security, artificial intelligence, robotics, and the space industry.

Concomitantly, the decree lays out the framework of the procedure by setting out which documents are needed to make a decision and by widening its scope of application to not only cover foreign investors but also the French company that is the target of the foreign investment.

What will change for foreign investors in the future?

The French government also wants to impose more dissuasive penalties. Therefore, the PACTE provides for the reinforcement of the minister's powers and for the strengthening of the financial penalties in the event the foreign investment was performed without the required prior authorisation or in breach of the conditions imposed by the minister for the performance of the planned transaction.

Injunctions and precautionary measures

The French Economy and Finance Minister will have a greater power of injunction (accompanied by a financial penalty). The Minister will be able to impose an injunction against the foreign investor in order to file an authorisation application, or to restore (financially) the previous situation, or to modify the investment strategy.

The minister will also be able to take precautionary measures, such as suspending the voting rights attached to shares subject to the prior authorisation, prohibiting and limiting the dividend distributions, suspending, limiting or prohibiting the free disposal of strategic assets,

and/or appointing an agent who will ensure the protection of national interests and prevent certain decisions of corporate bodies.

Moreover, the minister will have a greater power in the event the foreign investment was performed in breach of the conditions imposed for the performance of the planned transaction. In such cases, the minister will be able to use the injunction procedure or, more radically, withdraw the authorisation.

Financial penalties

The financial penalties will increase substantially. In case of breach, the foreign investor will pay the greater of (i) twice the amount of the irregular foreign investment, or (ii) 10 per cent of the annual turnover (taxes excluded) of the company or (iii) 5 million Euros per legal entity and 1 million Euros per individual.

Taking into account the expanded scope of this protective mechanism and these heavy financial penalties, a thorough legal analysis should be carried out for each foreign investment project.