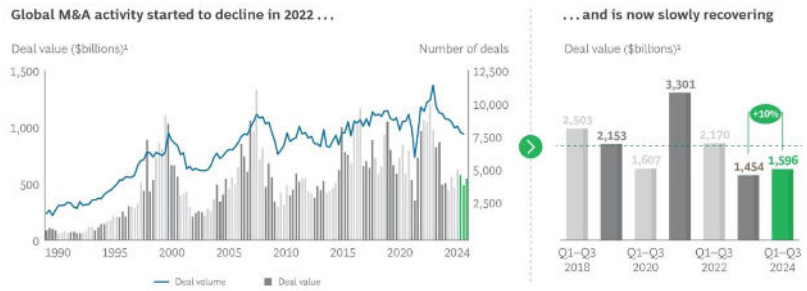
BMHAVOCATS

French M&A in 2024: Key Legal Developments

In 2024, despite a challenging global economic environment, France saw a notable resurgence in M&A activities, particularly in the financial services sector. Among the most active sectors globally were financial institutions and real estate (35% increase), technology, media and telecommunications (36% increase), and energy (14%)[1]. Nonetheless, M&A activity remains below historical norms.



BCG - 2024 M&A Report

2024 brought significant legislative changes and regulatory updates to the M&A landscape in France (1) as well as the screening of foreign direct investment (2). In addition, 2024 was a particularly interesting year for court decisions in the corporate sector (3).

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1.BCG, 2024 M&A Report, dated October 2024

1. LAW REFORMS

1.1. Introduction of multiple-voting shares

In order to strengthen the financing capacities of French companies and to modernize, simplify, and enhance the attractiveness of the regulatory environment, the "*Loi Attractivité*" was promulgated on June 13, 2024. This legislation introduced several key amendments :

- Multiple-voting shares rights to holders of preferred shares (*actions de préférence à droit de vote multiple*) [art. 1];
- More flexible procedures for certain capital increases [art. 9];
- Share-splitting mechanism [art. 13];
- Modernization of the conduct of general and board meetings [art. 18];
- Procedure for challenging the refusal to include a resolution on the agenda of shareholder meetings [art. 19];
- Minor changes to bondholders' meetings procedures [art. 21]; and
- Reform of nullities in corporate law [art. 26].

To date, only one of the 13 planned implementing decrees has been published.

The option for multiple voting rights to holders of preferred shares was previously introduced by the *Loi Pacte* (Law n° 2019-486) but only for unlisted companies. Prior to the *Loi Attractivité*, in French law, the only possibility to derogate from the one-share-one-vote rule in listed companies was to allocate double voting rights to identified and long-term shareholders.

The introduction of these multiple voting rights ("**ADPVM**") aims at attracting candidates for IPOs in France and addressing concerns raised by some entrepreneur-founders who wish to maintain their political power within their companies. It also anticipates the transposition of Directive (EU) 2024/2810 of October 23, 2024, on multiple voting rights structures.

Pursuant to the new article L. 22-10-46-1 of the French Commercial Code, ADPVMs can only be issued during the initial admission of shares to trading and for a period not exceeding 10 years, extendable by 5 years with approval by an extraordinary general meeting. ADPVM holders will not be able to take part in the vote on their renewal, and their shares will be excluded from quorum and majority calculations unless all shareholders have ADPVMs.

The multiple voting rights can only be allocated at the time of listing, and not at a later date.

It is important to note that multiple voting rights are not transferable, and that preferred shares will be automatically converted into ordinary shares in the event of a transfer of ownership.

To prevent any abuse, a maximum ratio of 25 to 1 between the number of voting rights attached to an ADPVM and the number of voting rights attached to an ordinary share for companies whose securities are admitted to trading on a multilateral trading facility (Euronext Growth/ Euronext Access) must be respected. This constraint does not apply to companies carrying out their IPO on a regulated market.

For certain meeting resolutions deemed crucial, the ADPVMs will be neutralized so that the concerned shareholder will benefit from only one voting right for decisions such as appointing auditors, approving annual accounts, amending bylaws (excluding capital increases), approving related-party agreements, and votes on executive remuneration policy and the remuneration awarded (Say on Pay).

Communication and transparency regarding the information on the number, duration, beneficiaries, and voting rights of ADPVMs will be crucial. The communication conditions will be specified in a forthcoming decree.

1.2. Merger reforms

Ordinance N. 2023-393, dated May 24, 2023, reformed the processes for mergers, demergers, partial asset transfers, and cross-border operations of commercial companies. This ordinance was further clarified by Decree N. 2023-430, dated June 2, 2023. Subsequently, it was ratified, amended, and completed by Law N. 2024-365, dated April 22, 2024, known as the "*Loi DDADUE*." This reform implements Directive (EU) 2019/2121 of the European Parliament and Council, dated November 27, 2019, which amends Directive (EU) 2017/1132 concerning cross-border transformations, mergers, and demergers.

The new legal framework introduces an exemption from the exchange of shares when the shares are held by the shareholders of the merging companies in the same proportions in all said companies, provided that these proportions are maintained after the operation. The *Loi DDADUE* includes tax adjustments such as the modification of article 210-0 A, I of the French Tax Code, to incorporate this new type of "simplified merger" into the definition of operations eligible for the favorable tax regime.

1.3. Universal transfer of assets (*transmission universelle du patrimoine*)

Decree N. 2024/751 dated July 7, 2024, amended the provisions regarding publication of Universal Transfer of Assets (*transmission universelle du patrimoine - TUP*).

As of October 1, 2024, it is now mandatory to publish the *TUP* in the Official Bulletin of Civil and Commercial Announcements (*bulletin officiel des annonces civiles et commerciales - BODACC*) to improve creditor information. Additionally, for amicable liquidations, a social compliance certificate and a tax certificate proving up-to-date accounts must be submitted to the trade and companies register at the time of liquidation.

The objective of this decree is to prevent the misuse of amicable liquidation and *TUP* procedures (Article 1844-5 of the French Civil Code) by fraudulent companies seeking to evade tax and social security adjustments.

Prior to this decree, the *TUP* was published in a legal announcements gazette (*Journal d'annonces légales*), which could compromise the 30-day opposition period for creditors, as some companies, in order to avoid recovering debts, used the lack of visibility of said legal announcements gazette.

Previously, it was possible to schedule the start date of the opposition period by selecting the publication date in the legal notice journal, which in Paris, for example, is published daily. Now, the publication is managed by the trade and companies register and, in practice, we observed at the end of 2024 that the publication could occur 2 to 3 weeks after the documents were submitted to said register. This creates uncertainty for operations that need to be completed by a specific date.

1.4. Bill on the Simplification of Economic Life (*Projet de Loi de Simplification de la vie économique*)

France is poised to undergo significant changes to its business transfer regulations as part of broader efforts to modernize various aspects of French commercial law. The government is specifically targeting the provisions of the Hamon Law, which has been criticized for extending transaction timelines and unnecessarily complicating business sales.

- **The Hamon Law Framework**

Since its implementation, the Hamon Law (Law n° 2014-856 of July 31, 2014) has imposed mandatory notification requirements on majority shareholders and companies contemplating the sale of their shares or businesses.

Under the current regime:

- Shareholders must inform their employees at least two months prior to executing any shares or assets purchase agreement (the completion of this information process cannot be treated as a condition precedent);
- This obligation applies to:
  - Companies with fewer than 50 employees;
  - Companies with a work council (*Comité Social et Economique*) that have fewer than 250 employees, annual turnover below €50 million, or a balance sheet total under €25 million;
- Non-compliance carries substantial penalties, including fines of up to 2% of the transaction value;
- The primary objective is to facilitate employee buyouts by providing sufficient time for staff to formulate acquisition proposals.

The notification requirement has been a subject of ongoing debate, with critics arguing that it creates unnecessary complexities and potential deterrents to business acquisitions.

Proposed Legislative Amendments: on April 24, 2024, the French government introduced a new bill to simplify economic affairs ("*Projet de loi de simplification de la vie économique*"), which includes several key modifications to the Hamon Law.

The initial proposal sought to maintain the notification framework while easing its implementation by:

- Reducing the mandatory notification period from two months to one month; and
- Decreasing non-compliance penalties from 2% to 0.5% of the sale price

The Senate's examination of the bill has taken a more radical approach. French senators proposed the complete abolition of the employee information requirement, arguing that the current system:

1. Creates significant transaction uncertainty
2. Risks breaching confidentiality during sensitive negotiations
3. Introduces delays that can jeopardize time-sensitive deals
4. Impose administrative burdens on small and medium-sized enterprises
5. May ultimately discourage potential buyers

The amended bill is now under examination by the French National Assembly (*Assemblée Nationale*).

➢ Merger Control Thresholds

Beyond the Hamon Law modifications, the bill also includes provisions to streamline merger control procedures by raising notification thresholds for the French Competition Authority (*Autorité de la concurrence*):

- The combined global turnover threshold would increase from €150 million to €250 million;
- The individual turnover threshold in France would rise from €50 million to €80 million

These adjustments aim to reduce unnecessary regulatory burdens for smaller transactions while maintaining appropriate oversight of mergers with potential market impact.

By removing or reducing notification requirements and raising merger control thresholds, the French government and Parliament are working toward creating a more business-friendly regulatory landscape for corporate transactions in France.

2. FOREIGN DIRECT INVESTMENT SCREENING IN FRANCE

In today's challenging global economic landscape, France has demonstrated remarkable resilience and continued appeal to international investors. The latest UNCTAD data reveals a concerning 23% reduction in investments across the European Union. Yet France has bucked this downward trend, securing its position as Europe's most attractive investment destination for the fifth consecutive year with 1,194 projects recorded in 2023.

France now captures 21% of all foreign investments directed to Europe, up from 18.7% in 2019, demonstrating not just resilience but growth in its share of European FDI. Early indicators for 2024 are equally promising, with foreign direct investment authorization filings increasing by 15-20% in 2024 in particular in the health, renewable energy, and tech sectors.

Following the last decree on foreign direct investment (Decree n°2023-1293, December 28th, 2023), the French FDI authority (Ministry of Economy's Treasury Department) is expected to publish new guidelines to replace the current version from 2022, which does not account for the 2023 decree reforms and will clarify the definition of critical raw materials introduced by said decree.

A key question for the renewable energy sector is whether these new guidelines will exempt small-capacity renewable energy projects, particularly those at the "ready-to-build" stage, from notification requirements. Under the current regulations, such projects require notification,

creating potential administrative hurdles for investments and additional workload for the FDI administration. The industry is closely watching whether the updated guidelines will introduce a more proportionate approach for these renewable initiatives.

Streamlined Authorization Process: since October 2023, the authorization process has been modernized with FDI requests now submitted through a dedicated FDI platform website. A new version of this FDI platform could be launched this year, implementing expected corrections and improvements.

3. KEY CORPORATE LAW JURISPRUDENCE IN 2024

➢ November 2024: *Cour de Cassation* Rules on Majority Provisions in Simplified Joint-Stock Companies (SAS)

In a landmark ruling on November 15, 2024, the Commercial court of the French supreme court (*Cour de Cassation*) established a critical precedent regarding voting thresholds in simplified joint-stock companies (*Société par Actions Simplifiée - SAS*). The Court determined that bylaws cannot establish approval thresholds lower than the relative majority for collective shareholder decisions.

Case Background: the dispute centered on a capital increase approved with only 46% of votes in favor (229,313) against 54% opposed (269,185). This approval was based on company bylaws stipulating that shareholders could adopt collective decisions without a majority, provided a certain threshold (one-third of voting rights) was reached.

The Court's Determination

The *Cour de Cassation* ruled that:

- Collective shareholder decisions in an *SAS* must obtain at least a simple majority of votes cast
- Any bylaw provisions to the contrary are deemed unwritten
- This principle applies to all collective decisions, whether required by law or specified in the bylaws
- This is a matter of public policy that cannot be circumvented through the contractual freedom of shareholders

Practical Implications: French *SAS* companies with qualified majority thresholds below 50% must modify their bylaws accordingly. However, preference shares remain the only legitimate tool to give majority power to a minority shareholder.

➢ September 2024: *Cour de Cassation* Clarifies the Share Ownership Transfer Date

On September 18, 2024, the *Cour de Cassation* delivered an important ruling on the effective date of share ownership transfers for unlisted shares of a simplified joint-stock company (*SAS*).

Case background: The case involved a share purchase agreement in which the transfer had not been recorded in the share register (*registre de mouvement des titres nominatifs*) or in the individual shareholder account (*compte individuel des actionnaires*), leading to a dispute about whether the purchasers were effectively shareholders with rights to request the appointment of an ad hoc agent to convene a general meeting.

The Court established that:

- For unlisted shares of an *SAS*, ownership transfer is effective only upon registration of the shares in the individual shareholder account (*compte individuel des actionnaires*) or in the company's share register (*registre de mouvement des titres nominatifs*);
- This registration must be done on the date agreed by parties and notified to the issuing company;
- The transfer date cannot be prior to notification to the issuing company;
- The purchaser acquires ownership only on the effective date of registration.

Practical Implications: this decision of the *Cour de Cassation*:

- Ends the practice of retroactive share transfers
- Requires purchasers to ensure proper registration to secure shareholder status
- Creates a potential liability for issuing companies if they do not carefully proceed with the registration of the notified transaction

➢ March 2024: *Cour de Cassation* Rules on the Validity of Scanned Signatures

The *Cour de cassation* ruled that the process of scanning signatures is valid but cannot be assimilated to an electronic signature (e.g. DocuSign, Yousign), which benefits from a presumption of reliability (pursuant to article 1367 paragraph 2 of the French Civil Code). Indeed, proof that the signatories have consented to sign and therefore consent to a deed cannot be provided.

Case background: Company A, beneficiary of put options on Company B's shares, initiated legal proceedings against three shareholders in Company B to enforce the put options. The shareholders denied being the signatories, arguing that the put options had been backdated and

signed without their approval through forged, scanned signatures. The Versailles Court of Appeals ruled that the deed with scanned signatures could not reliably identify the signatories and prove their consent despite the presence of a national identification document attached to said scanned signatures.

Practical Implications: Scanned signatures remain valid but do not benefit from the legal presumption of reliable identification provided by the French Civil Code for electronic signatures and therefore cannot be equated to these. A scanned signature does not constitute positive identification of a signatory and thus cannot reliably prove consent.

To limit any risk, it is advisable to use electronic signatures for all types of deeds. If scanned signatures are used, all relevant information should be collected to prove the signatory's identity and consent to the deed.

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