Global Private M&A Guide - Limited External Content - France

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*This content was last reviewed around October 2023.*

# Quick reference guide

## Due diligence, pricing and closing

**Typical due diligence issues**

In France, pre-acquisition due diligence is standard. While the issues that a foreign investor should be aware of will be determined by the particularities of the transaction and target company or business, some key issues in due diligence of a French target include the following:

Employment: French employment law is complex with a comprehensive Labor Code (Code du Travail), with little scope for individual negotiation.

Compliance: Compliance matters have become key issues since the entry into force of (i) the Sapin II Law relating to transparency and anti-corruption, which requires large companies and groups (with at least 500 employees and an annual turnover in excess of EUR 100 million) to implement compliance programs, and (ii) the Duty of Vigilance Law which requires French companies with more than 5,000 employees in France or more than 10,000 employees in France and abroad, to undertake reasonable measures to prevent human rights violations, severe physical or environmental damage, and health risks resulting from the activities of the company, the companies it controls directly or indirectly and the subcontractors and suppliers with which the company has established business relationships.

Data Protection: Data protection issues are becoming more important in light of the EU General Data Protection Regulation, which extends personal data protection and increases sanctions for non-compliance.

**Pricing and payment**

Independent appraisals are not required to support the valuation of the target in a share or asset deal. Buyers typically rely on their internal valuations.

Purchase price adjustments are common. The choice of adjustment generally depends on the calculation method of the purchase price and type of business operated by the target. It is common for the purchase price to be stated on a "cash-free debt-free" basis, with a purchase price adjustment based on target working capital for the purpose of confirming the value of the target company at closing. Although less common, the purchase price may be stated to be "cash-free debt-free" on the basis of a locked box mechanism based on locked box accounts prepared as close as possible to the signing date. A locked box mechanism is typically used in private equity transactions where the selling party is a private equity fund. Earn-outs are sometimes seen in smaller transactions where the management by the sellers is key to the target business for a transition period after closing, or in deals involving start-up or bio-tech businesses, the valuation of which is uncertain at the time of the transaction.

From a legal perspective, there are generally no restrictions regarding the payment of the purchase price in or out of France, as there are few controls over foreign exchange transactions. Most commonly, the purchase price is paid in Euro. However, payment in other currencies or a consideration by way of shares is also possible (the euro equivalent of the purchase price amount, if not paid in Euro, needs nevertheless to be determined (or determinable) for tax registration purposes). If the purchase price does not reflect the fair market value, this may have tax consequences. French transactions also commonly provide for an escrow arrangement (and more rarely for the holdback) for part of the purchase price to secure the payment of any future purchase price adjustment or indemnities given for breach of the sellers' representations and warranties or specific indemnities.

**Signing/closing**

The Civil Code provides for an express obligation on parties negotiating a transaction, including a sale of shares, assets or business, to negotiate in good faith. This duty applies both in pre-contractual negotiations and during performance of the contract. The duty includes the obligation to inform the buyer of relevant important facts that the buyer could not discover on its own. Also, where negotiations are at an advanced stage giving rise to a reasonable expectation that the transaction will proceed, the unilateral termination of the negotiations by a party may give rise to damages if such termination is characterized as unfair/wrongful.

Whether or not signing and closing is simultaneous will depend on the conditions and complexity of each transaction, and in particular if any third-party prior approval (e.g., antitrust or foreign investment) is required. Both mechanisms are common.

## Approvals/registrations

**Foreign investment restrictions**

France has a mandatory and suspensory foreign investment screening procedure, which means that transactions that meet the relevant criteria need to be notified to the relevant authority and cleared before they can be completed.

The foreign investment review (FIR) regime is limited to certain sectors deemed to be sensitive. For further information, see the more detailed section on "Foreign investment restrictions".

**Antitrust/merger control**

France has a mandatory and suspensory merger control regime, which means that transactions that meet the relevant criteria need to be notified to the competition authority and cleared before they can be completed.

It is also necessary to consider EU merger control rules. Mergers involving companies active in several member states and reaching certain turnover thresholds are examined at European level by the European Commission. This allows companies trading in different EU member states to obtain clearance for their mergers in one go. For further information, see the more detailed section on "Antitrust/merger control".

**EU Foreign Subsidies Regulation**

As of 12 October 2023, the EU Foreign Subsidies Regulation (FSR) requires qualifying transactions, and bids in response to certain large public tenders in the EU, to be notified for upfront clearance by the European Commission where the companies involved have benefited from foreign financial contributions (a broad concept) that exceed certain (low) thresholds. Acquisitions of a target with annual revenues in the EU of at least EUR 500 million will trigger FSR deal notifications. Acquisitions of smaller targets will not, regardless of deal value. Outright mergers and large joint ventures will trigger a notification requirement if the EUR 500 million EU-wide revenue threshold is met by one of the merging parties or the joint venture.

**Other regulatory or government approvals**

Other regulatory or governmental approvals must be evaluated on a case-by-case basis, depending notably on the relevant industry and the deal structure (e.g., in case of transfer of operational permits).

## Employment

**Obligation to consult the social and economic committee (comité social et économique) (CSE)**

Generally, where a business is acquired by a share or asset sale, the management of the target company must inform and/or consult the target's employees and if applicable, the CSE, about the proposed sale.

Companies with more than 11 employees must have a CSE. For companies employing between 11 and 49 employees, the CSE has limited power and is not consulted on share or asset sale. For companies employing more than 50 employees, the powers of the CSE are extended and the CSE must in summary be consulted on a significant share or asset sale.

The Labor Code requires the target's management to inform the CSE about the proposed sale and consult it to obtain its opinion. This involves the target's management giving the CSE an information note on the proposed sale and consequences for employees, in particular. The consultation process must take place between one and three months before any binding agreement or letter of intent is signed, even at the parent company level, if that agreement involves France and French management is aware of it. This consultation requirement can affect the parties' ability to keep the acquisition confidential.

Although the CSE cannot prevent the proposed sale (unless the purpose of the transaction is to deny employees of their rights), the CSE can apply for a court order to have the transaction suspended until the obligations to inform and consult have been complied with. A CSE may also appoint an expert to evaluate the information provided by the target, which can impact the transaction timetable. In theory the CSE bears the expert's costs, but in practice the CSE may insist that the target's management bears these costs.

Failure to consult the CSE may result in the target and the head of the target being liable for fines.

In addition, the health, safety and working conditions commission (CSSCT) of the CSE should be consulted on major changes to health and safety, and working conditions in the company, which may include the sale of a business.

**Hamon law obligation to inform employees**

French law ("**Loi Hamon**") obliges smaller and mid-size employers to inform employees directly before a proposed sale of: (i) at least 50% of the shares; or (ii) the business (going concern) of their employer, with a view to allow them to make an offer to buy the shares or business. No priority or preemption right is granted to employees, and the seller has no obligation to consider an unrealistic offer that is made by an employee and the refusal to accept an offer by an employee need not be justified.

This obligation applies even when no consultation of the CSE is required. Companies that have no CSE consultation requirement (i.e., companies with less than 50 employees) must inform all employees of the proposed sale at least two months before any binding agreement related to the sale is signed. Also, the sale cannot take place before the end of this two-month period unless all employees have informed the company that they waive their right to make an offer.

Companies with a CSE and between 50 and 250 employees, and that fall into the category of small or medium-sized companies (i.e., companies with a turnover below EUR 50 million or a balance sheet total below EUR 43 million) must inform employees of the proposed sale at the latest when the company's CSE is informed and consulted on the proposed sale. The sale can only take place once the CSE consultation process has been completed. Failure to comply with this obligation to inform may trigger the payment of a fine of to 2% of the purchase price of the proposed sale.

The seller only needs to disclose to its employees its intention to sell its shares, or to sell the business as a going concern, as applicable. The seller does not need to disclose the name of the proposed buyer and has no duty to provide information or documents relating to the company, its strategy or its financial statements to employees, even if an employee has indicated its interest in buying the shares, or the business (as applicable). Employees are subject to an obligation of discretion under Loi Hamon.

## Tax

**Transfer taxes/value-added tax (VAT)**

A share acquisition is exempt from French VAT and subject to transfer taxes as follows:

Transfers of shares in a Societé Anonyme (SA) or Société Par Actions Simplifieé (SAS) are subject to 0.1% transfer tax.

Transfers of shares in a Société à Responsabilité Limitée (SARL) are subject to 3% transfer tax with an allowance on the taxable basis equal to EUR 23,000 multiplied by the percentage of shares transferred.

Transfers of shares in French real estate-oriented companies are subject to 5% transfer tax. A real estate-oriented company is a French or non-French non-listed company whose assets consist of more than 50% of real estate or assimilated assets in France.

The acquisition of a business (asset deal) may be subject to VAT (at 20%) and to transfer taxes under the following conditions:

Transfers of real estate assets are subject to 5.81% or 5.09% transfer tax depending on location (to be increased by notary fees and other related expenses) and may be subject to VAT under certain conditions.

Transfers of ongoing business/clientele/activity/trademarks and patents registered in France are subject to transfer tax at an escalating rate of 0% up to EUR 23,000 of taxable basis, 3% from EUR 23,001 to EUR 200,000 and 5% above EUR 200,000 and are generally exempted from VAT under specific relief.

Transfers of isolated assets may not be subject to transfer tax in certain circumstances but should generally be subject to VAT.

Transfer taxes are assessed on the purchase price or the fair market value if higher. They are normally borne by the buyer but the parties may agree otherwise. However, the seller and the buyer are both severally and jointly liable for their payment to the French Treasury.

**Income tax/withholding taxes**

Participation-exemption regimes are available in France on dividends (95% exemption, subject to holding at least 5% in the distributing company for at least two years, or 99% for distributions within a tax group) and on capital gains on sales of substantial shareholdings/controlling interests (88% exemption, subject to a two-year holding requirement).

EU laws and double taxation treaties signed by France provide for reduced rates or exemptions on withholding taxes applicable to French-sourced income.

**OECD's Two Pillar Solution**

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has put forward a so-called Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. Pillar Two is intended to introduce a global minimum effective rate of tax of 15% for large businesses in each jurisdiction where they operate and will lead to fundamental changes in the international tax system. It is currently being implemented in a large number of jurisdictions.

Groups will need to consider how the Pillar Two rules could impact on the life cycle of M&A transactions from the pre-acquisition phase (including transaction planning (such as the choice of acquisition structure and financing) and due diligence of the target group), the acquisition phase (such as contractual risk allocation around Pillar Two) to the post-acquisition phase and the impact of Pillar Two on any post-acquisition integration.

## Post-acquisition integration

For information on post-acquisition integration matters, please see our [Post-acquisition Integration Handbook](https://www.bakermckenzie.com/en/insight/publications/resources/post-acquisition-integration-2023).

# Common deal structures

## What are the key private M&A deal structures?

The purchase of a business can take a number of different forms. There are basically three techniques to take control of a business in France: (i) through a sale of shares, (ii) through a sale of assets or (iii) through a merger/contribution of assets or shares. The legal and tax framework, however, differs significantly depending on how the transaction is structured.

The most common form of acquisition, especially for larger businesses, is the purchase of shares. Transfers of assets are generally preferred for the sale of smaller businesses. Mergers and contributions are more frequently used for internal reorganization purposes or in the case of strategic combinations of companies or businesses or joint ventures.

For large businesses, auction processes are often seen in France but are less common for small businesses. The bid process is conducted in accordance with a bid process letter prepared by the advisers of the seller and usually provide for the submission by the buyer of (i) a non-binding letter of interest at an early stage of the transaction process; such letter of interest usually provides for a description of the buyer (controlling parties and strategy), the acquisition structure (including details on the financing) and the indicative purchase price and (ii) a binding offer after completion of the due diligence exercise, including the final purchase price, adjustments mechanisms, conditions precedent, representations and warranties and specific indemnities set out in the definitive purchase agreement usually attached as an annex to the binding offer.

A merger consists of the automatic transfer of all the assets and liabilities, by operation of law, of the absorbed company to the absorbing company. The liabilities are automatically assumed, as the case may be, under the terms and conditions specified in the merger contract. For a transaction to be characterized as a merger, the shareholders of the entity which contributes the assets must in principle receive shares from the entity receiving the assets, but a limited cash payment is permitted in certain circumstances (in some cases, simplified regime may apply with no issuance of shares). As to EU companies, the Mobility Directive 2019/2121, which amended the Directive 2017/1132 regarding cross-border mergers and was implemented within French law with effect as from 1 July 2023 by the ordinance 2023-393, provides for specific rules and procedures governing mergers between French and other EU member state companies.

## Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

Companies setting up operations in France can choose from a range of corporate vehicles. The most common of those forms are: corporations (sociétés anonymes - SA); simplified corporations (sociétés par actions simplifiées - SAS); and limited liability companies (sociétés à responsabilitié limitée - SARL).

## What are the different types of limited liability companies?

Limited liability companies can take the form of any of the most common types of private companies as listed above. The shareholders' liability for the debts and obligations of the company is limited to the amount of their capital contributions.

The SA is the most sophisticated type of French company and is most suitable for larger businesses, including companies listed on the stock exchange. The SA is required to have a minimum of two shareholders and a share capital of EUR 37,000. SAs are managed either by a CEO (being a French natural person) with a board of directors or an executive committee with a supervisory board. The functioning of SAs is heavily regulated by law and corporate governance rules are strictly defined in the French commercial code.

The simplified corporation SAS is suitable for holding companies and businesses requiring flexibility in organizing the corporate governance rules. The SAS is managed and represented by at least one president (French or foreign individual or corporate entity) and the by-laws can provide for general manager(s) to be empowered with the same powers as the president. A collective corporate governance body (similar to a board of directors) can also be created to control the management of the SAS. More generally, arrangements related to governance, rights attached to the shares and transfer of shares can be freely organized by the by-laws. No minimum share capital is required to incorporate a SAS, which must have at least one shareholder. An SAS cannot be listed on a stock exchange.

The SARL is a closed form of a company commonly used for small structures or 'family' businesses. No minimum share capital is required to incorporate an SARL and the share capital of an SARL is split up into partnership shares (parts sociales). An SARL must have at least one shareholder and cannot be listed on a stock exchange. Shares are freely transferable between the shareholders, but approval of a majority of the shareholders holding at least half of the shares is required in the event of a transfer of shares to a third party (unless the by-laws require a larger majority). An SARL is run by one or several managers, the number of which is set out in the by-laws. A manager may be a French or foreign national and must be a natural person, not an entity.

## Is there a restriction on shareholder numbers?

An SA must have at least two shareholders, without any other restriction on shareholder numbers.

An SAS must have at least one shareholder, without any other restriction on shareholder numbers.

An SARL must have at least one and no more than 100 shareholders.

## What are the key features of a share sale and purchase?

In the context of a purchase of shares, the buyer steps into the shoes of the seller and acquires the company with all of its assets and liabilities. It is therefore critical that appropriate representations, warranties and indemnities are included in any sale agreement.

## What are the key features of an asset sale and purchase?

In the sale of a business as a going concern (*fonds de commerce*), certain assets and contracts are deemed part of the transferred business (which essentially involves clientele, other intangible assets, tangible assets, employment contracts, insurance contracts and commercial leases). Any other assets or contracts to be transferred (e.g., real estate and other contracts) must be specifically identified, or else will be deemed assets to remain with the seller. All liabilities will be deemed to remain with the seller except:

Certain liabilities which are the subject of specific regulation (e.g., in relation to employees transferred with the business, social contributions or environment); and

Liabilities as otherwise provided in the business transfer agreement.

The sale of a business as a going concern will be subject to transfer tax.

The sale of a business as a going concern must comply with mandatory formalities and must be formalized in a business transfer agreement (for tax registration purposes, the business transfer agreement or a short form version must be executed in the French language and with a purchase price in Euros). A notice of the transfer of the business must be published in a local legal gazette and in the BODACC (the national official bulletin for civil and commercial announcements) within 15 days from the date of the transfer. Creditors of the seller have 10 days from the notice (the opposition period) to object to the payment of the transfer price to the seller.

If the business is carried out or situated in a specific protected area (périmètre de sauvegarde du commerce et de l'artisanat de proximité) (i.e., a geographic area delimited by decision of the local municipality to protect local craftsmanship, commercial activities and diversity), the municipality has a right of preemption to acquire the business. Notice of the contemplated business transfer must be given in advance by the seller to the municipality. The municipality has two months from the date of receipt of the notification to exercise its preemption right to acquire the business. Failure to comply with this notification requirement may result in the transfer of the business being challenged by any interested third party and declared invalid by a court decision.

Finally, the seller of a business remains jointly liable with the buyer vis-à-vis third contracting parties unless it obtains the express written authorization of its co-contracting party releasing them from this joint and several liability following the transfer.

# Preliminary documents

## Is it customary to prepare a letter of intent or term sheet and, if so, to what extent are they binding on both parties?

In complex transactions, it is customary to prepare letters of intent or term sheets. They are not usually legally binding as the aim of the letters of intent or term sheets is to provide for the main terms and conditions of the prospective transaction, which remain subject to further negotiations between the parties. Provisions which are usually expressed as legally binding in the letter of intent include confidentiality, exclusivity and break-up fees.

## Does a term sheet, in this context, customarily include provisions on exclusivity, break fee or confidentiality?

**Exclusivity:** Exclusivity provisions are commonly used, but only where a specific time frame for the exclusivity period is clearly set out.

**Break fee:** Break fees are not common at all in France and constitute a penalty provision. Moreover, a judge would be entitled to reduce its amount should it be significantly higher than the real level of damage likely to be incurred.

**Confidentiality:** Confidentiality provisions are very commonly used in term sheets.

## Are exclusivity, break fee and confidentiality provisions supplemented with separately negotiated agreements?

Confidentiality or non-disclosure agreements are usually drafted as separately negotiated agreements (usually entered into by the parties before starting discussions on the transaction). Exclusivity and, if applicable, break fees are usually included in the term sheet if such agreement is binding, i.e., exclusivity will rarely be granted by the seller before a binding agreement is reached on the main terms and conditions of the transaction (in particular, within a bid process).

## Is there a duty or obligation to negotiate in good faith?

The Civil Code provides for an express obligation on parties negotiating a transaction, including a sale of shares, assets or business, to negotiate in good faith. This duty applies both in pre-contractual negotiations and during performance of the contract. The duty includes the obligation to inform the buyer of relevant important facts that the buyer could not discover on its own. Also, where negotiations are at an advanced stage giving rise to a reasonable expectation that the transaction will proceed, the unilateral termination of the negotiations by a party may give rise to damages if such termination is characterized as unfair/wrongful.

# Agreeing to the acquisition agreement → Purchase price

## Is a purchase price adjustment common?

Frequency/market practice: Purchase price adjustments are fairly common.

## What type of purchase price adjustment is common (e.g., debt-free, cash-free)?

Frequency/market practice: Choice of adjustment method generally depends on the calculation methods of the purchase price and the type of business operated by the target. Net debt (or net cash) and working capital adjustments are common. Net assets value adjustments are less common.

## Is there a collar on the purchase price adjustment?

Frequency/market practice: Rarely. Collars are not common.

## Who usually prepares the closing balance sheet (where applicable)?

Frequency/market practice: The responsibility is usually on the buyer to ensure the target company prepares this. However, the seller may also take responsibility, especially where the seller is continuing e.g., in owner-managed companies with earn-out arrangements.

## Is the balance sheet audited (where applicable)?

Frequency/market practice: The closing balance sheet is rarely audited. Third-party experts are generally used, as designated by the parties, to review the closing balance sheet post-closing if there is a dispute between the parties regarding calculation of the purchase price adjustment.

## Is an earn-out common?

Frequency/market practice: Rarely to fairly common in circumstances where the sellers continue managing the target company after closing or, in case of a disagreement or the valuation of the target between the parties (in particular for start-up or tech companies for which the buyer may have difficulties to assess the "real" value for the target). Otherwise, fairly uncommon.

## Is a deposit common?

Frequency/market practice: Rarely.

## Is an escrow common?

Frequency/market practice: Fairly common in circumstances where it is for the purpose of securing both the purchase price adjustment and the indemnification obligations of the seller under the representations and warranties, specific indemnification cases and breach of covenants. In addition, an escrow mechanism is often used under asset deals qualifying as transfer of going concerns (*cessions de fonds de commerce*) to secure the payment of the purchase price during the post-closing opposition period of the creditors.

## Is a break fee common?

Frequency/market practice: Rarely.

# Agreeing to the acquisition agreement → Conditions precedent

## Express Material Adverse Event (MAE) closing condition?

Frequency/market practice: Fairly common as the scope/definition of the MAE is often an issue and subject to negotiation.

## Is the MAE general or specific?

Frequency/market practice: Both are seen. Depending on the negotiations, the scope and definition of the MAE are key and often subject to negotiation.

## Is the MAE quantified?

Frequency/market practice: Rarely (even if sometimes seen in certain transactions).

# Agreeing to the acquisition agreement → Covenants

## Is a noncompete common?

Frequency/market practice: Noncompete is very common depending on the context. Noncompete provisions may rarely apply if the seller is an investment fund or if the seller and the target act within the same industry and market.

## Is it common to use waterfall or blue pencil methods to interpret contractual provisions?

Frequency/market practice: Waterfall/blue pencil provisions are not applicable in France.

## Are nonsolicitation provisions (of employees) common?

Frequency/market practice: Very common depending on the context (see comments related to noncompete). Duration is generally similar to noncompete.

## Are nonsolicitation provisions (of customers) common?

Frequency/market practice: Very common depending on the context (see comments related to noncompete). Duration is generally similar to noncompete.

## Are seller restrictions usually imposed on the target business between signing the purchase agreement and closing?

Frequency/market practice: Very common.

## Is there broad access to books, records and management between signing and closing?

Frequency/market practice: Rarely. There is a risk of de facto management by the buyer under French law.

## Is it common to update warranty disclosure or notify of possible breach?

Frequency/market practice: Very common. Updating disclosure schedules and notification of a possible breach between signing and closing is very common. However, it is usually negotiated that disclosure must not prevent or limit the buyer's right to indemnification. The buyer's right to walk away where there is a material update/breach between signing and closing may be negotiated (issues linked to MAE).

# Agreeing to the acquisition agreement → Representations and warranties

## Materiality in representations — how is it quantified (e.g., by a USD amount)?

Frequency/market practice: Fairly common. Materiality qualifiers are commonly used but often not quantified (other than specific warranties, e.g., contract value or representations regarding actions or events in the interim period).

## How is knowledge qualified (e.g., specific people, actual/constructive knowledge)?

Frequency/market practice: Knowledge qualifiers are common and usually negotiated, and often limited to the actual knowledge of a limited group of persons including the management and individuals who handled the due diligence process on seller/target side.

## Is a warranty that there is no materially misleading/omitted information common?

Frequency/market practice: Fairly common.

## Is disclosure of the data room common?

Frequency/market practice: Fairly common. Not systematic, but always negotiated.

# Agreeing to the acquisition agreement → Repetition of representations and warranties

## Is it common to repeat warranties at closing?

Frequency/market practice: Repetition of the representations and warranties at completion is very common.

## Is it common to repeat warranties at all times between signing and closing?

Frequency/market practice: Repetition to make sure that representations and warranties have been true at all times between signing and closing is very common.

## Is a bring-down certificate at closing common?

Frequency/market practice: Bring-down certificates at completion are fairly common.

## What is the applicable repetition standard, e.g., true in all material respects or Material Adverse Effect?

Frequency/market practice: Fairly common. True and accurate in all material respects is common, but for fundamental representations it must be absolutely true. Often negotiated.

## Is double materiality common (a materiality qualification in bring-down at closing and in representation(s))?

Frequency/market practice: Rarely.

# Agreeing to the acquisition agreement → Limitations on liability

## What is the common cap amount (as a percentage of purchase price)?

Frequency/market practice: 10%–30% for general cap. Key warranties may be subject to a different, greater cap than the general cap. Specific indemnities are usually capped at 100%, and sometimes not capped.

## Does the cap (and other liability limitations) apply to the whole agreement or just warranties (or particular terms)?

Frequency/market practice: Usually warranties only.

## What are the common exceptions to the cap?

Frequency/market practice: Key representations and warranties often excepted (e.g., title, ownership, authority, good standing, etc.) Often tax and specific areas of concern (treated as specific indemnities) depending on key findings in due diligence also expected with specific, separated caps or no cap.

## Is a deductible or basket common?

Frequency/market practice: Both common (50/50).

## Is a de minimis common?

Frequency/market practice: Fairly common.

## How long does seller liability survive?

Frequency/market practice: From 12–36 months for general representations and warranties.

## Are there any common carve-outs from limitation on seller liability (e.g., fraud, tax, key warranties)?

Frequency/market practice: For tax, social security and environmental matters or key representations and warranties/specific indemnities for which the statute of limitations usually applies (+x months). Exception for breach of competition laws/compliance matters to be considered.

## Is warranty insurance common?

Frequency/market practice: Rarely, but more and more frequent.

# Agreeing to the acquisition agreement → Set-offs against claims

## Is a set-off against claims for tax benefits common?

Frequency/market practice: Fairly common.

## Is a set-off against claims for insurance proceeds common?

Frequency/market practice: Fairly common.

## Is a set-off against claims for third-party recoveries common?

Frequency/market practice: Fairly common.

# Agreeing to the acquisition agreement → Damages, knowledge

## Is there an obligation to mitigate damages?

Frequency/market practice: Fairly common.

## Is there an exclusion of consequential damages?

Frequency/market practice: Fairly common.

## Are provisions that there is no liability if the buyer has knowledge common, or does buyer knowledge have no effect?

Frequency/market practice: It is fairly common to provide for a representation from the buyer that, except as disclosed in the purchase agreement, it is not aware of any breach of representations at the time of closing.

# Agreeing to the acquisition agreement → Dispute resolution

## Does local law allow for a choice of governing law?

Frequency/market practice: Yes.

## What is the common governing law?

Frequency/market practice: Choice of governing law is allowed, but it is generally accepted market practice that French law applies for French target companies.

## Is litigation or arbitration more common? If arbitration, where?

Frequency/market practice: Both are common (50/50). Arbitration is common with foreign buyers/sellers and local courts are common with local buyers/sellers.

# Agreeing to the acquisition agreement → Stamp duty and tax

## If stamp duty is payable, is it normally shared?

Frequency/market practice: Stamp duty applies. Usually borne and paid by the buyer, but shared payment can be negotiated (yet both parties remain liable for payment towards the French tax authorities). Stamp duties are equal to 0.1% of purchase price paid to each seller for the transfer of shares in French SAs or French SASs; 3% of the portion of purchase price paid to each seller after application of an allowance equal to the ratio between EUR 23,000 and the number of issued shares for the transfer of shares in French SARLs; and 5% for the transfer of shares in real estate-oriented companies.

## Is a separate tax covenant/indemnity or tax deed common?

Frequency/market practice: It is fairly common to have tax representations and warranties and specific indemnification included in the general representations and warranties. However, it is also common to have specific tax indemnity when a specific tax risk has been identified in the due diligence and the specific indemnification period aligned on applicable statute of limitations for tax matters. Separate deed of tax covenant is not common in France.

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