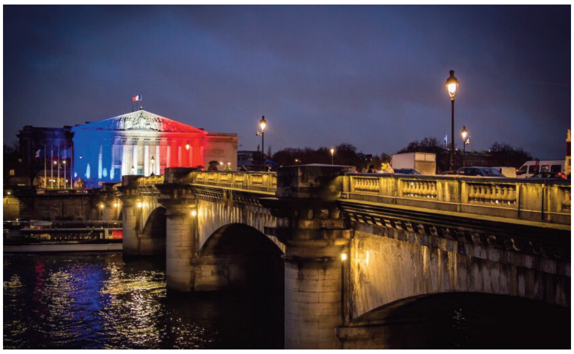
Strong Chinese presence reflects France's leading role in European FDI

The key components of a business-friendly environment are in place in France and present an opportunity for further Chinese investment, say **Raphaël Chantelot**, **Ran Hu,** and **Hubert Bazin** of **LPA-CGR avocats**



Europe is the third-largest economy in the world (after the US and China), and France is one of the largest economies in Europe, with developed infrastructures and a central geographical position. As such, France has established itself as the most popular destination for foreign direct investments (FDI) in Europe, with a variety of targets, ranging from luxury goods to high-tech companies.

The 2024 study from EY reviewing the attractiveness of European countries confirmed that status for 2023. France ranked first in terms of volume of investment and the number of FDI projects in Europe, including R&D centres projects, well above its traditional competitors, the UK and Germany.

Following the election in 2017 of a new, business-friendly president, Emmanuel Macron, a series of reforms have been implemented to make France more attractive to foreign investors. For instance, the government of President Macron has lowered the French corporate income tax (CIT) rate gradually to 25% (from more than 33.3% in 2017), to develop tax incentives for innovation. Major changes have also been decided upon to make French labour law more flexible, with a simplification of the employees' representation system and clear rules for dismissing employees (reducing the severance cost and the risks of litigation).

The re-election of Macron in April 2022 for a second term of five years sent a strong signal to economic players and foreign investors that France will develop an even more business-friendly environment and will strengthen its efforts to attract foreign investments.

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Since 2006, Hubert has been involved in the preparation of the Ricci Dictionary of Chinese Law (the first trilingual Chinese–French–English legal dictionary).

Chinese investments in France: key figures

Despite the impact of the COVID crisis, which stalled a number of projects, China remained the leading Asian investor in France in 2023. Chinese investment in France targets all kinds of sectors and types of businesses, from family businesses to listed groups (for example, Lanvin and Accor Hotels), in industries as diverse as tourism (Club Med), fashion brands (Baccarat), food and wine, football clubs, electrical equipment, and the automotive sector (car parts manufacturer Le Bélier).

However, as the world recovered from the pandemic, and particularly in 2022, Chinese investments refocused on strategic sectors such as technology and infrastructure.

To date, there are over 900 subsidiaries of Chinese businesses established in France, in which more than 50,000 people are employed. A large diaspora of Chinese companies and Chinese executives are settled for good in France and contribute to the development of a vibrant Chinese business community in France.

The outlook for Chinese investment in France remains promising. Indeed, despite the effects of the COVID crisis, foreign businesses established in France are not considering curbing activities in France, and although certain projects have been postponed, many opportunities can be seized.

Much restructuring and M&A activity is expected with the increase in interest rates, as a lot of French companies will want to refocus on core business and divest other activities, and many other companies will be looking for new investors to bring much-needed financing.

France is also benefiting from Brexit, as the UK was previously one of the preferred investment destinations in the EU, and from China's rising trade tensions with the US, which traditionally absorbed one of the largest chunks of Chinese FDI.

These circumstances, combined with the positive effects of President Macron's reforms, make France a desirable entry point for Chinese investors looking to develop operations in Europe.

French foreign investment controls

In principle, foreign investment in France is free and not subject to governmental approval. However, in certain industries that are deemed sensitive or related to national defence, a prior authorisation from the French government may be required.

French law (Section L.151-3 of the French Monetary and Financial Code) traditionally provides that certain foreign investments in activities relating to national security or critical for public safety are subject to prior approval by the French Ministry of the Economy and Finance.

The French government has been extending the list of industries deemed 'sensitive' to the French economy and subject to prior approval. The list now includes investments in telecoms, transportation, public health (with the addition of biotechnologies, as a result of the COVID crisis), technologies with a dual use (civil and military), and certain IT and telecoms areas (robotics and AI, cryptology, communications, and transportation networks and services).

New activities have been added in 2024 to the scope of FDI control: R&D in photonics and low-carbon energy production technologies, and the extraction, processing, and recycling of critical raw materials. In 2023, around 300 transactions were submitted to the control of the Ministry of Economy and Finance, around half of them were confirmed to fall within the scope of FDI control rules and authorised, and in half the cases the approval was granted subject to conditions.

The requirement for prior approval applies to investments made:

- By investors registered in the EU or the European Economic Area (EEA), when they take control of a company or of a business active in these industries; and
- By investors from other jurisdictions (outside the EU/EEA), when they acquire more than 25% of the voting rights of a company active in such sensitive industries.

Established as a temporary response to the COVID crisis, the French government has also confirmed in 2024 the extension of its control to foreign (non-EU/EEA) investments in listed companies (for those active in these industries) when they exceed 10% of the voting rights.

The authorisation process is quite straightforward: the request is submitted to the Ministry of the Economy and Finance, which has 30 days to review the investment and approve it or request additional information (in which case, its review must be completed within 45 days of the application). In practice, longer review periods, such as three or four months, should be expected if the Ministry of the Economy and Finance requests supplemental information and/or considers imposing conditions to clear the case (which happened in half the FDI filings made).

However, Regulation (EU) 2019/452, which came into force at the end of 2020, adds a new layer of foreign investment control. Under this regulation, in the course of its review, the French Ministry of the Economy and Finance must notify the foreign investment project to the European Commission, and other member states may request that conditions be added where the foreign investment could also have an impact in their jurisdiction on their own public safety or public order.

There are no foreign currency or foreign exchange restrictions in France.

Antitrust

In terms of competition policy, the French authority that oversees competition clearance is the French Competition Authority (Autorité de la Concurrence), an independent administrative agency.

French merger control applies if the turnovers of the parties to a transaction (the acquirer, the target, and their subsidiaries) exceeded, in the last financial year, certain (cumulative) thresholds provided in Article L. 430-2, I of the French Commercial Code. The thresholds include a worldwide turnover by all parties exceeding €150 million or a turnover in France exceeding €50 million for at least two of the parties. Transactions are not subject to notification in France if they are notified at the EU level.

Under Article L. 430-3 of the French Commercial Code, a notifiable merger cannot be finalised before it is cleared by the French Competition Authority. There is no filing fee. Failure to notify a reportable transaction is subject to daily penalties and fines.

The majority of notified transactions are cleared within 25 business days of their notification filing. However, certain transactions go through a more in-depth Phase II review, which requires an additional 65 business days.

The Foreign Subsidies Regulation

On December 14 2022, the EU adopted Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market. The Foreign Subsidies Regulation (FSR) allows the European Commission to investigate, analyse, and remedy distortions in the internal market caused by foreign subsidies.

A foreign subsidy is defined as a financial contribution provided directly or indirectly by a third country, which confers a benefit limited to one or more undertakings or industries. The FSR applies to mergers and to public procurement procedures when certain thresholds are met. Foreign subsidies totalling less than €4 million, or less than €300,000 per non-EU country, over a period of three years are considered to be unlikely to distort the internal market (de minimis thresholds).

Regarding mergers, the parties must notify the transaction to the European Commission if:

- The acquired company, one of the merging undertakings, or the joint venture generates an aggregate turnover in the EU of at least €500 million; and
- The foreign financial contributions exceed €50 million in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

If the relevant thresholds are met, the FSR filing is mandatory in addition to the merger filing, if required. In practice, both filings can be coordinated with the European Commission. The FSR notification must be filed prior to closing and the parties may not complete the transaction prior to clearing.

Regarding public procurement procedures, the parties must notify foreign financial contributions to the contracting authority if:

- The estimated value of the public procurement exceeds €250 million (or €125 million if the public procurement is divided into lots); and
- The amount of foreign financial contributions received by the economic operator or its main subcontractors or suppliers (providing key elements in the performance of the contract or concession, or representing a share of more than 20% of the value of the bid) over the last three years exceeds €4 million per third country.

The contracting authority then transfers the notification to the European Commission. If the thresholds are not met, the parties must nevertheless list in a specific declaration included in the bid all foreign financial contributions received and confirm that the bid is not subject to notification.

If the parties carry out a notifiable transaction without prior notification, the European Commission may impose fines of up to 10% of the aggregate turnover achieved by the company in the preceding financial year. The FSR also grants the European Commission the power to investigate, ex officio, any foreign subsidy alleged to distort the internal market.

Investment vehicles

In terms of investment techniques, French corporate law offers various forms of corporate vehicles that can be used for an acquisition or a joint venture, including the equivalent of a limited liability company and a company limited by shares.

One of the most commonly used legal entities that Chinese investors take advantage of for large transactions is the simplified joint stock company (société par actions simplifiée), as it is a very flexible corporate form: it can be established with a single shareholder and with limited share capital, and the rules governing its functioning are very flexible and can be organised, to a large extent, freely in the by-laws.

In general, there are no requirements that impact a Chinese investor particularly. French law does not require the participation of a French citizen or entity in French commercial companies, either as shareholders or as directors or officers. Recent regulations requiring the disclosure of the ultimate beneficial owner of a French company, however, do sometimes raise disclosure issues with Chinese investors.

Dispute resolution

On November 28 2007, France and the People's Republic of China signed a bilateral investment treaty that came into force in France in 2011.

It is worth highlighting that French courts are independent, and commercial matters are judged in courts composed of professional judges, with an appeal process in front of professional judges. There are also various summary proceedings that can allow an investor to enforce its rights efficiently.

French courts also duly deliver the exequatur allowing foreign judgments and international arbitration awards and deeds received by foreign officers when such judgments and awards have complied with basic principles designed to ensure the fairness of the trial and rights of the defendant.

Furthermore, France is party to multiple European and international conventions, as well as bilateral treaties (including with China), that provide simplified legal frameworks for the recognition and the enforcement of foreign judgments and judicial cooperation. French judgments and arbitration awards rendered in France (for instance, under the International Chamber of Commerce Arbitration Rules) are generally enforceable in other jurisdictions.

Tax

Traditionally, Chinese investors would establish holding companies in Luxembourg to benefit from lower CIT rates. However, these structures are coming under scrutiny from French tax authorities and there is an increasingly common requirement to have 'substance' in Luxembourg (for instance, actual staff and operations), which is costly and burdensome to meet.

Now, the CIT rates in France and in Luxembourg are nearly similar; therefore, this type of tax structuring via Luxembourg is no longer useful.

Indeed, since January 1 2022, a 25% CIT rate applies to all companies, regardless of turnover.

Small companies (for example, enterprises at least 75% owned by individuals or by other small enterprises and with a turnover of €10 million or less) are taxed at a reduced rate of 15% on the first €38,120 of profits and at the standard CIT rate on any excess (Article 219-I-b of the French Tax Code).

Gross dividends distributed to corporate shareholders outside France are subject to a final withholding tax of 25%, unless there is a tax treaty between France and the foreign country that provides for reduced withholding tax rates (as described below, China and France have signed such a tax treaty). However, no withholding tax is levied on dividends paid by a French company to a qualifying parent company resident in the EEA if certain conditions are met.

Foreign companies established in France enjoy the same government aid and incentives as French companies (support for productive investment, R&D, professional training, and job creation, among other activities). France also offers tax and non-tax incentives to French and foreign businesses that are:

- Creating new, or expanding existing, businesses in certain French regions;
- Acquiring declining industries; or
- Decentralising their activities out of the Paris and Lyon regions.

In addition, taxpayers in France (including foreign investors that have established a business in France) may benefit from the attractive R&D tax credit system. The R&D credit, which takes into account the annual volume of expenditure, amounts to 30% of the expenses related to R&D operations up to a value of €100 million, and 5% for anything above that. Higher rates apply to companies that have never benefited from the credit and those that did not benefit from the credit for a five-year period. Certain conditions must be met.

France and China signed a revised double taxation agreement (DTA) on November 26 2013. This agreement reduces the withholding tax rates applicable to dividends, royalties, and interest. A Chinese investor will be taxed only 5% on the repatriation of dividends from France if the investor holds 25% of the shares or voting rights in the French company (the withholding tax rate will be 10% in all other cases). Withholding taxes on royalties and interest paid to investors resident in China are also reduced to 10%.

The DTA also helps to eliminate any double taxation arising from cross-border transactions and to secure the tax position of Chinese investors.

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