

INTERNATIONAL newsletter



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MERGERS & ACQUISITION AND PRIVATE EQUITY

SAS: A prime tool for foreign groups in France. Why foreign groups choose the SAS structure and key practical issues

Antoine Rousseau, Partner



The French Société par Actions Simplifiée (SAS) has become the corporate vehicle of choice for foreign groups establishing subsidiaries in France. Its main advantage lies in its exceptional flexibility: the organization and operation of an SAS are governed primarily by its bylaws, allowing shareholders to structure governance, entry, and exit conditions in line with their strategic objectives. This adaptability makes the SAS particularly attractive for holding structures and joint ventures, as it enables streamlined management and lower operating costs, especially when the parent company holds 100% of the share capital.

A key practical consideration concerns the drafting of shareholders' agreements (pactes d'actionnaires) and exit provisions. The SAS's contractual flexibility allows such clauses to be incorporated directly into the bylaws, making them binding on all shareholders. Yet this freedom also calls for careful legal drafting to

prevent conflicts with mandatory corporate law or public policy—particularly in cross-border settings, where international rules may come into play.

Common exit mechanisms (tag-along, drag-along) must be carefully structured to ensure enforceability and to avoid inadvertently conferring control rights that could reshape the group's structure or trigger regulatory consequences.

Ultimately, the SAS provides foreign groups with a highly adaptable platform for their French subsidiaries—but its success depends on meticulous legal design of governance and exit arrangements.

PUBLIC DATA, TERRITORIAL AI AND INNOVATIVE SET-UPS DEPARTMENT

When Transparency Meets Confidentiality: Protecting Corporate Secrets in Public Deals

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Public procurement law has the particularity of having to reconcile the general interest, on the one hand, and the protection of the economic interests of the bidders, on the other.

The public purchaser is therefore bound by strict confidentiality, particularly regarding trade secrets, in accordance with Article L. 311-6 of the Code of Relations between the Public and the Administration. This obligation covers the secrecy of processes, economic and financial information, as well as commercial and industrial strategies.

Two litigation strategies make it possible to limit the risks of infringing trade secrets during legal proceedings:

- Submitting a confidential brief to the judge: a party wishing to submit internal documents containing information covered by trade secrecy may do so by transmitting them only to the judge, excluding the other parties. This mechanism, regulated by the Code of Administrative Justice, has been recognized in concrete cases;
- Interim proceedings relating to trade secrets: this procedure allows a company, in the event of an infringement or imminent risk of infringement of its trade secrets, to apply to the urgent applications judge to request protective measures aimed at stopping the infringement. The implementation of this procedure requires proof of a serious risk, which makes it difficult to establish a recognized infringement of the applicant's trade secrets.

Finally, the contracting authority is under an obligation to ensure the complete confidentiality of bids, failing which it may face numerous sanctions in the event of unauthorized disclosure of confidential information:

- The procedure conducted by the contracting authority may be deemed irregular;
- The contracting authority may incur liability;
- The contracting authority may be subject to criminal prosecution, depending on the recipient of the confidential information, for breach of professional secrecy, or even for the offense of favoritism.

Thus, the protection of trade secrets is crucial in public procurement to ensure fair competition and preserve companies' competitiveness. If you are responding to calls for tenders in France and wish to receive advice, our public procurement department is able to assist you and protect your trade secrets.



COMPLIANCE

UK Joins Franco-German-Spanish Defense Export Agreement: Simpler Trade Rules and the 'De Minimis' Revolution

Frédéric Saffroy, Partner
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With the Kensington Treaty signed in July with Germany, the United Kingdom is preparing to adhere to the Agreement on Defense Export Controls currently binding France, Germany and Spain. This trilateral framework, concluded initially between France and Germany in 2019 and joined by Spain in September 2021, seeks to harmonize and simplify national export control procedures for defense items (those listed in the European Military List), while safeguarding essential national security prerogatives.

The three-party Agreement establishes a simplified/derogatory national licensing mechanism for transfers falling within the scope of the treaty, with three principal axes: (i) intergovernmental programs: exports forming part of cooperative programs are subject to a simplified notification procedure; (ii) industrial cooperation: transfers connected to joint ventures or structured partnerships benefit from accelerated processing ; (iii) component transfers: the "de minimis" rule provides that components or sub-assemblies representing less than 20% of the value of the final system do not trigger a requirement for re-export authorization from the supplier State.

This last provision is designed to foster seamless subsystem integration while maintaining necessary oversight for higher-value or critical components.

By adhering to the agreement, the UK will be bound by the same mutual undertakings: (i) not to oppose partner exports save in narrowly defined circumstances, (ii) to recognize the sufficiency of the lead State's licensing decisions, and (iii) to apply the de minimis principle, thereby allocating licensing responsibility primarily to the State of final assembly.

By mutual agreement, participating States will avoid using the presence of export-controlled components to veto each other's exports, listing exceptions only for exceptional cases - encouraging a climate of trust and advancing the goal of EU defense market openness. Although the agreement does not create a single EU defense market, it signals an historic shift towards harmonization within a traditionally fragmented regulatory landscape.

INTELLECTUAL PROPERTY/ DIGITAL & TECHNOLOGY LAW

How to navigate the challenges of AI and copyright law to protect your intangible assets and your works in France

Corinne Thiérache, Partner



Artificial Intelligence is disrupting traditional intellectual property frameworks, raising issues about ownership of AI-generated creations. Under French law, Article L.111-1 of the Intellectual

Property Code provides that only the author, defined as a natural person, can claim protection for a work of the mind. This requirement of a "personal imprint" automatically excludes works generated exclusively by an algorithm, AI as having no creative autonomy.

Regulations are gradually being put in place and case law is evolving.

Directive (EU) 2019/790 related to copyright already provides exceptions for text and data mining often invoked by the AI providers. For its part, the AI Act requires AI providers to document and publish summaries of protected data used to train their models, to enhance traceability and reduce the risk of unlawful reuse of pre-existing works, giving rights holders a new means of control.

In this highly competitive environment, it is relevant to clearly distinguish intellectual property rights on generated content to avoid confusion over:

- The AI developer retains rights to the software but not to the specific outputs.
- If the user formulates precise prompts, refines the outputs, and incorporates substantial creative choices, he may claim ownership of the original parts of the work. The user must then demonstrate a genuine creative contribution. To this end, it is advisable to retain the prompts and instructions used to generate the content, to trace the creative process, to document the artistic and editorial choices made to the AI-generated output, to register each step of production to establish a chronological record of the work and highlighting the human-added value.

Businesses and creators must integrate these requirements into their processes with the assistance of their IP-IT lawyers who will also be able to conduct trials in court if necessary. Our Intellectual Property / Digital and Technology Law Departments are able to assist you with this win-win business, technology and protection challenge.

GERMAN DESK/ CROSS-BORDER LABOR LAW

Invalidity of intra-group mobility clauses

Nicola Kömpf, Partner



A mobility clause allowing transfer to another company within the group is invalid under French law: only an express tripartite agreement allows for a change of employer.

Except where Article L. 1224-1 of the French Labor Code applies (succession, sale, merger, transfer of business assets, etc. resulting in an automatic transfer of all employment contracts attached to the transferred activity), a company cannot impose the transfer of an employee's contract to another employer, nor can it include a transfer clause in an employment contract, as such a change would be considered a de facto termination with the effects of a dismissal without real and serious cause. This invalidity is explained by the impossibility for the employee to consent in advance to a change of employer.

Such a transfer is only possible within the framework of a tripartite agreement that complies with specific formal requirements:

- The agreement of the employee and the two successive employers must be set out in a single document, signed by all three parties.
- The French Court of Cassation ruled against the assimilation of two separate documents into a tripartite

agreement, in the absence of a single tripartite document ("a tripartite agreement cannot be inferred from the simultaneous signing of a mutual termination agreement with the first employer and a permanent contract with the second employer.") The Court requires that the agreement between the parties be formalized by a written tripartite agreement, signed by the employee and its successive employers, in order to organize the continuation of the employment contract.

Even if the employee requested the transfer, the absence of an agreement signed by all three parties prevents it from being characterized as a tripartite agreement, and the first contract is considered terminated (with the associated risks).

Please note that the tripartite agreement does not transfer all of the former employer's obligations to the new employer, unless expressly stipulated.

It is therefore advisable that the tripartite agreement be carefully drafted and that it specifies the applicable collective bargaining agreement, the transfer of seniority, the pension plan, the place of work, the status of bonuses and paid leave, as well as any non-competition clause, and that it excludes any trial period.

FINANCING

French security package: mortgage vs. fiducie for real estate financings

Sadri Desenne, Partner

Foreign lenders often default to a mortgage (hypothèque) when financing French property. It is not the only - nor always the best - route. French law also offers the fiducie-sûreté: a security trust that transfers title to a trustee for the lenders' benefit until repayment. Costs. Notarial fees on a mortgage are calculated on the amount of the secured obligations. For a fiducie over real estate, fees are based on the property's appraised value. At high LTVs, that base can be more favourable, making the fiducie comparatively efficient.

Enforcement. A fiducie enables out-of-court enforcement by a sale to a third party under the trust terms. Lenders (through the trustee) can manage the process

- timing, marketing, conditions - offering greater control and often faster execution than court-driven foreclosure. The starting sale price must still be set by an independent valuer.

Takeaway. In French real estate financings, comparing mortgage and fiducie early - on cost, timing and exit - can lower friction and strengthen recoveries. For real estate deals, the French security package is less a hurdle than an opportunity.



DISTRIBUTION AND COMPETITION

Exclusive distribution - protection of exclusive territory

Catherine Robin, Partner
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The supplier at the head of an exclusive distribution network is required to protect the territory of its exclusive distributor against active sales by third parties. This obligation stems from the «agreement» it enters into with the resellers in the network. Without proof of this agreement, the exclusive distributor cannot invoke competition law to accuse a third party of not respecting its territory. (CJEU, May 8, 2025, case C-581/23, Beevers Kaas)

Facts. Cono, the producer of Beemster cheese, granted Beevers Kass with the exclusive distribution right to distribute the product in Belgium. A large Belgian distributor, Albert Heijn, which purchases this cheese from Cono, also distributes it in Belgium, in violation of Beevers Kaas's territorial exclusivity. Bee-

vers Kaas brought an action against Albert Heijn. In its defense, Albert Heijn argued that Beevers Kaas' exclusive distribution did not comply with competition law. The Belgian court referred the case to the Court of Justice of the European Union, which handed down the decision in question on the basis of Regulation (EU) 330/2010 applicable at the time of the events.

In accordance with this regulation, the supplier is bound by a «parallel obligation» to protect the exclusive territories assigned to each of the resellers in its network. This obligation is not clearly stated and derives from Article 4(b)(i) of Regulation (EU) No. 330/2010. This is the first time that the Court of Justice has affirmed this principle in this judgment. For the Court, "the allocation by a supplier of territorial exclusivity to one of its buyers is necessarily accompanied by a parallel imposition on that supplier to protect that buyer from active selling by other buyers of that supplier"(para. 39). Today, this obligation is expressly included in Regulation (EU) 2022/720 23, which replaced Regulation (EU) 330/2010.

The rest of the judgment concerns the proof of this obligation to protect exclusive territories that the Court of Justice requires Beevers Kaas to fulfill. This proof was difficult to provide as there was no contractual clause between the supplier and its distributors organizing the territorial distribution that Beevers Kaas could rely on.

Beevers Kaas then argued that only Albert Heijn had infringed its territorial exclusivity. All other distributors outside its area had refrained from distributing the products in Belgium. Beevers Kaas thus claimed to have provided proof of the latter's acquiescence to the supplier's request to respect its territorial distribution.

The Court of Justice considers that this element is not sufficient. It requires an «agreement» and points out that, within the meaning of Article 101 TFEU, an agreement may result from direct evidence or objective and consistent indications establishing with certainty that the supplier has invited the resellers to comply with the territorial restrictions and that the latter have actually agreed to do. This was not the case in this instance.

Suppliers are therefore advised to ensure that their exclusive distribution agreements expressly include this protection obligation. Failing this, they should include it in their general terms and conditions of sale or put in place a system of penalties for distributors who do not comply with it. The robustness of their exclusive distribution network depends on it.



INSURANCE AND LIABILITY

Qualification of structure for renovation works on industrial equipments

Nathalie Dupuy-Loup, Partner

The application of the ten-year builders' guarantee provided for by Article 1792 of the French Civil Code depends primarily on the classification of the works carried out as a structure. Since the concept of a structure is not defined by law, case law has determined that the classification of a structure can apply to construction works but also to works carried out in an existing structure. It uses several non-cumulative criteria to determine what does or does not constitute a structure, such as: stability with ground anchoring, the contribution of material, the extent of the works, or the use of construction techniques (Civ.3, 24/05/2011, no. 10-17.106; Civ.3, 20/04/2017, no. 16-13.259; Civ.3, 07/09/2011, no. 10-10.763; Civ.3, 10/11/2021, no. 20-20.294).

It follows that if the repair works on an item of equipment in an existing structure is in itself a structure with regard to the aforementioned criteria, its unsui-

ability for its intended purpose or the impairment of its solidity is covered by the ten-year guarantee.

The question arose as to the fate of repair or installation works on a piece of equipment whose sole purpose is to enable the exercise of a professional activity, since these elements are excluded from the scope of the ten-year warranty (Article 1792-7 of the French Civil Code). Was their classification as a building *de facto* excluded? In a decision dated September 25, 2025 (No. 23-18.563), the Court of Cassation clarified that, provided that they meet one or more of the criteria established by case law to be classified as a structure, such works are likely to constitute, in themselves, a structure within the meaning of Article 1792 of the French Civil Code, and to incur the ten-year liability of the builders. It does not matter whether the site of the works is one or more pieces of equipment whose sole function is to enable the exercise of a professional activity. The Court ruled that this was the case where renovation works on the cladding of a production unit, after recalling that it required the use of construction works techniques, ensuring their anchoring to industrial chimneys.

The decision confirms the need for a comprehensive approach to characterizing the nature of the works and adapting the litigation and insurance strategy accordingly. The nature of the liability incurred (ten-year or contractual) and the applicable insurance guarantee (ten-year insurance or contractual liability insurance) will depend on the classification of the works.

