# Policymakers Tango in Paris

## France's policymakers take two steps forward and one step back in their attempts to boost cross-border business.

By Howard Stock

Last year was a busy one for France as lawmakers attempted to shake off some of the country's reputation for bureaucracy and a less-than-accommodative business environment.

"France's challenges are well-known: lower the cost of labor by reducing social charges; reduce complexity by decreasing administrative oversight of the economy; introduce greater predictability and stability of tax legislation," says Rémy Blain, a partner at Bryan Cave LLP. "Corporate transactions in France are slowed down and rendered more complex by strong regulation in several key areas—government oversight of strategic industries, employee relations—as well as a debt market which, despite historically low interest rates, has become more complex."

Despite these challenges, the French M&A market completed more than 3,000 corporate transactions totaling €147.21 billion, aided in part by the business friendly reforms related to employment and contract law.

"Through these revisions of French law, the current French government is trying mainly to introduce more flexibility in French Employment law and to clarify and consolidate some principles applicable to contracts as established by case law,"

explains Nathalie Younan, a partner at FTPA.

Indeed, France is more committed than ever to encouraging foreign investment within its borders, adds Mireya Berteau, director of international strategic projects and business development at McDermott Will & Emery. "In the current economic climate, the French government sees foreign investment as a way to create jobs and stimulate growth," she says. "Investment regulations are simple, and a range of financial incentives are available to foreign investors."

Although economic growth in Europe remains modest, the French business environment was active in the past two years, especially in its historically strong sectors like the energy, automotive and tourism businesses (although affected by terrorist attacks), says Fabien Pouchot, M&A specialist at Altana. "We have seen that foreign investors welcome the continuous efforts made in France to simplify administrative procedures, ease restrictions on investment activities and boost tax incentives," he says. "The most recent World Bank Doing Business 2016 ranks France 27th, moving up four ranks compared to last year, and confirming progresses made in terms of facilitating transactions and increasing France's attractiveness."

## POPPING THE CORK

All in all, France is poised for even greater things, lawyers say, but it is not quite there yet. For all of the positive momentum, "the current business environment in France is a mixture of lukewarm stability and waiting for the cork to pop off the bottle," says Christian Schede, managing shareholder and chair of Greenberg Traurig's real estate practice, which does business in France but is based in Germany.

Some of Schede's caution is reflected in the fact that France seems to balance any bold step toward attracting global business with a move that make France a slightly less attractive destination for foreign capital. One example is the decree of May 14, 2014, the Décret Montebourg, which added some limitations to foreign investments that could potentially result in a decrease of inbound investments. However, Younan says that in 2015, foreign investors showed interest in investing in France, mainly U.S. based investors. "Moreover, some major investments come from European countries such as Germany and the Scandinavian countries," she says. "Indian companies are also looking at targets."

Foreign investment in France has been especially active with respect to extensions of existing projects and presence, Blain says. "This is consistent with the perception of France as a favorable investment destination," he says. "France is rated significantly higher by investors who are already present in the country than by those who are not."

Foreign investment represents a significant percentage of production, exports and employment in many sectors, Berteau adds. According to the National Economic and Statistical Studies Agency, some 20,000 companies established in France receive foreign investment. These firms employ 12% of wage-earners, are responsible for one-third of French exports and undertake more than 20 percent of corporate research and development (R&D) expenditures. Rapid growth in new technologies has given way to renewed growth in traditional sectors: automobiles, metalworking, aerospace, capital goods, consultancy and services.

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According to the France Attractiveness Scoreboard for 2015, France is ranked seventh in terms of highest cumulative stock of inbound FDI in the world. It grew to €606 billion in 2014, up 4% from 2013, Pouchot says. In Europe, France is still ranked third after the United Kingdom and the Germany. "Over the past five years, France has seen a surge of over 600% in inbound M&A transactions, with high-value deals like the acquisition of Alstom by General Electric in 2015, the $1.1 billion investment of China's Dongfeng in SA Peugeot Citroën and the acquisition of the resort operator Club Méditerranée by Chinese Conglomerate Fosun International," he says, adding that "the trend in terms of inbound M&A transactions remains very positive for 2016, as U.S. investors remain very interested in high-value-added industries, such as the software sector, and Asian investors still show strong interest in the technology sectors."

Schede says that while private equity, usually a benchmark for economic prospects, is fairly slow, real estate investments and developments enjoy a decent activity level.

## REMOVING BARRIERS

In order to negate perceived barriers to entry, in 2015 France promulgated the "loi Macron", which was meant to soften the rules applicable to the attribution of free shares (AGA), incentive schemes (BSPCE), and more generally of employment law, Younan says. Moreover, the "loi Rebsamen" also simplified employment law. "French employment law reform initiated

by Myriam El Khomri, should also create an incentive for inbound investments and M&A transactions given that one of its main purposes is to facilitate and make less costly the dismissals of employees on economic grounds," she says.

Blain adds that successive governments have in recent years introduced significant reforms in the recent years, such as the R&D Tax Credit (CIR) and the Competitiveness and Employment Tax Credit (CICE), aiming at greater attractiveness on taxation. "Other measures implemented in the recent past have included a reform in 2014 of the regime of government control of foreign investment in sensitive sectors, but this reform in fact widened the scope of industrial sectors that became subject to government approval," he says.

Other important amendments to France's regulatory regime include the Law for Growth, Activity and Equality of Opportunities, which notably reformed the employment courts, the banking disintermediation, and collective dismissal procedures, Pouchot says. Lawmakers also created a new form of company, the so-called "société de libre partenariat," which is inspired by the Anglo-Saxon limited partnership, and should increase the attractiveness of the French finance industry by serving the needs of institutional clients. "Another example that should encourage inbound M&A investments is the draft bill on the

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reform of employment law, which is currently under discussion and should bring more flexibility to the French employment law system," he says.

In order that all interested parties have the opportunity to weigh in on new rules, the French government generally engages in industry and public consultation before drafting legislation or rulemaking through a regular but variable process directed by the relevant ministry, Berteau says. However, the text of draft legislation is not always publically available before parliamentary approval. Recently, though, the French government has experimented with new procedures such as online industry consultations for input related to the U.S.-E.U. Transatlantic Trade and Investment

**RÉMY BLAIN**
BRYAN CAVE LLP

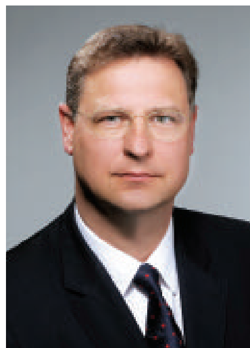
**FABIEN POUCHOT**
ALTANA

Partnership (TTIP) and the E.U.-Japan free trade agreement, as well as mandatory impact assessments. However, although more open than before, French practices appear to be somewhat less transparent and less systematic than E.U. public notice and comment procedures, according to industry feedback.

## SIMPLIFYING REGULATIONS

To improve matters, in June 2014, the new Prime Minister, Manuel Valls, set up the position of State Secretary for State Reform and Simplification, headed by Thierry Mandon, to make French regulations simpler. As part of his mission, Mandon is consulting with companies prior to the drafting of legislation that may affect them. He works in close cooperation with two other agencies under the Prime Minister: the Prime Minister's Secretariat General and the Secretariat General for European Affairs. Some 40 simplification measures have been adopted so far, including the so-called provision on "zero additional cost" for all new measures. "This means that the impact on businesses of any change in regulations or legislation will be quantified by independent experts, or representatives of the business community and any new cost will be offset by a reduction at least equivalent to it. Foreign companies have expressed concern regarding France's standard-setting procedures," Berteau says.

The remaining hurdles are mainly related to French employment law, particularly regarding 2014's "loi Hamon." This law introduced, in case of sale of a company, that employees be notified in advance in order to give them the opportunity to make an offer for the shares or the business to be transferred. In addition, it sets out a new mandatory triennial employee's information. In practice, however, the requirement to inform employees beforehand results more often in delaying transactions rather than in allowing employees to acquire companies, Younan says. "Although the sanction for failing to inform the employees is now



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GREENBERG TRAURIG
GERMANY

**NATHALIE YOUNAN**
FTPA

limited to a civil fine of 2% maximum of the purchase price, and no longer the potential cancellation of the sale, the hurdle remains," she says. "The loi Macron also provides for a new set of rules regarding the maximum number of corporate offices in listed companies, which is now limited to three instead of five."

The main challenge for France is not only to address the necessary structural reforms, but also to correct the perception of French economic climate, Blain says. "There is a profound need to reduce the complexity of the regulatory regime in a wide sense, including administrative oversight and control, and tax and social regulations," he says.

Without general economic reform encouraging risk-taking and introducing more flexibility in the labor market, it is hard to see where the dynamic should come from, Schede says. "However, one should not overlook that France and, in particular, Paris is per se hugely attractive to foreign investors, especially those with Asian roots. It is still widely perceived as a market to be in, but finding compelling investment opportunities is somewhat challenging these days."

Indeed, the list of possible red flags is long: Weak economic growth—0.4% GDP growth in 2014, unemployment stubbornly above 10%, unpredictable economic and budget policies, the complexity of tax regimes, and the fact that France has been subject to strict E.U. macroeconomic surveillance due to a prolonged period of budget deficits exceeding the E.U. limit of 3% of GDP, the tax environment, the high cost of labor (with the minimum wage, called the SMIC, for Salaire Minimum Interprofessionnel de Croissance, at €1,457 per month), rigid labor markets, and occasional strong negative reactions toward foreign investors planning to restructure, downsize or close, Berteau says.

## PRIMARY DESTINATION

That said, according to Ernst & Young's annual Barometer, France remains the primary destination for industrial installations; in 2014, the number of installations has increased by over 14% with 608 new projects. "This very positive result is outweighed by the setback of employment creations, which have dropped by 11% in 2014, leading to the conclusion that the main hurdle to M&A inbound investments in France remains the cost of labor and more generally the French employment law system," Pouchot says. "The purpose of the draft bill on employment law, which is currently being discussed, is obviously to remedy this issue by facilitating and encouraging employment creations with more flexibility."

There is a growing realization that deep structural reforms are necessary, and can no longer be avoided, Blain concedes, which is not only the case within business communities, which have long advocated such reforms, but this seems to be shared also with wider sections of the public. "The question is no longer whether or not to carry out these reforms, but about how to bring them to bear in a difficult environment characterized by structural budget deficit and weak world and European economic growth, as well as global security threats," he says.

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Ultimately, while lawyers concede that France still has a long way to go if it truly wishes to open its borders to global business, the country remains one of Europe's premier destinations. "France succeeds in remaining the most attractive destination for foreign investors in Europe," Pouchot says. "Our optimism stems from the fact that foreign investors keep considering France as a source of stability and an inescapable business place in Europe and that inbound investments have increased of 600% and outbound investments have come to their highest over the past five years. All the measures that have been, and are currently being, taken by the French government to promote competitiveness and investment with the reforms on contractual, employment and anti-corruption laws will inevitably enhance foreign investment and foreign M&A into France. ■