

M&A in France – 2021 Foreign Investment Control and others

LEGAL PERSPECTIVE

French Economy - COVID-19 impact
M&A under Covid-19
French Foreign Investment Screening

Feb. 2021



AWARDS & DISTINCTIONS

Jeantet is a leading business law firm with market recognition



Jeantet



Best Lawyers®

DECIDEURS
STRATEGIE FINANCE DROIT



Jeantet

JEUNE AFRIQUE



The
**LEGAL
500**

« Jeantet is known for strong cross-border offering with experience in a variety of jurisdictions. Also handles inbound transactions from foreign clients.»

Chambers Europe 2020

« Jeantet's main strengths include its pragmatic and creative approach to cases, excellent client relations and reasonable fees. »

IFLR 1000 2020

« Jeantet is known for its ability to handle complex cases and to provide effective, innovative and sustainable solutions. »

THE LEGAL 500 EMEA 2020



法国基本情况 France as Investment Destination



M&A IN FRANCE

French Economy- End of 2019

1ST EU INDUSTRIAL INVESTMENT DESTINATION 欧洲第 1 工业投资目的地国

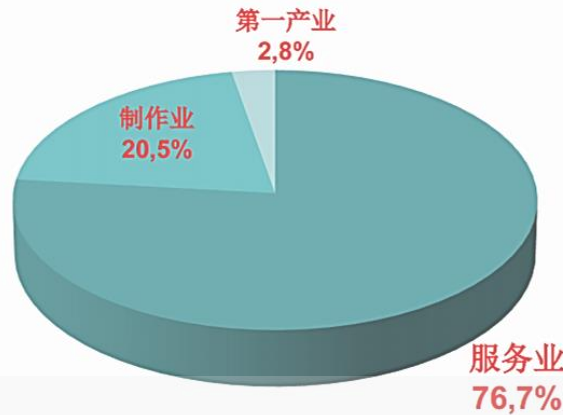
2ND EU CONSUMER COUNTRY 欧洲第 2 大消费市场

6TH ECONOMY 全球第 6 大经济体

6 7M RESIDENTS 居民

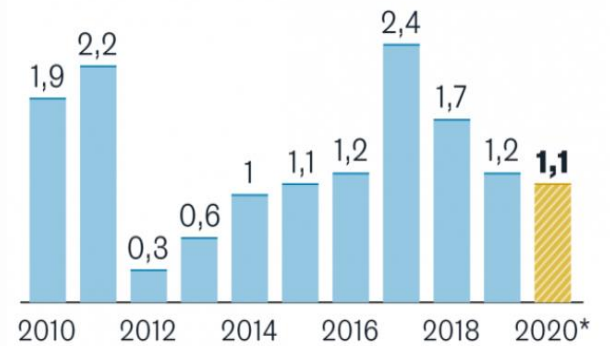
GDP 27 716 亿 USD

GDP PERHEAD 32 000 EURO



Before * COVID19

Croissance annuelle du PIB, en %



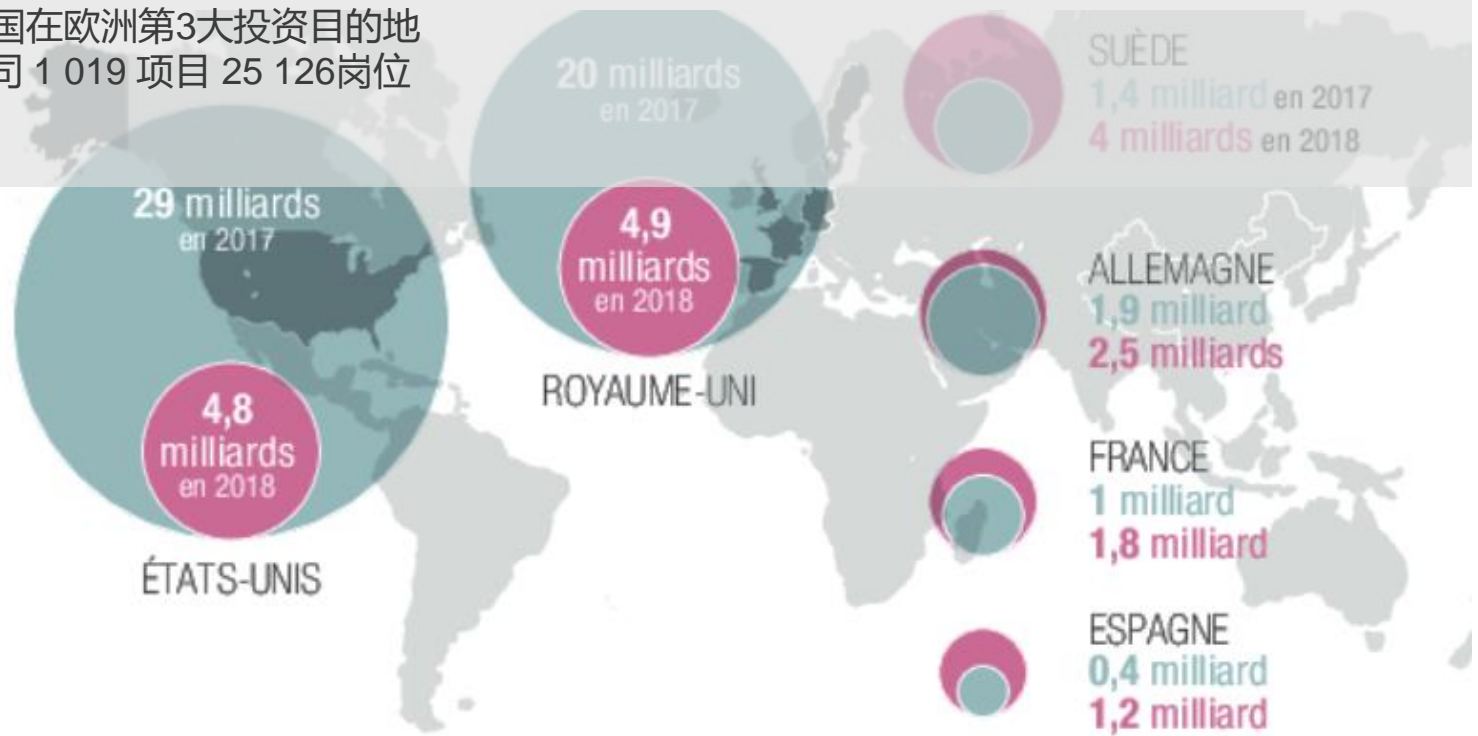
M&A IN FRANCE

Chinese Investments in France

2018 中国对外投资 欧洲和北美总体 下滑 (-73%) 对法国投资 反弹 + 86%
 2019年相对于2018年再次下降












截至2019年11月，中法双边投资总额超过400亿美元。

法国是中国在欧洲第3大投资目的地
 700 子公司 1 019 项目 25 126岗位



M&A IN FRANCE CHINES INVESTMENTS



Club Med	€ 939 M	FOSUN 复星	Hotel
	(12,9 %- 14%) \$1 100 M		Auto
	(49%) € 308 M	Shandong Highway	Utilities
	€ 60 M	AVIC	Auto
	€ 475 M	Hainan Airline	Industrial
	(30%) € 3187 M	CIC	Energy
Louvre Hotels	€ 1300 M	Jinjiang	Hotel
	€ 1300 M	RUYI	Textile
	€ 2 200 M	Qinghua Unigroup	Tech
	€ 164 M	Fortune Fountain Capital 沅沅资本 (HK)	Consumer
	€ 625 M	Fosun	Food
	€ 600 M	CITIC CAPITAL	Cosmetic

M&A IN FRANCE

COVID-19 in France

20/02/2021

Vaccined 接种疫苗: 2 409 831

Confirmed Cases 确诊: 3 536 648 (+22 501)

Death 死亡 83 000 (+ 271)



Impacts on Economy

Y 2020

-2.6% - 3% GDP **LOST**

Y2021 : 6%

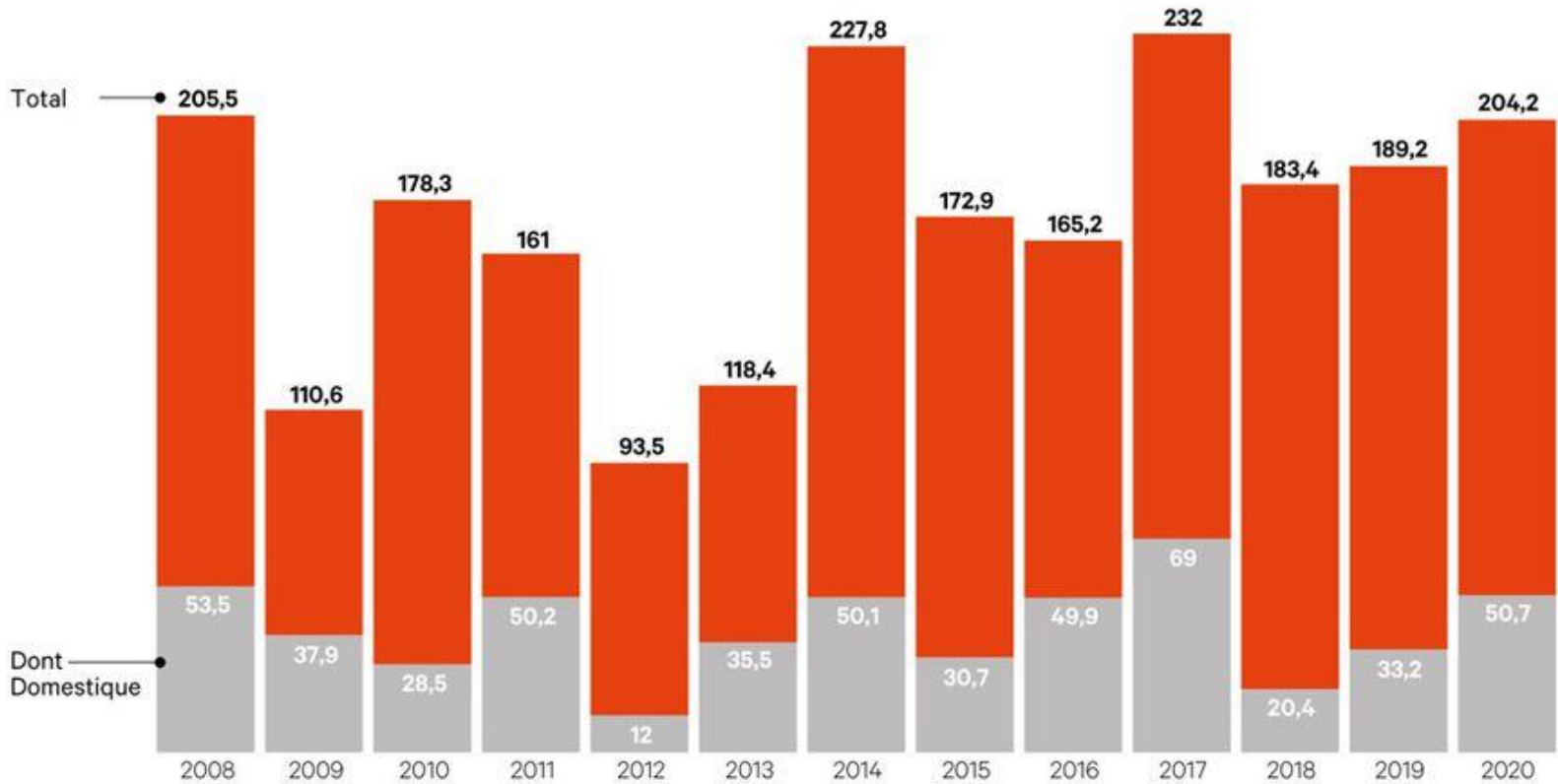


M&A IN FRANCE

2020 France

Les fusions et acquisitions françaises

En milliards de dollars



• LES ÉCHOS • / SOURCE : REFINITIV

CATCH UP IN SECOND HALF OF 2020

M&A IN FRANCE

2020 France

- 法国企业跨境并购依然活跃 FRENCH CROSSBOARDER M&A STILL ACTIVE CROSS-BORDER OPERATIONS HAVE MULTIPLIED DESPITE THE COVID
- ALSTOM'S ACQUISITION OF BOMBARDIER'S RAILWAY DIVISION (CANADA) (7.8 BILLION EUROS)
- SCHNEIDER' ACQUISITION OF OSISOFT (USA) (5 BILLION EUROS).
- AUG. 17 2020 - VOODOO OPENS ITS CAPITAL TO **TENCENT**
- JUN. 10 2020 - THE WORLD'S LEADING YEAST PRODUCER LESAFFRE TAKES CONTROL OF THE **CHINESE COMPANY BIOHYMN.**
- JUN. 9 2020 - A GLOBAL PLAYER IN TELECOM PAYMENTS, THE LYON-BASED COMPANY DIGITAL VIRGO TAKEN OVER A DIVISION OF THE JAPANESE OPERATOR NTT
- MAR. 31 2020 – GLOBAL OUTDOOR ADVERTISING LEADER JCDECAUX TAKES 23% BILLBOARDS OF **CLEAR MEDIA**, CHINA'S LARGEST BUS SHELTER OPERATOR



M&A IN FRANCE : COVID-19 IMPACT



1. 不可抗力 FORCE MAJEURE (1/2)

关于COVID19是否是合同不可抗力事件的问题，需要参考法国一般法律概念（和相关理论）中不可抗力事件的概念，以及“不可预测事件”的学说（分别为《法国民法典》第1218条和第1195条）。这些理论可以就个案酌情（取决于法院裁定）适用在因COVID19大流行而延误履约或变得繁重或不可能（或与此相关的限制）的情形中。

With respect then to applying or not force majeure to contracts in the context of the covid19, one should refer to the french general legal concepts (and related doctrines) applicable to force majeure events generally and also to the doctrine or « unpredictability » (imprévision) (article 1218 and 1195 of the french civil code respectively) that may on a case-by-case basis (and subject to court determination) apply to contrats when the performance thereof is delayed or becomes more onerous or impossible due to the covid19 pandemic (or restrictions in connection thereto).

→ **CONDITIONS 构成条件**

- Exterior 外部性
- Unpredictability 不可预知性
- Irresistible 不可抗拒

→ **FAIT DU PRINCE 公权力行为**



1. 不可抗力 FORCE MAJEURE (2/2)

CONSEQUENCES 后果

→ Suspension or disparition of obligation of exécution : l'article 1218 du code civil

履行义务的暂时中止，或者终止。

→ nevertheless, debtors must remain vigilant because a case of force majeure does not necessarily release from the performance of all of the obligations; this limit expressly results from article 1351 of the civil code according to which *“the impossibility of performing the service liberates the debtor from the obligation to perform when it proceeds from a case of force majeure and that it is final (...)”*.

→ Doctrine. "there is therefore not **disappearance** but **rebalancing** of the contract“

债务人必须保持警惕，因为不可抗力并不一定会解除所有履行义务；该限制明确来自《民法》第1351条，规定“在不可抗力的情况下，并且是最终的，而无法履行义务，债务人将从该履行义务被解脱 (...)”。

学术观点：“因此，合同不会**消失**，而是会**重新平衡**”。

TO BE ANALYSED ON CASE BY CASE BASIS 需要个案分析

→ Article 1218 of the Civil Code is not of public order and it is perfectly open to the parties to derogate conventionally by expanding or restricting cases of force majeure in their contracts

《民法典》第1218条不是公共秩序，它完全允许当事方按惯例通过扩大或限制合同不可抗力的情况，增减其范围。

需要具体读解合同条款

2. 公司法措施 CORPORATE LAW MEASURES

→ TO SIMPLIFY THE HOLDING OF GENERAL MEETINGS AND DELIBERATIONS AND DECISION-MAKING BODIES

简化召开股东大会、审议和决策机构

Ordinance no. 2020-321 of March 25, 2020 adapting the rules for the meeting and deliberation of assemblies and governing bodies of legal persons and entities devoid of legal personality under private law due to the epidemic of covid-19.

2020年3月25日第2020-321号法令，对由于COVID-19流行，就法人和非法人实体的股东议会和理事机构的大会和审议规则进行修改。

CONVOCAION OF THE GENERAL MEETING OF LISTED COMPANY

上市公司股东大会召集方式 书面 – 电邮 – 公报

DEMATERIALIZATION OF THE RIGHT OF COMMUNICATION PRIOR TO THE GENERAL MEETING

股东大会之前沟通的权力行使的无纸化 文件的提供

PARTICIPATION OF AUDITERS, LABOR REPRESENTATIVES

股东大会上不强制审计师、员工代表参加

到场计算、投票统计 无纸化

10 ADOPTING THE RULES FOR APPROVING ACCOUNTS AND PREPARING OTHER BUSINESS DOCUMENTS 批准年报和准备其他商业文件的规则

Ordinance no. 2020-318 of March 25, 2020 extends several deadlines applying to legal persons and entities without legal personality under private law for the presentation of their annual accounts or the approval thereof.

2020年3月25日第2020-318号法令延长了适用于私法下的法人和非法人实体提交其年度财报（清算报告）的最后期限。

3. 劳动法： THE SOCIAL MEASURES

Partial activity scheme 部分营业安排

- This system allows employers to **partially or totally suspend the employment contract of their employees or some of them if they suffer a loss of pay due to:** (i) the **temporary closure of the company** or their establishment or in case of (ii) **reduction in the working hours of the company** or establishment below the legal working hours which corresponds to 35 hours per week in France.

- 该安排允许雇主部分或全部中止其雇员或部分雇员的雇佣合同，条件是由于以下原因而遭受薪资损失：

(i) 公司或公司的临时关门，或 (ii) 公司或机构的工作时间减少到低于法国法定工作时间的每周35小时。

- The system has been adapted by a decree dated 25 March 2020 and an Ordinance dated 27 March 2020:
- Employees under partial activity receive 70% of their gross remuneration** for all non-working hours.
- The employer is reimbursed by **the French State upto EUR4,850 maximum** per month for a full-time employee.
- The **scheme is likely to apply in all sectors of activity for a maximum period of 12 months.**

2020年3月25日的法令和2020年3月27日的法令，对办法进行了规定：

- 参加该安排的员工在所有非工作时间可获得其总薪酬的70%。
- 法国政府向雇主偿还全职雇员的每月工资，以4,850欧元为上限。
- 该安排可能适用于所有行业，最长期限为12个月。

M&A IN FRANCE -外商投资审批 ADMINISTRATIVE SCREENING



外商投资审批 M&A IN FRANCE - ADMINISTRATIVE SCREENING

Evolutions before 2019 :

Traditional sensitive sectors 传统敏感领域投资审批

- 安保服务
- 与国防业务有关的业务
- 军用武器、弹药及爆炸物的贸易
- 军事服务或装备供应合同

2014 蒙特布 “全面覆盖法令” Montebourg Act 2014

预先投资审批程序扩大到:

电力和天然气供应、石油、水务、交通、通信网络和服务, 以及公共健康领域

受到监管的行业/特定项目批准和许可

- 对某些特定行业 (如通讯、金融、保险、赌博等), 需要专门监管机构所审批
- 可能污染环境或影响人类健康的制造业所需的批准或声明 (比如获得当地环境当局的SEVESO批准)
- 关于建设和建筑运营 (基础设施) 许可的批准和/或申报

2015年9月8日

EU cleared GE's acquisition of Alston's energy activities at 13,5 Billions USD.

欧盟委员会批准通用电气以135亿美元 (约合102亿欧元) 的价格收购了阿尔斯通的能源业务。

2019年: 法国战略产业保护法案 (PACTE Act)

法国外商投资审批 M&A IN FRANCE - ADMINISTRATIVE SCREENING

Since Pact Act of 2019

Scope of application 适用范围

Type of transactions 交易类型

外国人、直接间接控制的法国公司、外国居住的法国人
收购产权、对决议机构构成有决定性影响

Control 控制力 控制权、独立业务部、或者达到一定比例

2019年12月1日

(2020年4月1日生效)

将门槛从33%降低至25%

2020年4月29日 – 2020年12月31

门槛临时降低为 10%

(德国已在2018年将其降低到10%)

Sector of activities 涉及行业

武器弹药爆炸物、军民两用技术、拥有国防秘密、核电设施信息安全、密码编译、远距离拦截通信、通信信息设备安全评估服务、除了CASINO之外的博彩、毒害防御、与国防安全有关的数据存储、
涉及国家安全的，参与国家保障：能源、水、交通、航天、通信、警察、关键基础设施、健康、粮食、政治新闻出版

影响国家安全的，关键技术研发。

新增战略行业

粮食安全和 新闻机构

趋势

2019 PACTE ACT

2020新冠

M&A IN FRANCE -外商投资审批 ADMINISTRATIVE SCREENING

Towards China and Lastest moves

Respect of local law and regulations

To protect strategic technologies: data, AI etc.

Welcom long term investment

Reciprocity

FOUR PRINCIPLES
Position of Macron administration expressed during the **2018** visit to Beijing



On 18 Dec 2020, formal refusal of acuiqition by Teledyne (USA) of French military night vision provider Photonis for protection of national strategic interest.



Jan 2021 French Minister of econmy publicly opposed to the acquisition of Carrefour by Couche-Tard (Canada) for nantional food security,

外商投资审批 FRENCH ADMINISTRATIVE SCREENING

行政部门的权利 Power of the French Administration

→ TOWARDS TRANSACTIONS CLOSED WITHOUT CLEARANCE 对未申报而完成的投资

- Injunction of Filing 补报
- Injunction to amend the transaction 命令修改交易
- Injunction to restore previous situation 命令恢复交易前原状

→ TEMPORARY MESURES 临时措施

- Suspension of vote 命令中止投票权
- Limitation to bonus distribution 限制分红
- Limitation to exit 限制资产转让
- Ad hoc agent 任命代理人

→ SANCTIONS 罚款

- HIGHEST OF : 200% INVESTMENT, 10% REVENUE, 5M EUR
- 投资额2倍、10%营业额、500万欧元（对自然人100万欧元）中的最高金额

M&A in France

法律尽职调查的新问题 DUE DILIGENCE TO UNVEIL LEGAL RISKS



M&A IN FRANCE : COVID-19 IMPACT

IMPORTANT CASELAW OF SUPRÊME COURT 2020

By judgment of 25 November 2020 (Cour de cassation, Chambre criminelle, 25 November 2020, 18-86.955, published in the bulletin), the Cour de cassation made a major change in jurisprudence by recognizing that in the event of a M&A, **the criminal liability of the acquiring company may be incurred for offenses committed by the absorbed company before the transaction.**

In this case, the absorbed company was accused of the involuntary destruction of the property of others by a fire resulting from a breach of a safety obligation,

This transfer of criminal liability from the absorbed company to the acquiring company only concerns criminal actions where the penalty incurred is a fine or a confiscation measure.

法律尽职调查的新问题 DUE DILIGENCE TO UNVEIL LEGAL RISKS

Personnal Data Protection

The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)

适用范围： 收集和处理欧盟居民个人信息的机构（境内、境外），

个人信息定义： 私人信息和公共活动信息

日期： 2018年5月25日 (两年过渡期的结束)

Essential Elements 实体义务

- 在流程中建立相应的保护工具（缺省隐私保护）
- 任命数据保护官
- 高风险事项（向海外传递信息）需要向主管机关申报
- 使用信息的合法基础（使用人同意、必须性，等等）
- 加强隐名保护
- 删除信息的权利

**Sanctions : 10 M - 20 M EUR ; 2% - 4 %
revenue**

21/12/2018 - 21/01/2019

	Euro 400 K
	Euro 250 k
	Euro 50 M



实际受益人登记 Declaration of Effective beneficiaries

BACK GROUND 背景： 反恐、反洗钱

APPLIED TO 范围： 所有商业公司

TARGETED 目标： 最终自然人持有25%之上股权，投票权。

DATE : 2018年4月1日之后

合规和社会责任 – LEGISLATIONS SINCE 2017

Obligation of Vigilance 警觉义务

2017年：环保、社会责任、公司治理，警觉规划，等等。
最高罚款:10M Eur

雇佣 **5 000** 人以上，总部在法国的企业，或者
在法国雇佣10 k人以上，总部在海外的

Anticorruption Aalarming 反腐警报机制

2017年6月 商业廉洁立法

识别、行为守则、举报人保护、外部关系监督、培训、举
报程序。罚款 个人20万欧元，公司100万欧元

在法国雇佣 **500** 员工以上的，或者
总部在法国一共雇佣 **500** 人以上
并且：年营收超过100万欧元

Crime fighting in working environment 职业警报机制

2018年1月

适用任何领域的违法犯罪的监督
逐级报警
举报人保护

在法国雇佣 **50** 人以上

商业廉洁法 Sapin Act II 30 June 2017

举报人保护

Whistle-blower protection (chap II)

定义 在履行其职务中了解到不法行为的人 (贪污、行贿、非法侵占, 等等)

The whistleblower is a person reporting a wrongful act (corruption, bribery, illegal taking of interest, misappropriation of public funds or favoritism) of which he became aware in the performance of his duties.

Protection
Procedure of information

反腐义务

Anticorruption : obligation of vigilance

规模企业 (500以上员工+100万欧元营收)

Obligation for French companies with more than 500 employees and a turnover of more than 100 million euros must set up a program to prevent and detect corruption:

- Create a map of the risks to which the company is exposed in this area
- Create a code of conduct
- An internal warning system designed to collect alerts from employees concerning the existence of conduct or situations contrary to the company's code of conduct
- Procedures for evaluating the situation of external stake holders
- Accounting procedures
- Etc,

违反规定, 法国反腐局可以罚款 个人20万欧元, 公司100万欧元

In case of failure to comply with these obligations, the French anti-corruption agency may issue a warning, order the company and its managers to adapt existing procedures but also impose a financial penalty (capped at €1 million for the company and €200,000 for the manager).

Jeantet AARPI



THANK YOU

Contacts

Thierry BRUN
M&A Partner
Email: tbrun@jeantet.fr

You SHANG
Lawyer - Chinese Desk Manager
Email: yshang@jeantet.fr
微信: **shangy32**

PARIS



CASABLANCA



LUXEMBOURG



GENEVA



BUDAPEST



KIEV



MOSCOW

