FRENCH DEGREE REQUIRES GOVERNMENT APPROVAL FOR FOREIGN INVESTMENTS IN STRATEGIC BUSINESS SECTORS

To Our Clients and Friends:

On May 14, 2014, the French government extended the blocking power of the French Ministry of Economy with respect to foreign investments regarding six new business sectors. The new rules came into effect on May 15, 2014 and concern the energy, water, transport, communications, defense and health sectors.

These new rules supplement existing regulation requiring foreign investors, prior to making an investment in specified sectors, to obtain an authorization from the French Ministry of Economy[1].

Extension of the protected sectors

The new rule extends the list of business sectors subject to this prior authorization. Now covered are the activities related to goods, products or services, essential to preserve French interests in relation to public order, public security and national defense listed below:

- Integrity, security and continuity of energy supply (electricity, gas, hydrocarbon or other sources of energy);
- Integrity, security and continuity of water supply in compliance with the rules established in the interest of public health;
- Integrity, security and continuity of the operations of transportation networks and services;
- Integrity, security and continuity of the operations of electronic communication networks and services;
- Integrity, security and continuity of operations which are essential for the defense, security or survival of the French nation and nuclear plants; and
- Public health protection.

Concerned foreign investors and foreign investments

The authorization process relating to these new sectors applies to EU and non-EU investors which acquire:
It also applies to non-EU investors who acquire more than 33.33% of the stock or voting rights of a company whose registered office is located in France.

**Authorization process**

Any foreign investor, who contemplates to invest in an entity or line of business which falls into one of the business sectors mentioned above, is required to seek an authorization from the French Ministry of Economy, irrespective of the size of the investment.

The Ministry of Economy has a two-month period to review the contemplated investment. Failing an answer within this time-line, the investment is deemed to be authorized. An authorization may be subject to the divestment of assets.

Failure to comply with the procedure may lead the Ministry of Economy to order the investor to withdraw from the investment, to modify the scope of its investment or to annul the investment. Failure to comply with this order exposes the foreign investor to a fine in a maximum amount equal to two times the investment amount (in addition to the annulment of the investment).

**Pending foreign investments**

The new rules are effective as of May 15, 2014 and should apply to investments which are in the process of being completed but not yet closed.

**Examination by the European Commission**

The European Commission has already publicly indicated that the protection of strategic interests by an EU member state is essential but that the means put in place to achieve the protection must be proportionate to their goal. The European Commission is likely to examine these new rules and decide whether they comply with EU rules in the coming weeks.

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[1] Prior to the Decree, French government had already a veto right over foreign investments in eleven business sectors: gambling industry (except casinos), private security services, research and development or manufacture of means of fighting the illegal use of toxics, wiretapping and mail interception equipment, security of information technology systems and products, security of the information systems of companies managing critical infrastructure, dual-use items and technology, cryptology goods and services, companies dealing with classified information, research, development and sale of weapons, companies that have entered into supply contract with the French Ministry of
Defense regarding goods or services involving dual-use items and technology, cryptology goods and services, classified information or research, development and sale of weapons.

Gibson, Dunn & Crutcher's lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you usually work or the following lawyers in the firm's Paris office:

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