CROSS-BORDER M&A: COMPARISION TABLE

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
GENERAL	• In the United States, there are widely accepted "market" practices and a well-developed body of legal precedent and judicial determinations that provide both guidance and enhanced certainty for commonly negotiated legal and economic points on M&A transactions. • The general principle of freedom of contract in the United States is firmly established, and whether a particular transaction is more favorable to a seller or buyer largely is a function of relative leverage and general economic conditions. • In the United States, negotiations typically are based upon a non-binding letter of intent, which does not impose liability for its non-binding provisions. Implied covenants of good faith and fair dealing are very limited in comprehensively negotiated deals among sophisticated parties.	• While the relative leverage of buyers and sellers changes along with overall economic conditions, the UK generally is perceived as a seller-friendly market relative to other markets, in part because of the prevalent "locked box" mechanism, concepts of data room disclosure and other more seller-favorable "market" practice concepts as discussed below. • Underlying general principles of freedom of contract and caveat emptor (buyer beware) exist and there is no obligation on parties to negotiate in good faith. • As with the United States, negotiations typically are based upon a non-binding letter of intent, which does not impose liability for its non-binding provisions. In the UK, there is no implied concept of good faith and fair dealings.	• As with the UK, France generally is perceived as a seller-friendly market due to overall economic conditions, especially on the private equity market. • The general principle of freedom of contract in France is well established but is subject to the legal obligation to negotiate in good faith. • French law provides several protective measures in favor of the buyer (such as a general information obligation of the seller) that sophisticated parties often waive in the negotiated transaction documentation. • As with the United States and the UK, negotiations with the bidders typically are based upon a non-binding letter of intent.
AUCTION PROCESS / SALE PROCESS	• A competitive auction process is very common, but there also is an active market for non-competitive or "proprietary" transaction processes, especially for "add-on" or "bolt-on" transactions.	• As in the United States, a competitive auction is very common, but there also is an active market for non-competitive or "proprietary" transaction processes, especially for add-on or bolt-on transactions.	• A competitive auction is very common, but there is also an active market for non-competitive transactions. • In an auction sale process, it is common market practice to have vendor due diligence

McDermott Will & Emery

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	• It is uncommon for sellers to provide a comprehensive sell-side (or "vendor") diligence report. Instead, a buyer engages its own legal counsel and specialized third-party advisors (insurance, IT, tax, financial, environmental, etc.) to conduct a thorough diligence review and prepare due diligence reports. • Also in contrast to, for example, the UK, it is uncommon for sellers to obtain a sell-side or stapled representations and warranties insurance (RWI) policy in advance. Instead, bidders are responsible for determining if they want to procure RWI, the implications of RWI (or absence of it) on the terms of their offers and the allocation of costs. Buyers are also typically responsible for completing the underwriting process. • In a competitive auction process, a potential buyer typically will be required to submit a non-binding indication of interest on the basis of an initial diligence review and the seller will select a smaller group of potential bidders to invite to management meetings and conduct more fulsome diligence on the basis of those initial indications. • While it is not uncommon for a buyer to obtain exclusivity on the basis of a term sheet, competitive processes often request that bidders complete diligence and submit a proposed purchase agreement before considering exclusivity. In very competitive processes, a seller might not grant exclusivity	• On an auction sale process, it is common market practice for sellers to have vendor due diligence reports (VDDs) prepared upfront and made available to potential bidders. In some circumstances, stapled warranty and indemnity insurance policies (W&I, or, as more commonly known in the United States, RWI) will also be made available to potential bidders. Otherwise, a competitive auction process is similar to the United States.	reports (VDDs) prepared upfront and made available to potential bidders after the submission of the non-binding letter of intent. • Similar to the United States, it is uncommon for sellers to provide stapled or sell-side W&I in advance. Instead, bidders are responsible for determining if they want to procure W&I, and the implications of W&I (or absence of it) on the terms of their offers and the allocation of costs. • In an auction sale process, exclusivity is generally granted once the financing of the transaction is secured, the purchase agreement is negotiated and, when relevant, the management and the buyer have agreed upon a governance and rollover term-sheet. • As compared to the United States, the management of the target often plays a larger role in negotiating the transaction documentation and should be anticipated early in the process even when the transaction involves a financial sponsor. This is, in part, a function of labor requirements and consultation processes, which make negotiations with management more central to the process.

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	until the fully negotiated purchase agreement is signed (and then only on the basis of limited, negotiated closing conditions).		
TRANSFER TAXES	• There is no transfer (or "stamp") tax on transfers of shares of stock or transfers of limited liability company interests.	• 0.5% of the total consideration on share acquisitions, subject to certain exceptions (*e.g.,* transfers below £1000, intragroup transfers). It is market practice that these taxes be paid by the buyer.	• Depending on the legal form of the target, but for the most common legal form (*i.e.*, in France, the *société par actions simplifiée*, or SAS): 0.1% of the consideration on share acquisitions, subject to certain exceptions (*e.g.,* intragroup transfers); it is market practice that these taxes be paid by the buyer.
PRICING MECHANICS	• The locked box mechanism is utilized only in a small minority of deals and usually only where a European buyer is involved. • A typical transaction is structured with an agreed purchase price on a cash-free, debt-free basis, a baseline or "target" working capital level (which is a negotiated amount that typically is based on "normalized" working capital requirements) and a post-closing adjustment mechanism. Unlike the locked box mechanism, the seller retains economic risk for the period between signing and closing, and the purchase price is adjusted downward for any debt at closing, upward for any cash, and upward or downward for any excess or shortfall in working capital levels from the negotiated target level. • The adjustment process itself typically provides a buyer the opportunity to prepare its own financial statements within a short	• A locked box mechanism is used routinely in UK-style transactions, especially in competitive auction processes. In a locked box mechanism, the purchase price is agreed upfront on a debt-free, cash-free basis and utilizing a negotiated, adjusted working capital amount referenced in a balance sheet prepared as of the locked box date and determined on the basis of agreed, normalized working capital requirements. On the locked box date, economic risk passes to the buyer, and a negotiated ticker fee typically applies to increase the ultimate purchase price from the locked box date to the date of closing. Except for negotiated, permitted leakage items, no items of leakage to the sellers (or their connected persons) are permitted. Any such non-permitted leakage will typically be recoverable on a pound for pound basis from the seller.	• A locked box mechanism is generally used in the French private equity transaction. Similar to the approach in the UK, in a locked box mechanism, the purchase price is a fixed equity price, final and binding on the parties at closing, and such price shall not be subject to any adjustment whatsoever, except as provided under the leakage or ticking fees provisions. • In contrast to the private equity market, a purchase-price adjustment mechanism based on a post-closing true up is frequently used in M&A transactions involving corporate counterparts. In this mechanism, the purchase price is determined based on an enterprise value and net debt, resulting from the closing accounts. Similar to a customary US transaction, at closing, the purchaser pays an estimated purchase price to the sellers based on the estimated net debt and working capital at closing, and such price is subject to an

McDermott Will & Emery

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	period after closing, reflecting the buyer's determination of the applicable levels of debt, cash and working capital at closing. Disputes between sellers and buyers (that they cannot first resolve amongst themselves) as to the calculations of these items typically are referred to accounting firms for resolution. • A buyer typically will place a portion of the purchase price in escrow at closing to provide security for any downward adjustments.	• Purchase price adjustment based on a post-closing true up is less frequently used in UK transactions and is generally perceived as more buyer friendly.	adjustment (upward or downward) after closing, once the closing accounts have been prepared and agreed among the parties and the final net debt and working capital position has been determined.
RISK ALLOCATION: REPRESENTATIONS AND WARRANTIES	• The definitive transaction documents will contain comprehensive representations and warranties (terms that are used interchangeably in US transactions) regarding the target business, which serve a basis for overall risk allocation. • Representations and warranties are divided into two categories (with differing survival periods and risk allocation, as discussed below): fundamental representations (*e.g.,* those regarding title, authorization, corporate status and capitalization) and general representations (*e.g.,* those regarding financials, employment matters and material contracts). • A general representation that there is no materially misleading or omitted information (a so-called "10b-5" representation) is uncommon.	• In the UK, there is a legal distinction between "representations" and "warranties." Representations allow recission of contracts; as such, purchase agreements usually expressly state that warranties are not given as representations. • All sellers will give fundamental warranties (*e.g.,* title and capacity). Private equity sellers will typically not provide business warranties (*e.g.,* those regarding financials, employment matters and material contracts) or a tax indemnity (*e.g.,* relating to any tax liabilities of the target group for the period prior to closing). Instead, it would be common for these business warranties to be given by management shareholders of the target (though a W&I insurance policy is normally the buyer's most likely source of recourse).	• Like in the United States and the UK, the definitive transaction documents will contain comprehensive representations and warranties regarding the target business, which serve as a basis for overall risk allocation. • On the French market, the scope of the representations and warranties that are granted by the sellers depends on the nature of the transaction (financial sponsor versus corporate buyer). • In a typical private equity transaction, all sellers give only fundamental warranties (*e.g.,* title, capacity, group perimeter, absence of insolvency) and no business warranties (save for in some primary leveraged buyout, or LBO, transactions) are granted even if specific indemnities can also be given if a specific risk has been identified.

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	• Qualifications and exceptions to representations and warranties are either included in the representations and warranties themselves (*e.g.,* materiality or knowledge qualifications) or the disclosure schedules delivered at signing. General data room disclosures are exceedingly rare. • It is increasingly common in US transactions for a purchase agreement to contain express exclusions of any representations or warranties not specifically included in the purchase agreement itself (including in any financial projections or any information provided in data rooms) and to limit a buyer's recourse for so-called extracontractual remedies. • The negotiated representations and warranties, as qualified by the disclosure schedules, are often the subject of RWI. The RWI market in the United States is very well developed, and insurers will cover fairly extensive representations and warranties.	• Business warranties are not typically repeated, or "brought down," on closing (except where W&I policies are used to back the warranties). • The scope of warranties can be extensive, and a buyer will resist accepting materiality or knowledge qualifiers. • Warranties are given subject to general disclosures and specific disclosures (subject to certain limitations). Unlike in the United States, it is common for the data room to be generally disclosed. For a disclosure to be valid it must meet a contractual standard of "fair disclosure," *i.e.,* it must be disclosed in such a way that a reasonable buyer can make a reasonably informed assessment of the underlying issue. • Warranties and tax indemnity are not generally backed by an escrow; instead, a buyer is expected to purchase W&I insurance.	• In a typical M&A transaction, all sellers give fundamental and business warranties (financials, employment matters, material contracts, employment, real estate, IP, litigation, tax, etc.). • Business warranties are generally repeated, or "brought down," on closing. • The scope of warranties can be extensive, and a buyer will resist accepting materiality or knowledge qualifiers. • The schedules attached to the purchase agreement constitute exceptions to the sellers' representations and warranties. Similar to the United States, it is uncommon for the data room to be disclosed. In circumstance where data-room disclosure is used, it is on a "fair disclosure" standard. • The W&I market in less developed than in the United States or the UK, but such W&I are increasingly common, and insurers will cover fairly extensive representations and warranties as well as any specific identified risk. A W&I mechanism is mostly seen when the transaction involves a corporate buyer and a financial sponsor seller.
RISK ALLOCATION: RWI AND INDEMNIFICATION	• Traditionally, sellers were expected to provide indemnification for breaches of representations and warranties, breaches of covenants and for known risks allocated to sellers in negotiations (so-called "special indemnities" based on disclosures or pure	• Similar to the United States, in a UK transaction, negotiated indemnification obligations serve to allocate risk for breaches of warranties and covenants (subject to negotiated exceptions and limitations).	• Similar to the United States and the UK, in a French transaction, negotiated indemnification obligations serve to allocate risk for breaches of warranties and covenants (subject to negotiated exceptions and limitations).

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	risk allocation). At least one (or more) of these concepts is included in the vast majority of transactions. • In a competitive auction or for a particularly good asset, sellers often are able to obtain a "no indemnity" or "walk-away" deal where a buyer's recourse is limited only to available coverage under an RWI policy. • Financial thresholds: In the majority of transactions, a buyer will have post-closing recourse against the seller along the lines of the following financial thresholds: – Liability to sellers from "dollar one" for fundamental representations, often with a cap at total purchase price or the RWI retention amount – Liability to sellers for damages in excess of a deductible (typically 0.5–1.0% of enterprise value) for general representations, again with a cap at 10–15% of the purchase price or the RWI retention amount – No deductible or cap for fraud. • Survival periods: – Fundamental representations can survive indefinitely or for a negotiated period (six years or the statute of limitations are common). – General representations typically survive for between 12 to 18 months.	• Financial thresholds: – Liability cap for fundamental warranties capped at the consideration actually received – Liability cap for claims other than fundamental warranties between 20% and 30% of the consideration (although 10–20% on larger transactions) with tax at 100%; on competitive auction processes, however, can be capped at £1 on the basis that the buyer will recover against W&I insurance (known as a nil-recourse transaction/ policy) – Claims are subject to individual *de minimis* thresholds (usually 0.1% of the consideration) and a basket (1% of the consideration) – No deductible or cap for fraud. • Survival periods: – Business warranties (excluding tax warranties) survive for between 12 to 18 months. – Tax claims survive for seven years (albeit in a competitive process, it can be as short as four years). • Where the buyer is utilizing W&I insurance, it is possible to obtain policy enhancements. These include:	• A loss resulting from a breach of the representations and warranties is considered as a price reduction of the shares. There is no specific tax covenant (save for specific tax risk which could have been identified during the due diligence process). • Financial thresholds: – Liability cap for fundamental warranties capped at the consideration actually received – Liability cap for claims other than fundamental warranties between 10 and 20% of the consideration (including tax); t is, however, common for the seller and the buyer to discuss the absence of a liability cap for tax and labor claims – Claims are subject to individual *de minimis* thresholds (usually 0.1% of the consideration) and a basket (1% of the consideration) – No deductible or cap for fraud or willful misconduct. • Survival periods: – Fundamental warranties survive through the statute of limitations (which can be limited to 18–24 months in a competitive auction process).

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	– In an RWI transaction that provides recourse against the seller, both the fundamental representations and general representations typically survive for 12 months. • Other risk allocation nuances: – *De minimis* claims thresholds or "mini-baskets"—a minimum claim threshold to limit "nuisance" claims and/or to serve as a proxy for a materiality threshold where a "double-scrape" is used. ▪ Materiality "scrapes"—a separate provision that disregards materiality qualifications in the representations and warranties for the purpose of indemnification or RWI coverage (irrespective of the inclusion of these qualifiers in the representations). A "single scrape" disregards materiality qualifications for the purposes of determining any damages, whereas a double scrape disregards materiality qualifications both for the purposes of determining damages and for determining whether a representation was breached in the first instance. • "Sandbagging": The right of a buyer to obtain indemnification coverage for breaches of representations that the buyer knows about before signing. Pro-sandbagging provisions	– *Knowledge scrape*, which effectively removes any knowledge qualifiers in the warranties. – *Materiality scrape*, which effectively removes any materiality qualifiers in the warranties. – *Extension of limitation periods*, which extend the warranty limitation period beyond that set out in the definitive transaction documents. • In the UK, a seller will seek to restrict a buyer's ability to claim for a breach of warranty where the buyer has knowledge of a matter resulting from a breach (*i.e.*, anti-sandbagging). Knowledge is usually limited to the actual knowledge of a subset of specific deal team individuals.	– Business warranties, and labor and tax, survive through the statute of limitations. – Other business warranties survive between 12 and 36 months. • Where W&I insurance is subscribed by the buyer, the liability of the seller tends to be capped at €1 on the basis that the buyer will recover against the insurer. • As in the UK, a seller will seek to restrict a buyer's ability to claim for a breach of warranty where the buyer has knowledge of a matter resulting from a breach. Knowledge is usually limited to the actual knowledge of a subset of specific deal team individuals.

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	are not uncommon in US transactions (granting a buyer the express right to pursue recourse for breaches or inaccuracies known prior to closing), but the majority of transactions are silent. US courts permit varying degrees of sandbagging.		
RISK ALLOCATION: ESCROWS AND HOLDBACKS	• The use of escrows (both as security for indemnification obligations and for purchase price adjustments) is common. • A typical indemnity escrow for an RWI transaction is 0.5% of the purchase price, and a typical indemnity escrow for a transaction without RWI is 10% of the purchase price. • The amount of an adjustment escrow is more transaction-specific, often negotiated to cover reasonably anticipated fluctuations in working capital and some additional coverage for potential inaccuracies in the financial statements.	• Escrows are uncommon in the UK except where negotiated on specific, known liabilities. Instead, there is a prevalence of W&I policies, in particular on private equity deals.	• When business warranties are granted, the following buyer protective mechanisms are common: – Escrow of a portion of the purchase price that is released gradually (*e.g.* over a three-year period) – Holdback (a portion of the purchase price that is not paid at closing) – First demand guarantee provided by a financial institution.
DEPOSITS; FINANCING	• A deposit is not common in US transactions. • Sellers typically will require assurance as to "certain funds," which typically comprise debt and equity components, with the following deliveries at signing: – Equity commitment letters—issued by the applicable private equity fund or funds committing to provide the applicable portion of the purchase price and transaction fees at closing	• A deposit is not common in UK transactions. • Deals are typically done on a "certain funds" basis, with no financing conditions (and buyer takes the risk of a financing failure). As in the United States, on private equity transactions the seller will want assurance as to certain funds, and the buyer will be expected to deliver European-style equity commitment letters and debt commitment letters at signing.	• A deposit is not common in French transactions. • Deals are typically done on a "certain funds" basis, with no financing conditions (and buyer takes the risk of a financing failure). Similar to the United States and the UK, sellers will typically require both equity commitment letters and debt commitment papers.

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	– Debt commitment letters—commitments from the lenders, subject to limited conditionality, to lend the desired debt amount, which ultimately is taken out by the target at closing and secured by the acquired assets. • Firm Guarantee: A guarantee by the applicable financial sponsor to pay a reverse termination fee (as the seller's sole recourse) if the buyer cannot close.		
CLOSING CONDITIONS	• A US transaction typically will include the following closing conditions: – The receipt of any required regulatory approvals (e.g., antitrust, CFIUS) or the expiration of applicable waiting periods. – The transaction is not then enjoined or prohibited by law. – The representations and warranties are accurate (as of the closing date) to a negotiated standard. – The parties have performed applicable covenants in all material respects. – There has not been a material adverse. – The transaction closed before a specified end date. • In a competitive process, where a buyer otherwise desires to provide additional	• In the UK, there is a focus on deal certainty in transactions. Therefore, conditions are typically limited to mandatory and suspensory antitrust filings and regulatory approvals. • In a competitive process, the buyer is expected to underwrite risk (e.g., agree to a "hell or high" water undertaking). • The inclusion of a material adverse changes clause is heavily resisted. • As in the United States, where there are condition precedents to closing (and therefore a gap between signing and closing), the seller will generally covenant to carry on business in the ordinary course through interim conduct undertakings.	• As in the UK, there is a focus on deal certainty in transactions. • A French transaction typically will include the following closing conditions: – Antitrust clearance (if applicable) or other regulatory clearances (such as foreign direct investment, or FDI, clearance) – In a deal with a financial sponsor, rollover of a portion of the equity of management. • The inclusion of a material adverse changes clause is not common. A French purchase agreement also typically will carve out French law provisions that protect the buyer from unforeseen circumstances and acts of god. • Where there are condition precedents to closing, the seller will generally covenant to

McDermott Will & Emery

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	certainty as to closing, a purchase agreement can include the following: – A "hell or highwater" obligation to obtain necessary regulatory approvals (including agreeing in advance to accept structural remedies, including divestiture obligations) – An "materially adverse effect (MAE) bringdown standard" where the buyer agrees to close unless a breach of the representations and warranties would reasonably be expected to result in an MAE • Reverse termination fees and expense reimbursement obligations. • Private equity deals are typically structured such that if all closing conditions are satisfied and the debt financing is available, a seller has the right to force a buyer to close and obligate the sponsor to draw down on its debt financing commitment; if the debt financing is not available, the seller receives a reverse termination fee as its exclusive remedy. • Where there are condition precedents to closing (and therefore a gap between signing and closing), a buyer would have the benefit of a full suite of interim conduct undertakings and can sue sellers if breached.		carry on business in the ordinary course through interim conduct undertakings.

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
POST-CLOSING RESTRICTIONS	• Post-closing restrictions (e.g., non-compete and non-solicit) often are provided by sellers and owners. • Common non-compete restrictions are no greater than five years. • Common non-solicit/no-hire restrictions are no greater than two to three years.	• Post-closing restrictions (e.g., non-compete and non-solicit) often are provided by sellers (other than institutional sellers). Institutional sellers may agree to non-solicitation of employees or key management (subject to customary exclusions). • Unreasonable restraints of trade are void and what is reasonable depends on the length, operational scope and geographic breadth of the relevant restriction. Commonly, post-closing restrictions are between one and two years.	• As in the UK, post-closing restrictions (*e.g.*, non-compete and non-solicit) often are provided by sellers (other than institutional sellers). Institutional sellers may agree to a non-solicitation of employees or key management (subject to customary exclusions). • Common non-compete restrictions are no greater than five years. • Common non-solicit/no-hire restrictions are no greater than two years.
REGULATORY	**ANTITRUST** • Generally, an antitrust filing will be required for transactions involving more than $111.4 million in value (2023 threshold, revised annually). Where an antitrust filing is required, the transaction will be subject to a 30-day waiting period, during which the applicable agency may contact the parties and request business documents and data or call customers and other industry stakeholders. If the 30-day waiting period expires without the issuance of a formal "second request," then antitrust approval is no longer an impediment to closing.	**ANTITRUST** • Generally (subject to exceptions), an antitrust filing will be required in the UK if (i) the target had UK turnover of GBP70 million or more in the prior financial year or (ii) the transaction will result in the creation of, or an increase in, a 25% share of supply (or purchases) of a given good or service in the UK (or a substantial part of it). • The Competition and Markets Authority (CMA) has the power to carry out an initial "Phase I" investigation into the transaction. Where it believes a transaction could give rise to a substantial lessening of competition in the UK, it has a duty to refer the merger to a detailed "Phase II" investigation.	**ANTITRUST** • Generally, an antitrust filing will be required (subject to exceptions) where (i) the total worldwide turnover of all the undertakings is greater than €150 million and (ii) the total turnover in France by at least two of the undertakings is greater than €50 million. Where an antitrust filing is required, the French Competition Authority (FCA) has 25 working days from the receipt of the complete notification (with an extension of 15 working days if the parties offer commitments) to decide whether it (i) approves the transaction (with or without commitments) or (ii) opens an in-depth review period (Phase II) where the FCA is allowed 65 more days (with an extension of 20 working days if the parties offer commitments 20 days before the expiration

McDermott Will & Emery

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
	FOREIGN DIRECT INVESTMENT (FDI) FILINGS • In the United States, the Committee on Foreign Investment in the United States (CFIUS) has authority to review "covered transactions" to find and address US national security implications: o Notifications to and reviews by CFIUS are *mandatory* for covered transactions where the US business has "critical technology" or where a foreign government has a substantial interest. o Even where a notification is not mandatory, CFIUS has authority to initiate a review and parties may elect to submit voluntary notifications. o See the recent CFIUS-related article published by McDermott: https://www.mwe.com/insights/president-biden-signs-executive-order-directing-cfius-to-focus-on-specific-national-security-risks/	• Generally, the CMA is required to complete its Phase I investigation within 40 working days of notification. • Where a Phase II investigation is opened, the CMA must publish its report within 24 weeks from the date of reference for a Phase II investigation, subject to possible extensions. If the CMA requires remedies as a condition for clearance, it will have an additional period of 12 weeks (which can be extended by six weeks) to accept any remedies. **FOREIGN DIRECT INVESTMENT (FDI) FILINGS** • Under the National Security and Investment Act 2021 (the NSI Act), parties to transactions involving high-risk sectors will be required on a mandatory basis to notify and obtain approval from the Department of Business, Energy & Industrial Strategy (BEIS) prior to completing a qualifying transaction. There are 17 high-risk sectors which, as well as obvious sectors such as defence and energy, also include sectors such as advanced robotics and quantum technologies. • Parties to a transaction involving a sector that is not considered high-risk will have the option of notifying BEIS on a voluntary basis if they believe that the transaction may raise national security concerns. Further, BEIS can also elect to call in and review a transactions on a unilateral basis.	of the Phase II period) to investigate the transaction and issue its decision. **FOREIGN DIRECT INVESTMENT (FDI) FILINGS** • The FDI regime requires the prior authorization of the Ministry of the Economy for foreign investment in French companies carrying out certain sensitive activities. Among the activities deemed sensitive within the meaning of the FDI regime are activities related to goods, services and infrastructure essential to the guarantee of the protection of national security and public order. • In terms of timing, upon reception of the application, an initial 30-business day review phase begins, at the end of which the Ministry of the Economy (Treasury Directorate) informs the investor either (i) that the transaction does not require prior authorization, (ii) that the transaction is unconditionally authorized or (iii) that further review is required. Lack of response within this 30-business day period means that the prior approval is not granted. When an in-depth review phase is opened, the Treasury Directorate has *45 business days* (starting from the opening of the in-depth phase) to issue its final decision. In the absence of a response within this period, the authorization is not granted. Overall, it could take around seven to eight weeks to obtain a decision. • Non-compliance with foreign investment regulations (*i.e.*, completion of the

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
		• The NSI Act introduces a statutory review timetable under which BEIS generally has up to 105 working days to review a transaction. • BEIS must carry out an initial review within 30 working days, after which they will either clear the transaction or call it in for a full national security assessment. Generally, a full assessment will be carried out within a further 30 working days. • Once BEIS has fully assessed the transaction, it may impose conditions on clearance or may block completion of the transaction. If a transaction has been completed, the BEIS may require that it be divested or unwound. • Non-compliance may result in fines of up to 5% of worldwide turnover or GBP10 million (whichever is greater); criminal penalties may also be incurred. Transactions subject to mandatory notification that take place without clearance will also be deemed legally void.	investment without the prior authorization) may lead to exposure to criminal, administrative and civil sanctions.
OTHER CONSIDERATIONS			• In contrast to the United States and the UK, the French private equity/M&A market includes some particular labor-law aspects. In particular, a target's social and economic committee (*comité social économique*, or CSE) must be consulted and informed of the transaction (*procedure d'information-consultation*) ***prior to execution*** of the purchase agreement. In this respect, information regarding the transaction

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
			(without details on the price of the transaction) must be provided to the CSE. This procedure can last up to one month (and up to two months in the event the cse appoints an expert). In practice, it can be shorter, particularly when the CSE gives its opinion following the first meeting. • French law also imposes an obligation to inform the employees of the target (only to the extent they are directly employed by target) in case of a sale by one shareholder of more than 50% of the share capital in companies with less than 250 employees. All employees of the target must be informed of the intent of the shareholders to sell (without any need to reveal extensive details as to the contemplated transaction or the identity of the buyer) and their right to make a purchase offer (which the seller may reject). • In contrast to the United States and the UK, transactions in France often are structured using an irrevocable offer or undertaking arrangement. In this structure, a buyer provides an irrevocable offer or undertaking to acquire the target in advance of the *information-consultation* of the CSE that provides the seller a put option. The put option is granted prior to signing the definitive purchase agreement, but is subject to an agreed form of the purchase agreement

TOPIC	UNITED STATES	UNITED KINGDOM	FRANCE
			and any other transactional documentation attached to the offer undertaking (such as an equity commitment letter, debt commitment papers or management term sheet). As a consequence, the purchaser is obligated to proceed with the transaction on the negotiated terms upon the seller's exercise of the put right, but the seller is not bound to proceed with the sale until the works council is completed and the put option has been exercised. Buyers often are provided an exclusivity period on the basis of the offer/undertaking, but it is not market practice for the buyer to ask for a break-up fee.