



CONTROL OF FOREIGN INVESTMENTS IN FRANCE:

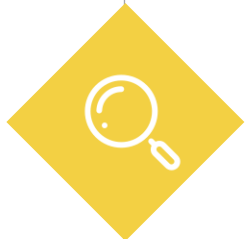
WHAT IMPACT ON LICENSING AND TECHNOLOGY TRANSFER?

September 18, 2024

GIDE
GIDE LOYRETTE NOUËL



Navigating the French FDI control: figures and trends



Main characteristics of the FDI regulations: criteria



Main characteristics of the FDI regulations: procedure & sanctions



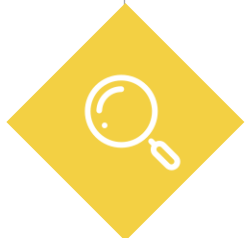
Impact on licensing and ToT - case study



Q&A



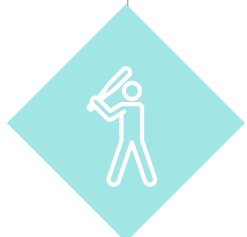
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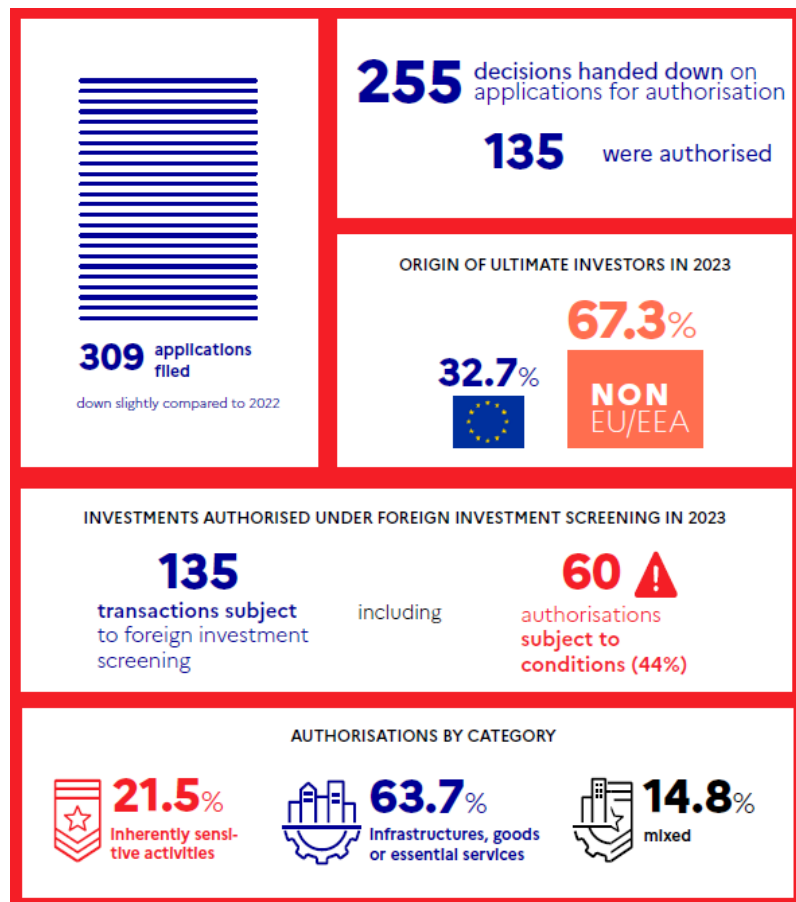


Q&A

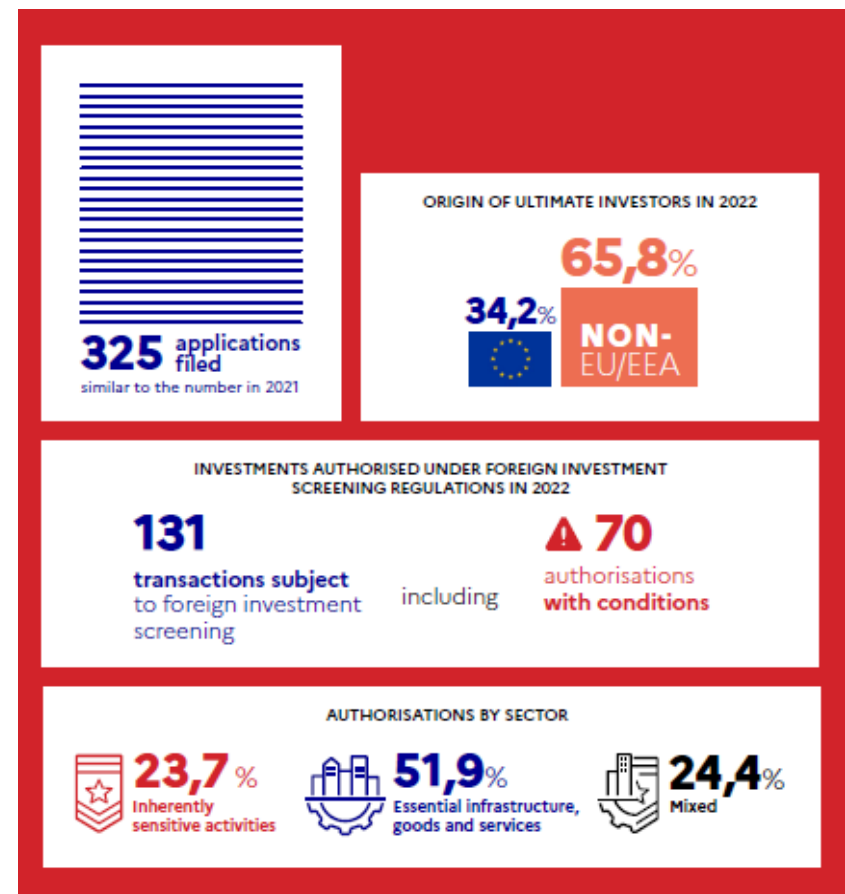
1. FIGURES & TRENDS

In 2023, France remain the most attractive country in Europe for foreign investments (5th year running).

◆ 2023 Key Figures

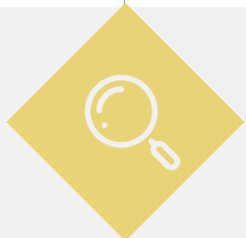


◆ 2022 Key Figures





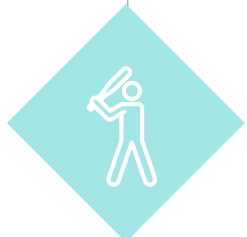
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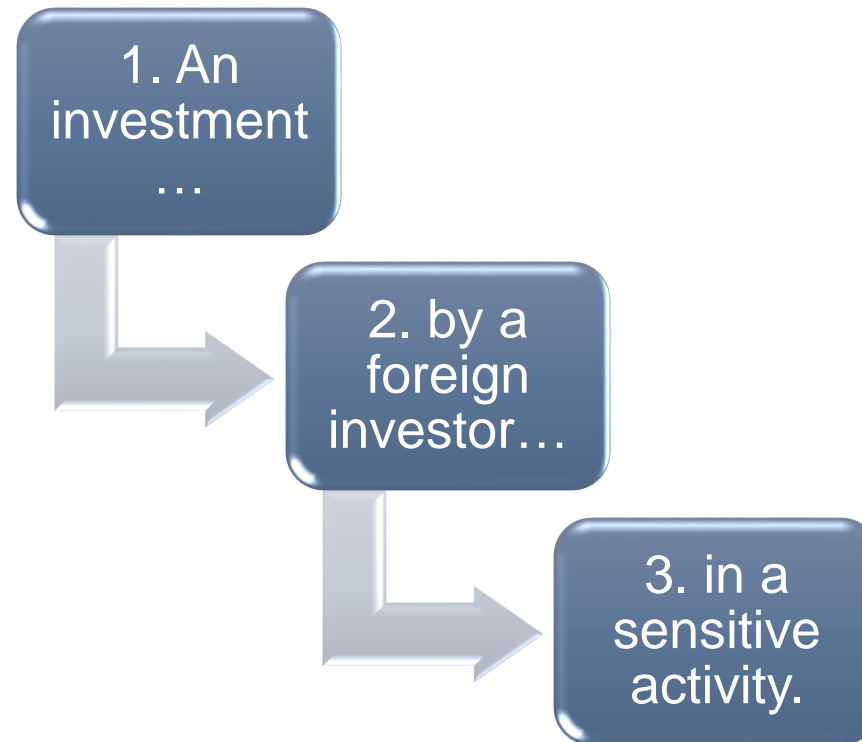
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Q&A

2. CRITERIA

Three main and cumulative criteria:



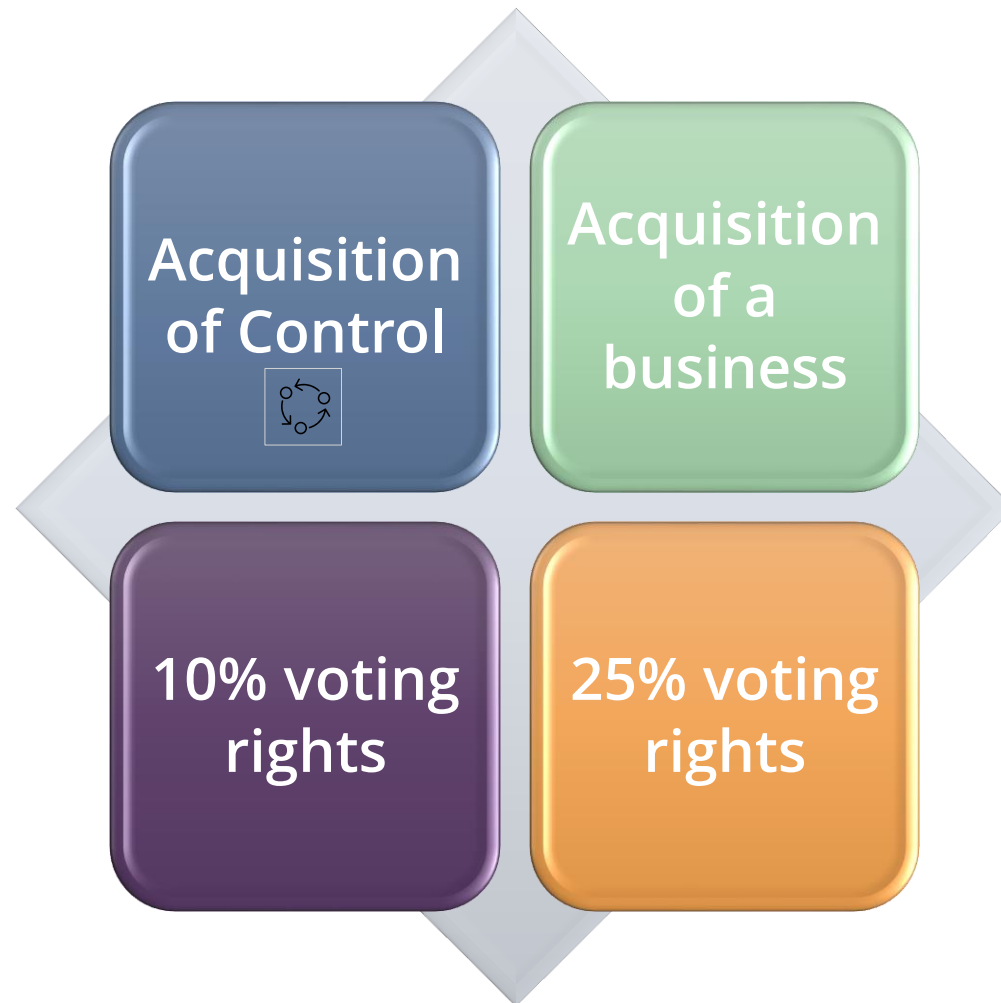
Art. L. 151-3 and seq. & R.151-1 and seq. French financial and monetary code:

« *foreign investment in an activity in France which, even on an occasional basis, participates in the exercise of public authority or (...) likely to undermine public order, public security or the interests of national defence or (...) relates to the research, production or marketing of weapons, ammunition, powder and explosive substances.* »

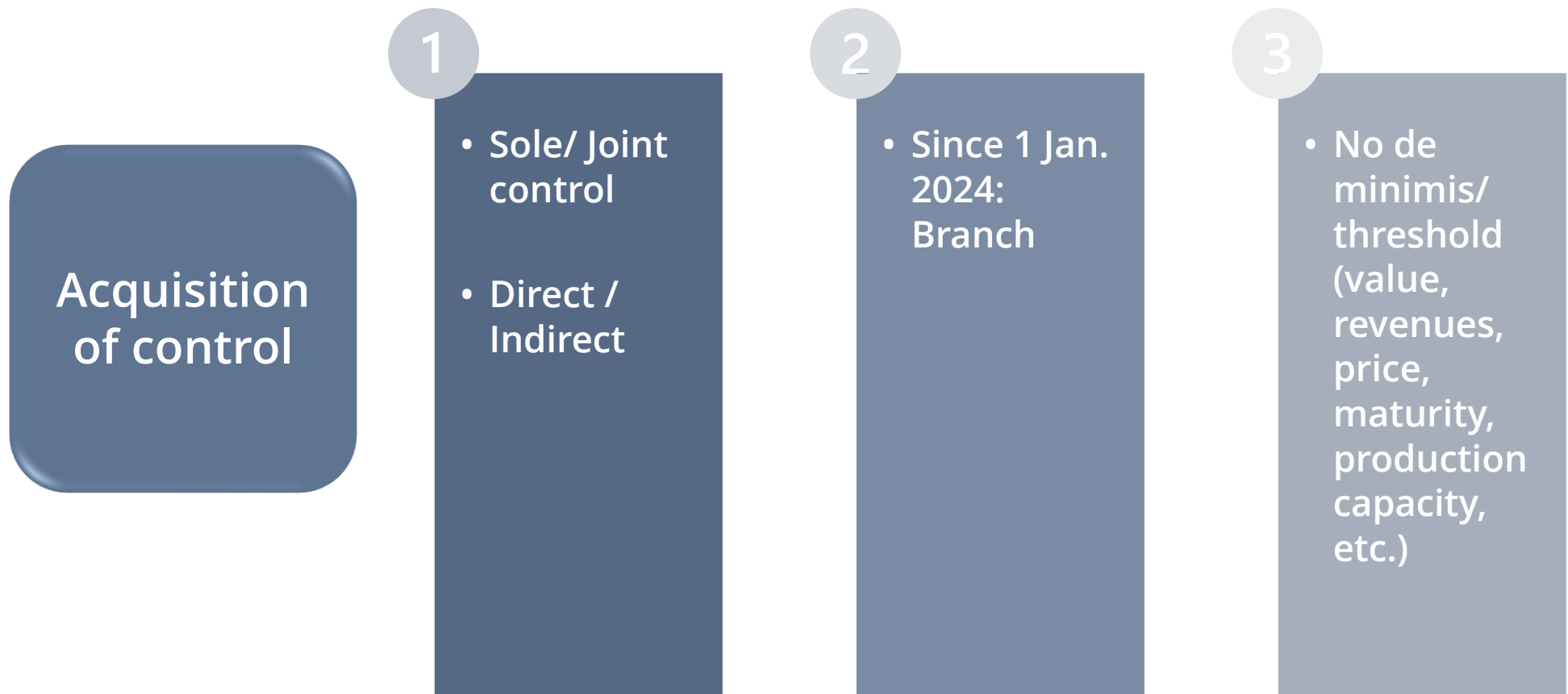
2. CRITERIA # 1: AN INVESTMENT



Criterion 1
An investment



2. CRITERIA # 1: AN INVESTMENT



2. CRITERIA # 1: AN INVESTMENT

Voting Rights

1

- Target NOT listed:

✓ 25% of the voting rights

2

- Target listed on a regulated market:

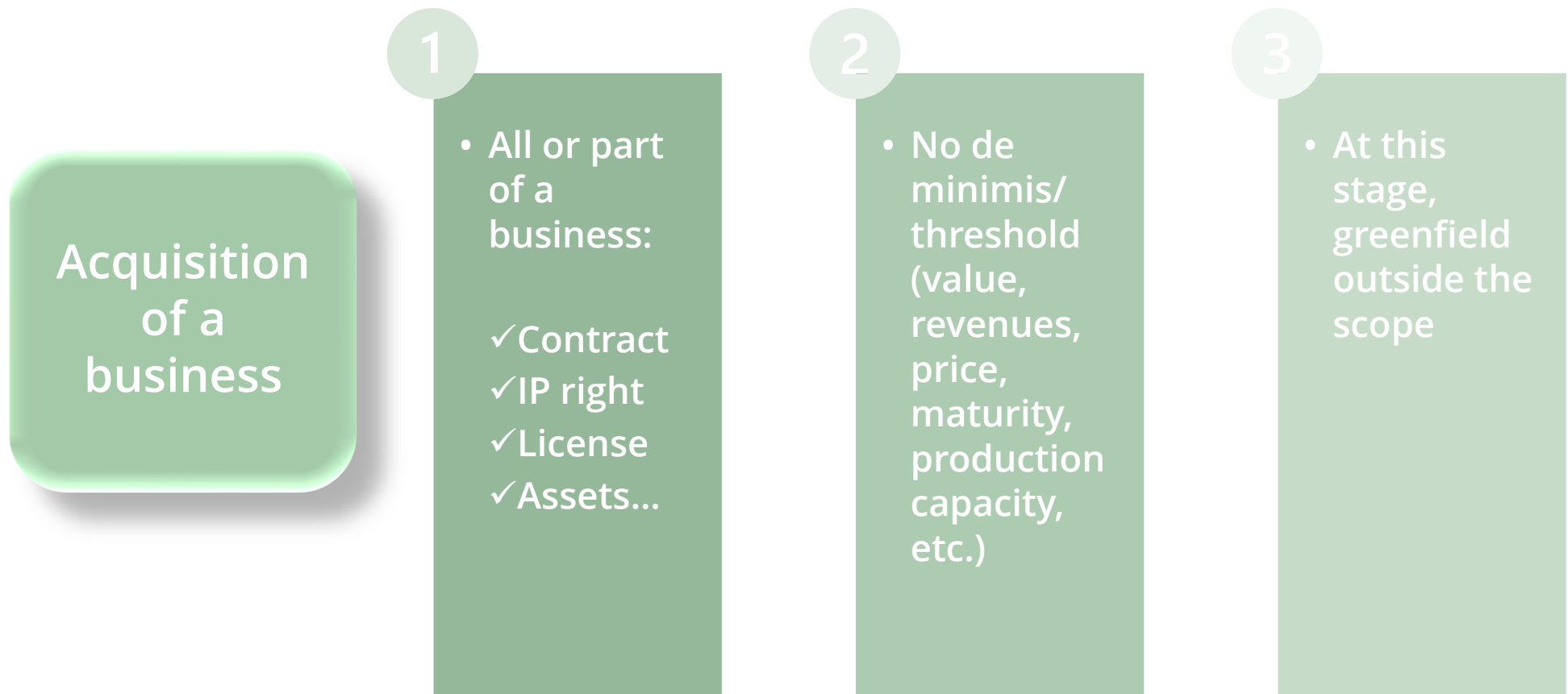
✓ 10% of the voting rights

3

- Only the voting rights existing at Completion

- Future voting rights (Warrants, convertible bonds, etc.) not included

2. CRITERIA # 1: AN INVESTMENT



2. CRITERIA # 2: A FOREIGN INVESTOR



Criterion 2

A foreign Investor

1

- Non-French Person
- Non-French Entity
- FR controlled* by Non-FR

2

- EU / non-EU: in most cases, no difference
- Except for 10% & 25% thresholds

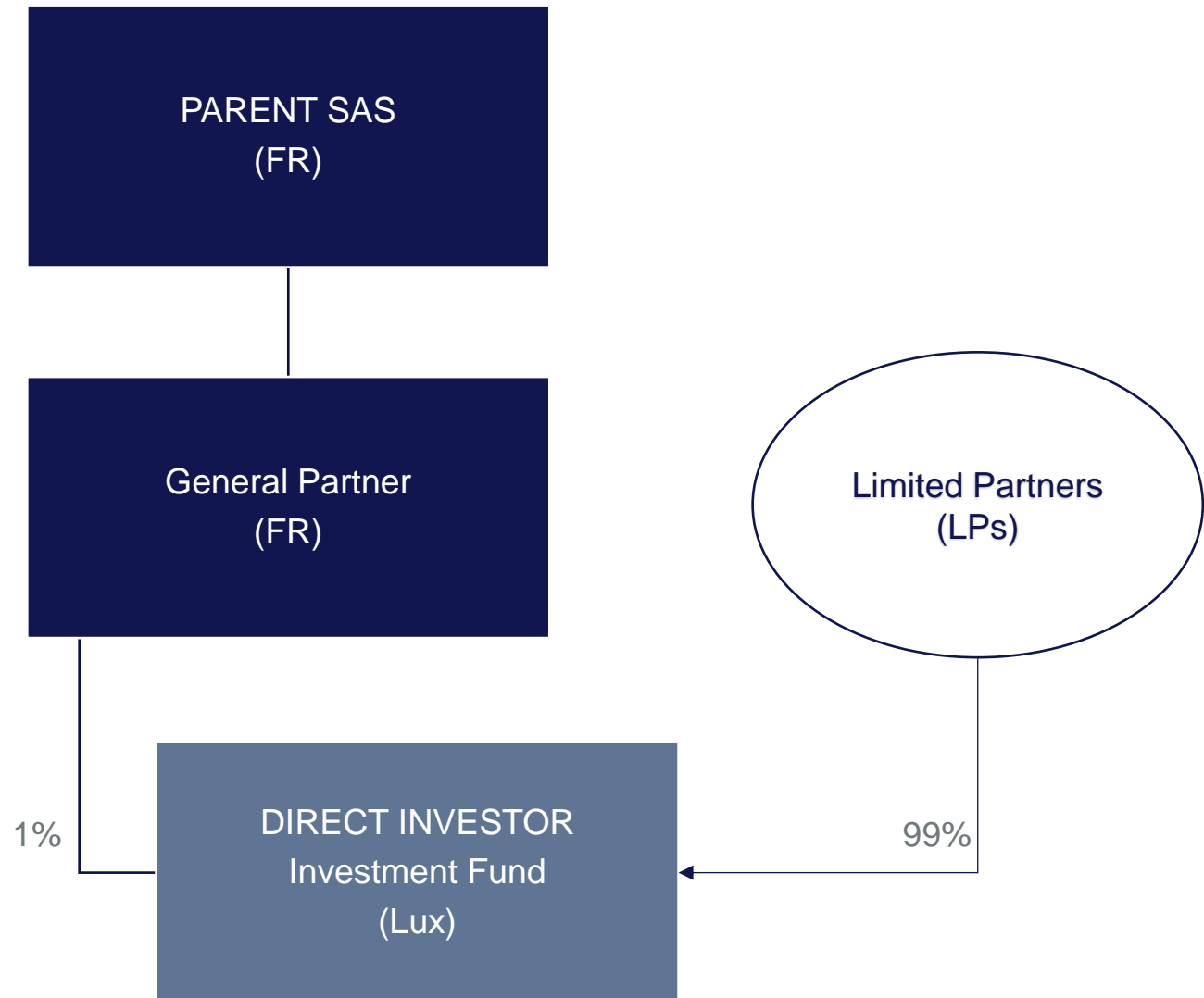
3

- Chain of control: Screening of the entire chain of control (UBO)
- One non-French element in the chain = foreign

**: « Control » means the holding of majority of shares or voting rights; alternatively, means the exercise of a decisive influence*

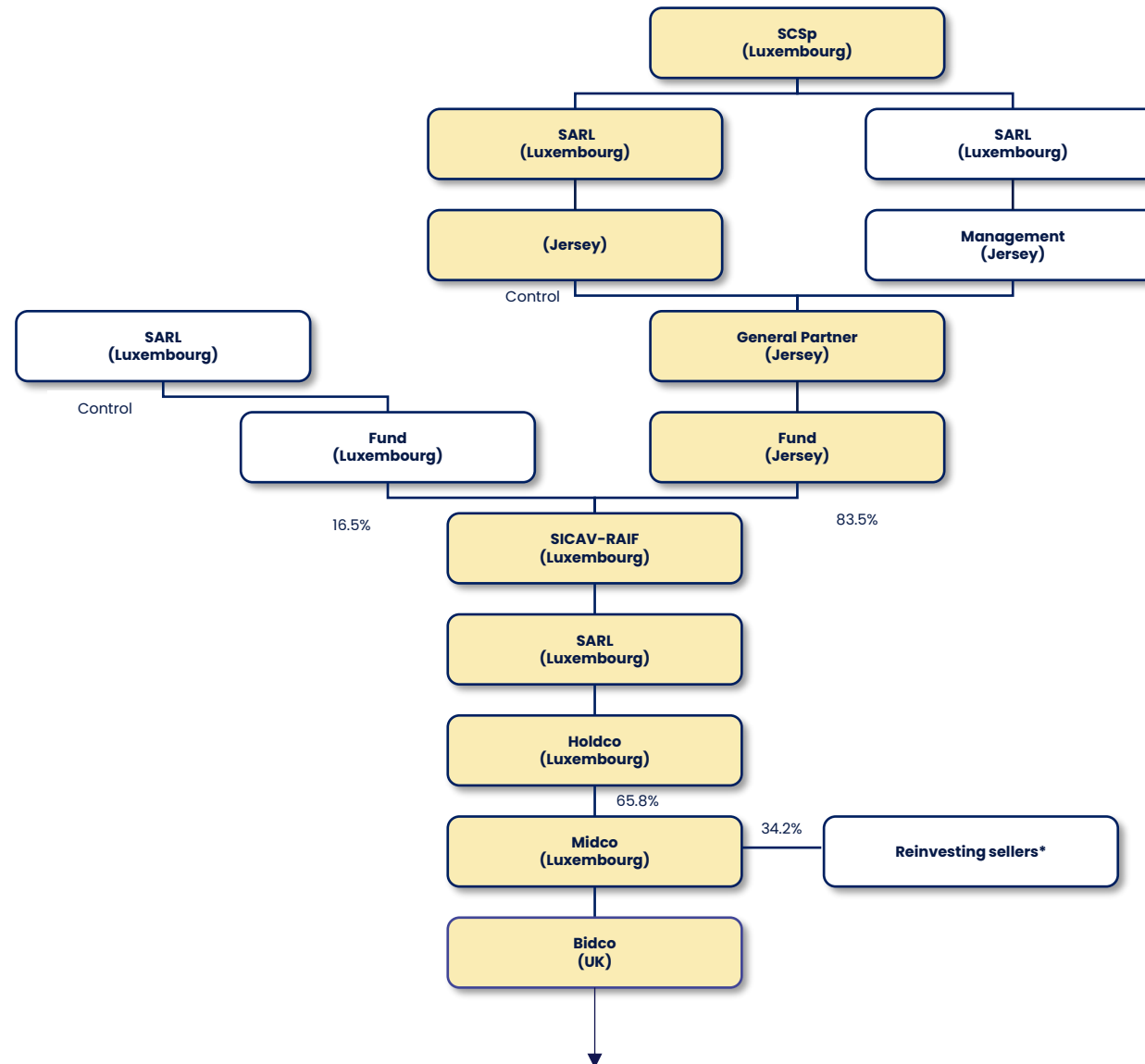
2. CRITERIA # 2: A FOREIGN INVESTOR

Example 1: Chain of control of a Fund



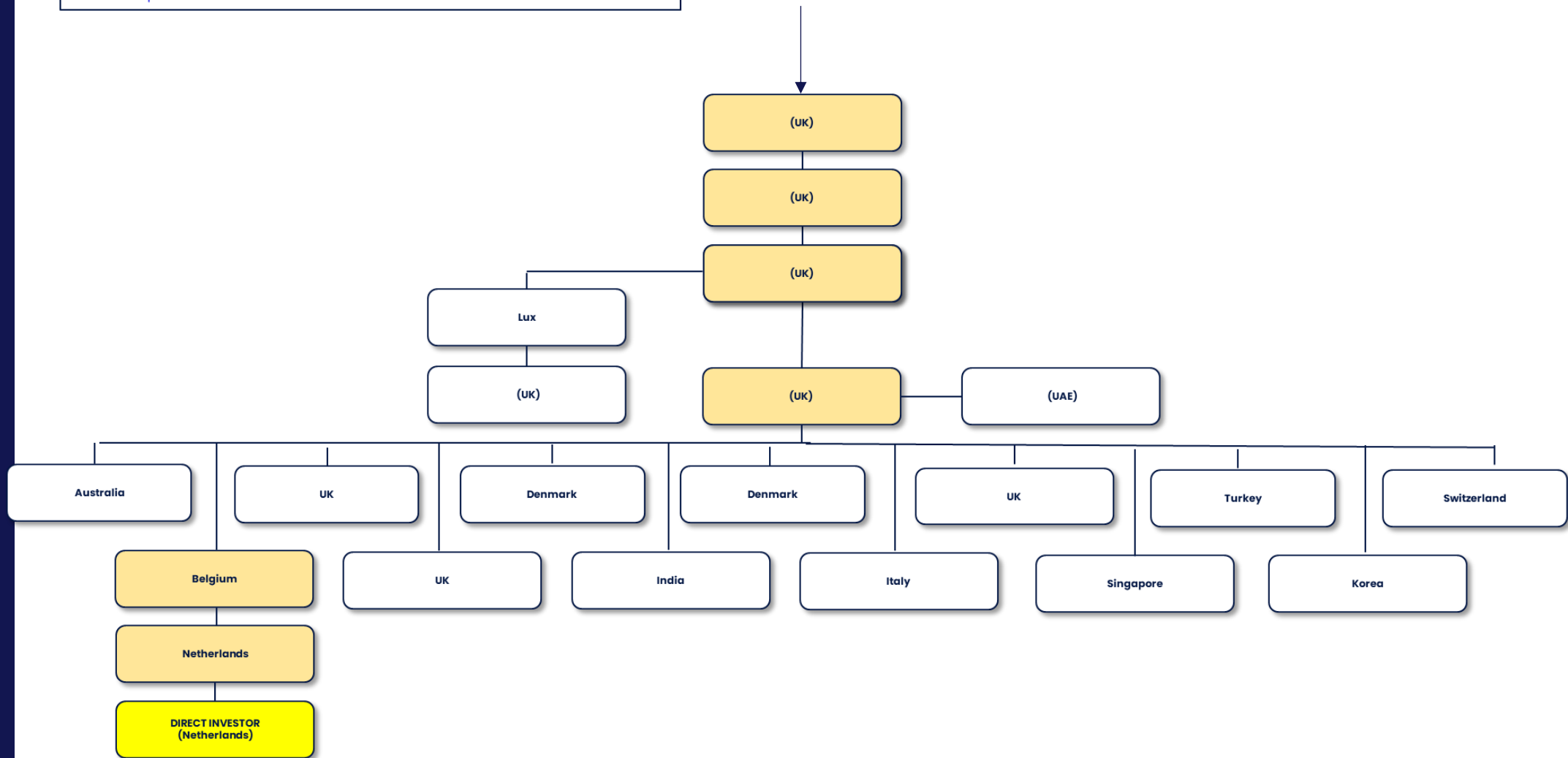
2. CRITERIA # 2: A FOREIGN INVESTOR

Example 2: Pharma group



2. CRITERIA # 2: A FOREIGN INVESTOR

All ownerships are 100% unless otherwise stated



3. CRITERIA # 3: A SENSITIVE ACTIVITY



Criteria 3

A sensitive
Activity

Defence &
Sovereignty



Critical
Infrastructures



Critical
Technologies



3. CRITERIA # 3: A SENSITIVE ACTIVITY



Defence &
Sovereignty

1. Weapons, ammunitions, gunpowder and explosive substances, warfare materials and assimilated items;
2. Dual-use items and technology;
3. Classified information;
4. Security of the information systems exercised, including as a sub-contractor, to the benefit of an Operator / Facility of Vital Importance (OIV);
5. Activities operated by companies that have entered into a contract, whether directly or as a subcontractor, with the French Defence Ministry;
6. Cryptology goods and services;
7. Interception of correspondences or capture of electronic data;
8. Entities licensed to assess and certify the security of information technology systems;
9. Gambling, except for casinos;
10. Pathogens or toxic agents and substances or prevention of the adverse health-related consequences of such use;
11. Processing, the transmission or the storage of sensitive data.

3. CRITERIA # 3: A SENSITIVE ACTIVITY



Critical Infrastructures

1. The integrity, security and continuity of the supply of energy;
2. The integrity, security and continuity of the supply of water;
3. The integrity, security and continuity of the operation of transport services and networks;
4. The integrity, security and continuity of the space operations;
5. The integrity, security and continuity of the operation of services and networks for electronic communications;
6. The operation of the missions of the national police, national gendarmerie, civilian security services, the security of prisons, public safety, customs and by the accredited private security entities;
7. The integrity, security and continuity of the operation of OIV;
8. The protection of public health;
9. The production, transformation and distribution of agricultural products;
10. Editing, printing, distribution of political and general information print and online press services;
11. The integrity, security and continuity of the extraction, transformation and recycling of critical raw materials.

3. CRITERIA # 3: A SENSITIVE ACTIVITY



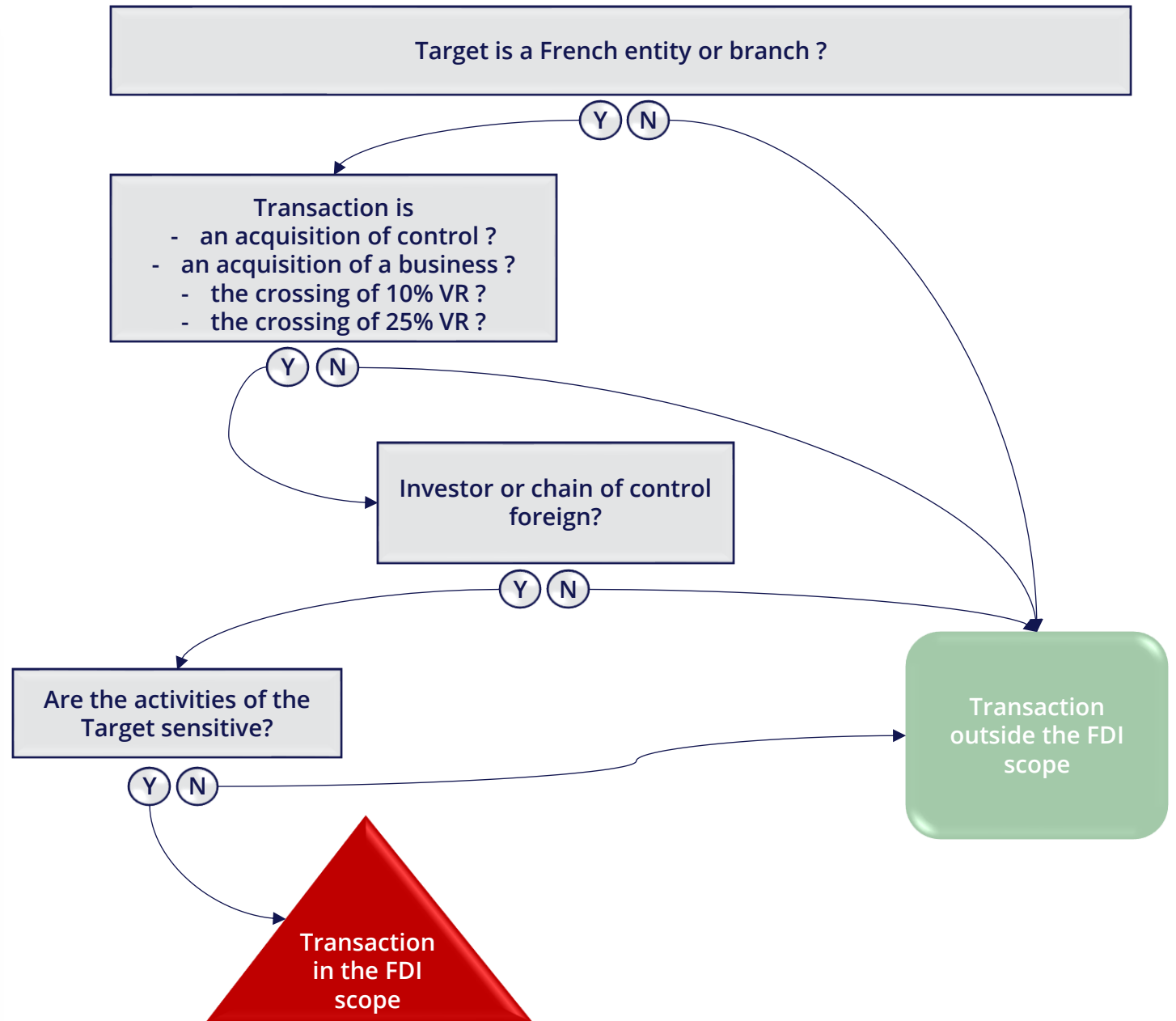
Critical Technologies

1. The activities of research and development related to the following critical technologies:
 - Cybersecurity;
 - Artificial intelligence;
 - Robotics;
 - Additive manufacturing;
 - Semiconductors;
 - Quantum technologies;
 - Energy storage
 - Biotechnologies;
 - Technologies involved in the production of low-carbon energy;
 - Photonic.
2. The activities of research and development related to dual-use items and technology listed in Annex I of Parliament Regulation (EC) N° 2021/821 of May 20, 2021.

NAVIGATING THE FOREIGN DIRECT INVESTMENT REGULATIONS IN FRANCE

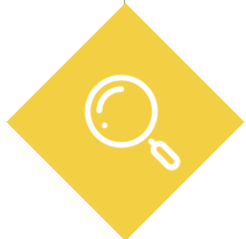


Test your knowledge





Navigating the French FDI control: figures and trends



Main characteristics of the FDI regulations: criteria



Main characteristics of the FDI regulations: procedure & sanctions



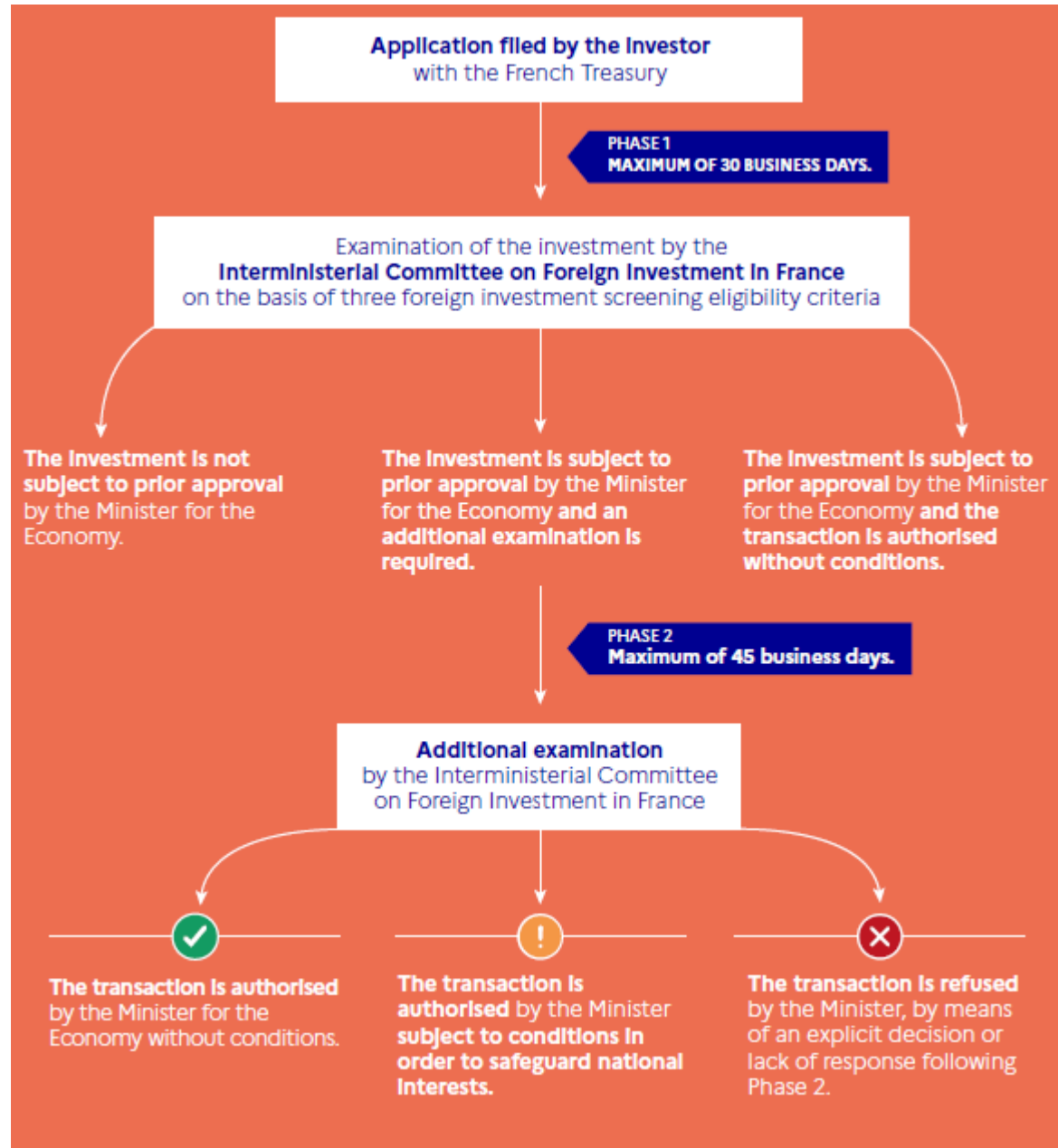
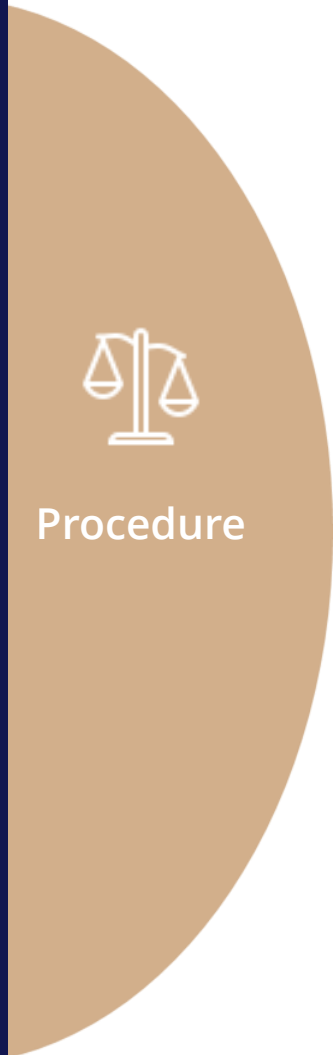
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Q&A

3. PROCEDURES AND SANCTIONS

FORMAL FILING



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FORMAL FILING

Possible Commitments

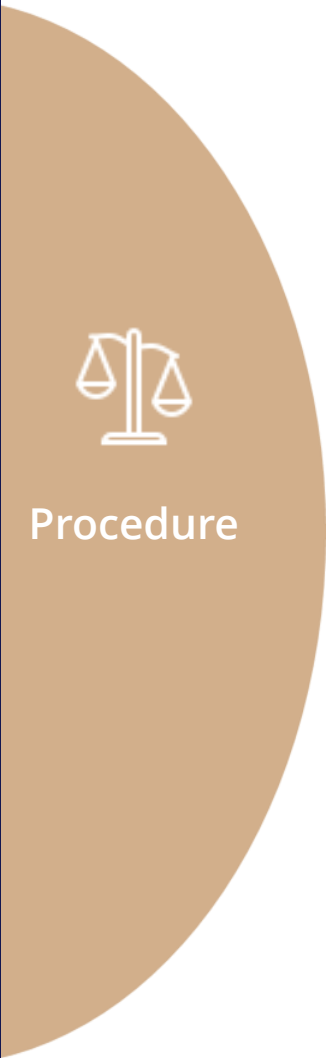
- Ca. 50% of clearances (53% in 2022 and 44% in 2023)
- Ensuring continuity and security of French interests and sensitive information
- Maintain knowledge and know-how in France, prevent capture of technologies
- Divesting, carve-out a business
- Adapt Target's governance
- Regular reporting obligation



Procedure

3. PROCEDURES AND SANCTIONS

SANCTIONS



3. PROCEDURES AND SANCTIONS

SANCTIONS

Possible Sanctions

- Nullity of the transaction
- Regularization of a filing
- Financial sanctions (2x transaction value; 10% French target turnover; 5m EUR)
- Political sanctions (suspension of voting rights; appointment of a representative, etc.)
- Criminal sanctions (up to 5 yr imprisonment; exclusion from public procurement, etc.)



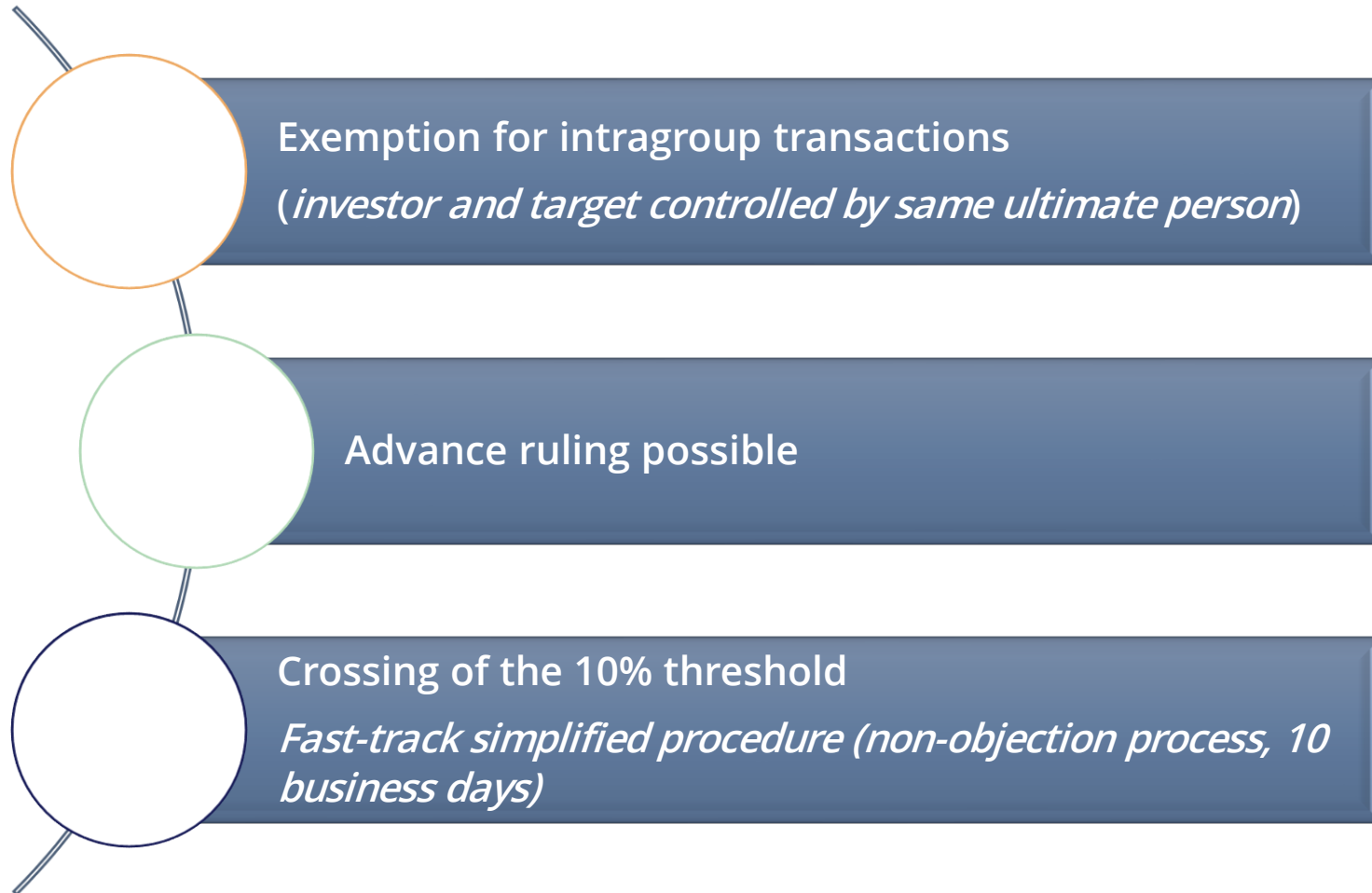
Procedure

3. PROCEDURES AND SANCTIONS

OTHER ASPECTS

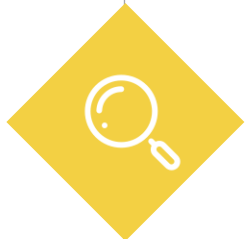


Procedure





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4. IMPACT OF FDI ON LICENSING AND ToT: CASE STUDY

Definitions

Licensing

- Licensing is a contractual arrangement that allows one party (the licensor) to grant another party (the licensee) certain rights to use, exploit, or manage their intellectual property assets.
- Licensing can serve several purposes:
 - ✓ Commercialisation
 - ✓ Market Expansion
 - ✓ Risk Mitigation
 - ✓ Innovation, etc.
- Licensing can take several form:
 - ✓ Exclusive
 - ✓ Non-exclusive
 - ✓ Sole license

Transfer of Technology

- Technology transfer (TT) is a collaborative process that allows findings, knowledge and intellectual property to flow from creators to public and private users. Its goal is to transform inventions and scientific outcomes into new products and services that benefit society (source: Wipo)
- Technology transfer is the movement of data, designs, inventions, materials, software, technical knowledge or trade secrets from one organisation to another.
- TT can cover various forms: licensing, assignment, collaboration, JV, etc.

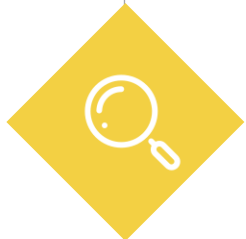
4. IMPACT OF FDI ON LICENSING AND ToT: CASE STUDY

Case studies

Case	French Target ?	Foreign Investor ?	Sensitive Activities ?	Investment ?	Outcome
Acquisition by an UK group of a portfolio of MAs, IPR and inventories relating to 11 medicines from a French pharma	Y	Y	Y	Y Acq. of a business line	FDI clearance
Licensing by a French entity to an Indian investor of its technology to produce low-carbon hydrogen <u>The license is exclusive and worldwide</u>	Y	Y	Y	Y Acq. of a business line	FDI clearance
Licensing by a French entity to an Indian investor of its technology to produce low-carbon hydrogen in India. The license is exclusive <u>only for India</u>	Y	Y	Y	N The license is only for India: the Target keeps its technology unchanged in France	No FDI clearance
Setting up of a JV (as an entity) in France whose purpose is to conduct R&D on renewable energy	Y	Y	Y	N Greenfield is not an eligible investment	No FDI clearance
Transfer to a Chinese group by an US entity of a portfolio of contracts entered into the French Government	N No target in France	Y	Y	Y Acq. of a business line	No FDI clearance



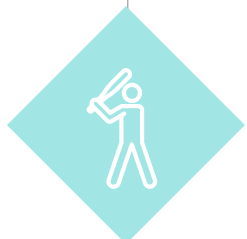
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