Dechert LLP

# The Future of France is Innovation!

Most people historically associate France with fine wines and delicious cheeses, but investors today know that the country offers much more!

From software to life sciences, French tech today is booming, and the rapid creation and growth of innovative new companies offers tremendous opportunities to investors globally. An historical reluctance to invest in France, due among other factors to French legal constraints, has recently been replaced by an optimism grounded in new French legal and market practices that were implemented to give strong and attractive legal terms and incentives to make French investments.

In the last decade, French investment structures have evolved to mimic U.S. practices – and while France does not have the type of standardized legal documentation used in the United States (e.g., the National Venture Capital Association investment forms), market practices and customs have developed that, at least from a French perspective, make investing in France at times even simpler than in the U.S.

For example, instead of multiple investment documents, such as a stockholders agreement, investor rights agreement and co-sale agreement, a single shareholders agreement is generally employed in French investment transactions that covers all of the voting rights, covenants among investors, access to information and management rights. In addition, following the 2016 amendments of French contractual law, the general enforceability and interpretation of such agreements was significantly strengthened.

Reforms to the French Commercial Code now enable companies to issue preferred shares with rights (particularly financial rights) that can be structured to be highly flexible. In recent years, such rights attached to preferred shares have been even further extended and standardized. Today it is common practice to provide for anti-dilution protection through the conversion ratio of the preferred shares, as is customary in the U.S., while before such protections were costly for investors.

Today, it is important to also highlight that the French tax and social environment has become highly favorable for innovative young companies. Earlier stage companies, spending money on research and development (R&D), are eligible under certain conditions to a specific French tax regime called "*Jeune Entreprise Innovante*." Under this program, such companies benefit from tax breaks and incentives and social contributions. Also, many of these companies are entitled, under special criteria, to a tax refund for up to 30% of their R&D expenses ("*Crédit d'Impôt Recherche*").

An updated tax regime in France has fostered – and helped to both stimulate and finance – earlier stage and innovative R&D activity in France. These various programs collectively help explain why there has been so much disruptive innovation by startups in France. At the same time, the public's general perception and mindset in France have evolved to encourage the spin-off into private companies of R&D from public academic and other institutions, while government money continues to be made available to private companies for innovation through subsidies, grants, loans and all stages of equity investment.

Also the longstanding reluctance to invest in France due to the restrictions around hiring and firing personnel under French employment law has also begun to change, French employment law reform is one of the key campaign promises of France's new President Macron, and the first reforms are very promising in loosening the restrictions on employment in France.

While France will continue to have tourists visit for the wines and cheeses that have brought it worldwide fame for centuries, we foresee a day not far ahead when even more investors will flock to the country to invest in what will soon become the first of many French "unicorns"!

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