Insights

INVESTING IN A FRENCH SAS?

WHAT EVERY FOREIGN INVESTOR NEEDS TO KNOW ABOUT MINORITY SHAREHOLDERS' PROTECTIONS

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SUMMARY

The *société par actions simplifiée* (SAS) has become the dominant corporate vehicle for private equity investments, foreign investors and holding structures in France. However, unlike its more heavily regulated counterpart *the société anonyme* (SA), it provides minority shareholders with almost no statutory protections by default. This article sets out what the statutory framework actually provides, where the gaps are, and what a well-advised investor should insist upon before investing in a French SAS.

What every foreign investor needs to know about minority shareholders' protections

I. THE SAS AND THE PRIMACY OF CONTRACTUAL FREEDOM

The SAS is governed by articles L. 227-1 *et seq.* of the French *Code de commerce*. The "*philosophy*" of the SAS is to offer a corporate form defined by contractual freedom rather than statutory prescription.

The *Code de commerce* sets out only a skeletal mandatory framework: the SAS must have a *président* (a single mandatory officer) and certain fundamental decisions (such as mergers and dissolution) must be taken collectively by the shareholders. Beyond that, the parties are largely free to structure the company as they see fit.

Conversely, the SA is governed by an extensive network of mandatory provisions covering, amongst other things, the composition and operation of the *board (conseil d'administration* or *directoire*), quorum and majority thresholds for shareholder meetings and detailed information rights. These rules exist precisely to protect shareholders — including minorities — from overreach by those in control. In the SAS, most of these safeguards fall away. The drafting of the contractual

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documentation in an SAS (articles of association and any shareholders' agreement) is therefore essential to ensure minority protection and a smooth organization between shareholders.

II. STATUTORY PROTECTIONS THAT DO APPLY — AND THEIR LIMITS

It would be wrong to suggest that minority shareholders in an SAS are entirely without statutory recourse. The following protections can be mentioned:

Abuse of majority (*abus de majorité*) or **Abuse of equality** (*abus d'égalité*) : French courts have long recognised that majority shareholders owe duties to the company and its minority shareholders, and that a decision taken contrary to the corporate interest — solely for the benefit of the majority, to the detriment of the minority — may be annulled. However, in reality, it is a remedy of last resort, not a practical governance tool.

Appointment of an independent expert (*expertise de gestion*) is one of the more useful statutory tools available to minority shareholders in an SAS. Under French law, one or more shareholders collectively holding at least 5 of the share capital may petition the commercial court to appoint an independent expert to investigate one or more specific management acts. The expert's report is then communicated to the petitioner, to the statutory auditors and to the company's management. This can be an effective way of shining a light on management decisions made without minority involvement, though it is limited to specific acts rather than providing ongoing transparency.

Statutory auditors that must be appointed in an SAS once it exceeds certain thresholds (balance sheet total, turnover, and employee headcount). This provides some assurance on the reliability of financial information, even though it falls well short of the broader information rights SA shareholders enjoy as a matter of course.

III. KEY RISKS AND CONTRACTUAL RESPONSES

The practical exposure of an unprotected minority shareholder in an SAS can be considerable. Given the limitations of the statutory framework, contractual drafting (whether in the articles of association or in a shareholders' agreement) is the minority investor's primary protection. The key risks and their contractual responses can be summarized as follows.

GOVERNANCE

Limited governance rules are a structural feature of the SAS that surprises many foreign investors. In fact, there is no mandatory board or no equivalent to a board of directors or board of managers in an SAS. The company needs only to have a président. A minority shareholder who has not secured governance rights by contract (whether in the form of a board seat, an observer right, or reserved matter veto rights) may have no involvement in or visibility over management decisions whatsoever.

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On the contractual side, the minority should negotiate at least the following: an observer seat (*censeur*) at any management or supervisory committee, and ideally reserved matter veto rights over key decisions such as capital increases, material acquisitions and disposals, related-party transactions, changes to the corporate purpose, and any amendments to the contractual documents that would affect minority rights.

LIQUIDITY

There are no statutory pre-emption rights on share transfers not tag-along or drag-along rights in an SAS unless expressly provided for in the articles or shareholders' agreement. A minority investor may therefore find itself locked in or confronted with an unwanted change of control — without any statutory remedy. The risk can be compounded by the possibility of forced transfer clauses (*clauses d'exclusion*). French law expressly permits the articles of an SAS to provide for the compulsory transfer of a shareholder's shares in defined circumstances, potentially at a price determined without the procedural safeguards a foreign investor might expect. These clauses can be drafted broadly and may be used by a majority shareholder to force out a troublesome minority. Whilst courts have imposed some limits, they remain a potent tool in the hands of a majority.

On the contractual side, the minority investor should negotiate for tag-along rights (*clauses de sortie conjointe*), pre-emption rights or right of first refusal on share transfers, anti-dilution provisions (whether through pre-emptive rights on new issuances or ratchet mechanisms), and, potentially, a put option allowing exit at a pre-agreed price or formula upon defined trigger events (deadlock, change of control, material breach, or failure to achieve an agreed liquidity event by a long-stop date).

INFORMATION

Information asymmetry flows directly from governance exclusion. The information rights that SA shareholders enjoy — including the right to submit written questions ahead of general meetings and to receive detailed financial and management information — do not apply in the SAS by default. A minority shareholder without contractual information rights may be limited to receiving the annual accounts, with little insight into the day-to-day management of their investment.

Information and reporting covenants should be drafted broadly, covering monthly or quarterly management accounts, annual audited accounts and any material events.

Finally, a critical structural point applies across all three areas. Provisions included in the articles of association bind all shareholders and are opposable to third parties (including future shareholders). Provisions contained only in a shareholders' agreement are binding as a matter of contract between the parties only, but do not bind third parties and may give rise only to damages (but not specific performance) in the event of breach. Where possible, key minority protections should be mirrored in both the articles and the shareholders' agreement.

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CONCLUSION

The SAS is a powerful and commercially sophisticated corporate vehicle, and its flexibility is a genuine competitive advantage for France as an investment destination.

But that flexibility cuts both ways. A foreign investor who enters an SAS without robust contractual protections is, in effect, relying on the good faith behavior of the other shareholders.

The bottom line for foreign investors considering an investment in a French SAS is that a well-balanced protective set of documents (articles of association and shareholders' agreement) must be negotiated before investing, not after.

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