France
Minority Shareholder Rights
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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

The laws of France protect minority shareholders in a number of ways. As a civil law country, most of the rights and protections are codified, most specifically in the French Commercial Code *(*Code de Commerce) and Civil Code (Code civil). A number of protections are subject to modification in companies' articles of association, so laws must always be considered alongside the articles of association of the company in question.

Public companies are subject to additional requirements, which are found in the General Regulation of the French Financial Markets Authority (Règlement général de l'Autorité des Marchés Financiers, or RGAMF). Court decisions enforcing minority shareholders' rights also provide further colour regarding protections available to them.

French listed companies must either comply with the provisions of a corporate governance code prepared by a corporate association or provide an explanation in their annual report for any non-compliance. In the event that the company does adhere to such a corporate governance code, the annual report must also provide an explanation of the reason for failing to follow any provisions of that code. A significant percentage of French listed companies adhere to the AFEP-MEDEF governance code. Since 2013, the AFEP-MEDEF code has included a requirement for a *haut comité de gouvernement d'entreprise*, which is a committee comprised of prominent experts designated responsible for supervising the application of the governance code.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

Shareholders are afforded various protections to help ensure that the value of their shareholdings is maintained relative to other shareholders in the same company.

Under L.225-129 of the French Commercial Code, only an extraordinary meeting of shareholders (at least 67 per cent of the votes that are present or represented at the shareholder meeting) has the power to issue new shares of the company. This provides some level of protection to minorities depending on the level of their collective holding and their level of participation.

Holders of ordinary shares also have preferential subscription rights (*droits préférentiels de souscription*), granting them a pre-emptive right over the new shares to be issued by the company (L.225-132 of the French Commercial Code). These pre-emption rights operate in proportion to the existing shareholdings in the company, allowing minority shareholders the opportunity to purchase enough new shares to maintain their relative shareholdings in the company.

The company's articles of association may not deprive the shareholders of this right, but shareholders may individually renounce it (L.225-132 of the French Commercial Code). In addition, an extraordinary meeting of shareholders (at least 67 per cent of the votes that are present or represented at the shareholder meeting) may suppress it in whole or in part in respect of a given issuance (L.225-135 of the French Commercial Code).

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

Unless provision has been made for the appointment of directors in a shareholders' agreement or the articles of association of a company, minority shareholders in France have no specific rights to appoint directors.

The courts may intervene to appoint directors where exceptional circumstances render the regular functioning of the company impossible and where the company is threatened by imminent harm. However, this measure is not intended to protect the interests of the minority shareholders in particular, but those of the company in exceptional situations.

Directors are otherwise appointed by the general meeting of the shareholders (L.225-18 of the French Commercial Code) by an ordinary resolution requiring a simple majority (ie, more than 50 per cent of the votes that are present or represented at the shareholder meeting), unless otherwise provided for in the articles of association. In certain events (death or resignation of a director, or if the number of directors is inferior to the legal or statutory minimum), the board of directors may or must temporarily appoint directors (L.225-24 of the French Commercial Code).

Any single shareholder may propose to remove or replace any director at any shareholder meeting, even if the subject is not on the agenda for the relevant shareholders' meeting (L.225-18 and L.225-105 of the French Commercial Code).

Directors in French companies are not generally viewed as owing duties directly to shareholders as such. Directors must act for the corporate interest (*intérêt social*) of the company while respecting the shareholders' rights granted by laws and regulations. The concept of corporate interest arises in a variety of contexts in French law; the board or management's failure to pursue the corporate interest can result in significant civil and criminal penalties. The most widely held view of the corporate interest attributes an independent purpose to the company as an autonomous legal entity, distinct from but taking into account that of its shareholders, employees, creditors, clients or other constituencies. However, it should be noted that another contemporary view of the corporate interest holds that the corporate interest simply represents the interests of the shareholders (and just the shareholders) as a whole via the corporation.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

In the event of a takeover bid over a listed company in France, the offer must be made for the totality of the issued and outstanding securities of the company (Article 231-6 of the RGAMF). This ensures that minority shareholders have the opportunity to sell their securities if they wish. In addition, public offerings following the normal (rather than a simplified) procedure provide for a reopening period of the offer, granting minority shareholders another chance to sell their shares if the offer is successful.

In 2014, the 'Florange' law abandoned the board passivity rule during offer periods, permitting the board of directors (to the extent permitted by the bylaws of the company and within the limits of the powers received from the shareholders' general meeting and the corporate interest (*intérêt social*) (see question 3 above regarding the definition of the corporate interest) to take any measure aimed at frustrating a hostile bid. The requirement that defences be consistent with the target's corporate interest should provide minority shareholders with some level of protection from the implementation of defences that would undermine the interests of the firm.

The AMF supervises and controls the whole process of public offering through the enforcement of the general principles contained in the RGAMF, including (but not limited to) the equal treatment of and equal information to all holders of the securities of the persons concerned by the offer and fair dealing. The AMF is also tasked with, among other things, reviewing the terms of the offer and the offer documentation to ensure compliance with applicable regulations, and under certain conditions like the event of a competing offer, assessing the offer price (or the exchange ratio in an exchange offer).

When majority shareholders own at least 90 per cent of the voting rights of a listed company, the minority shareholders may ask the AMF to request the majority shareholders to file a proposed compulsory buy-out bid (Article L.433-4 of the French Financial Markets Code and Article 236-1 of the RGAMF). The AMF takes into account the market conditions, such as the absence of liquidity for the shares, to make its decision.

French associations representing minority shareholders occasionally initiate litigation to attempt to gain publicity and exert pressure on listed companies. Such associations are entitled to 'bring legal proceedings before any court, including through the filing of civil actions, in relation to facts prejudicing the collective interests of investors in general or to certain categories of investors', (Article L.452-1 of the French Financial Market Code) and they have repeatedly brought suit before the Paris Court of appeal in connection with AMF decisions (Article R.621-45 of the French Financial Markets Code). These lawsuits generally concern decisions of the AMF either:

- clearing (*décision de conformité*) a corporate transaction (such as a public tender offer or a merger); or
- granting an exemption to the obligation to file a mandatory tender offer.

Such lawsuits are rarely successful but can in certain (increasingly limited) cases delay a takeover bid process.

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

Shareholders, as well as certain associations of shareholders, can seek remedies on behalf of the company against the directors or the executive manager (*directeur général*), through a derivative action (the *action sociale ut singuli,* Article L.225-252 of the French Commercial Code).

Shareholder litigation on the merits (stock drop suits, etc), while in principle possible under French law, is burdensome; although it may have some nuisance value, it is generally relatively uninteresting in terms of recovery potential. For example, the cost of the French derivative action (the *action sociale ut singuli* referred to above) is borne entirely by the plaintiffs, while any recovery is allocated to the company. A personal cause of action is also available; however, the plaintiff must demonstrate that the relevant loss is personal to them, and distinct from any loss incurred by the company or the other shareholders.

In the event of a contemplated litigation, a right available generally under French civil procedure permits 'any interested party' (including a minority shareholder) to seek, on an *ex parte* basis, the seizure of evidence that may be necessary for a contemplated litigation (Article 145 of the French Civil Procedure Code). This procedure must be exercised prior to the initiation of the litigation. Although there are defensive measures that may be adopted, this can be an extremely invasive process, involving judicial agents seizing corporate information (hard drives, emails, documents, etc) without prior notice.

As mentioned above in the response to question 3, the courts may intervene to appoint directors where exceptional circumstances render the regular functioning of the company impossible and where the company is threatened with imminent harm. However, this measure is not intended to protect the interests of the minority shareholders in particular, but those of the company in exceptional situations.

Shareholders of a *societé anonyme* (public company or SA) or a *societé par actions simplifieé* (simplified stock company or SAS) company representing at least 5 per cent of the share capital of the company, as well as certain minority shareholders associations, may inquire in writing of the president of the board about one or more management decisions of the company and/or its subsidiaries. In the absence of a satisfactory response within a month, these shareholders may request the judge to appoint an independent expert to inquire about these matters (L.225-231 of the French Commercial Code).

In a *société à responsibilité limitée* (limited company or SARL) company, shareholders owning at least 10 per cent of the share capital of the company may also ask the judge for the appointment of an expert, without being required to inquire in writing of the managers first (L.223-37 of the French Commercial Code). If appointed by the judge, the expert establishes a report which is published and attached to the statutory auditor's report at the next general meeting of shareholders.

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

A key element of participation in the operation of a company is the ability of the shareholders to express their opinions and vote on matters at general meetings (Article 1844 of the French Civil Code). Thus, *all* shareholders have the right to participate in the discussion of issues raised at a shareholders meeting. However, that right of discussion is limited by the topics set forth in the agenda for the meeting.

Notice of general meetings must be given to all shareholders at least 15 days before the meeting is due to be held; this is reduced to 10 days for general meetings being called a second time for reason of lack of quorum (Article R.225-69 of the French Commercial Code). With regard to listed companies, a notice must also be published in the *BALO* (mandatory French legal publications journal) 35 days prior to the date of the meeting (Article R.225-73 of the French Commercial Code).

Notices of general meetings should include details of the time and location of the meeting, as well as the nature of the meeting (ordinary or extraordinary) and the agenda. Among other documents, a copy of every written resolution proposed by the directors must be sent to the shareholders entitled to vote on the resolution (Articles R.225-81 and R.225-83 of the French Commercial Code).

Provisions also exist to ensure minority shareholders are given sufficient information about the company's decision-making activities and provide for a list of documents that must be sent to the shareholders (Articles R.225-81 and R.225-83 of the French Commercial Code) or put at their disposal at the registered office of the company (Article R.225-89 of the French Commercial Code) prior to the meeting.

All French shareholders have the right to ask specific questions in advance of a shareholders' meeting, which the board of directors or management board must respond to (Article L.225-108 of the French Commercial Code). French shareholders also have certain general information rights, which are not particularly broad or exceptional, and generally concern public documents and information that must in any event be publicly communicated (Article L.225-108; Article L.225-115; Article R.22-10-1 of the French Commercial Code).

Shareholders owning at least 5 per cent of the share capital of the company, as well as certain minority shareholder associations, may request from the president of the commercial court, on an *ex parte* basis, the appointment of a representative to convene the general meeting of shareholders (Article L.225-103 of the French Commercial Code). The court assesses whether the request is for legitimate purposes and in the interest of the company, and not solely to satisfy the plaintiff's personal interests.

Shareholders representing at least 5 per cent of the share capital, as well as certain minority shareholder associations, may request the addition of resolutions in the agenda of the meeting (Articles L.225-105 and R.225-71 of the French Commercial Code). The applicable minimum threshold of shareholding depends on the share capital of the issuer and is calculated on a sliding scale. In large companies it can be as little as 0.50 per cent (for companies with share capital in excess of €750,000, it is calculated as 4 per cent of the first €750,000; 2.5 per cent for the tranche between €750,000 and €7.5m; 1 per cent for the tranche between €7.5m and €15m; and 0.5 per cent for any share capital exceeding €15m).

Minority shareholders are also given a say in some of the most significant decisions in the life of a company, which must be authorised by an extraordinary general meeting of shareholders. This includes any change to the articles of association. Extraordinary shareholder decisions may only be made with the approval of at least two-thirds of the shareholders (Article L.225-96 of the French Commercial Code),

potentially giving minority shareholders the ability to block decisions which would be harmful to their interests.

Some decisions require an approval by the unanimity of the shareholders, thus allowing minority shareholders to block them if they wish. This includes any decision increasing the commitments of the shareholders (Article L.236-5 of the French Commercial Code), or special decisions such as any increase of the share capital by raising the face value of existing shares (Article L.225-130 of the French Commercial Code).

As mentioned above in response to question 5, shareholders of SA and SAS companies representing at least 5 per cent of the share capital of the company, as well as certain minority shareholders associations, may inquire in writing of the president of the board about one or several management decisions of the company and/or its subsidiaries. In the absence of satisfactory response within a month, these shareholders may request the judge to appoint an independent expert to inquire about these matters (L.225-231 of the French Commercial Code). In a SARL, shareholders owning at least 10 per cent of the share capital of the company may also ask the judge for the appointment of an expert, without being required to inquire in writing of the managers first (L.223-37 of the French Commercial Code).

It is unlikely that such a request will succeed if the board and the management have properly justified their position (if necessary with the assistance of outside experts or advisors) and have the necessary record to convince a judge that their attitude is appropriate *prima facie*. If appointed by the judge, the expert establishes a report which is published and attached to the statutory auditor's report at the next general meeting of shareholders.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

Shareholders owning at least 5 per cent of the share capital of the company may, twice a year, inquire in writing of the president of the board of directors or management board (in SA and SAS companies) or the manager in a SARL, about 'any matter likely to jeopardise the continued operation of the company' (Article L.225-232 of the French Commercial Code for SA and SAS, and Article L.223-36 of the French Commercial Code for SARL). The president of the board or manager must reply within a month and the response is communicated to the statutory auditor of the company.

In the event that, as a result of a company's losses as reflected in its accounts, its shareholders' equity falls below 50 per cent of the share capital (*les capitaux propres sont inférieurs à la moitié du capital social*), then, within four months following the approval of the accounts having revealed this loss, the shareholders (by a two-thirds majority) may decide whether to dissolve the company (Article L.223-42 of the French Commercial Code).

Minority shareholders have no other particular rights or protections when the company is experiencing financial difficulties and do not have special rights to demand that the company be wound up. However, as any other 'interested person' (*intéressé*), they may request the winding up of the company in certain situations (eg, in the event the share capital of a SA goes below €37,000, pursuant to Article L.224-2 of the French Commercial Code).

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

Under French company law, minority shareholders may bring an action for 'abuse of a majority position' (*abus de majorité*), ie, a decision contrary to the interests of the company (Article 1833 of the French Civil Code) and made solely in the interests of the majority shareholders. The abuse of the majority position leads to nullification of the decision and/or payment of damages.

More generally, directors and managers expose themselves to personal liability if they act in violation of the company's articles of association (Articles L.225-251 and L.225-256 of the French Commerce Code). Thus, as a practical matter, directors and managers should be deterred from supporting (or implementing the decisions of) majority shareholders in contravention of the company's articles of association.

However, minority shareholders should keep in mind that French law also includes a cause of action for abuse of a minority position (*abus de minorité*). This is a jurisprudentially created cause of action that allows majority shareholders or the company to challenge the oppressive action (often, a hostile vote) or inaction (eg, abstention from a vote) of minority shareholders, in the event that the minority's conduct blocks a decision. In order to succeed, the plaintiff will need to demonstrate that the act or omission was wrongfully designed to benefit certain minority shareholders and is contrary to the company's corporate interest. Minority shareholders incur civil liability if their behaviour causes damage to the company, and more generally the court may appoint an 'ad hoc agent' to vote in place and on behalf of the minority shareholders at the next general meeting.

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in France, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference
33	Any amendment to the articles of the company must be passed by a resolution at an extraordinary general meeting which requires at least two-thirds favourable votes. Therefore, the amendment can be blocked by shareholders representing more than one-third of the shares. This includes: • capital increase or decrease (including issuance of securities giving access to the share capital, eg convertible bonds) • legal merger, spin-off or contribution of assets • expanding or limiting the corporate purpose • transfer of headquarters • change of corporate name or change of corporate form • extending the duration of the corporation or dissolving it • changing the conditions for a transfer of shares or their nominal value • modifying the terms and conditions for the distribution of benefits.	In particular: Articles L.225-96 et seq and Article L.236-9, French Commercial Code (SA and SAS) Articles L.223-30 et seq. (SARL)
+10	Block any attempt by the majority shareholders to complete a squeeze-out.	Article L.433-4, French Financial Markets Code; Article 237-1, RGAMF
10	Request in court the appointment of one or several experts in charge of presenting a report on one or several management operations of the company (expertise de gestion).	Article L.223-37, French Commercial Code
5	Request from the president of the commercial court, on an *ex parte* basis, the appointment of a representative to convene a general meeting of shareholders	Article L.225-103, French Commercial Code
	Add resolutions in the agenda of the general meeting of shareholders (SA and SAS). Important note: this threshold of 5 per cent depends on the share capital of the issuer and is calculated on a sliding scale. It cannot be more than 5 per cent and may be reduced to 0.50 per cent in the largest companies.	Articles L.225-105 and R.225-71, French Commercial Code
	Inquire in writing of the president of the board (management board or board of directors) about one or several management decisions. In the absence of satisfactory response within a month, these shareholders may request the judge to appoint an independent expert to inquire about	Article L.225-231, French Commercial Code

	these matters (*expertise de gestion*) (SA and SAS).	
	Twice a year inquire in writing the president of the board (management board or board of directors) or manager (in SARL), about 'any matter likely to jeopardise the continued operation of the company'. The president of the board or manager must reply within a month and the response is communicated to the statutory auditor of the company.	Article L.225-232, French Commercial Code (SA and SAS) Article L.223-36, French Commercial Code (SARL)
	Seek that a court recuse (for good cause) one or more statutory auditors	Article L.823-6, French Commercial Code
One share	Right to participate and vote in the general meetings of shareholders	Article 1844, French Civil Code
	Ask specific questions in advance of a shareholders' meeting	Article L.225-108, French Commercial Code
	Actively solicit proxies from other shareholders (in listed companies)	Article 22-10-41, French Commercial Code
	Make a proposal during a general meeting of shareholders in relation to the removal or replacement of a director	Articles L.225-18 and L.225-105, French Commercial Code
	In the event of issuance of new shares by the company, benefit of preferential subscription rights (*droits préférentiels de souscription*) granting a pre-emptive right over the new shares, in proportion to the existing shareholdings in the company.	Article L.225-132, French Commercial Code
	In the event of a takeover bid, when majority shareholders own at least 90 per cent of the voting rights of a listed company, the minority shareholders may ask the AMF to request the majority shareholders to file a proposed compulsory buy-out bid.	Article L.433-4, French Financial Markets Code; Article 236-1, RGAMF
	Request the court to appoint a director (*administrateur provisoire*) where exceptional circumstances render the regular functioning of the company impossible and where the company is threatened by an imminent harm.	Created by the courts
	Approving or blocking any decision increasing the commitments of the shareholders, which require the approval by the unanimity of shareholders, as well as other special decisions (eg, increase of the share capital by raising the face value of existing shares)	Article L.236-5, French Commercial Code Article L.225-130, French Commercial Code
	Bring an action for abuse of a majority position (*abus de majorité*), ie a decision contrary to the interests of the company and made solely in the interest of the majority shareholders.	Article 1833, French Civil Code
	Seek remedies on behalf of the company against the directors or the executive manager (*directeur général*) through a derivative action (*action sociale ut singuli*)	Article L.225-252, French Commercial Code

	Seek, on an *ex parte* basis, the seizure of evidence that may be necessary for a contemplated litigation	Article 145, French Civil Code (right generally available under French civil procedure to any interested party, not only the minority shareholders)