7d. Fact Sheet – French employee buy-out mutual fund “FCPE de reprise”

The so-called “FCPE de reprise” (employee buy-out mutual fund) was introduced into the French system of employee financial participation (EFP) in 2006 in order to allow employees to take over their employer company under preferential conditions.

The French system of employee share ownership (ESO)

In France, employee share ownership is mostly acquired by means of profit-sharing plans as part of the overall system of EFP composed of:

- “intéressement” profit-sharing
- “participation” profit-sharing
- short term savings plans (Plan d’Epargne d’Enterprise (PEE)) and
- long-term savings plans (Plan d'Epargne-Retraite Collectif (PERCO)).

Within this system, invested employee earnings and matching amounts of the employer company must be, and employee profit shares can be, transferred to **mutual funds (Fonds Commun de Placement d’Entreprise (FCPE))**, usually managed by assets management firms, i.e. branches of banks or insurance companies which invest the assets on the capital markets, in shares or bonds of the employer company or of several different companies.

If the employer company is not listed, the FCPE is obliged to invest one-third of assets in marketable shares or bonds. There are however two exceptions:

(1) “FCPE simplifié” – a mechanism guarantying the liquidity (e.g., by the enterprise) is installed or the company buys back 10% of its own shares
(2) Since 2006 the “FCPE de reprise” – all assets belong to employees planning to participate in a leveraged buy-out.

Legal form – “FCPE de reprise”

The new business succession vehicle is a specific form of FCPE to facilitate business succession in non-quoted SMEs:

- The “FCPE de reprise” is invested in unlisted securities with the aim to acquire shares of the employer company or of a holding company set up in view of its acquisition reserved to the employees.
- It can be invested up to 95% in shares of the purchased company vs. 67% in the case of the regular non-diversified FCPE, thus the liquidity reserve is limited to 5%.
- The blocking period of sums allocated to the fund is until the completion of the takeover of the company but no less than 5 years. There are three cases of early release, i.e. disability, death and retirement to ensure longevity and stability in order to strengthen it as a business succession device and to reassure partners of this undertaking
- A holding company is created to carry the debt needed to buy out the company.
- At least 15 employees (or 1/3 of employees in firms with less than 50 employees) must hold shares in the acquisition vehicle (holding) created. These employees may own unequal shares of the capital, and it is not required that the operation is offered to all employees.

The “FCPE de Reprise”, although very similar to the classical FCPE, much better ensures the stability and continuity of an employee buyout operation and thus provides more security to potentially interested external investors and stakeholders.

French cousin of the Employee Stock Ownership Plan (ESOP)

In essence the “FCPE de reprise” – both, with regards to legal structure as well as financing mechanism – is very similar to its Anglo-American cousin the Employee Stock Ownership Plan (ESOP):

- Both are share ownership schemes, where the acquisition of shares via a trusteed fund (as intermediary entity) is financed by a profit share paid in addition to wages.
- Both may use borrowed funds on a leveraged basis.
- Both have the capacity to create substantial employee ownership and can be used to finance ownership succession plans.

- ➢ Just as the ESOP, which is primarily popular as a business succession vehicle for SMEs, the French “FCPE de reprise” creates a market for retiring shareholders’ shares, which is of major importance to unlisted SMEs having no other ready source of liquidity.

Perspectives – “FCPE de reprise”

The French “FCPE de reprise” creates a market for retiring shareholders’ shares, which is of major importance to unlisted SMEs that have no other ready source of liquidity. There are three types of companies likely to be interested in using a “FCPE de reprise” in the future:

- ➢ Subsidiaries of large groups which are subject to plans to be sold;
- ➢ SMEs whose retiring founder has no children wishing to take care of the business (which is the core target for this type of device);
- ➢ Companies owned by investment funds that do not perform exceptionally well and thus are difficult to resell to another fund.

The market in France is potentially large, with an estimated number of companies to be sold of around 50,000.

- ➢ The scarce incidence of “FCPE de reprise” is probably due to limited knowledge of its existence among professionals in the concerned financial sector
- ➢ An increase of the incidence of “FCPE de reprise” is most likely just a matter of time and successful pilot projects.

Table: Comparison of non-diversified FCPE with a view to business succession in SMEs

FCPE (type) Characteristics	**„Classic” FCPE** Art. L.214-40 Monetary & Financial Code (MFC)	**„Simplified“ FCPE** Art. L.214-40 MFC and Art. L3332-17 Labour Code	**FCPE „de reprise“** Art. L.3332-16 Labour Code
Governance, i.e., supervisory board	(1) Election by employee shareholders; or (2) appointment by enterprise representatives and (on behalf of employee shareholders) social partners		Election by all employee shareholders
Vesting period	Five years		Until completion of buyout; min. five years
Specific fiscal incentives for a buyout	Exemption from PIT and SSC / instead reduced 8% social tax and 13,5 on returns for: - Employee contributions up to 25% of yearly pay role - Monies from Profit Sharing (Participation / Intéressement). - Matching contribution of up to 5.000 € / year - Contribution of free shares. Company contributions in turn are tax deductible: - Matching contributions, - Free shares, - Discounts in capital increases. Invested employee earnings & matching employer contributions must be transferred to mutual funds (FCPE)		As for the other FCPEs (contributions to buyout holding company financing the issuance of new shares are tax deductible expenses for the company) additionally: - Art. 220 ninth General Tax Code, Tax credit in the amount of the interest paid to finance acquisition; - L3332-15: FCPE not compulsory to manage investment;
Exceptions for early exit	Nine: death, disability, retirement, cessation of employment, insolvency, marriage, birth of a third child or divorce while keeping custody of at least one child, purchase of a principal residence, founding or acquisition of an enterprise by the employee		Three: death, disability, retirement
Minimum requirements for liquidity	33.3% in high liquidity stock	None, provided: (1) a mechanism guarantying the liquidity (e.g., by the company); or (2) the company buys back 10% of its own shares	5% in high liquidity stock
Thresholds for non-quoted employer stock	33.3% to 66.6%	33.3% to 100%	33.3% to 95%
Enterprise savings plan (PEE) carrying the FCPE	Set-up: (1) as a result of negotiations, or (2) unilaterally on initiative of the employer		Set-up as a result of negotiations (exclusion of compulsory plans)

Source: Own research with the support of FONDACT and partners.

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