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A new legal framework for debt financing

In the wake of the wave of modernization and transparency of the French economic life triggered by the so-called “Sapin II” Law, in particular as regards the financing of the economy, Ordinance n°2017-1432 of October 4, 2017 reshapes the legal framework for asset management and debt financing.

The objective is to respond to businesses’ needs for a more diverse set of funding sources, while ensuring investor protection.

The diversification of sources of debt financing for medium-sized businesses and so-called *entreprises de taille intermédiaire* (i.e. mid-market companies) - which until recently resorted almost exclusively to banking institutions - has become an economic priority.

Just like the reform of the regime governing French security agents who are involved in structured financing^[1], the modernization of the legal framework for asset management and debt financing should contribute to increase the competitiveness of the Paris financial marketplace and to make the legal framework applicable to alternative investment funds more understandable to foreign players.

One of the most significant changes brought about by the Ordinance is the creation of a new category of alternative investment funds, i.e. the ***organismes de financement spécialisé*** (literally “specialized financing entities”) that will be regulated under the so-called “AIFM Directive”^[2] and will, alongside with existing French securitization entities, make up the overall category called *organismes de financement* (financing entities).

Specialized financing entities will be able to acquire, lend and manage loans, with the possibility to issue bonds. They can benefit from the EU passport provided for under the AIFM Directive and be granted by the

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French Financial Market Authority the label created by Regulation (EU) 2015/760, referred to as the “ELTIF” Regulation, according to which *inter alia* European long-term investment funds may grant loans to French entities.

The Ordinance also expands the rights of securitization entities by granting them - just like specialized financing entities - the possibility to enter into risk or cash sub-participation agreements and to benefit from the so-called “Daily” mechanism for the assignment of professional receivables as security for the granted loans.

In addition, specialized financing entities and securitization entities shall benefit from very favorable provisions in case of bankruptcy/insolvency proceedings (the transfer of receivables made in favor of such entities may not be set aside even if such transfer occurred during the so-called “suspect period” and, more generally, the provisions entitling an insolvency officer to nullify certain contracts entered into during such “suspect period” shall not apply).

Foreign institutions/entities having a corporate purpose similar to that of French entities authorized to lend in France under Article L. 511-6 of the French Monetary and Financial Code, will henceforth be entitled to acquire unmatured professional receivables from French entities. This will facilitate over time the purchase of receivables by foreign investment vehicles.

Furthermore, the legal regime applicable to custodians of cash and receivables held by securitization entities is strengthened to clarify the allocation of responsibilities between the management company of such entities and the custodian, with the overall objective to improve investor protection.

The provisions of the Ordinance shall enter into force on January 3, 2018, except for those concerning the custodians of securitization entities which shall become effective only on January 1, 2019. This time lag should enable securitization entities incorporated as of the date of publication of the Ordinance to be converted into specialized financing entities without first having to be wound up.

The creation of specialized financing entities is a further exemption to the French banking monopoly and should be welcome by the various players of the Paris financial marketplace as it allows for the lending in France or the purchase of French unmatured receivables by entities other than French licensed or EU passported financial institutions.

However, for the reform to be successful, further legal/regulatory provisions must be adopted to clarify a number of issues, including the applicable tax regime, an issue that is not addressed by the Ordinance.

[1] Ordinance n°2017-748 of May 4, 2017 - Cf. our article [A new status for Security Agents under French law](#) dated May 30, 2017

[2] Directive 2011/61/EU on Alternative Investment Fund Managers of June 8, 2011

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