

Published on 1 November 2008



Soulhier Bunch, Cabinet d'avocats d'affaires basé à Paris et Lyon

[Read this post online](#)

The corrective finance law No. 2008-1061 of October 16, 2008 to stimulate the economy: the plan to guarantee the interbank market and strengthen credit

The Corrective Finance Bill to stimulate the economy, presented by the prime minister during the Council of Ministers last October 13, was enacted on October 16, 2008 and published in the Official Journal of the French Republic on October 17, 2008.

This new law aims at restoring confidence in the banking and financial system, and at guaranteeing the proper financing of the French economy.

The measures taken at the national level are in line with the more global action plan that was developed at the European level by the member states of the Euro Zone. In accordance with the European plan, member states can adopt temporary measures to repurchase assets of poor quality, exchange them against government loans, or guarantee loans from financial institutions for up to five years.

Therefore, Law No. 2008-1061 of October 16, 2008 includes two main parts.

The first part, made up of the first five articles of the Law, seeks to bring up to date the provisional balance of the 2008 budget. The second part, described as the rescue plan for banks and the French banking system, is in Article 6, Title III of the Law, and is entitled "Permanent Provisions".

We are particularly interested in the guarantees contained in Article 6, the objective of which is to ensure the continuity and proper functioning of financing for individuals, companies, and local authorities, by providing banks with needed medium-term resources and actual funding necessary to reestablish confidence (summary

record from the Council of Ministers of October 13, 2008).

Article 6 of the Law on Corrective Finances therefore sets forth the following three measures:

1. Refinancing For Credit Institutions

The Law creates a **refinancing company** charged with raising funds from financial markets by issuing bonds guaranteed by the state, and then using such funds to authorize loans to credit institutions.

The goal of this scheme is to reenergize the banking system with liquidity to stimulate the economy.

These loans will earn interest and have five year terms (as opposed to six months corresponding to short-term refinancing provided by the Central Bank).

In exchange, the refinancing companies will be entitled to the following (capped at an amount equal to the principal plus interest and fees associated with a loan):

- a claim against the credit institutions;
- a direct claim against ultimate borrowers for the reimbursement of the underlying loans as well as on the collateral attached to such loans.

All such loans will be subject to agreements with the state which will fix the terms of the debtors' guarantees. These agreements will also set forth certain terms and conditions applicable to the refinancing companies relating to financially stimulating the economy, and to ensuring the refinancing companies and their managers abide by ethical rules that are in the public's best interest.

2. Strengthening Credit Institutions' Equity

The second element of the Law is the creation of a state-owned company which will, like the company described above, raise funds using state guarantees, but will spend such funds to buy equity or deemed equity in credit institutions.

As with the financial stimulus loans, the state will fix the eligibility criteria to ensure its participation in strengthening credit institutions' equity has a positive effect on stimulating the economy and abides by ethical rules that are in the public's best interest.

3. Establishment of State Guarantees to Support the Financial System

The terms of grant of the state guarantees are set forth in the Organic Law No. 2001-692 of August 1, 2001 regarding finance laws, which holds in Article 34 that "the finance law of the year authorizes the granting of guarantees and fixes their terms".

SOULIER BUNCH

Therefore, the Law on Corrective Finances validates:

- Guarantees in connection with the refinancing of credit institutions;
- Guarantees in connection with the state's purchase of equity in credit institutions; and
- Guarantees in connection with interbank operations of DEXIA.

The maximum aggregate amount of the state's guarantee under the Corrective Finance Law is 360 billion Euros.

It appears from reports and parliamentary discussions that preceded the Law's adoption that this maximum amount is made up of 320 billion Euros for the refinancing of credit institutions and 40 billion Euros for the company that will purchase equity issued by financial organizations.

Regarding DEXIA, it appears the state's direct refinancing guarantee will amount to 50 to 55 billion Euros. This amount is included in the 320 billion Euros associated with refinancing guarantees.

Soulier Bunch is an independent full-service law firm that offers key players in the economic, industrial and financial world comprehensive legal services.

We advise and defend our French and foreign clients on any and all legal and tax issues that may arise in connection with their day-to-day operations, specific transactions and strategic decisions.

Our clients, whatever their size, nationality and business sector, benefit from customized services that are tailored to their specific needs.

For more information, please visit us at soulierbunch.com.

This material has been prepared for informational purposes only and is not intended to be, and should not be construed as, legal advice. The addressee is solely liable for any use of the information contained herein.