

France Amends Banking Monopoly Rules to Facilitate Syndications

Ordinance allows certain types of foreign entities to purchase outstanding loans from French-regulated entities.

The French government has issued an ordinance that aims to improve the legal framework for French securitization and debt funds, effective 3 January 2018.

Ordinance No 2017-1432 (the **Ordinance**) also contains provisions amending the so-called French banking monopoly rules with a view to helping French banks and other French-regulated entities transfer their loan exposures to foreign entities.

Background: French banking monopoly rules

France's banking monopoly rules restrict the execution of credit transactions (*opérations de crédit*) on a regular basis within the country to authorized entities only — namely, French-licensed credit institutions, passported EU-licensed credit institutions, French-regulated financing companies (*sociétés de financement*), and certain French-regulated securitization vehicles and investment funds.

Pursuant to French banking monopoly rules, the acquisition of non-matured receivables from a French entity constitutes a credit operation that only an authorized entity can execute on a regular basis.

This rule has been a major constraint for French credit institutions wishing to syndicate their loan exposures to foreign entities in the international loan market.

The New Foreign Entity Exception

The Ordinance has introduced a new exception to the French banking monopoly rules that allows certain foreign entities to freely acquire funded loans from French-regulated entities (the **New Foreign Entity Exception**). In the report on the Ordinance addressed to the French president, France's finance minister indicated that the New Foreign Entity Exception aims to help facilitate the assignment of non-matured loan receivables to "foreign-regulated entities."

However, the actual scope of the New Foreign Entity Exception is broader.

Pursuant to the New Foreign Entity Exception, French credit institutions, French-regulated financing companies, and French investment funds authorized to lend in France, that hold non-matured loans or other professional receivables (other than receivables owed by consumers) will be able to assign such receivables directly to a range of foreign institutions and entities.

The Ordinance's only condition for entities falling within the scope of the New Foreign Entity Exception is that the foreign entity's activities or corporate purpose must be similar to those which are authorized to lend in France pursuant to the French banking monopoly rules (as amended by the Ordinance to include certain French regulated investment funds authorized to lend in France), namely, credit institutions, financing companies, investment funds, pension funds and securitization vehicles. The Ordinance does not require that the foreign entity be a regulated entity itself, nor does the Ordinance refer to any concept of regulatory equivalence regarding the foreign entity.

The New Foreign Entity Exception is broad enough to allow collateralized loan obligations (CLOs) or other foreign non-regulated credit funds to purchase loan receivables. French banks have long awaited the New Foreign Entity Exception in order to simplify the syndication of their loan exposures to foreign entities in the context of large syndicated loan financings.

Note that, once in effect, the New Foreign Entity Exception will supersede the restrictions on French banks' transfers of loan exposures to foreign non-regulated entities, pursuant to the Committee on Banking and Financial Regulation's (*Comité de la Réglementation Bancaire et Financière's*) regulation No 85-07 relating to the interbank market.

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