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The Legal 500 Country Comparative Guides

France

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in France.

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FRANCE
BANKING & FINANCE

1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

In addition to the European regulator, the European Central Bank ("**ECB**"), there are two main national authorities for banking regulation, supervision and resolution in France:

- the "Autorité de contrôle prudentiel et de resolution" ("**ACPR**") is responsible for the supervision of the banking and insurance sectors. It ensures the stability of the financial system and the protection of the customers; ACPR conducts investigations and issues sanctions.
- the "Autorité des Marchés Financiers" ("**AMF**") regulates participants and products in France's financial markets. It regulates, authorises, monitors, and, where necessary conducts investigations and issues sanctions. In addition, it ensures that investors receive material information, and provides a mediation service to assist them in disputes.

Other national authorities could also act against banks and financial institutions as for example the "Autorité de la Concurrence" (anti-competition agency), or the "Agence française anticorruption" (anti-corruption agency).

2. Which type of activities trigger the requirement of a banking licence?

A banking licence is required as soon as one of the banking services defined by law will be proposed. Banking services under French law are defined by the article L.311-1 of the French Monetary and Financial code as follows:

- receiving funds from the public;
- granting loans;
- providing banking payment services.

Whether a bank should decide to offer investment services, it should also have a licence.

3. Does your regulatory regime know different licenses for different banking services?

There are several types of licenses issued by the ACPR depending on the activities considered as follows:

- Credit institution license for banking activities which may be issued for a Credit institution and may be doubled up with an investment firm license for a Credit institution providing investment services;
- Finance company license in order to carry out credit transactions;
- Investment firm license in order to provide investment services (except the portfolio management companies license which is issued by the AMF);
- Payment institution license in order to provide payment services;
- Electronic money institution license in order to issue, manage and provide electronic money;
- Currency exchange.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

Credit institution and electronic money institution licenses allow to provide payment services and services related to electronic money.

Credit institutions may also carry out operations related to their activity such as:

- Exchange transactions;
- Trading in gold, precious metals and coins;
- Investment, subscription, purchase, management, custody and sale of securities

and any financial products;
- Advice and assistance in wealth management;
- Financial management advisory and assistance, financial engineering and, generally, all services intended to facilitate the creation and development of companies, subject to the legislative provisions relating to the illegal exercise of certain professions;
- Leasing operations of transferable or real estate property for institutions authorised to carry out financial leasing transactions;
- Payment services;
- Issue and management of electronic money.

When it provides investment services, the exercise of related operations and the conservation activity are subject to the prior approval provided of the ACPR.

5. Is there a “sandbox” or “license light” for specific activities?

There is no “sandbox” or “license light”, but the national authorities have decided to apply the principle of proportionality according to which applicable regulation depends on the size and the nature of the companies’ activities.

In this respect, all companies of the same size and nature should meet the same requirements.

In view of providing assistance to start-ups, the national authorities have considered that it was more helpful to offer them regulatory support due to their limited experience and resources in this field by taking the necessary time to explain the different existing status and to direct them towards the most suitable.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Since the PACTE Act has been adopted in final reading by the National Assembly on 11 April 2019, article L.54-10-2 of the French Monetary and Financial Code creates a new status of “service provider on digital assets”.

Digital asset services include the following services:

1. the safekeeping service on behalf of third parties of digital assets or access to digital assets, where applicable in the form of private cryptographic keys, in order to hold, store and transfer digital assets;
2. the purchase or sale of digital assets in legal currency service;
3. the exchange of digital assets service for other digital assets;
4. the operation of a digital asset trading platform;
5. the following services:
    a. the reception and transmission of orders on digital assets on behalf of third parties;
    b. the portfolio management of digital asset on behalf of third parties;
    c. the advice to subscribers of digital assets;
    d. the underwriting of digital assets;
    e. the guaranteed investment of digital assets;
    f. the unsecured investment of digital assets.

In this respect, two situations shall exist:

- The service provider intends to provide the services mentioned in 1° (custody on behalf of third parties of digital assets or private cryptographic keys, in order to hold, store and transfer digital assets), 2° (purchase or sale of digital assets in legal currency), 3° (exchange of digital assets for other digital assets) and 4° (operation of a digital asset trading platform) above: it must be registered.
- The service provider intends to provide one or several digital asset services mentioned listed above: it may decide to apply to the AMF for an approval.

The Article L.54-10-3 of the French Monetary and Financial Code specifies that the service providers mentioned in points 1° and 4° above should be registered with the AMF, which verifies whether:

1° The persons who effectively manage them are of good repute and competent to perform their duties;

2° Individuals who either directly or indirectly hold more than 25% of the service provider’s capital or voting rights, or exercise control over the service provider by any other means, guarantee sound and prudent management of the service provider, are of good repute and have the necessary competence;

3° The service providers have set up an organisation, procedures and internal control system to ensure compliance with the provisions of Chapters I and II of Title VI of this book that are applicable to them.

The Article L. 54-10-5 of the French Monetary and

Financial Code, provides that for the provision of one or more of the services mentioned in Article L. 54-10-2 as a regular activity, service providers established in France may apply for approval from the AMF. Registration and authorisation may be combined for providers of the digital asset services mentioned in 1° to 4° of Article L. 54-10-2 of the Monetary and Financial Code.

In addition, from 1 January 2024, a new mandatory enhanced registration system has been introduced for new players wishing to provide the four digital asset services subject to mandatory registration (custody, buying/selling for legal tender, trading of digital assets for other digital assets, operating a trading platform for digital assets).

It should be noted that operators who have already obtained a "basic" registration before 1 January 2024 benefit from a grandfathering clause and will continue to be subject to the registration requirements applicable before 1 January 2024.

As part of the "enhanced registration" process, the AMF will also assess the following points:

- Adequate security and internal control systems;
- Preventing and managing conflict of interests systems;
- Resilient and secure IT system.

With the introduction of the new regulation "MiCA" adopted by the European Union, a new licensing regime will come into force from 2025. Nevertheless, MiCA introduces a transitional period to allow registered or approved digital asset service providers to continue their activities. In France, a digital asset service providers will be allowed to continue its activities until July 2026.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Crypto assets are defined by Article L. 54-10-1, 2° of the Monetary and Financial Code as: "Any digital representation of value that is not issued or guaranteed by a central bank or by a public authority, that is not necessarily attached to a legal tender and that does not have the legal status of a currency, but that is accepted by natural or legal persons as a means of exchange and that can be transferred, stored or exchanged electronically".

Under French law, crypto assets do not qualify as deposits, or means of payment or electronic money as specified by the Monetary and Financial Code. Therefore, there is no legal guarantee of reimbursement at any time and for any value of these crypto assets.

8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

The French Accounting Standards Authority has clarified the accounting treatment to be applied in relation to crypto assets held, issued and retained, which is based on the definitions contained in the PACTE Act. In the situation where a digital asset has the characteristics of a financial security, the accounting treatment for financial securities should apply.

From a prudential point of view, there is no rule defining the treatment of exposures to crypto assets.

However, on 16 December 2022, the Basel Committee's oversight body endorses a global prudential standard for bank's exposure to crypto assets, including tokenised traditional assets, stablecoins and unbacked crypto assets, for implementation by 1 January 2025.

These standards, which are not binding as such, are expected to be part of an EU legislation package for harmonised application within the EU.

9. What is the general application process for bank licenses and what is the average timing?

Before starting above mentioned banking activities, the institutions must apply for a licence issued by the ACPR as follows:

- contact the Authorisation, Licensing and Regulation Division to present plans and proposed timetable.
- prepare an application for the licence, including all supporting documentation to be submitted to the ACPR General Secretariat.

Credit institution licences are issued by the ECB based on draft decisions sent by the ACPR.

The ACPR or the ECB have to decide on the application within a 6-month period following the receipt of the complete application.

In practice, the licensing decision must be taken within:

- 6 to 12 months following the receipt of the application for credit institutions and finance companies;

- 4 to 5 months in the case of investment firms;
- 3 months in the case of payment institutions and electronic money institutions.

10. Is mere cross-border activity permissible? If yes, what are the requirements?

International headquartered banks can operate in France as subsidiaries which require their own governance and risk management and are subject to capital and liquidity requirements. The establishment of a subsidiary requires an application for the requisite license issued by the ACPR.

- Institutions registered in another Member State of the EU or in a State party to the EEA Agreement can operate in France as they may be covered by a European passport under the following procedures:
    - freedom of establishment:
        - by opening a branch or subsidiary;
        - by using a tied agent to provide investment services there, an agent to provide payment services there, or an electronic money distributor;
    - freedom to provide services.

In all these cases, institutions must contact the competent authority of their Home State to complete the necessary formalities.

In return, the institutions established in France, including subsidiaries, can operate in the EU under the European passport. Before pursuing activities, the institutions must:

- Prepare a package for a notification under the freedom of establishment or a declaration under the freedom to provide services;
- Mail the completed package to the General Secretariat of the ACPR.

11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Banks, mutual or cooperative banks, specialised credit and municipal credit banks can operate as banks following the credit institution license.

In order to issue a credit institution license, the ACPR control the suitability of the legal form for the pro-posed activity.

French credit institutions are incorporated under the form of unlimited companies by shares, that is to say under the form of SA (public limited company), SAS (simplified joint-stock company) or, more rarely, under the form of limited partnership.

12. What are the organizational requirements for banks, including with respect to corporate governance?

At any time, the institutions must ensure that:

- at least two people are in charge of the effective management of the company;
- the nature and scope of the functions performed by persons effectively running the undertaking enable that person to have a comprehensive and in-depth view of the whole business and related risks;
- persons effectively running the undertaking comply with applicable regulatory requirements.

The appointment of a member of the supervisory body of a credit institution, finance company or investment firm must be notified to the ACPR**,** providing the information required for the authority to assess the fitness, propriety, knowledge, experience and availability of the person in question.

At any time, the institutions must ensure that the supervisory body is independent with respect to effective management. For this purpose, the general manager in charge of effectively running the business cannot add the function of chairman of the board of directors.

Important institutions must comprise several committees to assist the supervisory body as:

- the risks committee;
- the remuneration committee;
- the appointments committee;
- the audit committee.

In Particular, the appointment of the persons called on to take charge of the effective running of the business of the institution must be notified to the ACPR, providing the information required for the authority to assess the fitness, propriety, knowledge, experience and availability of the concerned persons.

Banking institutions must adopt a strong governance package including:

- a clear organisation ensuring a defined, transparent and consistent division of responsibilities,
- effective procedures for the detection, management, monitoring and reporting of risks
- an adequate internal control system,
- sound administrative and accounting procedures,
- remuneration policies and practices that enable and promote sound and effective risk management.

13. Do any restrictions on remuneration policies apply?

Banking institutions must adopt remuneration policies and practices that enable and promote sound and effective risk management.

In that way, they must implement a global remuneration policy regarding the persons effectively running the business, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, the professional activities of whom have a significant incidence on the risk profile of the bank or the group of which it is a part.

14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

The provisions of the Capital Requirements Directive IV (CRD IV) have been transposed into French law by means of Ordinance n° 2014-158 of February 20, 2014, Decree n° 2014-1316 of November 3, 2014, as amended in 2021, and several ministerial orders of November 5, 2014.

In this respect:

- Minimum paid up capital requirements depend on categories of licenses as follows: between € 1 million and € 5 million depending on the banking license granted for credit institutions and finance companies;
- between € 50.000 and € 3.800.000 depending on the services provided for Investment companies;
- between € 20.000 and € 125.000 for payment institutions;
- € 350.000 for electronic money institutions.

The provisions of the Capital Requirements Directive V (CRD V) adopted at the same time as the Capital Requirements Regulation II (CRR II) that is, on May 20, 2019, have been transposed into French law by means of Ordinance n° 2020-1635 of December 21, 2020 and Decree n° 2020-1637 of December 22, 2020. The fifth Capital Requirements Directive makes a number of changes to the previous text.

The Ordinance provides, with respect to capital requirements:

- the insertion of a new methodology for calculating the score of systemically important institutions taking into account the existence of the Single Resolution Mechanism for calculating the capital cushion for systemically important institutions;
- clarifications on the difference between the so-called “Pillar 2” (P2R) capital requirements and the “Pillar 2” (P2G) capital recommendations;
- a change in the quality of the capital required to meet the “Pillar 2” capital requirement, with institutions being allowed to use, under certain conditions, capital other than Tier 1 capital.

15. Are there any requirements with respect to the leverage ratio?

Banking institutions comply with the prudential regulation and regarding the leverage ratio they must implement policies and processes to detect, manage and monitor the risk of excessive leverage deter-mined according to CRR I.

The CRR II Regulation, which came into force on June 28, 2021, contains new provisions with respect to the leverage ratio. Among the contemplated changes, additional requirements regarding the leverage ratio will affect Global Systemically Important Banks (G-SIBs). CRR II makes this ratio a binding requirement applicable from 28 June 2021. The minimum requirement leverage ratio requirement to be met at all times is 3%.

16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding

LCR and NSFR?

The provisions of the Capital Requirements Directive IV (CRD IV) have been transposed into French law so that credit institutions and investment companies must respect a 100% permanent ratio between liquid assets or quickly achievable assets and the portion of short-term payments.

Additionally, the LCR must be applied by the credit institutions.

The CRR II Regulation, which came into force on June 28, 2021, contains new provisions with respect to liquidity ratios, modifying existing texts. Regarding the NSFR, the May 20, 2019 Regulation provides for the adoption of detailed and binding requirement for stable financing that must be respected at all times in order to avoid excessive maturity mismatches between assets and liabilities and excessive reliance on wholesale financing in the short term.

17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Banking institutions must publish their annual financial statements.

Particularly, listed banks must publish their bi-annual financial report.

Also, these banks must publish as soon as possible any significant information which could have an impact on the share value.

An annual report on internal control must be sent to the ACPR.

Practical details on how to submit financial information to the ACPR are available here: https://esurfi-banque.banque-france.fr/

18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Banking groups supervised on a consolidated basis shall:

- implement the necessary means to ensure compliance, in entities controlled exclusively or jointly, the provisions of the Order of November 3, 2014, as amended in 2021 relating to the internal control of banks and, where appropriate, European provisions, unless their application would be unlawful under a State outside of EU or EEA in which a subsidiary is established;
- ensure that the systems put in place within these banks are coherent with each other in order to measure, monitor and control the risks incurred at the consolidated level;
- verify the establishment of an organisation, a control system and the adoption within those entities of adequate procedures in order to product information necessary for the exercise of the monitoring on a consolidated basis.

These banking groups are supervised by the ECB or the ACPR (where the parent company is a French credit institution or investment firm) depending of their size.

Supervision on a consolidated basis affects all the entities of the group and involves that the ACPR, where appropriate, ensures with the competent authorities concerned:

- Coordination of the collect and publication of relevant or essential information (especially with on-site control missions);
- Planning and coordination of prudential supervision activities.

On March 2nd, 2020 the ACPR published Guidelines for the consolidated management of the mechanism for the fight against money laundering and terrorist financing of groups.

19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Changes of shareholding must be subject to prior authorisation of the ACPR in the following cases:

- Acquisition of the effective management control of the institution,
- Acquisition of one tenth, one fifth or one third of the capital and/or of the voting rights.

All modifications to the licence file shall be approved or declared to the ACPR.

20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Owners of banking institution must comply with a long list of criteria which main ones are the following:

- reputation of the proposed acquirer;
- reputation of the persons who are expected to take charge of the effective running of the business of the institution or to be a member of the supervisory body;
- reputation, experience and competence of key functions managers;
- financial soundness of the proposed acquirer;
- ability to still comply with prudential requirements;
- risks of money laundering.

21. Are there specific restrictions on foreign shareholdings in banks?

The control of foreign investment in regulated entities has been removed by the Decree of 2 August 2005 regulating financial relations with foreign countries.

The system for controlling foreign investment in certain economic sectors deemed strategic was re-formed by the PACTE law of May 20, 2019, which was supplemented by Decree no. 2019-1590 of December 31, 2019 and an Order at the same date. However, the banking sector is not covered.

22. Is there a special regime for domestic and/or globally systemically important banks?

The ECB supervises systemically important financial institutions. In France, these institutions are point out by the ACPR so that special supervision measures as additional capital requirement can be applied to them in order to reduce the risks involved.

23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

The Sanctions Committee of the ACPR could order two different natures of sanctions:

– Disciplinary sanctions:

- warning;
- reprimand;
- prohibition from conducting certain operations for a maximum period of ten years and any other restrictions on the conduct of its activity,
- temporary suspension of senior managers for a maximum period of ten years,
- compulsory resignation of senior managers,
- partial or total withdrawal of the license or authorisation and being struck off the list of authorised entities

– Financial sanctions:

- and/or a fine up to EUR.100 million (EUR.1 million for “bureaux de change”) or, in the event of non-compliance with the CRR, the penalties incurred by legal entities amount to 10% of turnover or twice the benefits derived from the breach when it can be assessed and a maximum amount of EUR.5 million for the responsible leaders.

The decisions taken by the Sanctions Committee are published in the official register of the ACPR and are made public. However, the Committee’s decision may provide for its publication without specifying the name of the bank in very exceptional cases where there could be a “risk of seriously disrupting financial markets or of causing a disproportionate prejudice to the parties involved”.

24. What is the resolution regime for banks?

Directive No 2014/59/EU of May 15, 2014 (BRRD), establishing a European framework for the recovery and resolution of credit institutions and investment firms, was transposed into French law under Ordinance No 2015-1024 of August 20, 2015, and supplements the framework created by Law No 2013-672 of July 26, 2013 on the separation and regulation of banking activities which set up a resolution college.

In addition, the Single Resolution Mechanism (SRM) defined in 2014 under Regulation No 806/2014, establishes uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund. Under the SRM, responsibilities for resolution are split between:

- the Single Resolution Board (SRB) located in Brussels, and
- the National Resolution Authorities (NRAs) of participating Member States.

In France, the ACPR has exclusive responsibility for certain entities: credit institutions considered less significant (not supervised by the ECB), nearly all investment firms, branches of third-country banks, and the banking systems in Monaco and in the French overseas territories.

With regard to these entities, the ACPR is charged of the following duties:

- preparing resolution plans;
- assessing the resolvability of an entity;
- taking decisions aimed at reducing or removing obstacles to the implementation of resolution measures;
- determining whether an entity is failing or likely to fail;
- implementing resolution

In France, the costs entailed by resolution are financed from two separate funds: either the Single Resolution Fund (SRF) or the National Resolution Fund (NRF).

Directive 2019/879 of the European Parliament and of the Council of May 20, 2019 (BRRD II), amending Directive 2014/59/EU (BRRD), was transposed by Order No. 2020-1636 of December 21, 2020, and Decree No. 2020-1703 of December 24, 2020.

The BRRD II Directive also modifies the powers of the authorities in charge of resolution to impose moratoria on certain liabilities, either through early intervention or resolution, and specifies the requirements for recognition of these powers in contracts entered into with banking institutions' counterparties.

25. How are client's assets and cash deposits protected?

First, in order to ensure the effective application of the resolution tools, resolution funds have been set up which are financed by contributions from the institutions.

In addition, in the event of a straightforward liquidation, the Deposit Guarantee and Resolution Fund (FGDR) is used to reimburse depositors, holders of securities and beneficiaries of guarantees.

In the event of a resolution, the deposit guarantee scheme, which subrogates to the rights of covered depositors, is not required to make a contribution greater than the amount of losses it would have had to bear if the institution had been wound up under normal insolvency proceedings, or greater than 0.4% of the total amount of covered deposits held by its members.

In the event of a liquidation, the deposit guarantee scheme is used for the following purposes:

- to reimburse depositors up to a maximum of EUR.100,000 per person and per establishment, within seven business days;
- to compensate investors up to a maximum of EUR.70,000 per person and per establishment in respect of any securities (shares, bonds, shares in UCITS) or other financial instruments that cannot be returned to them;
- to act in place of the bank if the latter is no longer able to honour the sureties or guarantees it has provided.

In France, the role of the deposit guarantee scheme is carried out by the Deposit Guarantee and Resolution Fund (FGDR).

Regarding the protection of clients assets, the bank acting as custody account-keeper must exercise due care in the safekeeping and accurate recording of securities. In particular, when it holds securities for its customers, it must keep the securities held on own account strictly separate from those kept for its customers. To this end, it must have at least two accounts open for each security with the central securities depository. This is called the account segregation rule.

The financial intermediary may never use its customers' securities without their express prior consent. This rule is intended to ensure that customers' securities may be promptly transferred to a healthy financial intermediary in the event that the original intermediary fails.

In the event of the failure of a custody account-keeper that fraudulently used its customers' securities without their agreement, a guarantee mechanism compensate investors if they cannot obtain their securities in the limit of EUR.70,000 per investor.

26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

When a failing bank enters into resolution, a tool known as a "bail-in' can be applied to force shareholders and creditors to absorb the losses and recapitalise the bank.

Under this mechanism, shareholders and creditors are required to shoulder some of the entity's losses or take part in its recapitalisation.

It consists of two phases:

- eligible liabilities are reduced as much as possible to absorb losses and bring the entity's net asset value down to zero;
- eligible liabilities are converted in order to recapitalise the entity or contribute to the capital of the bridge institution.

However, depositors are always protected, whether a bank is placed under resolution or into straightforward liquidation.

In the case of a resolution:

- Covered deposits (up to EUR.100,000) are protected as they are excluded from the scope of the bail-in.
- The ordinance transposing the BRRD into French law stipulates that no depositor may incur losses greater than they would have incurred under normal insolvency proceedings (NCWO – no creditor worse off than in liquidation).

In the case of a liquidation, depositors are also protected:

- Deposits of up to EUR 100,000 are protected by the deposit guarantee scheme, and reimbursed from a fund previously built up using contributions from financial institutions.
- Depositors are given a preferential ranking in the hierarchy of claims, and are thus reimbursed before ordinary creditors: amounts covered by the deposit guarantee scheme (up to EUR.100,000) are given a high ranking, followed by any amounts in excess of this threshold. Depositors are the last to be asked to make a contribution in the event of a resolution (after holders of capital shares and debt securities).

Depositors are placing even higher up in the ranking of claims for credit institutions. This makes it easier to apply the bail-in tool and provides depositors with greater protection.

Credit institutions can also issue a new category of debt securities which absorb losses after subordinated debt instruments and before preferred liabilities.

In the situation where a credit institution has infringed, or is liable, in the near future, to infringe its prudential requirements, the ACPR may take the following actions:

- Implement its recovery plan or its action plan;
- Modify its commercial strategy;
- Negotiate a restructuring of its debts with creditors;
- Remove or replace one or more of its manager;
- Call a general meeting of shareholders to vote on an agenda established by the competent authority.

If the resolution authority concludes that the entity is failing or likely to fail, that no possible alternative private sector measures can be taken (such as a recapitalisation) and that resolution is in the public interest, then the entity in question can be placed under resolution. In this case, the resolution authority takes control of the entity, either directly or via a specially appointed administrator.

27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?

The Article L613-30-3 of the French Monetary and Financial Code was modified by the Law n° 2016-1691 of December 9, 2016, and enables banks to comply with the Principles on Total Loss-absorbing Capacity (the "TLAC Requirements") adopted on November 9, 2015 by the Financial Stability Board (the "**FSB**").

Even if the TLAC ratio will have to be implemented from 1st January of 2019 and will apply to the globally systemically important banks, France has chosen to establish the ranking of debts in the event of a financial institution's liquidation, to create two new categories of debt:

- The first consists of currently existing claims that rank senior, as well as claims of future creditors that are not otherwise preferred and are not in the second category described below; and
- The second consists of a new type of non-structured debt containing a contractual clause specifying that their owner or holder is a "senior creditor" (and thus holds "Senior Non-Preferred Debt"); Senior Non-Preferred Debt may be issued by French banks.

The article thus introduces a new category of debt between subordinated debt, on the one hand, and the debt currently classified as senior debt, on the other hand, permitting financial institutions to issue unsubordinated debt instruments ranking below operating liabilities, making them eligible under the TLAC Requirements.

The TLAC regime only applies to globally systemically important banks.

28. In your view, what are the recent trends in bank regulation in your

jurisdiction?

a) The health crisis starting in 2020 has great impact on banks and financial institutions. The ACPR was deeply focused on the liquidity risk and asked several financial institutions to send their reporting on a weekly basis. Their concern was also linked to the governmental decision of facilitating the access to guaranteed loans for French companies under several conditions precedent.

b) The implementation of the anti-money laundering and counter terrorist financing regulation by entities is the target of numerous inspections based on which the college of the ACPR decides often to follow with disciplinary procedures in front of the Sanctions Committee.

Besides, the transposition of the fifth anti-money laundering Directive by Ordinance 2020-115 of February 12, 2020, has further strengthened the regulatory framework in this area.

In particular, it broadens the scope of actors subject to anti-money laundering obligations. It also provides for increased vigilance on transactions involving high-risk third countries identified by the Europe-an Commission and the Financial Action Task Force. The new measures also strengthen the resources of TRACFIN (French Intelligence unit for anti-money laundering) and the sharing of powers between the AMF and the ACPR for the control of anti-money laundering obligations on entities in the financial sector.

29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

While the economy and the financial system were in a process of normalisation following the crisis related to the covid-19 pandemic, the war in Ukraine constitutes a new major threat to financial stability, to which the financial system is showing resilience.

In particular, the war in Ukraine has reinforced inflationary pressures that were already significant, in particular, driven by energy prices. In response to rising inflation and the normalisation of monetary policy, there was a rapid rise in interest rates. This rise in interest rates had a transverse impact on all markets with, among other things, a significant increase in sovereign and corporate bond rates concomitant with a sharp drop in equity market valuations, and more generally price corrections across the spectrum of risky assets.

The rise in interest rates could have an impact on banks in terms of credit production, but the risk of default by households seems limited for the French High Council for Financial Stability, due to the specificities of financing market and the structure of debt (fixed rates, loan guarantees, monitoring of the debt ratio).

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