

## Relaxation of the French Banking Monopoly —A Major Milestone Reached

### IN SHORT

**The Situation:** On October 4, 2017, ordinance no 2017-1432, which addresses the modernization of the legal regime of assets management and financing debt, was published.

**The Result:** The reform introduces four new exceptions to the French banking monopoly. The main provisions of the ordinance will come into force on January 3, 2018.

**Looking Ahead:** This milestone relaxing the French banking monopoly aims at facilitating the financing of French local businesses by alternative capital providers as well as the refinancing of French banks by foreign nonregulated entities.

On October 4, 2017, France adopted an important reform to its banking monopoly. The changes arise from Ordinance no 2017-1432 ("New Ordinance") amending the French monetary and financial code provisions on alternative investment funds and banking transaction prohibitions to nonbanking entities.

The main provisions of this New Ordinance will enter into force on January 3, 2018, and the related application decrees are also expected to occur on that date.

#### French Banking Monopoly

Broadly speaking, the so-called French banking monopoly prohibits nonbank entities from carrying out any banking activity in France. French law takes a broad view of the breadth of "banking activity" as it extends to granting loans or purchasing non-matured receivables, except for very limited exceptions.

The growth of the financing needs from local businesses, combined with the increase of the European regulatory constraints over the French banks, led the French authorities to relax the banking monopoly in order to facilitate access to the local business lending market in France for alternative funding providers.

This recent reform of the French banking monopoly is the most significant milestone reached since 2014.

#### The First Milestones

From 2014 to 2016, the French legislature progressively introduced several new exceptions to the French banking monopoly, including in particular, the following:

- An exception allowing individuals to grant loans to French enterprises (2014) or enterprises to subscribe for *minibons* (interest-bearing notes) issued by French enterprises (2016) via crowdfunding platforms;
- An exception for commercial loans between enterprises having an economic relationship (2015); and
- An exception for French *fonds professionnels spécialisés* (professional specialized investment funds) and *fonds professionnels de capital investissement* (retail private equity investment funds) to grant loans to nonfinancial enterprises (2016).



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#### Four New Exceptions

The New Ordinance completes the French banking monopoly relaxation process that began in 2014, now with a focus on alternative funding tools:

1. It allows French securitization funds called *organismes de titrisation* ("OT") to grant loans to nonfinancial enterprises (conditions and limits to be set forth in a coming decree), to benefit from Dailly law assignments and to enter into sub-participations.
2. It creates a new category of French alternative investment funds ("AIF")—a debt fund called "*organismes de financement spécialisé*" ("OFS")—which is also allowed to grant loans to nonfinancial enterprises (conditions and limits to be set forth in a coming decree), to benefit from Dailly law assignments and to enter into sub-participations. Contrary to the French securitization fund, the new debt fund will also be allowed to invest into shares, quasi-equity instruments, or tangible assets and

will benefit from the AIF passport. The wide range of eligible investments and financings by this new type of French debt fund would allow its use in leverage buyout, real estate, and infrastructure financings.

3. It allows European alternative investment funds licensed as a "European Long Term Investment Fund" ("ELTIF") in accordance with Regulation (EU) No. 2015/760 of the European Parliament and the Council dated April 29, 2015 ("ELTIF Regulation") to grant loans to nonfinancial enterprises in France (conditions and limits are set forth in the ELTIF Regulation).
4. It allows foreign nonbank entities and institutions to purchase non-matured claims from French banks, provided that such claims are not held over individuals who are not acting for professional purposes.

### THREE KEY TAKEAWAYS

1. Two additional French AIFs (OT and OFS) will be allowed to grant loans to nonfinancial entities in France.
2. European funds qualifying as an "ELTIF" will be allowed to grant loans to nonfinancial entities in France.
3. Foreign nonregulated entities will be allowed to purchase non-matured professional receivables from French banks.

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