

**FRENCH BANKING ACT
24 JANUARY 1984**

Updated 1 September 1999
CRBF
Comité de la réglementation bancaire
et financière

1. GENERAL ORGANIZATION ACTS
1.1. - BANKING ACT
ACT 84-46 OF 24 JANUARY 1984

TITLE I
CREDIT INSTITUTIONS: DEFINITION AND OPERATING CONDITIONS

CHAPTER I
DEFINITION OF A CREDIT INSTITUTION AND OF BANKING OPERATIONS

Article 1

Credit institutions are legal persons carrying out banking operations as their regular business. Banking operations comprise the receipt of funds from the public, credit operations and making available to customers or administering means of payment.

Article 2

Funds received from the public shall be understood to be funds which a person accepts from a third party, especially in the form of deposits, with the right to make use of them for his own account, but subject to an obligation to repay them. The following shall not however be regarded as funds received from the public:

1. funds received or left in an account by unlimited or limited liability partners in a partnership, by associates or shareholders holding at least 5% of the capital, or by directors (*administrateurs*), members of the managing board (*directoire*) and supervisory board (*conseil de surveillance*) or *gérants* 1 , and funds deriving from participating loans (*prêts participatifs*);

2. funds which an undertaking receives from its employees provided that they do not amount to more than 10% of its capital resources. For the purposes of determining this threshold, funds received from employees by virtue of specific legislative provisions shall be excluded.

Article 3

For the purposes of the present Act, a credit operation shall be understood to mean any act by which a person, for valuable consideration, places or promises to place funds at the disposal of another person or assumes a commitment in favour of the latter in the form of commitments under signature, guarantees or the like. Leasing and, in general, any rental operation with a purchase option shall be treated as a credit operation.

Article 4

Means of payment shall be understood to comprise all instruments which, irrespective of the medium or technical procedure used, enable any person to transfer funds.

1 Persons appointed by the shareholders of sociétés à responsabilité limitée (private limited companies) or sociétés de personnes (partnerships) to manage and represent them.

Article 5

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

1. foreign-exchange operations;
2. operations in gold, precious metals and coins;
3. the placement, subscription, purchase, management, custody and sale of securities and any financial product;
4. advice and assistance in the management of assets;
5. advice and assistance in financial management, financial engineering and, generally, all services designed to facilitate the setting-up and development of undertakings, subject to the legislative provisions relating to the illegal exercise of certain professions;
6. operations involving the simple rental of movable or immovable property, in the case of institutions authorized to effect leasing operations.

The performance of the related operations and the activity of safekeeping shall be subject to the prior authorization prescribed by Article 11 of the Financial Activity Modernization Act 96-597 of 2 July 1996 when such performance constitutes investment services as defined in Article 4 of that Act.

Article 6

Credit institutions may also, subject to the conditions laid down by the *Comité de la Réglementation Bancaire et Financière* referred to in Article 29, take and hold equity holdings in existing or new undertakings.

Article 7

Credit institutions may only regularly carry on activities other than those referred to in Articles 1 to 6 subject to the conditions laid down by the *Comité de la Réglementation Bancaire et Financière*. Such operations must in any case remain of limited importance in relation to the institution's normal business as a whole and must not hinder, restrict or distort competition on the market concerned.

Article 8

The following shall not be subject to the present Act: the Treasury, the *Banque de France*, the financial services of the Post Office, the *Institut d'Émission des Départements d'Outre-Mer*, the *Institut d'Émission*

d'Outre-Mer and the Caisse des Dépôts et Consignations. These institutions and services may carry out the banking operations specified in the laws and regulations governing them.

The regulations of the *Comité de la Réglementation Bancaire et Financière* as well as the regulations of the *Comité de la Réglementation Comptable* may, *mutates mutandis* and subject to the conditions fixed by a decree of the *Conseil d'État*, be extended to the financial services of the Post Office, the *Caisse des Dépôts et Consignations* and the Treasury accountants providing deposit services for private individuals.

Article 9

When credit institutions with their headquarters abroad open information, liaison or representative offices, the opening of such offices must be notified in advance to the *Comité des Établissements de Crédit et des Entreprises d'Investissement* referred to in Article 29. Such offices may use the business name of the credit institution they represent.

Article 9-1

For the purposes of the present Act:

1. The term "subsidiary" means an undertaking over which the *Commission Bancaire* records that sole control is exercised within the meaning of Article 357-1 of Act 66-537 of 24 July 1966 on commercial enterprises;
2. – The term "financial group" means a group formed by the direct or indirect subsidiaries of a credit institution, investment firm or financial holding company, and by undertakings of a financial nature over which the parent undertaking exercises joint control within the meaning of Article 357-1 of Act 66-537 of 24 July 1966. The *Comité de la Réglementation Bancaire et Financière* shall define undertakings of a financial nature as referred to in the preceding paragraph;
3. – The term "mixed group" means a group formed by the direct or indirect subsidiaries of parent undertaking that is not a financial holding company, credit institution or investment but at least one

CHAPTER II PROHIBITIONS

Article 10

It shall be prohibited for any person other than a credit institution to carry out banking operations on a regular basis. It shall also be prohibited for any undertaking other than a credit institution to receive funds from the public at sight or less than two years' term.

Article 11

Without prejudice to the particular provisions applicable to them, the prohibitions laid down in Article 10 above shall not apply to the persons and services listed in Article 8 or to undertakings governed by the Insurance Code, reinsurance companies, stockbrokers (*investment service providers*) or bodies collecting contributions paid by employers to finance construction programmes defined by the Construction and Housing Code or securitization vehicles. The prohibition on credit operations shall not apply to:

1. non-profit-making bodies which, in fulfilment of their objects and for welfare reasons, grant loans from their capital resources on preferential terms to certain persons within their sphere of action;
2. bodies which, in the case of the operations defined in Article L. 411-1 of the Construction and Housing Code, and purely as an adjunct to their activity as a builder or supplier of services, grant natural persons acquiring property deferred payment of the price of the housing being purchased or subscribed to by them;
3. undertakings which grant salary advances or loans of an exceptional nature to their employees for welfare reasons.
4. to risky unincorporated mutual funds (*fonds communs de placement*) which, according to the terms set forth in Article 22 of Act 88-1201 of 23 December 1988 relating to Undertakings for Collective Investment in Transferable Securities (UCITS) and creating securitization vehicles (*fonds communs de créances*), grant overdrafts to the companies in which they have an equity interest.

Article 12

The prohibitions laid down in Article 10 of the present Act shall not prevent an undertaking, of whatever nature, from:

1. allowing its contracting partners deferred or advance payment facilities in the course of its business;
2. concluding contracts for the leasing of housing;
3. carrying out treasury operations with companies which, directly or indirectly, have capital links with it that confer on one of the linked undertakings effective control over the others;
4. issuing securities and negotiable debt securities defined in Article 19-I of Act 91-716 of 26 July 1991 containing various economic and financial provisions;
5. issuing vouchers and cards for the purchase of a particular article or service from it;
6. remitting cash as collateral for lending of securities pursuant to Article 31.c of Act 87-416 of 17 June 1987 relating to savings;
7. buying or selling securities, debt securities that are negotiable on a regulated French or foreign market or government securities as part of a repurchase agreement.

Article 13

No one may be a member of a board of directors or supervisory board of a credit institution nor, directly or through an intermediary, direct, manage or run a credit institution in any capacity, nor be authorized to sign on behalf of such an institution:

1. if he has been convicted:
 - a) of a crime,
 - b) of violating the provisions of Articles 150, 151, 151-1, 177, 178, 179, 419 or 420 of the Penal Code,*

- c) of theft, fraud or breach of trust,
 - d) of an offence which is punishable, under special Acts, by penalties laid down in Articles 405, 406 and 410 of the Penal Code,*
 - e) of misappropriation when acting as a public depository, extortion of funds or securities, criminal bankruptcy, injury to the credit of the State or breach of exchange control regulations,* These articles from the former Penal Code were repealed by Act 92-1336 of 16 December 1992. See the correlation tables published in the circular of 14 May 1993 for the corresponding references and provisions in the new Penal Code.
 - f) under the provisions of Title II of Act 66-537 of 24 July 1966 on commercial companies, Articles 6 (*consumer Code, Art L 313-5*) and 15 of Act 66-1010 of 28 December 1966 relating to usury, money loans and certain canvassing and advertising operations, Article 10 of Act 72-6 of 3 January 1972 relating to canvassing for financial business and investment and insurance operations or Article 40 of Act 83-1 of 3 January 1983 on the promotion of investment and protection of savings,
 - g) of receiving items obtained in consequence of such offences,
 - h) under the provisions of either Article L.627 of the Public Health Code or Article 415 of the Customs Code,
 - i) or under the terms of Articles 75 and 77 to 84 of the present Act;
2. if he has been sentenced to a period of imprisonment in excess of two months under Article 66 of the amended decree of 30 October 1935 unifying the Act on cheques;
3. if he has been the subject of a conviction by a foreign court of law that is *res judicata*, constituting under French law a conviction for one of the crimes or offences listed in the present Article. The criminal court of the convicted person's domicile shall, at the request of the State Prosecutor's Office, evaluate the regularity and legality of the decision and give a ruling in chambers on the application of the prohibition in France, the person concerned having been duly summoned to attend;
4. if a personal bankruptcy or prohibition order as laid down in Article 108 of Act 67-563 of 13 July 1967 on receivership, liquidation of assets, personal bankruptcy and criminal bankruptcies has been pronounced against him or if he has been adjudged bankrupt by a foreign court of law when the adjudication in bankruptcy has been declared enforceable in France and if he has not been discharged;
5. if he has been relieved of his duties as a law official by virtue of a court ruling.

Article 14

No undertaking other than a credit institution may make use of a business name, advertising or in general any expression implying that it is an authorized credit institution or creating confusion on the subject.

No credit institution may imply that it belongs to a category other than that in which it has been authorized or create confusion on the subject.

CHAPTER III AUTHORIZATION

Article 15

Before starting business, credit institutions must obtain authorization from the *Comité des Établissements de Crédit et des Entreprises d'Investissement* referred to in Article 29. The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall verify whether the applicant undertaking meets the requirements laid down in Articles 16 and 17 of the present Act and the appropriateness of the undertaking's legal form to the activity of a credit institution. It shall take into account the programme of operations of the undertaking, its proposed technical and financial resources and the suitability of the persons investing capital and, where applicable, their guarantors.

The Committee shall also assess the applicant undertaking's capacity to achieve its development objectives in a manner that is compatible with the smooth working of the banking system and offers sufficient safety for its customers. The Committee may limit the authorization it delivers to the exercise of certain operations defined by the applicant's corporate purpose. (*Act 99-532 of 25 June 1999, Article 34*)

The Committee may withhold authorization when it is likely to be hindered in the exercise of its supervision of the applicant undertaking either by the existence of equity links or links of direct or indirect control between the undertaking and other natural or legal persons, or by the existence of laws or regulations of a State that is not a party to the agreement on the European Economic Area when one or more of the above-mentioned persons are governed by such laws or regulations. The Committee may also refuse authorization if the persons referred to in Article 17 lack the necessary integrity and adequate experience for their duties. The Committee shall reach a decision within twelve months of receiving the application. Any refusal of authorization shall be notified to the applicant.

The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall prepare and keep up-to-date a list of credit institutions which shall be published in the *Journal Officiel de la République Française*.

Article 5 -1

When an undertaking subject to the law of a State other than a member of the European Communities requests, pursuant to point 1) of Article 33 below, permission to acquire an equity holding in a credit institution or an investment firm such that either of the latter would become its subsidiary, or when a direct or indirect subsidiary of such an undertaking applies to the *Comité des Établissements de Crédit et des Entreprises d'Investissement* for authorization, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall limit or suspend its decision, at the request of the Council or Commission of the European Communities, if these authorities so request upon finding that credit institutions or investment firms having their headquarters in a Member State do not enjoy access to the market of the said third country or do not enjoy the same treatment as credit institutions or investment firms having their headquarters there.

When the Committee limits or suspends its decision under the provisions set out in the preceding paragraph, the authorization granted by the competent authority of a State that is a party to the agreement on the European Economic Area and not a member of the European Community shall have no legal effect on the territory of the French Republic during the period of the limitation or suspension and, in particular, the provisions set forth in Title IV bis of the present Act shall not apply to the institutions concerned.

Article 16

Credit institutions must have paid-up capital or a paid capital endowment at least equal to a sum fixed by the *Comité de la Réglementation Bancaire et Financière*. All credit institutions must be in a position at any time to prove that their assets effectively exceed their liabilities to third parties by an amount at least equal to the minimum capital. However, the *Comité de la Réglementation Bancaire et Financière* shall lay down the conditions in which institutions approved by the *Comité des Établissements de Crédit* prior to 31 December 1992, or resulting from the merger of two or more credit institutions and which do not satisfy the provisions of the foregoing paragraph, may continue to carry on their business.

Article 17

The headquarters of any credit institution subject to the present authorization must be located on the same national territory as its registered office. At least two people must be responsible for the effective direction of a credit institution's business policy. Credit institutions with their headquarters abroad shall appoint at least two persons to be entrusted with the effective direction of the activities of their branch in France.

Article 18

Credit institutions shall be authorized as banks, mutual or co-operative banks, savings and provident institutions, municipal credit banks, financial companies (*sociétés financières*) or specialized financial institutions (*institutions financières spécialisées*).

1. Only the following institutions shall be generally entitled to receive funds from the public at sight or at less than two years' term: banks, mutual or co-operative banks, savings and provident institutions and municipal credit banks. Banks may carry out all banking operations. Mutual or co-operative banks, savings and provident institutions and municipal credit banks may carry out all banking operations subject to the restrictions arising under the laws and regulations governing them.

2. Unless authorized to do so by way of a secondary activity in accordance with the conditions laid down by the *Comité de la Réglementation Bancaire et Financière*, financial companies and specialized financial institutions may not receive funds from the public at sight or at less than two years' term. Financial companies may carry out only such banking operations as are covered by the decision authorizing them to operate or by the laws and regulations applying to them.

Securities houses are financial companies whose principal business is to manage securities portfolios on their customers' behalf, receiving funds together with a management authority for this purpose, or to assist on a *del credere* basis in the placement of such securities. (*This paragraph shall be repealed effective 1 January 1998 – Act n° 96-397 of 2 July 1996, articles 20 and 97-IV*).

Specialized financial institutions are credit institutions carrying out a permanent public-interest task assigned to them by the State. They may not carry out banking operations other than those relating to this task, except as a secondary activity.

Article 19

I – The *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall revoke the authorization of a credit institution either at the request of the institution or *ex officio* when the institution

no longer fulfils the conditions to which the authorization is subject, when it has not made use of its authorization within 12 months or when it has ceased carrying on its business for six months or longer.

II – The revocation of authorization takes effect at the end of a period specified by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*.

III – During such period:

– the credit institution remains subject to the supervision of the *Commission Bancaire* and, where appropriate, the *Conseil des Marchés Financiers*. The *Commission Bancaire* may impose the disciplinary sanctions prescribed by Article 45, including striking the institution off the list of authorized institutions."

– the institution may engage only in the banking operations and provide only the investment services strictly necessary for the winding-up of its business and must limit the other activities mentioned in Articles 5 through 7;

– it may not refer to its status as a credit institution without making it clear that its authorization is being revoked.

IV – The funds received from the public mentioned in Article 2, insofar as they may be accepted on a professional basis only by a credit institution, and the securities issued by such institution which are not traded on a regulated market, shall be refunded and redeemed by the institution at maturity or, if such maturity is subsequent to the period mentioned in II above, on the date specified by the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. At the end of said period, the institution shall no longer be a credit institution and must change its name. The banking operations other than acceptance of public funds (*Funds received from the public*) in which the institution engaged or agreed to engage before the revocation of its authorization may be completed.

V – A credit institution which decides to dissolve before the end of the period mentioned in II above remains subject, until completion of its liquidation, to the supervision of the *Commission Bancaire*, which may impose the disciplinary sanctions prescribed in Article 45, including striking off. It may not refer to its status as a credit institution without making it clear that it is in liquidation.

Article 19-1

A credit institution may be struck off the list of authorized credit institutions by the *Commission Bancaire* as a disciplinary sanction. The striking off shall entail liquidation of the legal person, if its registered office is in France. In the case of a branch of an institution with its registered office outside the European Economic Area, such striking off shall entail liquidation of the branch's balance-sheet and off-balance-sheet assets and liabilities. To protect customers' interests, the *Commission Bancaire* may defer the liquidation for a period that it determines. An institution struck off the list remains subject to the supervision of the *Commission Bancaire* until completion of the liquidation. It may engage only in the operations strictly necessary for the winding-up of its business. It may not refer to its status as a credit institution without making it clear that it has been struck off the list of authorized institutions.

Article 19-2

The *Comité de la Réglementation Bancaire et Financière* shall set the conditions for implementing Articles 19 and 19-1. In particular it shall specify the procedures for:

– publicizing the decisions concerning the revocation of authorization and striking-off ;

- in addition to the possibility of taking advantage of other legal options for assignment and enforceability vis-à-vis third parties, the assignment of claims arising from the credit operations mentioned in Article 3 may be made binding on third parties by the debtor's written consent or else by decision of the *Commission Bancaire*;
- transferring housing savings plans and accounts, business savings passbook accounts, people's savings plans and passbook accounts, personal equity plans and uncollateralized commitments to one or more other credit institutions without prejudice to the rights of the holders or beneficiaries;
- transferring financial instruments held on account with the institution to another investment service provider or to the legal person issuer of the instruments;
- limitation of the operations referred to in Articles 5 through 7 of this Act."

CHAPTER IV CENTRAL BODIES

Article 20

For the purposes of the present Act, the following shall be regarded as central bodies: the *Caisse Nationale de Crédit Agricole*, the *Chambre Syndicale des Banques Populaires*, the *Confédération Nationale du Crédit Mutuel*, the *Caisse Centrale de Crédit Coopératif*, the *Fédération Centrale du Crédit Mutuel Agricole et Rural*, the *Centre National des Caisses d'Epargne et de Prévoyance* and the *Chambre Syndicale des Sociétés Anonymes de Crédit Immobilier*.

Article 21

The central bodies shall represent their member credit institutions in relations with the *Banque de France*, the *Comité des Etablissements de Crédit et des Entreprises d'Investissement* and, subject to the rules applying to disciplinary procedure, the *Commission Bancaire*. They shall be responsible for ensuring cohesion within their network and the smooth functioning of their member institutions. To this end, they shall take all necessary measures, in particular to safeguard the liquidity and solvency of each of these institutions and of the network as a whole.

They may also decide to prohibit or limit the payment of a dividend to the shareholders of credit institutions or of investment firms affiliated to them. They shall ensure that the laws and regulations applying to these institutions are implemented and exercise administrative, technical and financial supervision over their organization and management. On-site supervision by central bodies may be extended to their direct or indirect subsidiaries and to those of affiliated institutions. Within the scope of these powers, they may take disciplinary action as provided for under the laws and regulations applying to them. Loss of membership status must be notified by the central body to the *Comité des Etablissements de Crédit et des Entreprises d'Investissement*, which shall take a decision on the authorization of the institution in question.

After informing the *Commission Bancaire*, and without prejudice to the powers of the *Comité des Etablissements de Crédit et des Entreprises d'Investissement*, central bodies may, when the financial situation of the institutions concerned warrants such action, and notwithstanding all provisions or stipulations to the contrary, decide the merger of two or more legal persons affiliated to them, the total or partial transfer of their business and their dissolution. The central bodies must previously consult the managing bodies of the legal persons concerned. The central bodies are responsible for the liquidation of credit institutions affiliated to them or for the total or partial transfer of their business.

Article 22

Without prejudice to the powers conferred on the *Commission Bancaire* to exercise supervision by off-site monitoring and on-site supervision of their member institutions, the central bodies shall, each in its respective area, assist in implementing the laws and regulations governing the credit institutions. As part of these responsibilities, they shall bring any infringements of such provisions to the notice of the *Commission Bancaire*.

CHAPTER V ORGANIZATION OF THE PROFESSION

Article 23

All credit institutions shall be required to belong to a professional body or central body affiliated to the *Association Française des Établissements de Crédit et des Entreprises d'Investissement*. Nevertheless, the Minister for Economic Affairs and Finance may authorize certain specialized financial institutions to belong to the Association directly. The objects of the *Association Française des Établissements de Crédit et des Entreprises d'Investissement* shall be to represent the collective interests of the credit institutions and investment firms, particularly in relations with the public authorities, provide its members and the public with information, carry out research into any questions of mutual interest and draft recommendations thereon with a view, where appropriate, to promoting inter-network co-operation and organizing and managing services of mutual interest.

The *Association Française des Etablissements de Crédit et des Entreprises d'Investissement* may also engage in discussions with trade union organizations representing the sector concerning issues of a general nature relating to credit institutions and investment firms as a whole. Its statutes shall be submitted for the approval of the minister.

TITLE II FORMULATION AND IMPLEMENTATION OF THE RULES APPLYING TO CREDIT INSTITUTIONS

CHAPTER I CONSEIL NATIONAL DU CREDIT ET DU TITRE

Articl 24

A national credit and securities council - the *Conseil National du Crédit et du Titre* - is hereby established. The *Conseil National du Crédit et du Titre* shall study the working of the banking and financial system, particularly as regards customer relations and the administering of means of payment. It may issue opinions in these areas. It may also, in these areas, commission any research it deems necessary subject to the conditions laid down in Article 28. It may be asked by the Minister for Economic Affairs and Finance to give an opinion on bills and draft decrees falling within its competence, and may be

consulted in connection with the drafting of the National Plan. Each year, the *Conseil National du Crédit et du Titre* shall send the President of the Republic and Parliament a report on the working of the banking and financial system. This report shall be published in the *Journal Officiel*.

Article 25

The *Conseil National du Crédit et du Titre* shall be chaired by the Minister for Economic Affairs and Finance. The Governor of the *Banque de France* shall be its deputy-chairman. The other members shall be appointed by a decree of the Minister for Economic Affairs and Finance in accordance with the following distribution:

1. four representatives of the State, including the Head of the Treasury;
2. two deputies and two senators;
3. one member of the *Conseil Économique et Social*;
4. three elected representatives of the regions and overseas departments and territories;
5. ten representatives of the sectors of economic activity;
6. ten representatives of national trade unions, including representatives of the trade unions representing the staff of credit institutions and investment firms;
7. thirteen representatives of the credit institutions and investment firms, including one representative of the *Association Française des Établissements de Crédit et des Entreprises d'Investissement* and one representative of investment firms.
8. six prominent persons chosen for their competence in economic and financial matters. Members of the *Conseil National du Crédit et du Titre* may not be represented by an alternate. The arrangements for the appointment of members of the *Conseil National du Crédit et du Titre* shall be laid down by decree.

Article 26

The *Conseil National du Crédit et du Titre* shall meet when convened by its chairman. The *Conseil National du Crédit et du Titre* shall also meet whenever a majority of its members think it necessary. The proceedings of the *Conseil National du Crédit et du Titre* shall only be valid when a majority of its members are present.

Publication of the opinions mentioned in the second and third paragraphs of Article 24 and of the research referred to in the second paragraph of the same Article shall be a matter for decision by a majority of the members of the *Conseil National du Crédit et du Titre*.

Article 27

The *Conseil National du Crédit et du Titre* shall be provided with its own financial resources for its operational requirements. The Secretary General of the *Conseil National du Crédit et du Titre* shall be appointed by the Minister for Economic Affairs and Finance from a list of at least three names drawn up by the *Conseil*.

Article 28

The *Conseil National du Crédit et du Titre* may give some of its members particular assignments and set up working parties or study groups within its organization. The *Conseil National du Crédit et du Titre* may ask the *Banque de France* or the competent authorities to provide it, subject to the obligation of professional secrecy, with the information needed to discharge its functions.

CHAPTER II COMITÉ DE LA RÉGLEMENTATION BANCAIRE ET FINANCIÈRE AND COMITÉ DES ÉTABLISSEMENTS DE CRÉDIT ET DES ENTREPRISES D'INVESTISSEMENT

Article 29

A banking regulatory committee - the *Comité de la Réglementation Bancaire et Financière*- and a credit institutions committee - the *Comité des Établissements de Crédit et des Entreprises d'Investissement*- are hereby established, members of which shall be chosen from within the *Conseil National du Crédit et du Titre* and which shall report annually to that body.

Article 30

Within the framework of guidelines laid down by the Government and subject to the powers of the *Comité de la Réglementation Comptable*, the *Comité de la Réglementation Bancaire et Financière* shall fix the general regulations applicable to credit institutions and to investment firms in accordance with the conditions laid down in Chapter III of the present title. It shall comprise the Minister for Economic Affairs and Finance or his representative as chairman, the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, or his representative on this *Commission*, and five other members or their alternates appointed by Order of the Minister for Economic Affairs and Finance for a three-year term : one member of the *Conseil d'État*, one representative of the *Association Française des Établissements de Crédit et des Entreprises d'Investissement*, one representative of trade unions representing employees of credit institutions and investment firms other than those referred to in Article 15 (of Act 96-597 of 2 July 1996), and two prominent persons chosen for their competence.

When it considers general provisions affecting the activity of investment service providers, the *Comité de la Réglementation Bancaire et Financière* also includes the chairman of the *Commission des Opérations de Bourse* or its representative, the chairman of the *Conseil des Marchés Financiers* or its representative and a representative of the investment firms. Decisions shall be taken by a majority vote of the members present. In the event of a tie, the chairman shall have the casting vote.

Article 31

The *Comité des Etablissements de Crédit et des Entreprises d'Investissement* shall be responsible for taking the decisions and granting the individual authorizations or exemptions provided for in the laws and regulations applying to credit institutions and to investment firms, with the exception of those within the competence of the *Commission Bancaire*. It shall be chaired by the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, or his representative on this *Commission*. Its other members shall be the Head of the Treasury or his representative, the chairman or chairmen of the authorities which approved the programme of operations of the person whose application for authorization the *Comité* is considering or their representative, the chairman of the managing board of the

guarantee fund mentioned in Article 52-1 *et seq.* or a member of the managing board representing him, and six members or their alternates appointed by Order of the Minister for Economic Affairs and Finance for a three-year term : one member of the *Conseil d'État*, one senior manager of a credit institution and one senior manager of an investment firm representing the *Association Française des Établissements de Crédit et des Entreprises d'Investissement*, one representative of trade unions representing employees of the firms and institutions subject to authorization by the *Comité*, and two prominent persons chosen for their competence. In the case of a tie, the Chairman shall have the casting vote. In the event of an emergency ascertained by its chairman, the *Comité* may take a decision by way of a written consultation on a decision proposal, according to a procedure laid down in a decree of the *Conseil d'Etat*. The *Comité* may delegate the power to take decisions or grant permits or individual dispensations to its chairman, except as regards authorization, the revocation of authorization or effective change of control of a subject institution, with the exception of the provisions set forth at the last paragraph of Article 21 and at Article 46-1. The Head of the Treasury may request postponement of any decision of the Committee. In this case the Chairman shall in due course arrange for further discussion of the matter.

Article 31-1

All persons participating or having participated in the discussions or activities of the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall be bound by the obligation of professional secrecy subject to the penalties laid down in Article 378 of the Penal Code. This secrecy may not serve as grounds for non-disclosure of information to a court engaged either in a court-ordered liquidation procedure concerning a credit institution, investment firm or financial holding company, or in criminal proceedings. Notwithstanding the provisions of Act 68-678 of 26 July 1968 relating to the disclosure of documents and information of an economic, commercial, industrial, financial or technical nature to natural and legal persons, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* may transmit information to the authorities of other States responsible for the authorization or supervision of credit institutions and financial institutions, subject to reciprocity and provided the said authorities are themselves bound by an obligation of professional secrecy subject to the same guarantees as in France. The Commission of the European Communities may also receive such information subject to what is necessary to the performance of the tasks entrusted to it and provided that persons receiving such information are bound by an obligation of professional secrecy subject to the same guarantees as in France.

Article 32

Appeals against the regulations of the *Comité de la Réglementation Bancaire et Financière* or the decisions of the *Comité des Établissements de Crédit et des Entreprises d'Investissement*, which must state the grounds for its decisions, shall lie to the administrative courts. The regulations shall be published in the *Journal Officiel de la République Française*, after confirmation by the Minister for Economic Affairs and Finance.

CHAPTER III REGULATION OF CREDIT INSTITUTIONS

Article 33

The *Comité de la Réglementation Bancaire et Financière* shall establish the regulations governing in particular:

1. the amount of credit institutions' capital and the conditions for taking, increasing or disposing of direct or indirect equity holdings in these institutions as well as in financial institutions as defined under Article 71-1 of this Act directly or indirectly holding effective power of control over one or more credit institutions;
2. the conditions for the establishment of networks;
3. the conditions under which these institutions may take equity holdings;
4. the conditions of the operations that may be carried out by credit institutions, particularly in their relations with customers, and the conditions of competition;
5. the organization of joint services;
6. the management standards to be observed by credit institutions, with a view in particular to safeguarding their liquidity and solvency and the equilibrium of their financial structure;
7. the information intended for the competent authorities;
8. subject to the tasks conferred upon the European System of Central Banks by paragraph 2 of Article 105 of the Treaty establishing the European Community, the instruments and rules of credit policy;
9. the rules relating to depositor protection referred to in Article 52-1;
10. the rules applicable to accounting organization, data processing supervision and security mechanisms and internal control procedures.

In case of failure to comply with the requirements laid down by the *Comité de la Réglementation Bancaire et Financière* in regard to application of point 1 of this Article, and without prejudice to Article 356-4 of Act 66-537 of 24 July 1966 on commercial companies, the State Prosecutor, the *Commission Bancaire* or the *Comité des Établissements de Crédit et des Entreprises d'Investissement* or any shareholder may apply to the courts to suspend the exercise of the voting rights attached to irregularly held direct or indirect shares or equity interests in credit institutions or financial institutions until such time as the situation has been rectified.

Article 33-1

After consulting the *Conseil des Marchés Financiers* and subject to the powers of the *Commission des Opérations de Bourse* as regards portfolio management companies defined in the Financial Activity Modernization Act 96-597 of 2 July 1996, the *Comité de la Réglementation Bancaire et Financière* also issues, with regard to the investment service providers defined in Article 6 of that Act, regulations concerning:

1. the amount of the capital requirement in light of the services which the investment service provider plans to provide;
2. the standards defined in 5 to 7, 10 and, if applicable, 8 of Article 33.

Article 34

The following shall be excluded from the responsibilities of the *Comité de la Réglementation Bancaire et Financière*:

1. as regards the mutual or co-operative banks, definition of the conditions for membership and the resulting restrictions on their field of activity;
2. definition of the powers of the specialized financial institutions, savings and provident institutions and municipal credit banks;
3. the principles applying to banking operations benefiting from government aid;
4. the rules applicable to the provision of investment services by investment firms and credit institutions.

Article 35

The *Comité de la Réglementation Bancaire et Financière* regulations as well as the *Comité de la Réglementation Comptable* regulations may differ depending on the legal status of the credit institutions or investment firms, the extent of their networks or the characteristics of their business. They may, if necessary, set out the conditions for the granting of individual exemptions of an exceptional and temporary nature.

Article 36

The Chairman of the *Comité de la Réglementation Bancaire et Financière* shall determine the terms and conditions on which the regulations issued by the *Comité de la Réglementation Bancaire et Financière* shall be implemented.

TITLE III SUPERVISION OF CREDIT INSTITUTIONS

CHAPTER I COMMISSION BANCAIRE

Article 37

A banking commission - the *Commission Bancaire* - is hereby established to monitor the credit institutions' observance of the laws and regulations applying to them and take disciplinary action against any contravention. It shall examine the way in which they operate and monitor the soundness of their financial situation. It shall ensure that the rules of sound banking practice are observed.

Article 37-1

The *Commission Bancaire* shall also monitor the compliance of investment service providers other than portfolio management companies, members of regulated markets and members of clearing houses with the laws and regulations that are provided for in this Act or that expressly provide for supervision by the *Commission Bancaire*. It shall punish any violations thereof under the conditions set forth at Article 45.

It shall examine the conditions under which they operate and monitor the soundness of their financial situation. This supervision shall be exercised without prejudice to the powers of the *Conseil des Marchés Financiers* and the *Commission des Opérations de Bourse* concerning supervision of rules of conduct.

Article 38

The *Commission Bancaire* shall comprise the Governor of the *Banque de France* or his representative, as chairman, the Head of the Treasury or his representative and four members or their alternates appointed by an Order of the Minister for Economic Affairs and Finance for a period of six years:

1. a member of the *Conseil d'État* proposed by the deputy chairman of the *Conseil d'État*;
2. a judge of the *Cour de Cassation* proposed by the First Chief Justice of the *Cour de Cassation*;
3. two members chosen for their competence in banking and financial matters.

In the case of a tie, the chairman shall have the casting vote.

Article 38 - 1

The *Commission Bancaire* shall hear the chairman of the managing board of the guarantee fund for any matter concerning an institution in respect of which it envisages seeking the intervention of the guarantee fund or proposing to the guarantee fund that it should take preventive action. The *Commission Bancaire* shall also hear the chairman of the managing board at his request.

Article 39

The General Secretariat of the *Commission Bancaire* shall carry out off-site monitoring and on-site supervision as instructed by the *Commission*. The *Commission* shall periodically fix the programme of on-site supervision. The *Banque de France* shall provide the General Secretariat of the *Commission Bancaire* with the staff and resources required to carry out the supervisory duties mentioned in the paragraph above, in accordance with terms and conditions to be specified by formal agreement. The General Secretariat of the *Commission Bancaire* may also call on any competent persons to assist it in its supervisory duties within the framework of formal agreements to be concluded to that end.

Article 40

The *Commission Bancaire* shall draw up a list of the documents and data to be submitted to it and determine their form and the deadlines for filing. In addition, it may require credit institutions and investment firms to provide any information, document, clarification or proof necessary to the exercise of its functions. It may ask to be sent the auditors' reports and, in general, all accounting documents (and, when necessary, for them to be certified), as well as all relevant information and data.

Article 41

The findings of on-site supervision shall be forwarded either to the board of directors or to the managing and supervisory boards, or other similar decision-making body, of the credit institution or investment firm in question. They shall also be given to the statutory auditors. On-site supervision may be extended to the subsidiaries of a credit institution or investment firm, to the legal persons directly or indirectly controlling it within the meaning of Article 355-1 of the Commercial Companies Act 66-537 of 24 July 1966, and to their subsidiaries.

Article 41-1

When the authorities of a State party to the agreement on the European Economic Area with competence to supervise a credit institution or investment firm wish, in specific cases, to verify information concerning one of the legal persons referred to at the second paragraph of Article 41 whose registered office is situated in France, the *Commission Bancaire* must, by way of an exception to the provisions of Act 68-678 of 26 July 1968 on the disclosure of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons, respond to their request either by carrying out the verification itself or by allowing the representatives of such authorities to do so. On-site supervision by the *Commission Bancaire* may be extended to the legal persons referred to in the second paragraph of Article 41 whose registered office is situated in another State party to the agreement on the European Economic Area. The *Commission* shall ask the competent authorities of the other State party to the agreement on the European Economic Area to carry out such verification. With the authorization of such authorities, it may appoint representatives to carry out controls.

In order to ensure the supervision of an institution subject to its control, the *Commission Bancaire* may require branches established in another State party to the agreement on the European Economic Area to disclose all information relevant to the exercise of such supervision and, after informing the authority of the State concerned with competence for the supervision of credit institutions or investment firms, cause its representatives to carry out an on-site inspection of the branches of the institution concerned. By way of an exception to the provisions of the above-mentioned Act 68-678 of 26 July 1968, the *Commission Bancaire* may in addition exchange all information relevant to the exercise of their duties with the authorities of other States party to the agreement on the European Economic Area responsible for the supervision of credit institutions, investment firms, other financial institutions and insurance companies.

Article 41-2

The *Commission Bancaire* may, by way of an exception to the provisions of the above-mentioned Act 68-678 of 26 July 1968, conclude bilateral agreements with the authorities of a State not party to the agreement on the European Economic Area entrusted with duties similar to those entrusted in France to the *Commission Bancaire*, provided that such authorities are themselves bound by a professional secrecy obligation, such bilateral agreements having as their purpose, cumulatively or otherwise:

- the extension of on-site inspections to the branches or subsidiaries established in a foreign country of a credit institution, investment firm or financial holding company governed by French law;
- the conduct by the *Commission Bancaire*, at the request of such foreign authorities, of on-site inspections of institutions subject to supervision in France that are branches or subsidiaries of institutions subject to the supervision of such authorities. Such inspections may be carried out jointly with such foreign authorities;
- the definition of the conditions under which the *Commission Bancaire* may transmit, receive or exchange information relevant to the exercise of its powers and those of foreign authorities responsible for the supervision of credit institutions, investment firms, other financial institutions, insurance companies or financial markets.

Article 41-3

Controls carried out under Articles 41-1 and 41-2 by the representatives of a foreign authority with competence for the supervision of credit institutions may only concern compliance with the prudential management standards of the State concerned in order to permit a control of the financial situation of banking or financial groups. They must be the subject of a report to the *Commission Bancaire*, which

alone may order sanctions with regard to the subsidiary or branch controlled in France. In order to allow exercise of the controls set forth at Articles 41-1 and 41-2, and by way of an exception to the provisions of the above-mentioned Act 68-678 of 26 July 1968, persons taking part in the strategic or operational management of the credit institutions referred to in the previous paragraph or employed by such a credit institution must comply with the requests of representatives of foreign banking supervisory authorities and may not assert a professional secrecy obligation as grounds for non-disclosure to them.

The *Commission Bancaire* shall refuse a request for assistance from a foreign authority when complying with the request is likely to prejudice French sovereignty, security, essential economic interests or public policy or when criminal proceedings of whatever nature have already been initiated in France on the basis of the same facts and against the same persons, or when final judgment has already been delivered against those persons for the same facts. Without prejudice to the prerogatives of the *Conseil des Marchés Financiers* and the *Commission des Opérations de Bourse*, the provisions of this article and of Articles 41-1 and 41-2 shall apply to investment firms and to the investment services business of credit institutions.

Article 42

When a credit institution is in breach of the rules of sound banking practice the *Commission Bancaire* may, after having given its management an opportunity to put forward their explanations, issue a warning to them.

Article 43

The *Commission Bancaire* may issue a recommendation to a credit institution calling upon it to take appropriate steps to restore or strengthen its financial situation, improve its management methods or ensure that its organization matches its activities or development objectives. The institution concerned is required to respond within two months, giving details of measures taken following the recommendation. Independently of the provisions set forth in the previous paragraph, the *Commission Bancaire* may issue an injunction to any credit institution, undertaking or person subject to its supervision pursuant to Article 37-1 calling upon it, *inter alia*, to take all necessary measures within a given period to restore or strengthen its financial situation, improve its management methods or ensure that its organization matches its activities or development objectives.

Article 44

The *Commission Bancaire* may appoint a provisional administrator, to whom will be transferred all the powers for administering, managing and representing the legal person. This appointment may be made either at the request of the management, if they feel themselves no longer able to carry out their duties normally or on the *Commission's* initiative when the credit institution can no longer be run on a normal basis or when one of the sanctions referred to in Article 45(4) and (5) has been imposed.

Article 45

If a credit institution or investment firm has contravened a law or regulation relating to its business, has not responded to a recommendation, or has not heeded a cautionary notice, or has not fulfilled commitments given on the occasion of an application for authorization or a permit or dispensation provided for by the laws and regulations that apply to credit institutions and investment firms, the *Commission Bancaire*, subject to the powers of the *Conseil des Marchés Financiers*, may impose one of the following disciplinary sanctions:

1. warning;
2. reprimand;
3. prohibition on the execution of certain operations and any other limitations on the carrying on of business;
4. temporary suspension of one or more of the persons referred to in Article 17 of the present Act or in Article 12 of the Financial Activity Modernization Act 96-597 of 2 July 1996 with or without appointment of a provisional administrator;
5. compulsory resignation of one or more of such persons with or without appointment of a provisional administrator;
6. striking the investment firm or credit institution off the list of authorized credit institutions and investment firms with or without appointment of a liquidator.

The same applies if it has failed to comply with an injunction as set forth at Article 43. The *Commission Bancaire* may also impose, instead of or in addition to said sanctions, a pecuniary sanction not exceeding the minimum capital which the credit institution or investment firm must have. The corresponding sums shall be collected by the Treasury and paid into the State budget. The *Commission Bancaire* may also decide, either in place of or in addition to such sanctions, to prohibit or limit the payment of a dividend to the shareholders of the credit institution or investment firm.

When it imposes any of the foregoing disciplinary sanctions on an investment service provider, the *Commission Bancaire* shall so inform the *Conseil des Marchés Financiers*. The *Commission Bancaire* may decide that the sanctions imposed under the terms of the present Article shall be published at the expense of the credit institution or investment firm in such journals or publications as it may decide.

Article 46

The *Commission Bancaire* may appoint a liquidator to credit institutions having been struck off and undertakings improperly carrying on the business defined in Article 1 or infringing one of the prohibitions specified in Article 10. All powers to administer, manage and represent the legal person are transferred to the liquidator.

Article 46-1

When a provisional administrator or liquidator has been appointed to a credit institution under Articles 44 and 46, the *Commission Bancaire* may, after seeking the opinion of the guarantee fund under Article 52-2, make a referral to the *Tribunal de Grande Instance* so that, when the *Commission* considers such action to be justified in the interests of depositors, the court may order the sale of the shares held by one or more of the institution's managers, *de jure* or *de facto*, remunerated or not. The sale price shall be determined after assessment by a court-appointed expert. The shares shall be valued according to the methods used for transfers of assets with the weightings appropriate to each case, according to the value of the assets, the profit record, the existence of subsidiaries and the business outlook and, for companies whose shares are admitted to trading on a regulated market, the stock market value. The suit shall be brought by way of a summons served on the shareholders concerned. The competent court is the one in whose venue the credit institution has its registered office.

Under the same conditions, the court may decide that the voting rights attached to the shares or voting certificates held by one or more of the managers, *de jure* or *de facto*, remunerated or not, shall be exercised for a period that it shall determine by an administrator appointed by the court for the purpose. Under the same conditions, the court may also order the sale of all the shares in the institution, or of the shares that have not been sold under the terms set forth in the first paragraph of this Article. When the shares are admitted to trading on a regulated market, the terms and conditions of sale are determined by the general regulations of the *Conseil des Marchés Financiers*. The amount of compensation payable to non-identified holders shall be held on deposit.

Article 46-2

By way of an exception to the provisions of Article 3 of Act 85-98 of 25 January 1985 on business reorganization and bankruptcy, credit institutions that are unable to make their payments immediately or in the short term are deemed to be insolvent. Credit institutions that have been struck off on the orders of the *Commission Bancaire* and whose liabilities vis-à-vis third parties, with the exception of debts that are repayable only after unsecured creditors have been paid off in full, are greater than its net assets minus provisions to be constituted may be placed in court-ordered liquidation.

Article 46-3

The business reorganization and court-ordered liquidation procedures instituted by the above-mentioned Act 85-98 of 25 January 1985 may be initiated with regard to a credit institution or investment firm only after an opinion from the *Commission Bancaire*. An application for initiation of the procedure for seeking an arrangement with creditors instituted by Act 84-148 of 1 March 1984 on the prevention and amicable settlement of business difficulties with regard to a credit institution or investment firm may be submitted to the President of the court only after an opinion from the *Commission Bancaire*. The procedures for issuing the opinions referred to in the first and second paragraph above shall be laid down in a decree of the *Conseil d'Etat*.

Article 46-4

When the *Commission Bancaire* has appointed a provisional administrator under the terms of Article 44, the court may only instruct the bankruptcy trustee to monitor management operations, as set forth at point 1 of Article 31 of the above-mentioned Act 85-98 of 25 January 1985.

Article 46-5

If a liquidation procedure with regard to a credit institution or investment firm is initiated or ordered by the court, the *Commission Bancaire* shall appoint a liquidator who shall draw up an inventory of assets, carry out liquidation operations and lay off staff under the terms and conditions set forth at Title III of the above-mentioned Act 85-98 of 25 January 1985. Under the terms of Articles 148-1 or 148-4 of the same Act, the liquidator appointed by the court shall carry out the operations set forth respectively at the first two paragraphs of Article 148-3 or the third paragraph of Article 148-4, except for the inventory of the company's assets and liquidation operations.

Article. 46-6

If a court-ordered reorganization or liquidation procedure is initiated with regard to a credit institution or investment firm, the guarantee fund and depositors are exempt from the declaration set forth at Article 50 of the above-mentioned Act 85-98 of 25 January 1985, the latter for their claims falling wholly or partly within the scope of the fund's intervention. The fund shall inform depositors of the amount of claims

excluded from the scope of intervention and shall indicate how such claims are to be declared to the creditors' representative. The creditors' representative shall draw up statements of all claims. Such statements must be certified by the bankruptcy judge, filed with the Commercial Court registry and published in an appropriate notice. In the event of an objection, depositors should bring action before the court within two months following the publication of notice, failing which they shall be out of time. A decree of the *Conseil d'Etat* shall lay down the procedures for implementing the present Article.

Article 47

When the *Commission Bancaire* decides that on-site supervision should be made at an institution belonging to a central body, it shall inform the central body thereof. It shall send the central body the findings of the supervision and the warnings and injunctions addressed by it to the member institution. In addition, the central body may ask the *Commission Bancaire* to take the initiative in appointing a provisional administrator to a member institution under the terms of Article 44.

Article 48

I. When the *Commission Bancaire* reaches a decision under Article 45, it is an administrative court.

II. When special circumstances warrant it, the *Commission* can take the measures provided for in Articles 44 and 46 without hearing both sides. The measures referred to in the preceding paragraph are withdrawn or upheld by the *Commission* after hearing both sides within a time limit fixed by a decree of the *Conseil d'État*.

III. The proceedings of the *Commission* shall be valid when an absolute majority of its members are present or represented. Furthermore, except in emergencies, its proceedings as an administrative court shall only be valid when all of its members are present or represented.

Article 49

Any person who participates or has participated in the supervision of credit institutions or investment firms, as provided in the present Chapter, shall be bound by the obligation of professional secrecy subject to the penalties laid down in Article 378 of the Penal Code. This secrecy may not serve as grounds for non-disclosure of information to a court engaged either in a court-ordered liquidation procedure initiated with regard to a credit institution, investment firm or financial holding company, or in criminal proceedings. Such professional secrecy obligation may not serve as grounds for non-disclosure vis-à-vis administrative courts to which a dispute relating to the activity of the *Commission Bancaire* has been referred. Notwithstanding the provisions of Act 80-538 of 16 July 1980, the *Commission Bancaire* may transmit information to the authorities responsible for supervising credit institutions or investment firms in foreign countries, provided that there is reciprocity and that the authorities in question are themselves bound by an obligation of professional secrecy subject to the same guarantees as in France.

CHAPTER II GOVERNMENT COMMISSIONERS

Article 50

The Minister for Economic Affairs shall appoint a Government Commissioner to any central body mentioned at Article 20 or to any credit institution to which the State has assigned prerogatives of public

power or a public interest task. A legislative decree shall lay down the procedures for implementing the present Article. It shall define in particular the conditions under which the Government Commissioner may oppose resolutions adopted by the decision-making body of the central body or credit institution regarding the exercise of the prerogatives conferred on it in virtue of its public-authority status or the public-interest task it performs.

TITLE IV PROTECTION OF DEPOSITORS AND BORROWERS

CHAPTER I THE LIQUIDITY AND SOLVENCY OF CREDIT INSTITUTIONS

Article 51

Credit institutions shall be required, subject to conditions laid down by the *Comité de la Réglementation Bancaire et Financière*, to observe management standards designed to safeguard their liquidity and solvency in relation to depositors and, more generally, third parties, and the equilibrium of their financial structure. They must in particular observe risk-asset and risk-diversification ratios. Credit institutions must also have a suitable system of internal controls enabling them *inter alia* to measure the risks and profitability of their activity. When supervision is exercised on the basis of a consolidated financial situation, financial groups must adopt internal control procedures suitable for the production of information relevant to the exercise of such supervision. A regulation of the *Comité de la Réglementation Bancaire et Financière* shall define the conditions for implementing the provisions set forth in this paragraph. Failure to comply with the obligations established under the present Article shall lead to implementation of the procedure described in Article 45.

Article 52

Where such action appears justified by a credit institution's situation, the Governor of the *Banque de France*, as chairman of the *Commission Bancaire*, shall call upon the shareholders or members of the institution, after seeking the opinion of *the Commission Bancaire*, except in an emergency, *après avoir, sauf en cas d'urgence, pris l'avis de la Commission bancaire* to provide the latter with the support it needs.

Article 52-1

Credit institutions authorized in France shall belong to a deposit guarantee fund whose purpose is to compensate depositors if their deposits or other repaid funds are unavailable. The deposits or other funds of credit institutions, insurance companies, collective investment undertakings, pension organizations, investment firms and persons mentioned at Article 8 or point 1 of Article 2 are excluded from such compensation. Deposits or other funds may be excluded from compensation under the conditions set forth in a regulation of the *Comité de la Réglementation Bancaire et Financière*, either because of information concerning the situation of the undertaking or special advantages that the depositor in question may have enjoyed, or because of the specific nature of certain funds or deposits, or because of the illicit origin of the funds concerned.

Article 52-2

The guarantee fund shall intervene at the request of the *Commission Bancaire* as soon as it finds that one of the institutions mentioned at Article 52-1 is no longer able, immediately or in the short term, to repay funds received from the public according to the legal, regulatory and contractual conditions governing their repayment. If the guarantee fund intervenes, the institution concerned shall be struck off the list of authorized credit institutions. On a proposal from the *Commission Bancaire*, the guarantee fund may also intervene in a preventive capacity vis-à-vis a credit institution whose situation gives rise to fears that deposits or other repaid funds may become unavailable at some point in the future, taking into consideration the support from which the institution may otherwise benefit. When the guarantee fund agrees to take preventive action with regard to an institution, it shall define the terms and conditions of its intervention after seeking an opinion from the *Commission Bancaire*. It may in particular make its intervention conditional on the total or partial sale of the credit institution or the extinction of its activity, including by the sale of its business.

In order to implement the present provisions the guarantee fund may, at the request of a central body mentioned in Article 20, take part in the action of such central body by assuming part of the cost of measures intended to guarantee the solvency of a credit institution affiliated to such central body. In order to implement the provisions of the previous two paragraphs, the guarantee fund may acquire the shares of a credit institution, with the consent of the central body concerned where relevant. Appeals against decisions of the guarantee fund taken under the terms of the present Article shall lie to the administrative courts.

Article 52-3

The guarantee fund is subrogated in the rights of the beneficiaries of its intervention in the amount of the sums it has paid.

Article 52-4

The guarantee fund may take all action in liability against the *de jure* or *de facto* managers of the institutions on whose behalf it intervenes in order to obtain reimbursement of all or part of the sums it has paid. It shall inform the *Commission Bancaire* of any such action.

Article 52-5

The member institutions of the guarantee fund shall provide it with the financial resources it needs to carry out its tasks, under conditions laid down by the *Comité de la Réglementation Bancaire et Financière*. In addition, the guarantee fund may issue nominative and non-negotiable certificates of association subscribed by member undertakings when they join. When the losses suffered by the guarantee fund cannot be covered by subscriptions already called up, the certificates of association mentioned in the previous paragraph may no longer be remunerated. In such case, the par value of each such certificate is reduced in the proportion necessary to absorb the losses. Certificates of association are repayable only if a member's authorization is revoked under conditions laid down by the *Comité de la Réglementation Bancaire et Financière*. If a member institution is struck off, its certificate of association is cancelled and the sums paid in revert to the guarantee fund. Subscriptions due from credit institutions affiliated to one of the central bodies mentioned at Article 20 shall be paid directly to the guarantee fund by the central body concerned. The guarantee fund may borrow from its members. To that end, it may constitute the contractually required guarantees or ask its members to constitute them on its behalf.

Article 52-6

Any member that fails to pay its called-up subscription to the guarantee fund shall be liable to the sanctions set forth at Article 45 and to penalties paid directly to the guarantee fund under the terms and conditions laid down in its rules of procedure.

Article 52-7

The deposit guarantee fund shall be a private law corporation. It shall be managed by a managing board under the control of a supervisory board. The members of the managing board and supervisory board must meet the conditions set forth at Article 13.

Article 52-8

The supervisory board shall monitor the management of the deposit guarantee fund. It shall draw up the guarantee fund's rules of procedure and rules for the use of its funds, which shall be confirmed by an Order of the Minister for Economic Affairs after they have been approved by the *Comité de la Réglementation Bancaire et Financière*. It shall elect a chairman from among its members. The supervisory board shall approve the accounts and appoint the auditors. At the end of each accounting period, a copy of the accounts as approved shall be furnished to the Minister for Economic Affairs. The guarantee fund shall be subject to control by the *Inspection Générale des Finances*. The supervisory body shall have twelve members, each representing one or more members of the guarantee fund, as follows:

- four members representing respectively the four credit institutions or groups of credit institutions affiliated to the same central body that are the largest contributors, *ex officio*;
- two representatives of institutions having a central body defined at Article 20, not *ex officio*;
- six members representing the other categories of credit institution, not *ex officio*.

Article 52-9

The supervisory board shall take decisions by a simple majority. Each member of the supervisory board shall have a number of votes that depends on its total financial contribution to the guarantee fund and the contributions of the institutions that have appointed that member to represent them. In the event of a tie, the chairman shall have the casting vote. For implementation of Article 52-8 and the present Article, the amount of the payment made by the central body on behalf of the institutions affiliated to it is taken into account.

Article 52-10

The managing board shall comprise three members appointed by the supervisory board, which shall also appoint one of them as chairman. The members of the managing board may not at the same time carry out duties in or receive remuneration from institutions or companies that are members of the guarantee fund. The chairman may carry out his duties only with the approval of the Minister for Economic Affairs.

Article 52-11

The Minister for Economic Affairs, the Governor of the *Banque de France*, acting as chairman of the *Commission Bancaire*, and the chairman of the *Conseil des Marchés Financiers* or their representative may, at their request, be heard by the supervisory board and the managing board.

Article 52-12

The members of the managing board and supervisory board and any person who, in the course of his duties, has access to documents and information in the possession of the guarantee fund are bound by an obligation of professional secrecy under the conditions and subject to the penalties laid down in Article 226-13 of the Penal Code. Such professional secrecy obligation may not serve as grounds for non-disclosure vis-à-vis judicial authorities acting in the context of criminal proceedings or administrative or civil courts hearing an appeal against a decision of the deposit guarantee fund or the *Commission Bancaire*.

Article 52-13

The members of the managing board of the guarantee fund shall have access to all accounting and financial documents and to the reports of the auditors of the institution on whose behalf the *Commission Bancaire* has sought the guarantee fund's intervention under the terms of Article 52-2.

Article 52-14

A regulation of the *Comité de la Réglementation Bancaire et Financière* shall lay down:

- the compensation ceiling per depositor, the compensation procedures and time limits and rules regarding customer information;
- the characteristics of certificates of association and the conditions for their remuneration and for their reimbursement should the subscriber's authorization be revoked, after deduction of any losses suffered by the fund where applicable;
- the total amount of annual subscriptions payable by members;
- the conditions under which an institution may be dispensed from paying part of such contributions in return for the constitution of appropriate guarantees;
- the amount of the minimum subscription of each credit institution that is a member of the guarantee fund;
- the rules for the apportionment of annual subscriptions, the basis for the calculation of which is the amount of deposits and other repaid funds weighted by subscriptions already paid and by indicators of the financial situation of each credit institution concerned, including in particular the amount of own funds and commitments and the European solvency ratio, reflecting the objective risks to which the member exposes the fund;
- the conditions and procedures for appointing the members of the supervisory board and the length of their term of office.

This regulation may be amended only after seeking the opinion of the chairman of the managing board of the deposit guarantee fund.

Article 52-15

A guarantee mechanism is hereby established with the purpose, if a credit institution should fail, of honouring the guarantee obligations required by laws or regulations given by such institutions in favour of private law natural or legal persons. Credit institutions whose authorization in France enables them to issue such guarantees shall join the system. The deposit guarantee fund shall manage the guarantee mechanism described in the previous paragraph. Articles 52-2 and 52-13 of this Act shall apply to the above-mentioned guarantee mechanism. In addition, the deposit guarantee fund is subrogated in the rights and obligations arising from the commitments given by the credit institution and honoured by the fund for the amount of the sums it has paid in connection therewith.

The guarantee mechanism shall intervene at the request of the *Commission Bancaire* as soon as the *Commission* finds that a credit institution is no longer able to honour, immediately or in the short term, the guarantee commitments mentioned in the first paragraph that it has given. Where relevant, the guarantee mechanism shall intervene jointly with the deposit guarantee fund when the fund is called on under the terms of the first paragraph of Article 52-2. On a proposal from the *Commission Bancaire*, the guarantee mechanism may also intervene in a preventive capacity, independently or jointly with the deposit guarantee fund, under the conditions set forth at Article 52.2. A decree shall list the mandatory guarantees covered by the guarantee mechanism and lay down the procedures for informing the public about the guarantee given.

Article 52-16

A regulation of the *Comité de la Réglementation Bancaire and Financière* shall lay down, *inter alia*:

- compensation procedures;
- the total amount and rules for the apportionment of the annual subscriptions payable by member institutions to the mechanism, giving particular consideration to objective indicators of the financial situation of each institution concerned;
- the conditions under which an institution may be dispensed from paying part of such contributions to the guarantee mechanism in return for the constitution of appropriate guarantees.

CHAPTER II ACCOUNTING OBLIGATIONS OF CREDIT INSTITUTIONS AGREEMENT BETWEEN A CREDIT INSTITUTION AND ITS MANAGEMENT

Article 53

The provisions of Articles 340 and 341 of the above-mentioned Act 66-537 of 24 July 1966 shall apply to all credit institutions and investment firms in accordance with conditions fixed by the *Comité de la Réglementation Comptable* after seeking the opinion of the *Comité de la Réglementation Bancaire et Financière*.

Auditing shall be carried out in each credit institution or investment firm by at least two auditors from the list provided for in Article 219 of Act 66-537 of 24 July 1966 on commercial companies. The auditors shall be appointed after seeking an opinion from the *Commission Bancaire* under conditions laid down in a decree. The *Commission Bancaire* may also appoint an additional auditor when the situation justifies such action. The auditors may not represent or be members of firms having mutual links of a legal, professional, equity or organizational nature. They shall conduct their assignment under the conditions laid down in the above-mentioned Act 66-537 of 24 July 1966 and shall certify the annual accounts. They shall verify that the information intended for the public is accurate and conforms with the said accounts. Nevertheless, where a credit institution's or an investment firm's balance-sheet total is below a threshold fixed by the *Comité de la Réglementation Comptable* after seeking the opinion of the *Comité de la Réglementation Bancaire et Financière*, the certification referred to in the preceding paragraph may be carried out by one auditor. When this condition applies and the institution is subject either to public accounting rules or to a special regime for the approval of its accounts incorporating safeguards which satisfy the *Commission Bancaire*, the latter may decide to lift the certification requirement referred to in the preceding paragraph. The auditors must offer all guarantees of independence with regard to the credit

institutions, investment firms or financial holding companies they audit. Articles 219 to 221-1 of the above-mentioned Act 66-537 of 24 July 1966 apply to the auditors of any credit institution, investment firm or financial holding company.

Article 53-1

The *Commission Bancaire* may ask the auditors of credit institutions, investment firms and financial holding companies subject to this Act to supply all information on the activity and situation of the credit institution, investment firm or financial holding company being audited and on the controls they have carried out in the conduct of their assignment. The *Commission Bancaire* may also transmit to the auditors of credit institutions, investment firms, financial holding companies, undertakings for collective investment in transferable securities and management companies mentioned at Article 12 of Act 88-1201 of 23 December 1988 on undertakings for collective investment in transferable securities and creating securitization vehicles the information they need to discharge their duties. The information transmitted in this way shall be covered by a professional secrecy obligation. Furthermore, the *Commission Bancaire* may transmit written observations to the auditors who shall reply in like form.

The auditors are required to advise the *Commission Bancaire* promptly of any fact or decision concerning the credit institutions, investment firms or financial holding companies they are auditing that come to their attention in the conduct of their assignment and that may:

- constitute a breach of the laws or regulations applicable to the above-mentioned credit institutions, investment firms or financial holding companies likely to have significant effects on their financial situation, results or assets;
- prejudice their status as a going concern;
- cause the auditors to issue a qualified or adverse opinion.

The same obligation applies to the facts and decisions referred to above that come to the auditors' attention in the conduct of their assignment with regard to a parent or subsidiary of a credit institution, investment firm or financial holding company. When the auditors conduct their assignment with regard to a credit institution affiliated to one of the central bodies referred to at Article 20, the facts and decisions referred to in the preceding paragraphs shall be transmitted simultaneously to the central body concerned and to the *Commission Bancaire*. The auditors of a credit institution, investment firm or financial holding company shall be relieved of the professional secrecy obligation vis-à-vis the *Commission Bancaire* and where relevant the central bodies referred to at Article 20 as regards the obligations listed above, and they may not be held liable for any information or facts they may disclose in performance of those obligations.

Article 53-2

When a breach of the provisions of this Act committed by an auditor of a credit institution, investment firm or financial holding company comes to the notice of the *Commission Bancaire*, or when it considers that the conditions of independence necessary for the proper conduct of an auditor's assignment are not met, it may ask the competent court to relieve the auditor of his duties as set forth at Article 227 of the above-mentioned Act 66-537 of 24 July 1966. The *Commission Bancaire* may also bring such breach to the attention of the competent disciplinary authority. To this end, the *Commission Bancaire* may furnish all information necessary to ensure that the authority concerned is fully informed.

Article 54

Credit institutions shall be required to draw up their accounts, in accordance with the conditions fixed by the *Comité de la Réglementation Comptable* after seeking the opinion of the *Comité de la Réglementation Bancaire et Financière*, in consolidated form.

Article 55

Il credit institutions shall publish their accounts in accordance with conditions laid down by the *Comité de la Réglementation Comptable* after seeking the opinion of the *Comité de la Réglementation Bancaire et Financière*. The *Commission Bancaire* shall ensure that publication as referred to in the present Article takes place in due manner. It may order the institutions concerned to publish corrections should inaccuracies or omissions be observed in the published documents. It may bring to the attention of the public any information it deems necessary.

Article 56

The provisions of Articles 101 to 106 of the above-mentioned Act 66-537 of 24 July 1966 shall apply to all credit institutions. For the purposes of implementing Article 103 of the Act referred to in the preceding paragraph, where these credit institutions do not have a general meeting, the auditors' special report shall be submitted to the board of directors for final approval. Where these credit institutions are exempted from the certification requirement under the terms of the third paragraph of Article 53 of the present Act, the special report shall be drawn up, as appropriate, by the public accountant or the body responsible for approving the accounts.

CHAPTER III PROFESSIONAL SECRECY

Article 57

Any member of a board of directors and, where applicable, a supervisory board and any person who in any capacity participates in the direction or management of a credit institution or is employed by one shall be bound by the obligation of professional secrecy subject to the conditions and penalties laid down in Article 378 of the Penal Code. Except as provided by the law, the obligation of professional secrecy may not be used as a ground for non-disclosure vis-a-vis the *Commission Bancaire*, the *Banque de France* or a court dealing with criminal proceedings.

Article 57-1. – For the requirements of supervision on the basis of the consolidated financial situation of one or more credit institutions or investment firms having their registered office in a State party to the agreement on the European Economic Area, undertakings established in France that are part of the financial group or mixed group to which such credit institutions or investment firms belong are required, notwithstanding all laws to the contrary, to transmit the necessary information to undertakings of the same group having their registered office in a State party to the agreement on the European Economic Area. The recipients of such information are bound by a professional secrecy obligation under the conditions and subject to the penalties referred to in the preceding Article, applicable to all information or documents they may receive or hold in that way. The provisions of this Article do not prevent application of Act 78-17 of 6 January 1978 on data protection.

CHAPTER IV
RELATIONS BETWEEN CREDIT INSTITUTIONS AND THEIR CUSTOMERS

Article 58

Any natural or legal person domiciled in France who does not have a current account has the right to open such an account in the credit institution of his choosing or with the financial services of the Post Office or the Treasury. The opening of such an account shall take place after delivery to the credit institution of a statement in which the person making the request declares on his honour that he does not have a bank account. In the event of refusal by the chosen credit institution, the person may refer to the Banque de France so that it names either a credit institution, or the financial services of the Post Office or those of the Treasury. Credit institutions and the financial services of the Post Office or of the Treasury may only limit the services linked to the opening of a current account to basic banking in the conditions defined by decree.

In addition, the institution named by the Banque de France, limiting the use of the current account to basic banking services, shall carry out its task under the pricing conditions set by decree. Any decision to close the account taken by the credit institution named by the Banque de France shall be notified in writing and state the reasons for the decision and be addressed to the customer and to the Banque de France for information. A mandatory minimum period of forty five days shall be given to the account holder. These provisions shall apply to persons subject to a ban on writing cheques and making card payment imposed by the banks (*interdits bancaires*).

As part of the prevention and the fight against exclusion from banking services, for dishonoured cheques a certificate of non-payment shall be delivered at the request of the bearer, after expiry of a period of thirty days, as from the initial presentation of the cheque in the event that the cheque was not paid upon its second presentation or if a provision has not been made to enable payment within the same period. This certificate shall be delivered by the drawee when a further presentation after the thirty-day period proves unfruitful. Any payment made by the drawer to the account on which the dishonoured cheque was drawn shall primarily be allocated to constitute a provision for the full payment of the dishonoured cheque.

Article 59

A consultative committee - *Comité Consultatif* - is hereby established to study matters concerning credit institutions' relations with their customers and suggest appropriate measures in this sphere, in particular by putting forward opinions or general recommendations. The Committee shall report annually to the *Conseil National du Crédit et du Titre*. The report shall be published. The Committee shall be chaired by a prominent person chosen for his competence in banking and financial matters and shall be composed predominantly, and in equal numbers, of representatives of the credit institutions and representatives of their customers. The conditions for the appointment of members of the Committee and its organizational and operational rules shall be fixed by decree.

CHAPTER V
OPERATING CREDIT GRANTED TO UNDERTAKINGS

Article 60

No facility, apart from ad hoc assistance, granted to an undertaking for an unspecified period by a credit institution, may be reduced or terminated without written notification and until expiry of a notice period fixed when the facility was granted. Whether the credit was opened for a specified or unspecified period, the credit institution shall not be required to observe any notice period in the event of highly reprehensible behaviour on the part of the beneficiary of the credit or where the latter's situation proves to be irreparably compromised. Non-compliance with these provisions may involve financial liability on the part of the credit institution.

Article 60-1

Whenever considering granting financial assistance to an individual entrepreneur for the latter's professional activity, a credit institution that intends to ask for real property that is not necessary for the business as security or collateral security from a natural person must inform the entrepreneur in writing that the latter may offer a guarantee on assets that are necessary for the business of the undertaking and state the amount of collateral it wishes to obtain in view of the amount of financial assistance sought. If the individual entrepreneur fails to respond within fifteen days or if the credit institution refuses the guarantee offered by the individual entrepreneur, the credit institution shall inform the individual entrepreneur of the exact amount of security it wishes to obtain on assets that are not necessary for the business of the undertaking or from any other surety. If the entrepreneur does not agree, the credit institution can refuse to grant the financial assistance and its liability cannot be called into question. In its dealings with the individual entrepreneur, a credit institution that has failed to fulfil the formalities referred to in the first and second paragraphs cannot call on any security it may have obtained. If the security is made up of real or personal property and subject to formal publicity, the credit institution cannot call on it once the registration of the guarantee has been struck off.

Article 61

Act 81-1 of 2 January 1981 facilitating credit to undertakings shall be amended as follows.

1. The first paragraph of Article 1 shall be replaced by the following provisions:

"Any credit granted by a credit institution to a legal person governed by private or public law, or to a natural person carrying on his business activity, may, simply by the delivery of a schedule, give rise to assignment or pledging in favour of that institution by the recipient of the credit of any claim that the latter may have on a third party, legal person governed by public or private law or natural person carrying on his business activity. Claims due for payment, even at a future date, may be assigned or pledged. Claims arising from an act that has been or may be entered into but the amount and maturity of which have not yet been fixed may also be assigned or pledged."

2. Article 1, sixth paragraph, (4), shall be replaced by the following provisions:

"4) Description or specification of the claims assigned or pledged or identifying particulars, e.g. details of the debtor, the place of payment, the amount of the claims or their valuation and, where appropriate, their due date."

3. The second paragraph of Article 1 shall become the third paragraph of that Article. Point 5 of that paragraph shall be rescinded.

4. A fourth and fifth paragraph, in the following terms, shall be added after the third paragraph :

"Nevertheless, when transmission of the assigned or pledged claims is effected by a computerized process making it possible to identify them, the schedule need do no more than indicate, in addition to the details referred to in (1), (2) and (3) above, the medium by which they are being transmitted, their number and their total amount. In the event of a dispute regarding the existence or transmission of one of these claims, the assignee may use any means to prove that the disputed claim is included in the total amount entered in the schedule."

5. An Article 1-1, in the following terms, shall be inserted after Article 1:

"Article 1-1 – Even when it is effected by way of guarantee and without stipulating a price, assignment of a claim shall transfer ownership of the assigned claim to the assignee. Saving contrary agreement, the signatory of the deed of assignment or security shall be jointly and severally liable for payment of the assigned or pledged claims."

6. In Article 2, second paragraph, the words: "according to an inviolable technical procedure" shall be deleted.

7. A third and fourth paragraph, in the following terms, shall be added to Article 4:

Saving contrary agreement, delivery of the schedule automatically entails transfer of the sureties guaranteeing each claim. In the event of a dispute over the date entered in the schedule, the credit institution shall use any means to prove the accuracy of that date."

8. Article 13 shall be replaced by the following provisions:

"Article 13 – Provisions contrary to the present Act contained in the Decree of 30 October 1935 on the financing of government and local authority contracts and in the Code of Public Contracts shall be rescinded. A decree of the *Conseil d'Etat* shall fix the procedures for implementing the present Act and make the necessary amendments to the Code of Public Contracts."

Article 62

The provisions of Article 1-1, first paragraph, of Act 81-1 of 2 January 1981 facilitating credit to undertakings shall be interpretative in character.

Article 63

Article 13-1 of Act 75-1334 of 31 December 1975 relating to subcontracting shall be supplemented by a second paragraph in the following terms:

"He may, however, assign or pledge these claims in their entirety subject to obtaining beforehand, in writing, the joint and several personal guarantee referred to in Article 14 of the present Act vis-à-vis the subcontractors."

Article 64

Former provisions amending the Act 67-563 of 13 July 1967 on receivership, liquidation of assets, personal bankruptcy and criminal bankruptcies. This act has been repealed.

CHAPTER VI BANKING INTERMEDIARIES

Article 65

A banking intermediary is any person who, as his regular business, brings together parties interested in concluding a banking operation, without being *del credere*. A banking intermediary may only carry on his activity between two persons of whom at least one is a credit institution.

Article 66

The present Chapter shall not apply to notaries, who remain subject to the laws and regulations applying to them. Nor shall it cover advice and assistance in financial matters.

Article 67

Any banking intermediary who, even occasionally, has funds entrusted to him as agent for the parties shall be required at any time to give proof of a financial guarantee specifically earmarked for repayment of the said funds. This must be provided by a guarantee commitment given by a credit institution entitled to give such commitments or an insurance or "capitalization" undertaking ("entreprise d'assurance ou de capitalisation") governed by the Insurance Code.

Article 68

Banking intermediaries shall carry on business under the terms of a mandate issued by the credit institution. This mandate shall specify the nature and conditions of the operations that the intermediary is empowered to carry out.

Article 69

Repealed by Act n° 96-597 of 2 July 1996.

Article 70

Banking intermediaries shall be subject to the provisions of Part II of Act 66-1010 of 28 December 1966 on usury, money loans and certain canvassing and advertising operations.

Article 71

No one who falls within the scope of Article 13 of the present Act may carry out the business of a banking intermediary.

TITLE IV BIS
RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES IN MEMBER STATES OF THE EUROPEAN COMMUNITIES

Article 71-1

Under this title:

1. "Banking service" shall mean a banking operation within the meaning of Article 1 or a related activity within the meaning of Article 5 of the present Act;
2. "Competent authorities" shall mean the authority or authorities of a Member State responsible for authorizing or supervising credit institutions having their headquarters there, in keeping with the legislation of that State;
3. "Operations under the freedom to provide services" shall mean an operation whereby a credit institution or financial institution provides a banking service in a Member State other than the one in which its headquarters is located, otherwise than through a permanent presence in that Member State;
4. "Financial institution" (*établissement financier*) shall mean an undertaking not subject to authorization as a credit institution in the State in which its headquarters is located and which, as its main business, whether or not in combination with other activities:
 - a) carries out one or more of the activities referred to in points 1), 3), 4), and 5) of Article 5 of the present Act;
 - b) acquires equity holdings in undertakings which carry out banking operations or one of the aforementioned activities as their regular business;
 - c) for a financial institution with its headquarters in a Member State other than France, carries out banking operations within the meaning of Article 1 of this Act with the exception of receiving funds from the public.

Article 71-2

Within the limits of the services that it is authorized to provide in a Member State other than France, in which it has its headquarters, and in accordance with the terms of the authorization granted to it in that country, any credit institution may establish branches within the territory of the French Republic for the purpose of providing banking services and operations under the freedom to provide services, in keeping with Article 71-4 of this Act, subject to prior notification of the *Comité des Établissements de Crédit et des Entreprises d'Investissement* by the competent authorities of the Member State, in accordance with the conditions laid down by the *Comité de la Réglementation Bancaire et Financière*.

Article 71-3

Within the limits of the services that it is authorized to provide in a Member State other than France, in which it has its headquarters, any financial institution having received from the competent authorities of the said Member State a certificate of compliance with the conditions required for this purpose by the said authorities may establish branches within the territory of the French Republic for the purpose of providing banking services and operations under the freedom to provide services, in keeping with Article 71-4 of this Act, subject to prior notification of the *Comité des Établissements de Crédit et des Entreprises d'Investissement* by the competent authorities of the Member State, in accordance with the conditions laid down by the *Comité de la Réglementation Bancaire et Financière*.

Article 71-4

The institutions referred to in Article 71-2 and 71-3 and their branches in France are not subject to Articles 15, 16, 53 and 56. They are not subject to the regulations of the *Comité de la Réglementation Bancaire et Financière*, except in respect of such provisions of the said regulations as have not been the subject of coordination among the Member States, when they are adopted in the interest of the general good or when they relate to monetary policy or the liquidity of institutions. The *Comité de la Réglementation Bancaire et Financière* shall determine which provisions in its regulations shall remain applicable by virtue of this Article.

Article 71-5

For the purpose of the supervision of an institution qualifying for the provisions in Article 71-4 of this Act, and notwithstanding the provisions of Article 1 bis of the aforementioned Act 68-678 of 26 July 1968, the competent authorities to which the institution referred to in Article 71-4 is subject may order the said institution and its branches in France to disclose all information relevant to the said supervision. Further, subject solely to its having previously informed the *Commission Bancaire*, the said competent authorities may carry out themselves or through the intermediary of persons they appoint for that purpose on-site supervision of the said institution's branches in the territory of the French Republic.

Article 71-6

The *Commission Bancaire* shall monitor the compliance of the institutions referred to in Articles 71-2 and 71-3 of this Act with the laws and regulations applying to them under Article 71-4. It may examine the conditions under which they conduct their business and it may supervise their financial soundness having regard to the supervision by the competent authorities referred to in Article 71-1.

Articles 37 and 39-46 of this Act shall apply to these institutions. The striking off provided for at point 6 of Article 43 and in the first paragraph of Article 52-2 shall be understood to prohibit the institution from continuing to provide banking services within the territory of the French Republic. When an institution referred to in Articles 71-2 and 71-3 is the subject of a withdrawal of its authorization or is wound up, or, in the case of a financial institution, when it no longer satisfies the requisite conditions within the meaning of Article 71-3, the *Commission Bancaire* shall take all necessary measures to prevent it from taking up further operations within the territory of the French Republic and in order to protect the interests of depositors. A decree in the *Conseil d'Etat* shall lay down the procedures to be followed by the *Commission Bancaire* in the discharge of its responsibilities and powers under the foregoing paragraphs. In particular, it shall lay down procedures for informing the competent authorities referred to in Article 71-1.

Article 71-7

Any credit institution having its headquarters in France and wishing to establish a branch in another Member State shall notify the *Comité des Établissements de Crédit et des Entreprises d'Investissement* of its plans and provide such information as determined by the *Comité de la Réglementation Bancaire et Financière*. Unless, in the light of the said plan, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* has grounds to doubt the adequacy of the credit institution's administrative structures or its financial soundness, it shall communicate this information within three months of the date of proper receipt thereof to the competent authority of the host Member State and shall notify the institution concerned.

In case of refusal by the *Comité des Établissements de Crédit et des Entreprises d'Investissement* to communicate the information referred to in the first paragraph of this Article to the competent authority of the host Member State, it shall inform the institution concerned of the reasons for this refusal within three months following proper receipt of the said information. Credit institutions having their headquarters in France that wish to carry out their activities in another Member State for the first time under the freedom to provide services, shall declare their intention to the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. This declaration shall be accompanied by such information as shall be determined by the *Comité de la Réglementation Bancaire et Financière*. The *Comité de la Réglementation Bancaire et Financière* shall determine how the information referred to in the foregoing paragraphs is to be communicated to the competent authority of the other Member State.

Article 71-8

Any financial institution having its headquarters in France and wishing to establish a branch in another Member State in order to provide banking services under the right of establishment shall notify the *Comité des Établissements de Crédit et des Entreprises d'Investissement* of its plan and provide such information as shall be determined by the *Comité de la Réglementation Bancaire et Financière*. The financial institution shall also show to the *Comité des Établissements de Crédit et des Entreprises d'Investissement* that it satisfies the conditions laid down by the *Comité de la Réglementation Bancaire et Financière*. These conditions refer to the activities carried out in France by these institutions, procedures whereby these institutions are placed under the control of credit institutions, and the applicable regulations for ensuring the quality and control of their management together with the guarantee of their liabilities by their parent companies. If the institution satisfies the conditions referred to in the foregoing paragraph, the *Comité des Établissements de Crédit et des Entreprises d'Investissement* shall, unless it has grounds to doubt the adequacy of the financial institution's administrative structures or its financial soundness in the light of the plan, communicate the information pertaining to the plan within three months of receipt to the competent authority of the host Member State and shall notify the institution concerned.

Financial institutions wishing to carry out their business for the first time within the territory of another Member State under the freedom to provide services, shall declare their intention to the *Comité des Établissements de Crédit et des Entreprises d'Investissement*. They shall further show that they satisfy the conditions referred to in the second paragraph of this Article. The financial institution carrying out its business in another Member State under this Article shall be subject to Articles 17, 56 and 57 of this Act, and to the regulations adopted by the *Comité de la Réglementation Bancaire et Financière*, with respect to those regulations whose scope of application comprises this category of institution. The said financial institution shall be supervised by the *Commission Bancaire* in accordance with the procedures laid down in Articles 37 and 39-41; it may be subject to the measures and penalties provided for in Articles 42-45. The withdrawal of the authorization provided for in point 6. of Article 45 shall here mean withdrawal of eligibility for the regime defined in this Article. A decree in the *Conseil d'Etat* shall, as required, lay down the conditions for application of Articles 71-7 and 71-8.

Article 71-9

For the purposes of the present Act, credit institutions having their headquarters in another State that is party to the agreement on the European Economic Area are considered equivalent to credit institutions having their headquarters in a Member State of the European Communities other than France 2 .

TITLE V FINANCIAL HOLDING COMPANIES

Article 72

Financial holding companies ("compagnies financières") are financial institutions, as defined in point 4. of Article 71-1 of the present Act, whose subsidiaries are mainly or wholly one or more credit institutions, investment firms or financial institutions. At least one of the subsidiaries is a credit institution.

2 This article was initially introduced by Act 93-1420 of 31 December 1993, Article 7-2. See note to Article 15-1, second paragraph and Article 101 of the Banking Act for its territorial scope and date of entry into force.

Article 73

Financial holding companies shall be subject to the provisions of Articles 13, 17, first paragraph, 40, 41, 43, 44, 45, 46, 51, 53 to 55, 75, 76 and 79 under conditions set forth in a regulation of the *Comité de la Réglementation Bancaire et Financière*. The auditors of the above-mentioned companies shall also be subject to all the provisions of this Act applicable to the auditors of credit institutions and investment firms.

Article 74

The *Commission Bancaire* shall ensure that financial holding companies comply with the requirements laid down in Article 73 of the present Act. If it appears that a financial holding company has violated the provisions of the previous Article, the *Commission Bancaire* may impose one of the sanctions provided for in the first and second points of Article 45 of the present Act.

The *Commission Bancaire* may, either in place of or in addition to these disciplinary sanctions, impose a fine not exceeding the minimum capital required of the credit institution or the investment firm that is the subsidiary of the financial holding company. When the financial holding company's subsidiaries include several credit institutions or investment firms, the upper limit on the fine shall be determined with reference to the capital of the credit institution or of the investment firm with the highest minimum capital requirement.

TITLE VI PENALTIES

Article 75

Any natural person who disregards any of the prohibitions pursuant to Articles 10, 13 or 14 shall be liable to three years' imprisonment and a fine of FRF 2,500,000. The court may order posting or publication of the conviction and sentence as provided by Penal Code Article 131-35.

Article 76

No one who has been convicted under Article 75 of an offence against Article 13 of the present Act may be employed in any capacity in the credit institution where he performed managerial or executive functions, was a member of the board of directors or supervisory board or was an authorized signatory, or in any subsidiary of that institution carrying on the business referred to in Article 1. In the event of

infringement of this prohibition, the offender and his employer shall be liable to the penalties laid down in Article 75 above.

Article 77

Any natural person who violates one of the prohibitions pursuant to Articles 65 or 71 shall be liable to two years' imprisonment and a fine of FRF 200,000.

Article 78

Any banking intermediary who fails to satisfy the obligation pursuant to Article 67 shall be liable to one year's imprisonment and a fine of FRF 100,000.

Article 79

Any senior manager of a credit institution or of any of the legal persons or subsidiaries referred to in the second paragraph of Article 41 who, after being formally asked to do so, does not comply with a request for information by the *Commission Bancaire*, who interferes in any way with the exercise of its supervisory function or who supplies it with inaccurate information shall be liable to one year's imprisonment and a fine of FRF 100,000.

Article 79-1

The provisions of Articles 456 and 457 of Act 66-537 of 24 July 1966 on commercial companies apply to the auditors of all credit institutions, investment firms and financial holding companies, whatever their legal form.

Article 80

The senior managers of a credit institution who have not drawn up its inventory, annual accounts and a management report for each financial year in accordance with the provisions of Article 53 shall be liable to a fine of FRF 100,000.

Article 81

The senior managers of a credit institution who fail to cause the appointment of its statutory auditors or to invite them to attend shareholders' meetings shall be liable to two years' imprisonment and a fine of FRF 200,000. Any senior manager of a credit institution or any other person in its employ who interferes with the investigations or audits of the statutory auditors or refuses them on-site access to all documents useful in the discharge of their duties, including all contracts, records, accounting documents and registers of minutes, shall be liable to five years' imprisonment and a fine of FRF 500,000.

Article 82

The senior managers of a credit institution who fail to publish its annual financial statements as provided in Article 55 shall be liable to a fine of FRF 100,000.

Article 83

The senior managers of a credit institution who fail to prepare its accounts in consolidated form in accordance with Article 54 shall be liable to a fine of FRF 100,000.

Article 84

The senior managers of a financial holding company who fail to prepare its accounts in consolidated form in accordance with Article 73 shall be liable to a fine of FRF 100,000.

Article 84-1

Legal persons may be convicted of the offences defined in Articles 75, 78, 79, 80, 81, 82, 83 and 84 as provided by Penal Code Article 121-2. The punishment to which legal persons shall be liable is:

1. a fine as provided by Penal Code Article 131-38;
2. the punishment mentioned in Penal Code Article 131-39.

The prohibition referred to at 2 of Penal Code Article 131-39 relates to the activity in the course of or in connection with which the offence was committed.

Article 85

Courts hearing actions relating to offences referred to in Articles 75 to 84 of the present Act may, at any stage of the proceedings, ask the *Commission Bancaire* for any relevant advice and information. For the purpose of implementing the provisions of the present title, the *Commission Bancaire* may institute civil action ancillary to the criminal action at any stage of the proceedings.

TITLE VII SUNDRY AND TRANSITIONAL PROVISIONS

CHAPTER I SUNDRY PROVISIONS

Article 86

Repealed by Act 93-949 of 26 July 1993 on the Consumer Code, Book III, Title I, Chapter I: Consumer Credit.

Article 87

Repealed by Act 93-949 of 26 July 1993 on the Consumer Code, Book III, Title I, Chapter III: Joint Provisions.

Article 88

I. The second paragraph of Article 3 of the Decree of 25 August 1937 regulating *bons de caisse* shall be rescinded.

II. The beginning of Article 6 of the said Decree shall be amended as follows:

“ The provisions of the present decree shall not apply to credit institutions or companies... (The remainder unchanged.)

Article 89

“ The Ordinance 86-1243 of 1 December 1986 relating to free prices and free competition shall apply to credit institutions as far as their activities as defined in Articles 7 and 8 are concerned. Articles 7 to 10 of Ordinance 86-1243 of 1 December 1986 on free prices and free competition apply to credit institutions as regards their banking operations and operations connected to their business. In the event of breaches of these provisions, action will be taken under the conditions laid down in Titles III and VI of the said Ordinance. The notification of claims provided for at Article 21 of the above-mentioned Ordinance 86-1243 of 1 December 1986 shall be furnished to the *Commission Bancaire* which shall deliver its opinion within two months. Should the *Conseil de la Concurrence* impose a penalty on conclusion of the procedure provided for at Articles 21 and 22 of the above-mentioned Ordinance 86-1243 of 1 December 1986, it shall where relevant state its reasons for diverging from the opinion of the *Commission Bancaire*.

Articles 7 to 10 of the Ordinance 86-1243 of 1 December 1986 relating to free prices and free competition shall apply to credit institutions as far as their banking activities are concerned. Offences against these provisions shall be recorded and punished by derogation of Article 45 of the present Act in accordance with the conditions laid down in Titles III and VI of the said Ordinance.

Article 90

I. The first paragraph of Article 17 of Act 56-760 of 2 August 1956 concerning military expenditure: 1) opening and cancellation of credits; 2) creation of new resources; 3) ratification of decrees, shall be replaced by the following provisions:

“ Notwithstanding any provisions to the contrary, it shall be prohibited for any credit institution that receives funds from the public at sight or at less than five years to grant, by whatever means, a return on those funds higher than that fixed, as appropriate, by the *Comité de la Réglementation Bancaire* or by decree or by the Minister for Economic Affairs and Finance; such institution shall also be prohibited from opening or maintaining on an improper basis accounts benefiting from government aid, e.g. in the form of a tax exemption, or accepting sums in excess of the authorized ceilings for such accounts. ”

II. The beginning of the second paragraph of the same Article shall be amended as follows:

“ Without prejudice to the disciplinary action that may be taken by the *Commission Bancaire*, offences against the provisions... (The remainder unchanged.)

Article 91

I. The first paragraph of Article 12 of Act 78-1 of 2 January 1978 relating to compensation for French persons returning from overseas who have been dispossessed of their goods shall be replaced by the following provisions:

The priority indemnification bonds and indemnification bonds shall be in registered form. They may not be assigned, except in favour of a credit institution in accordance with the conditions laid down in Article 13. ”

II. The first sentence of Article 13 of the said Act shall be replaced by the following provisions:

“ The priority indemnification bonds and indemnification bonds may be pledged in favour of a credit institution in connection with loans contracted by their holders. ”

Article 92

An Article 18-1, in the following terms, shall be inserted in Act 66-1010 of 28 December 1966 relating to usury, money loans and certain canvassing and advertising operations:

“ Article 18-1 – The present Act shall apply to the overseas territories and the *Collectivité Territoriale de Mayotte* (Territorial Unit of Mayotte). ”

Article 93

An Article 7, in the following terms, shall be added to Act 75-619 of 11 July 1975 relating to the legal interest rate:

“ Article 7 – The present Act, with the exception of Article 4 thereof, shall apply to the overseas territories and the *collectivité territoriale of Mayotte*. ”

Article 93-1

Notwithstanding any legislative provisions to the contrary, payments and deliveries of financial instruments made within the framework of interbank settlement systems or within the framework of financial instrument settlement and delivery systems up until the end of the day on which a court orders reorganization or liquidation proceedings to be instigated against a direct or indirect participant in such a system may not be cancelled even on the grounds that a court has issued such an order. These provisions shall also apply to payment instructions and to delivery instructions relating to financial instruments once they have become irrevocable in one of the systems mentioned in the preceding paragraph. The time when and procedures whereby an instruction is deemed irrevocable in a system shall be defined by the rules governing the operation of the system.

For the purposes of this Article, an interbank settlement system or a financial instrument settlement and delivery system shall mean a national or international procedure organizing dealings between two or more parties that have the status of credit institutions, or institutions or companies referred to in Article 8 of this Act, of investment firms or clearing house members governed by the Financial Activity Modernization Act 96-597 of 2 July 1996 or of non-resident institutions with comparable status, for the usual execution, whether or not this involves netting, of payments as well as, where financial instrument settlement and delivery systems are concerned, the delivery of financial instruments between said participants. This procedure must either have been instituted by a public authority or be governed by a master agreement complying with the general principles of a market-wide agreement or a standardized agreement. Where financial instrument settlement and delivery systems are concerned, this procedure must also have been approved by the *Conseil des Marchés Financiers*.

Article 93-2

When they organize dealings between more than two parties, the regulations, master agreements or standardized agreements governing any interbank settlement system or financial instrument settlement and delivery system mentioned in Article 93-1 may, in addition to the financial instrument accounts referred to in Article 29 of Act 83-1 of 3 January 1983 on the development of investment and the protection of savings, require direct or indirect participants in such systems to transfer assets, securities, bills, claims or sums of money, or to constitute security using the said assets, securities, bills, claims or

sums of money, in order to meet the payment obligations stemming from participation in such a system. The above-mentioned transfers shall confer full property rights as security and shall be effective vis-à-vis third parties without formalities.

The regulations, master agreements or standardized agreements referred to in the preceding paragraph shall define the procedures for the constitution, employment, realization or utilization of the financial instrument accounts referred to in Article 29 of the above-mentioned Act 83-1 of 3 January 1983, or for the transfers, which are effective vis-à-vis the attaching creditors. The provisions of Act 84-148 of 1 March 1984 relating to the prevention and amicable settlement of company difficulties, of Act 85-98 of 25 January 1985 relating to the court-ordered reorganization or liquidation of companies or those governing all court-ordered or amicable procedures instituted outside France, equivalent to those provided for by these Acts, shall not prevent application of this Article.

Article 93-3

Credit institutions, investment firms, the branches located in France of foreign credit institutions, foreign investment firms, foreign financial institutions as defined at point 4 of Article 71-1 and, by way of exception to Article 8 of this Act, the Treasury, the financial services of the Post Office, the *Banque de France*, the *Institut d'Emission d'Outre-Mer* and the *Caisse des Dépôts et Consignations* shall comply with the following provisions when they make transfers within the European Economic Area denominated in the currency of one of the States party to the agreement on the European Economic Area on the orders or in favour of their customers:

1. Delays in executing credit transfers, the amount of which is at most equal to a threshold set by a regulation of the *Comité de la Réglementation Bancaire et Financière*, shall give entitlement to compensation calculated according to the procedures laid down in the above-mentioned regulation, even if there is no fault, without prejudice to the remedies available in ordinary law, at the latest fourteen working days after execution of the transfer.
2. Credit transfers as referred to in paragraph 1 above that are not completed shall be returned to the principal in question, even if there is no fault, within fourteen working days after receipt of a request, within a limit and according to procedures defined by a regulation of the *Comité de la Réglementation Bancaire et Financière*. Restitution shall be made without prejudice to the remedies relating to liability available in ordinary law.
3. Restitution as referred to in paragraph 2 above does not apply if non-execution is either due to an error or omission of the principal in the instructions given to his institution, or attributable to an intermediary institution chosen by the principal. Under these circumstances, however, the institutions concerned must use their best efforts to facilitate restitution of the funds in question to the principal.
4. The beneficiary of the transfer is responsible for restitution as referred to in paragraph 2 above if non-execution is attributable to that institution or to an intermediary institution chosen by it.
5. A regulation of the *Comité de la Réglementation Bancaire et Financière* shall lay down the conditions of application of this Article.

CHAPTER II
CONSEQUENTIAL AMENDMENTS TO CURRENT ACTS

(see also Act 96-597 of 2 July 1996 on the modernization of financial activities)

Article 94

I. The Act of 19 June 1930 prohibiting individuals convicted of certain offences and undischarged bankrupts from exercising the profession of banker, the instrument called Act 2-532 of 13 June 1941 on the regulation and organization of banking business, the instrument called Act 2-533 of 14 June 1941 on the regulation and organization of the businesses related to the profession of banker, Act 45-015 of 2 December 1945 on the nationalization of the *Banque de France* and the major banks and on the organization of credit, except for Articles 1, 3, 6, 7 and 8 thereof, Act 46-1071 of 17 May 1946 on the organization of credit in France, Articles 5 and 7 of Act 57-888 of 2 August 1957 on various provisions relating to the Treasury and Article 15-III of Act 70-601 of 9 July 1970 on various economic and financial provisions are hereby repealed.

II. References to the above-mentioned Acts of 19 June 1930, 13 June 1941, 14 June 1941 and 2 December 1945 in any Acts or regulations in force shall be replaced by references to the corresponding provisions of the present Act. In all of the Acts in force and wherever they appear, the words “ banks ” (*banques*), “ financial institutions ” (*établissements financiers*) or “ credit institutions with special legal status ” (*établissements de crédit à statut légal spécial*) shall be replaced by the words “ credit institutions ” (*établissements de crédit*). The words: “ banking trade auxiliaries ” (*auxiliaires des professions bancaires*) shall be replaced by “ banking intermediaries ” (*intermédiaires en opérations de banque*). The words “ *Conseil National du Crédit* ” shall be replaced by the words “ *Comité de la Réglementation Bancaire* ” or the words “ *Comité des Établissements de Crédit* ”, depending on the attributions in question. The words “ *Commission de Contrôle des Banques* ” shall be replaced by the words “ *Commission Bancaire* ”.

III. 1. Article 2 of the savings and provident institutions code shall be replaced by the following provisions:

“ Article 2. – The creation of new savings and provident institutions is subject to authorization by the *Comité des Établissements de Crédit* of proposals made by the *Centre National des Caisses d'Épargne et de Prévoyance*. ”

2. Articles 68 and 69 of the said code are hereby repealed.

IV. 1. The first paragraph of Article 2 of the amended Decree 55-622 of 20 May 1955 on the status of municipal credit banks shall be supplemented by the following sentence:

“ They shall conduct their business after having obtained the authorization of the *Comité des Établissements de Crédit*. ”

2. The beginning of Article 3 of the above-mentioned Decree shall be amended as follows:

“ Without prejudice to the responsibilities conferred on the *Comité de la Réglementation Bancaire*, the organization and operation.... (The remainder unchanged.)

V. Provisions amending the Decree of 28 February 1852 on land mortgage banks (*sociétés de crédit foncier*) abrogated by Act 99-532 of 25 June 1999, Article 111.

VI. Former provisions amending the Decree of 24 March 1848 and the Act of 10 June 1853. These texts relating to the opening of sub-offices for credit guarantees (*sous-comptoirs de garantie*) and discount offices and sub-offices (*comptoirs et sous-comptoirs d'escompte*) were repealed by Act 94-679 of 8 August 1994, Article 13.

VII. Provisions amending the amended Imperial Act of 13 July 1899 on mortgage banks (*banques hypothécaires*), abrogated by Act 99-532 of 25 June 1999, Article 111.

VIII. 1. A second paragraph, worded as follows, shall be added to Article L. 312-2 of the Construction and Housing Code:

“ Housing loan companies are, furthermore, subject to supervision by the *Commission Bancaire*.”

2. Point b) of Article L. 422-4 of the Construction and Housing Code shall be supplemented as follows:

“ notwithstanding the limits set in the second paragraph of Article 7 of Act 84-46 of 24 January

3. The first paragraph of Article L. 422- 5 of the said code shall be replaced by the following provisions:

“ Low-rent housing companies (*sociétés d'habitation à loyer modéré*) must be authorized by an administrative ruling. Home loan companies (*sociétés de crédit immobilier*) are subject to authorization by the *Comité des Établissements de Crédit*. ”

4. The beginning of the first paragraph of Article L. 423-3 of the said code shall be amended as follows:

“ Without prejudice to the responsibilities conferred on the *Comité de la Réglementation Bancaire* and on the *Commission Bancaire* in housing loan company matters, the financial rules.... ” (The remainder unchanged.)

5. The beginning of the first paragraph of Article L. 451-1 of the same code shall be amended as follows:

“ Subject to the provisions in the second paragraph of Article L. 312-2 of this code, organizations for low-rent housing... ” (The remainder unchanged.)

IX. Point a) in the first paragraph of Article 1 of amended Decree 55-873 of 30 June 1955 on regional development companies (*sociétés de développement régional*) shall be replaced by the following wording:

“ a) Authorization as a credit institution ”;

X. 1. The second sentence of the third paragraph of Article 2 of the Act of 13 March 1917 on the organization of credit for small and medium-sized retail firms and small and medium-sized industrial enterprises shall be replaced by the following provisions:

“ Nevertheless, this right can only be used at the end of the financial year, subject to three months' notice and if the redemption of the shares does not result in a reduction of the company's capital to an amount that is lower than the minimum capital it is required to have as a credit institution. ”

2. Article 1 of the Act of 7 August 1920, which supplements and amends the above-mentioned Act of 13 March 1917 is hereby repealed.

3. Article 3 of the above-mentioned Act of 7 August 1920 shall be replaced by the following provisions:

“ Article 3. – The use of the words “ *banque populaire* ” as a title or qualifier in a prospectus, advertisement, letter, etc. by any undertaking other than those provided in Title II of the Act of 13 March 1917 is prohibited on pain of the sanctions laid down in Article 405 of the Penal Code. ”

4. Article 1 of the Act of 24 July 1929, which amends the above-mentioned Act of 13 March 1917, is hereby repealed.

5. The last part of the sentence in Article 1 of the Act of 17 March 1934, which amends and supplements the above-mentioned Act of 24 July 1929 shall be worded as follows:

“ ... and the outright reference to the legislative provisions governing popular credit banks and credit institutions. ”

6. Article 5 of the said Act is hereby repealed.

7. Article 5 of the Order of 20 June 1945 on mutual guarantee insurance companies (*sociétés de caution mutuelle*), *Banques Populaires* and the *Caisse Centrale de Crédit Hôtelier, Commercial et Industriel* is hereby repealed.

XI. The third paragraph of Article 5-1 and the third paragraph of Article 5-3 of Order 58-966 of 16 October 1958 shall be repealed.

XII. Article 646 and the second paragraph of Article 651 in Book V of the rural code are hereby repealed.

XIII. 1. The last sentence of Article 7 of Act 75-628 of 11 July 1975 on the *Crédit Maritime Mutuel* shall be repealed from the words “ *et fixe notamment* ”.

2. A sentence worded as follows shall be inserted between the first and second sentence of Article 8 of the said Act:

“ The *Caisses Régionales* and, where appropriate, the Unions shall also be governed by Act 84-46 of 24 January 1984 relating to the activities and supervision of credit institutions. ”

3. The third sentence of the second paragraph of Article 10 of the said Act shall be replaced by the following provision:

“ It may not be reduced to an amount that is less than the initial capital, set by the statutes at an amount that is at least equal to the minimum required of the *Caisses Régionales de Crédit Maritime Mutuel* and, where appropriate, the Unions, in their capacity as credit institutions. ”

4. The second sentence of the fifth paragraph of Article 13 of the said Act shall be replaced by the following provision:

“ This appointment must be approved by the *Caisse Centrale de Crédit Coopératif* under the conditions set by the Decree referred to in Article 20. ”

5. The words “ minister responsible for the merchant marine ” and “ minister responsible ” in Article 15 of the said Act shall be replaced by the words “ *Caisse Centrale de Crédit Coopératif* ”.

6. The first paragraph of Article 16 of the said Act shall be replaced by the following provisions:

“ If the board of directors makes any decisions contrary to the specific laws and regulations governing the *Crédit Maritime Mutuel* or to the guidelines provided in Article 5, or if the board abstains from exercising its functions, the *Caisse Centrale de Crédit Coopératif* may, after serving notice without effect and under the conditions set by the Decree referred to in Article 20, ask the Minister for Economic Affairs and Finance to dissolve the board of directors and name an administrator or a temporary administration committee for the *Caisse* or the Union. ”

7. The second sentence of the first paragraph of Article 18 of the said Act shall be supplemented by the words “ and in accordance with the laws and regulations governing the appointment of auditors for credit institutions. ”

XIV. 1. The beginning of Article 1 of amended Act 52-332 of 24 March 1952 on savings-lending undertakings (*entreprises de crédit différé*) shall be amended as follows:

“ Savings-lending undertakings are credit institutions that grant loans... ” (The remainder unchanged.)

2. The beginning of the fifth paragraph of Article 1 of the said Act shall be amended as follows:

“ Savings-lending undertakings, which have been specially authorized to do so by the *Comité des Établissements de Crédit*, may grant loans for reimbursement...” (The remainder unchanged.)

3. The words “ special authorization ” in the third paragraph of Article 5 of the said Act shall be replaced by the words “ special authorization provided for in the fifth paragraph of Article 1.”

4. The beginning of the second paragraph of Article 6 of the said Act shall be amended as follows:

5. Article 8 of the said Act shall be replaced by the following provisions:

“ Article 8. – The savings-lending undertakings referred to in the present Act shall be subject to the administrative and financial supervision of the Minister for Economic Affairs and Finance and the supervision of the *Commission Bancaire*. ”

6. Articles 2, 3, third paragraph, 4, 6, third paragraph, 7, second paragraph, 9, 10, 11, 12, 14 and 15 of the said Act are hereby repealed.

XV. The second sentence of the second paragraph of Article 14 bis of Order 45-1356 of 20 June 1945, which supplements the Order of 2 February 1944, which transforms the *Caisse Centrale de la France Libre* into the *Caisse Centrale de la France d'Outre-Mer* and amends the statutes appended thereto shall be repealed.

XVI. Point 1 of Article 2 of Act 46-860 of 30 April 1946 for the establishment, financing and execution of works and development plans concerning the territories under the responsibility of the minister for France's overseas possessions shall end with the words “ and which shall not be subject ”.

XVI bis. Mutual or cooperative banks shall be entitled to make public offerings.

XVII. All other laws and regulations contrary to this Act or incompatible with its provisions are hereby repealed.

CHAPTER III TRANSITIONAL PROVISIONS

Article 95

Credit institutions and the central bodies referred to in Article 20 shall bring their statutes into conformity with the present Act within three months of its entry into force.

Article 96

Repealed by Act 92-518 of 15 June 1992, Article 3-V, on the Caisses de Crédit Municipal.

Article 97

Notwithstanding Articles 18 and 95, long-and medium-term credit banks on the list of banks prior to the enactment of the present Act shall bring their statutes into conformity with the Act within eighteen months of its becoming law.

Article 98

Within three months of the entry into force of the present Act, the *Comité des Etablissements de Crédit* shall draw up a list of the institutions that satisfy its provisions. The institutions on this list shall be deemed to have obtained the authorization referred to in Article 15. Other institutions must apply for authorization within six months of the date of publication of the list referred to in the first paragraph of the present Article, failing which they shall cease their operations and go into liquidation.

Article 99

Repealed by Act 92-665 of 16 July 1992, Article 44-II. (The provisions of this Article concerning securities houses have been inserted in Article 18-2).

Article 100

If, on the date the present Act becomes law, they are carrying on activities other than those referred to in Articles 1 to 6, credit institutions must apply to the *Comité des Etablissements de Crédit*, within the period stipulated in the first paragraph of Article 98, for authorization to continue the said activities.

Article 100-1

As long as branches of credit institutions having their headquarters in a Member State of the European Community other than France are not covered by a guarantee scheme in their home State, they are bound to belong to a guarantee scheme in France under the conditions set by the *Comité de la Réglementation Bancaire et Financière*. Until 31 December 1999, the amount and the scope of the coverage offered by French branches of credit institutions having their headquarters outside of France and belonging to the guarantee scheme of their home State must not exceed the maximum amount and scope of the coverage afforded by the corresponding guarantee scheme in force in France.

Article 100-2

Credit institutions whose authorizations have been revoked by the *Comité des Établissements de Crédit* before the date when the Financial Activity Modernization Act 96-597 of 2 July 1996 comes into force

shall lose their credit institution status six months after that date. However, if the *Commission Bancaire* finds during that time that any of those institutions still owe funds received from the public, II through V of Article 19 shall apply to them in the manner decided by the *Comité de la Réglementation Bancaire et Financière*. Credit institutions whose authorizations have been revoked by the *Commission Bancaire* before the date when the Financial Activity Modernization Act 96-597 of 2 July 1996 comes into force shall be subject to Articles 19-1 and 19-2 of this Act. The *Commission Bancaire* shall decide on the date of liquidation of the legal person.

Article 101

I.- This Act shall apply in the overseas territories and in the *collectivité territoriale de Mayotte* (Territorial Unit of Mayotte), except for Articles 15-1, 100-1 (first paragraph) and Title IV *bis*.

II.- Articles 15-1, 100-1 (first paragraph) and Title IV *bis* of this Act shall not apply in the *collectivité territoriale de Saint-Pierre-et- Miquelon* (Territorial Unit of Saint-Pierre-and-Miquelon).

Article 102

The laws and regulations relating to the persons and services referred to in Article 8 of the present Act and to credit institutions and banking operations, including the decree of 30 October 1935 unifying the Act on cheques, Act 66-455 of 2 July 1966, Act 66-1010 of 28 December 1966, Act 78-22 of 10 January 1978, Act 79-596 of 13 July 1979 and Act 81-1 of 2 January 1981, and the provisions issued to implement them, shall be codified by decrees adopted by the *Conseil d'État* after obtaining the opinion of the higher committee responsible for studying the codification and simplification of laws and regulations. These decrees shall make such formal amendments to the current provisions as are rendered necessary by the work of codification excluding any amendments of substance.

Article 103

A decree in the *Conseil d'État* shall define the conditions for the application of the present Act.

Article 104

Pending the entry into force of this Act, the credit institutions shall remain subject to the accounting procedures and rules governing them as at 31 December 1983.

Article 105

This Act shall become law six months after publication in the *Journal Officiel de la République Française*. Nevertheless the provisions of Articles 61, 63 and 104 shall become law on publication of the Act in the *Journal Officiel*. This Act shall be executed as a law of the State.