



Key Changes in French Regulations on Bank Resolution and Financial Netting

On November 8, 2016, the French Parliament adopted a bill modifying important elements of: (i) France's initial implementation of EU Directive no. 2014/59 of May 15, 2015, which established a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"); and (ii) the financial netting and collateral regime.

BRRD

BRRD had initially been implemented by way of an administrative ordinance of August 20, 2015 ("BRRD Ordinance"). Pursuant to the French Constitution, this ordinance had to be ratified by the Parliament.

A ratification bill was presented by the government in Parliament on January 13, 2016. Its final version was voted on November 8, 2016, and is expected to be ratified on or around December 15, 2016. It will enter into force on the day of its ratification.

Apart from minor drafting and technical corrections, key changes to the French BRRD implementation rules that were brought about by the new law are:

- The extension of the benefit of the safe harbor in case of bail-in of Article 49 of BRRD to any transaction qualifying as a "financial contract" and governed by a master agreement, including the GMRA, the OSLA, or the GESLA. The first implementation of BRRD strictly limited the benefit of Article 49 to derivatives, but it was seen as too narrow and against the spirit of Article 49 of BRRD;
- The inclusion of a proportionality test and a delay to request contractual recognition of the extraterritorial effects of the French resolution authority decisions of bail-in taken pursuant to Article 55 of BRRD; and
- A broad implementation of the cross-default provisions of Articles 68 (exclusion of certain contractual terms) and 71 (stay) of BRRD, which under French law will apply to members of the group of the institution under resolution, as opposed to the sole guaranteed or cross-defaulted entities referred to by BRRD.

Financial Netting and Collateral Regime

The primary changes with regard to the French netting and collateral regimes are :

- The extension of the French close-out netting regime to financial obligations between a central counterparty, a clearing member, and a client;
- The ability of collateral to be posted by a third party, including central counterparties; and
- An effective segregation of collateral posted as initial margin. Such provision was highly anticipated by French banks willing to develop their clearing and non-cleared derivatives activities under French law. Pursuant to this new provision, the party providing collateral as initial margin pursuant to the EMIR Regulation has an exclusive right upon such collateral.

In our view, these proposed changes are significant and will be embraced by the market and the industry.

Lawyer Contacts

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