

French Government Passes Ordinance to Promote Bond Financings

IN SHORT

The Situation: With some provisions left unchanged for more than 50 years, France's bond laws were outdated and overly complicated.

The Action: An ordinance enacted by the French government modernizes the legal framework pertaining to bond issues.

Looking Ahead: The Ordinance is expected to be the initial step in simplifying the country's bond laws, thereby making them more attractive as a financing instrument.

On May 10, 2017, an ordinance was adopted by the French government ("Ordinance") in order to promote the use of bonds governed by French law as a financing instrument. The Ordinance seeks to modernize the French legal framework governing bond issuances so as to make it more attractive. One of the Ordinance's major innovations is to allow the parties to contractually organize the representation of the bondholders. While the Ordinance is enforceable beginning the day following its date of publication, there are certain provisions of the Ordinance that will need to be fleshed out by an implementation decree that is currently under review by the Council of State (*Conseil d'Etat*).



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The Ordinance is the first step towards the simplification of the legal regime applicable to bonds governed by French law; a simplification that is welcomed in French law debt transactions.

Bondholders' Representations and General Meetings: More Flexibility?

The current legal framework regarding bondholders' representation was adopted in 1966. Bondholders are grouped into a so-called "*masse*," which is a distinct legal entity and that makes decisions in general meetings through one or more representatives. This entity must be consulted for any change in the bond documentation and upon certain corporate events of the issuer. The main innovation of the Ordinance is that, for all bonds with a nominal value which will be in an amount to be determined by the Council of State (likely to be equal to or greater than €100,000), parties will be free to contractually define their relationship without the traditional *masse* provisions applying automatically.

The parties will also be permitted to set aside provisions relating to the bondholders' representative and/or to general bondholders' meetings, thus allowing the parties to contractually agree upon the amendments, quorums, and majority provisions. In addition, issuers will have the ability to amend the terms and conditions of the bonds unilaterally in order to correct a manifest error.

The *masse* provisions and other related provisions will still be an option for the parties.

Facilitating Decision-Making Processes

Traditionally, bondholders were only able to amend the terms and conditions of the bonds by way of decisions adopted during the bondholders' general meeting. Rules for convening and holding such meetings were mandatory and cumbersome (e.g., a notice for convening the meeting had to be sent to the bondholders at least 15 days prior to such meeting). The Ordinance now allows the parties to contractually agree on the form and notice period of the convening notice. However, the Ordinance refers to the Council of State to set the necessary protections in order to ensure that bondholders are provided with necessary and proper information. The Ordinance also provides that the documentation may contemplate consultation of the bondholders via a written consultation (including electronic communication) without mandating a general meeting.

Clarification of the Status of the Bondholders' Representative

Nationality

The Ordinance clarifies that the functions of the bondholders' representative may be carried out by any person who is domiciled or who has his registered office in a Member State of the European Union. It is worth noting that the perimeter of qualifying nationalities is limited to the Member States of the European Union—the impact of Brexit should be borne in mind when appointing a bondholder's representative established in the United Kingdom.

Delegation

Regarding the bondholders' representative's functions, the Ordinance now provides that the latter is entitled to mandate a third party to carry out, on behalf of the *masse*, all management acts (*actes de gestion*) in order to protect the common interests of the bondholders. This puts an end to an existing controversy as to whether the bondholders' representative was entitled to delegate certain powers to a third party. It is interesting to note that such delegation is limited to management acts and, therefore, does not include disposal acts (*actes de disposition*). The report to the President of the French Republic accompanying the Ordinance indicates that this innovation aims at enabling the bondholders' representative to delegate the management of the security interests to a security agent.

Simplification of Corporate Authorization Process

The Ordinance modernizes the corporate authorizations regime allowing the board of directors to delegate the decision to issue bonds to any person of its choice (currently, the board of directors may only delegate to one or more of its members, to the Chief Executive Officer, or to one or more deputy Chief Executive Officers).

Simplification of the Granting of Security Interests

The Ordinance simplifies the provisions relating to the granting of security interests by, among other things, removing certain notarization requirements.

THREE KEY TAKEAWAYS

1. The primary innovation of the Ordinance is that, for all wholesale bond issuances, parties will be free to contractually define relationships among bondholders without regard to the conventional *masse* provisions.
2. The parties will also be permitted to contractually agree upon the amendments, quorums, and majority provisions applicable to bondholders' consultations.
3. The Ordinance also simplifies the corporate authorizations process and the granting of security interests.

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