ANNEXE 2
Rapport sous-groupe juridique (version anglaise)

"The advantages of financial collateral arrangements over direct transfer"

Introduction

We refer to the report which has been drafted by the various working groups which have worked under the leadership of the Banque de France.

First of all, we wish to remind how secured is the French securitisation framework (please refer to paragraph II - "The French securitisation's legal framework") and underline that many of its characteristics are well suited for the European Central Bank refinancing that all parties would like to achieve (the "Transaction").

However, the aim of this Memorandum is to underline how important it is, according to credit institutions, to privilege financial collateral arrangements over direct transfers of the Receivables within the framework of a securitisation. Actually, direct transfers of the Receivables will be triggering major issues such as:

(i) accounting issues: recourse to the direct transfers would trigger substantial discrepancies between the stand alone accounting of the Originator and its consolidated accounting;

(ii) IT and operational issues: the use of direct transfers of the Receivables will imply at least large IT adaptations otherwise the Originator's risk procedures, regulatory reportings and customer management procedures will be destabilized;

(iii) collateral management's issues: this management is much more cumbersome within the direct transfers since it has to be performed by way of buybacks (substitutions) or new assignments instead of mere flagging and de-flagging of the collateral; and,

(iv) clients management's issues: the management and the servicing of the Receivables remain unchanged (business relationships, litigations, set-off, discounts, refunds…) which is extremely important for the Originators' clients who are very reluctant, particularly during the crisis, to have any potential modifications of the relationships they have established with the Originators and fear to have to deal with third parties which do not have a global approach of their needs,

whereas financial collateral arrangements are extremely secured tools which have been implemented at the European level thanks to the "collateral Directive" (please refer to the paragraph III "Why is it necessary to use financial collateral arrangement?").

I - Brief description of the transaction

Presentation of the securitisation vehicule issuing notes :

The portfolio of receivables (the "Receivables" or the "Portfolio") would be transferred to a securitisation vehicle (the "SV"), which would consequently issue securities which principal and interests will be backed on the redemption of the Receivables.

These debt instruments would not be issued in tranches, which means the level of risk will be the same for all of them. These debt instruments shall be either "self-subscribed" by the transferor particularly for refinancing purposes with the Eurosystem or with other eligible counterparties or be subscribed by investors. These debt instruments would not be listed on a regulated market. They will not be rated by rating agencies but shall benefit from the Banque de France's rating based on the Portfolio's rating. A SV being sponsored by several transferors, with compartments avoiding risk-sharing, should be also envisaged and would allow reducing expenses.

To achieve this, the Eurosystem should agree to integrate to the existing range of non-negotiable assets, a new category of non-negotiable assets.

These debt instruments would carry the same risk as the Receivables (under the exceptions mentioned below), would have their advantages in terms of breaking up of the risks, and would fully satisfy the objective of operational simplicity.

Actually, if the initial implementation triggers the creation of a legal structure and the cooperation between several parties, such a process is largely brought under control by the banks and there is a long-established practice by Eurosystem. An *SV* being sponsored by several originators would allow reducing the related expenses.

Competition laws issues due to the fact that the SV shall be able to refinance all the credit institutions which are eligible to the Eurosystem refinancing shall be studied in due time and shall be managed in accordance with French and European legislations.

II - The French securitisation's legal framework - reminder

1 The French securitisation's vehicles

Article L. 214-42-1 of the French Monetary and Financial Code (or "Comofi") refers to the securitisation mutual fund (*fonds commun de titrisation* referred as "FCT") and also to the securitisation company (Société de Titrisation referred as the "ST") which has been created in June 2008[1]-[2] and is endowed with the legal personality (*personnalité morale*).

Please revert to Appendix I for both the text and the translation of the French Law.

1.1 *Fonds communs de titrisation*

An FCT is established pursuant to a joint initiative between a management company (*société de gestion*) and a custodian (*dépositaire*): the FCT is a co-ownership (*co-propriété*) entity without legal personality.

Each FCT must issue at least two units (*parts*) and, where the parties elect so, may issue debt instruments, particularly bonds under Medium Term Notes' programmes and commercial papers such as *titres de créances négociables*. As it will be probably the case here, specific FCT segregated pool's or compartment (*compartiment*) will be set-up; each one of them being dedicated to the refinancing of one Originator (or its group).

Unitholders and, as it will be the case, noteholders are only liable for the FCT's debts, with recourse limited to the FCT's or the compartment's assets in proportion to each unitholder's or notesholders' claims. The two units issued by the FCT or by each compartment, as it will be the case here, shall be subscribed by the Originator which sponsors a given compartment. The issue of units could be limited to two for each compartment. The issue of these two sole units do not have any impact on the overcollateralization of a given compartment.

The legal requirement to issue two units is only needed in relation to the qualification of co-ownership. Actually, it is compulsory for a FCT to issue at least the two units since it is legally a co-ownership (*co-propriété*) and it needs at least two co-owners, the units' holders. It is, therefore, very much part of its legal regime. This legal requirement should not be considered, in any way, as creating tranches. Therefore, the requirement of the Eurosystem not to issue tranches will indeed be fulfilled.

[1] Ordinance no. 2008-566 dated 13 June 2008 (published in the *Journal Officiel de la République Française* on 14 June 2008 and codified under Article L. 214-42-1 to Article L. 214-49-14 of the French Monetary and Financial Code). The French Monetary and Financial Code can be found on the Legifrance website at http://www.legifrance.gouv.fr.

[2] Decree no. 2008-711 dated 17 July 2008 (published in the *Journal Officiel de la République Française* on 19 July 2008 and codified under Article R. 214-92 to Article R. 214-109 of the French Monetary and Financial Code). The French Monetary and Financial Code can be found on the Legifrance website at http://www.legifrance.gouv.fr.

Provisions of article L. 214-43 of the Comofi have created a carve-out regime to the provisions of article 2285 of the French Civil Code which has instituted the principle that creditors have recourses over all their debtor's assets. By exception to this article 2285 and unless provided otherwise in the constitutive documents of the vehicle (notably the funds' regulations), the assets of a specific compartment shall be applied only in satisfaction of the debts, commitments and obligations of such compartment and shall only be entitled to receive the benefit of the rights and assets associated with such compartment. They are established to create segregated pool of assets and financed by the issues of their own debt instruments. These compartments constitute separate balance-sheets within the FCT. Therefore, the creditors of a specific compartment are certain that the creditors of another compartment will not have any recourse against the assets of his compartment.

Part of an FCT, as such, the compartments benefit from the general exemption of the insolvency law as provided by article L. 214-48 of the Comofi and therefore, are bankruptcy remote.

1.2 *Sociétés de titrisation*

One of the principal purposes of the 2008 French Securitisation's reform was to allow the creation of securitisation vehicles endowed with the legal personality and taking the form of French commercial companies (*sociétés commerciales*). Similarly to FCTs, the management of STs must be conducted by a management company (*société de gestion*) and certain types of the ST's assets must be held by a custodian (*dépositaire*).

In accordance with Article L. 214-49 of the French Monetary and Financial Code, STs can either be limited liability companies (*sociétés anonymes*) or simplified joint stock companies (*sociétés par actions simplifiées*). Each ST must issue ordinary shares and, where the parties elect so, may also issue the same categories of debt instruments as FCT (particularly bonds under Medium Term Notes' programmes and commercial papers such as *titres de créances négociables*).

Pursuant to Article L. 214-49-3-II of the French Monetary and Financial Code, STs are not subject to the provisions of Book VI of the French Commercial Code (*Livre VI du Code de commerce*) which relates to the insolvency proceedings applicable to French commercial companies (*sociétés commerciales*).

The working group aims to set up a securitisation company (société de titrisation) in the form of a French commercial company considering the fact that such ST offers a more friendly tax environment should the Receivables be governed by a foreign Law and/or the debtors of such receivables be located outside France, compared to the one applicable to FCT in such a case.

Under French law, commercial companies, and therefore STs, are endowed with the legal personality (*personalité morale*) as from the date on which they have been registered with the relevant commercial registry[3]. The main consequence is that STs would therefore benefit from the provisions of international tax treaties and conventions (withholding double taxation treaties to avoid such double taxation). Such applicable tax treatment has been one of the principal motivations for the creation of the ST by the Government. Since the FCTs have not the legal personality, they were not qualified to benefit from such withholding double taxation treaties. Such situation has created an obstacle to the use of the French securitisation legal framework as a tool in trans-borders securitisations which the Government wanted to remedy to make Paris a more attractive market place.

[3] Article L. 210-6 of the French Commercial Code (Code de commerce).

Tax lawyers are indicating that bilateral tax treaties and conventions entered into by France being drafted on the basis of the OECD Model Tax Convention[4], such tax treaties and conventions usually entitle their beneficiaries to avoid double taxation in France and in another country in respect of the same operation.

In order to benefit from these provisions, an ST must be a resident of one or both of the Contracting States pursuant to Article 1 of the OECD Model Tax Convention, a resident being defined under Article 4-1 as "*any person*[5] *who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof*".

However, on the other side, the ST being a commercial company, applicable corporate taxes are applicable. Among others, specific care shall be brought to business tax, organic tax, annual lump sum tax. It should also be noted that the legal personality conferred to STs may also ease the tax treatment of the acquisition of receivables (and other assets) by French STs by jurisdictions other than France. Due to the However, on these issues, due to the fact that the Ordinance dated 13 June 2008 which has created the ST does not includes any tax provisions, a tax ruling delivered by the Inland Revenue (*administration fiscale*) shall very likely be necessary to allow this ST to evolve in a secured and favourable tax environment.

Although the form of the debt instruments to be issued is still in process of analysis, along bonds' issues within the framework of Euro Medium Term Notes programmes, the working group believes that TCN (*titres de créances négociables*) issued under a STEP compliant commercial paper programme[6] could also be appropriate for repo financing purposes; such TCN may be issued either on a medium to long term basis (BMTN (*Bons moyens Terme Négociables*)) in order to allow for a longer term and more stable source of funding, or on a short term basis (*billets de trésorerie*)[7] so as to replicate the short term financing currently in place in the TRICP programme. The STEP Label will allow the TCN to be eligible, in accordance with the then applicable policy, for repo financing both by the Eurosystem[8] and insurance companies.

The French TCN market is neither qualified by the Eurosystem as a regulated market, which qualifies it as a "non-regulated market accepted by the ECB" as provided by 6.2.1.5 of the General Documentation on the monetary policy[9], nor it is under the MIFID[10]. Therefore, as one of the principles of these transactions is to avoid any involvement of any rating agencies, this goal may be achieved under the current regulations. However, the policy of the Eurosystem may change over time and could

[4] Convention drafted by OECD (Organization for Economic Co-operation and Development) in the aim to be used by OECD member states as a model instrument in relation to the negotiation of their bilateral tax treaties and conventions and to simplify tax issues which may arise in international transactions.

[5] Article 3 of the OECD Model Tax Convention defining a "Person" for the purpose of the convention as "an individual, a company and any other body of Persons".

[6] As allowed by the provision of article L.214-42-1 "the object of securitization vehicles are to finance or hedge such risks … by issuing … debt instruments" and the provisions of articles L. 213-1 and seq of the French Monetary and Financial Code regulating the French commercial papers.

[7] However, a lack of harminisation in one of the applicable text could be an impediment to the issue of BT.

[8] It aims to foster the integration of the European markets for short-term paper through the convergence of market standards and practices. Integration will enhance market depth and liquidity and increase the diversification opportunities for issuers (both financial and non-financial institutions) and investors. The Financial Markets Association (ACI) and the European Banking Federation (EBF) are the main promoters of the STEP initiative. Please revert to http://www.stepmarket.org/homepage.html

[9] "The implementation of monetary policy in the euro area: General documentation on Eurosystem monetary policy instruments and procedures"

[10] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending several previous Directives (MIFID).

eventually revert to the regulation applicable before January the 1st, 2012[11] under which the TCN had to be listed on a regulated market to be ECB eligible. Therefore, to be certain that if such criteria is implemented again, it will be necessary to amend the current provisions of article L. 214-44 of the Comofi which provides that when a debt instrument issued by an FCT or a ST or one of its compartments is admitted to trading on a regulated market or are offered to the public, these instruments shall have to be rated[12]. This amendement is also needed in order to allow the issues of listed bonds under Euro Medium Term Notes programmes.

The aim of the amendment shall be to avoid having automatically and inevitably the debt instruments issued by the FCT or an ST being rated as a condition to their admission to trading on a regulated market. It shall be an option for the FCT, as it is currently the case for all other issuers of debt instruments when they are listed, to decide if it is appropriate to rate them or not[13].

In order to also avoid the rating requirements, it will be necessary to amend the current provisions of article D. 213-3 of the Comofi which provides that all issuers (except a list of issuers not including the OT) shall make public a rating of their TCN programme.

2 Organs of the securitisation vehicules

These organs are regulated entities. This framework contributes largely to the security brought to the French securitisation vehicles.

2.1 The management company

Any management company (*société de gestion*) duly licensed by the French Financial Markets Authority (*Autorité des marchés financiers*) to manage FCTs (*société de gestion de fonds communs de créances*) or any portfolio management company (*société de gestion de portefeuille*) within the meaning of Article L. 532-9 of the French Monetary and Financial Code is allowed to manage securitisation vehicles [14].

2.2 The custodian

Article L. 214-49-2 of the French Monetary and Financial Code authorises any credit institution (and not only a French branch of such credit institution) located in a member State of the European Economic Area to act as custodian (*dépositaire*) in a securitisation transaction.

The custodian (*dépositaire*) also remains responsible for monitoring the decisions of the management company (*société de gestion*) in accordance with the regulations or by-laws of the securitisation vehicles and the specific program of activity (*programme d'activité spécifique*) approved by the French Financial Markets Authority (*Autorité des marchés financiers*).

[11] Press release to be found at : http://www.ecb.int/press/pr/date/2011/html/pr110921.en.html

[12] « Where units, shares or debt instruments issued by the securitisation vehicle are admitted to trading on a regulated market or are offered to the public, a document describing the characteristics of the units and, if applicable, the debt instruments to be issued by the vehicle, the receivables it intends to purchase and the contracts on forward financial instruments or insurance risk transfer contracts it intends to enter into and assessing their associated risks, shall be prepared by an entity included on the list issued by the Minister for the Economy on the advice of the Autorité des marchés financiers (Financial Markets Authority or "AMF")."

[13] We have been informed that the French ministry of finance is going to initiate soon a reform on securitisation due to the transposition of the AIFM Directive, this amendment is currently being discussed with the ministry and the AMF.

[14] Such a provision being specified under Article L. 214-49-1 (with respect to STs) and Article L. 214-49-7 (with respect to FCTs) of the French Monetary and Financial Code.

For this project, the appointment of the management company and the custodian will be done after an invitation for tenders (procurement procedures to be determined in due time).

3 Bankruptcy remoteness of securitisation vehicules

It is an essential element of any securitisation transaction that the securitised assets cannot be recovered pursuant to claims by any third party *i.e.* the securitised assets are ring-fenced and the securitisation vehicle is legally bankruptcy remote. The 2008 Securitisation's reform was highly sensitive to this issue.

3.1 Protection of securitisation vehicules against bankruptcy proceedings

SVs are not subject to the provisions of Book VI of the French Commercial Code (*Livre VI du Code de commerce*)[15]. This is essential for STs as they are endowed with the legal personality (*personnalité juridique*) and would have therefore been, without such exemption, subject to French bankruptcy law (*droit des procédures collectives*), element which would have irretrievably compromised the utility of such entities as securitisation vehicles.

The scope of the civil enforcement measures (*procedures civiles d'exécution*)[16] has been restricted by the French Securitisation Reform such that the OTs assets can only be subject to civil enforcement measures (*procedures civiles d'exécution*) if such measures are enforced in compliance with the allocation rules (e.g. priority order of payments as described below) specified under the regulations or the by-laws of the SV or in the agreements entered into by the SV[17].

It is essential to underline that creditors of a defaulting Originators/ assignors will not have any claim on the FCT's or the FCT's compartments' assets.

3.2 Confirmation of the validity and enforceability of certain contractual provisions developed by securitisation practitioners

The French Securitisation's reform has given resonance to certain contractual provisions devised by practitioners of securitisation transactions, such as priority orders of payment (subordination amongst creditors) or limited recourse clauses[18].

Priority orders of payment clauses are designed to determine, on specified dates and taking into account particular circumstances which may be described in the relevant agreement, the order in which the debts incurred by the SV shall be paid.

These clauses are usually accompanied by specific limited recourse clauses pursuant to which the SVs creditors surrender their rights to contractual recourse against the SV for any sums due and payable which may exceed the SV's available assets.

4 Rules relating to the acquisition and management of the assets of a securitisation vehicules

The 2008 French Securitisation Reform, in the aim of bringing more flexibility to the French securitisation market, provided for rules relating to the acquisition and management of the assets of an SV among which:

[15] Article L. 214-48 III of the French Monetary and Financial Code.
[16] Measures prescribed by law no. 91-650 dated 9 July 1991 bearing a reform of civil execution procedures.
[17] Article L. 214-43 paragraph 4 of the French Monetary and Financial Code (as read after the entry into force of the New Securitisation Ordinance).
[18] Article L. 214-43 paragraph 3 of the French Monetary and Financial Code.

4.1 Assignment of receivables to securitisation vehicules

4.1.1 Law governing the assignment

Pursuant to the French Securitisation Reform, the Receivables to be transferred to SVs can now be assigned either (i) under French law or (ii) under any other foreign law which could allow the refinancing of foreign law governed Receivables in case the Originators have lent to foreign clients under foreign law.

4.1.2 Assignment mode

The Receivables can be assigned to an SV by way of a transfer deed (*bordereau de cession*) or any other means under French or foreign law[19].

Furthermore, the regime applicable to the transfer deed (*bordereau de cession*) has been relaxed since the transfer deed (*bordereau de cession*) can now be initially drawn up, stored and transmitted electronically[20].

4.2 Transfer of unmatured receivables

The SV may transfer unmatured receivables or receivables which have not yet become due and payable (*créances non échues ou déchues de leur terme*) in accordance with the conditions provided for in its regulations or by-laws[21]. It is the case of the Receivables to be assigned in this Transaction.

4.3 Entry into forward financial instruments

SVs have also the ability to enter into forward financial instruments in accordance with, and pursuant to, the terms and conditions set out in the regulations or the by-laws, as the case may be, of the relevant SV.

4.4 Entry into financial collateral arrangements

Pursuant to Article L. 214-43 paragraph 7 of the French Monetary and Financial Code, SVs are free to benefit from financial collateral arrangements (*garanties financières*) falling within the scope of Article L. 211-38 of the French Monetary and Financial Code[22], such financial collateral arrangements (*garanties financières*) may notably be entered into by the borrowers - Originators for the purpose of collateralising their obligations under the loans.

Such financial collateral arrangements (*garanties financières*) (the "Collateral Arrangements") benefit from a favourable legal framework (the entry into, and enforceability of, such arrangements are not subject to any requirements other than the transfer, dispossession or control by the beneficiary of the relevant assets or rights) and are enforceable even in the event of the opening of any insolvency proceedings pursuant to Book VI of the French Commercial Code (*Livre VI du Code de commerce*) or any equivalent procedure under any other foreign law against one of the defaulting Originators (please refer to paragraph III – 1.3 here below).

[19] Article L. 214-43 paragraph 8 of the French Monetary and Financial Code (as read and interpreted after the entry into force of the New Securitisation Ordinance).

[20] Article D. 214-102 4° of the French Monetary and Financial Code.

[21] Article L. 214-49-1 paragraph 2 (with regards to STs) and Article L. 214-49-7 paragraph 2 (with regards to FCTs) of the French Monetary and Financial Code.

[22] For information purposes, the regime set by Article L.211-38 of the French Monetary and Financial Code derives from the implementation of directive 2002/47/EC dated 6 June 2002 on financial collateral arrangements, please see below.

Pursuant to such arrangements, the Originators will either (i) transfer the full title of instruments, securities, bills, Receivables, agreements, or cash (i.e, transfer by way of security - *remise en pleine propriété à titre de garantie*), enforceable as against third parties without any further formalities or (ii) grant security interests (*sûretés*) over such assets or rights which could have taken the form of a pledge over the Receivables (*nantissement*). However, the Originators are ready to constitute the Collateral Arrangements by transferring the full title of Receivables to the benefit of the Société de Titrisation.

The working group has decided to choose the transfer by way of security as the way to create the Collateral Arrangement whereby the Originators, as collateral providers, shall transfer full ownership of the Receivables to the Société de Titrisation for the purpose of securing the performance of the relevant financial obligations.

Please notice that the Collateral Arrangements have been preferred to the recourse of the "Dailly law" (provisions of L.313-23 and seq of the Comofi) due mainly to the fact, as explained in paragraphe III – 1 below, that Collateral Arrangements are governed by provisions which are the transposition of several European Union Directives which has been implemented in every member State. The mere fact that the Collateral Arrangements are set-up in accordance with a European level secured framework shall ease the financing of foreign Receivables particularly by being a more suitable tool to solve international law issues.

III - Why is it necessary to use financial Collateral Arrangements?

Instead of implementing *direct transfers* of the Receivables, the recourse to Collateral Arrangement is privileged by the concerned credit institutions. A given credit institution will lend, under a loan agreement, to a given Originator, acting as borrower. In order to guarantee its obligations under the loan agreement (the "Secured Loan"), the Originator will enter within a Collateral Arrangement with the lender by transfer of full title by way of security of a Portfolio of Receivables (*remise en pleine propriété à titre de garantie*). Immediately afterwards, the credit institution acting as lender will assign the loan agreements' granted to the Originator to a Société de Titrisation. According to French Law, such assignment of receivable over the Originator implies automatically the transfer of the collateralised Portfolio to the benefit of the Société de Titrisation. The Société de Titrisation being funded, as described in paragraphe I, by issuing debt instruments, it shall allow the Société de Titrisation to pay immediately the sale price of these receivables to this credit institution which will be, therefore, immediately redeemed. After such assignment, the Société de Titrisation will have Secured Loan agreements' receivables against the borrower - Originator benefiting from a Collateral Arrangement on its balance sheet.

The Originators consider as very important to privilege the Collateral Arrangements by transfer of full title by way of security vs. a direct transfer in the form of a sale of the Receivables because they trigger major accounting, IT and operational issues, whereas Collateral Arrangements are very secured tools which have been implemented at the European level.

1 - The collateral arrangement' legal framework: a European secured framework

The provisions set forth in Articles L. 211-36 *et seq*. of the French Monetary and Financial Code are the transposition of several European Union Directives which are known as the collateral directive (the "Collateral Directive").

Therefore, we are referring to European level legislation which has been implemented in every member States and which is well known by the regulatory authorities such as Banque de France and the ECB.

One of the greatest improvements brought by the Collateral Directive is to allow enforcement of the Collateral Arrangements even after the opening of an insolvency proceding against the borrowers - Originators which has granted the Collateral Arrangements

Please also notice that, from the end of 2006, these provisions have been the keystone of the structuring of the French "structured" covered bonds transactions which are now qualified as "legal" under the name of Sociétés de Financement de l'Habitat[23].

1.1 The European Collateral Directive

As a reminder, the Directive 2009/44/EC of 6 May 2009[24] amending several previous Directives[25] is a very important legal framework for the European financial markets and it has several aims among which:

- Removal of the major obstacles for the (cross-border) use of collateral;
- Creation of clear, effective and simple regimes for financial collateral arrangements;
- Limitation of administrative burdens, formal acts and cumbersome procedures to create and enforce financial collateral;
- Recognition of specific risk mitigation techniques used in the financial markets;
- Recognition of the right to re-use pledged collateral; and,
- Creation of legal certainty on the applicable law.

Therefore, the Collateral Directive wishes to contribute to the:

- Integration and cost efficiency of the financial markets;
- Stability of the financial system;
- Reduction of risks (legal risks and credit risks) and losses; and,
- Enhancing cross-border transactions and competitiveness.

Particularly, on the financial markets transactions, the Collateral Directive is used to set-up close-out netting between eligible parties particularly in the worst cases scenarii when one of the counterparty is defaulting.

The possibility to implement a close out netting is also possible even for transactions which are not financial markets transactions.

In general, it also includes the possibility for eligible parties to finance or to be financed by granting eligible assets as Collateral Arrangements.

One of the greatest improvements brought by the Collateral Directive is to allow enforcement of the Collateral Arrangements even after the opening of an insolvency proceeding against the borrowers - Originators which has granted the Collateral Arrangements.

1.2 The French legislation:

The Collateral Directive has been implemented in French Law in Articles L. 211-36 to L. 211-40 of the French Monetary and Financial Code (*Code monétaire et financier*), hereafter the "Comofi". The provisions of article L 211-36-1 of the Comofi are particularly to be applied.

[23] Law n° 2010-1249 dated 22 October 2010.
[24] Directive from the Parliament and Council.
[25] Which are the Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims.

Please revert to Appendix II for both the text and the translation of the French Law.

Within the framework of this legislation and as a transposition of European Directives, it is possible to implement/enforce the Collateral Arrangements even in the worst cases scenarii, such as the one where borrowers - Originators would be defaulting or would be submitted to a French insolvency procedure.

Eligible parties: when the Collateral Arrangements are materialised in cash, both parties have to be eligible counterparties which include credit institutions, investment services providers, public corporations, territorial authorities, institutions, clearing houses, non resident institutions with a similar status, organizations or international financial organizations in which France or the European Community is a member, French or a foreign law governed mutual debt fund (securitisation vehicles, *organismes de titrisation*), a UCIT (*Organismes de Placement Collectif*) and an insurance company[26].

Pursuant to paragraphs L 211-38 of the French Monetary and Financial Code, the creation and perfection of the Collateral Security shall not be conditional upon any formality (such as for example filing, registration, notification, notarization, etc.). The sole requirements for such creation and perfection shall be (i) the mere execution of a written agreement between the relevant parties; and (ii) the ability of the Originator to represent in writing that the Receivables shall be at least identified.

The relevant Collateral Arrangement will require that the Receivables shall be properly identified within the IT system of the borrower - Originator (e.g., by "flagging" the corresponding loan receivables in such borrower's IT systems). Even if not required by the French Monetary and Financial Code, the relevant Collateral Arrangement will provide that the underlying documents evidencing title to the Receivables should be delivered upon enforcement within pre-agreed and identified premises upon prior notice.

Once more, these are procedures which have been successfully implemented within the framework of the Sociétés de Financements de l'Habitat transactions. Controls' procedures have also been carried out directly by the Autorité de Contrôle Prudentiel or indirectly, through the specific controlers, during the last past years, since 2006 (including within the Originators' premises to check that they are indeed capable of providing all the evidences necessary to have eligible Receivables for collateralisation).

Most of the prominent law firms have already recognised the legal security brought by the Collateral Arrangements.

For the Originators, this long and successful experience needs to be taken into account by the regulator and constitutes a deciding argument to privilege Collateral Arrangement. It is the reason why the Originators do insist for the implementation of the Collateral Arrangement.

1.3 Enforcement following insolvency proceedings

Concerning the choice of the law governing the Agreement, the laws of the insolvency procedures which would apply against the Originators, i.e French law, should be chosen since the security brought by the French Monetary and Financial Code to securitisation vehicles is particularly efficient in the worst case scenario when one of the Originator is defaulting or submitted to an insolvency proceeding.

[26] Are also included within this list of eligible parties, the French State, the CADES, the Bank of France, the *Caisse de la dette publique*, the *institution d'émission des DOM*.

In accordance with the European directive relating to the Reorganisation and Winding Up of Credit Institutions Directive (2001/24/EC) dated 4 April 2001 (as implemented in France), any insolvency proceeding against one of the Originators and its EEA [27] branches would fall within the jurisdiction of the French courts applying French law[28].

(a) Therefore, French courts would recognise the effects of the Collateral Arrangements vis-à-vis third parties based on the provisions of articles L.211-38 *et seq.* of the French Monetary and Financial Code. One of the key objectives of the French legislation is to create a carve-out regime in case of implementation of an insolvency proceeding. Therefore, notwithstanding any insolvency proceedings being commenced against one of the Originators, the Collateral Arrangement may be enforced. This objective is achieved given the very secured legal regime applicable to the Collateral Arrangement, which is immune from the application of insolvency laws and can be enforced in any circumstances.

(b) Thus, to the extent that the creation of the Collateral Arrangement satisfies the requirements of article L.211-38 *et seq.* of the French Monetary and Financial Code, the Collateral Arrangement will benefit from a general exemption to the application of the insolvency law as provided by article L.211-40 of the French Monetary and Financial Code (applicable to the effect of the insolvency law generally).

(c) Accordingly, contrary to usual provisions of French insolvency law:

(i) the creation of the Collateral Arrangement would not be subject to the risk of avoidance even if made during the hardening period ("*nullités de la période suspecte*;
(ii) the Collateral Arrangement could be enforced after the commencement of insolvency proceedings against one of the originators without suffering from the general stay of proceedings; and
(iii) the Receivables which are within the Collateral Arrangement would not be capable of being seized by Originator's creditors and the administrator would not be able to consider the Receivables are entering within the defaulting Originators' balance-sheet [29].

No right of the beneficiary of the Collateral arrangement to enforce the Collateral Security shall be in any manner affected or limited by any insolvency proceedings mentioned under the sixth book of the French *Code de commerce* (*Livre VI du Code de commerce*) which would have been opened with respect to the Borrower or any of its assets, pursuant to Article L. 211-40 of the French *Code monétaire et financier.*

2 - The financial Collateral Arrangements: as secured as direct transfer in the form of a sale

For the whole duration of the Collateral Security Arrangement, the securitization vehicle has full legal title over the Collateral Security Assets that has been transferred (*remis en pleine propriété à titre de garantie*), provided that it shall be liable to return such Collateral Security

[27] The European Economic Area (EEA) was established on 1 January 1994 following an agreement between the member states of the European Free Trade Association (EFTA) and the European Community, later the European Union (EU). Specifically, it allows Iceland, Liechtenstein and Norway to participate in the EU's Internal Market without a conventional EU membership. In exchange, they are obliged to adopt all EU legislation related to the single market, except laws on agriculture and fisheries. As you know, one EFTA member, Switzerland, has not joined the EEA.
[28] In accordance with Directive Parliament and Council 2001/24/EC on credit institutions' bankruptcy proceedings within the EU as implemented at article L 613-31 of the Comofi.
[29] Please notice that, to our knowledge, at this stage there is no case law.

Assets back to the Originator when any and all Originator's obligations has been extinguished and provided that the Originator has not been defaulting.

2.1 Impact of the hardening period on the Collateral Arrangements

As a reminder, the hardening period (*période suspecte*) is a period of time the duration of which is determined by the bankruptcy judge upon the judgement recognising that the cessation of payments (*cessation des paiements*) of the insolvent Originator has occurred. The hardening period begins on the date of such judgement and extends for up to eighteen (18) months before the date of such judgement.

As already mentioned, Article L. 211-40 of the Comofi states that the provisions of book VI of the French Commercial Code (pertaining to insolvency proceedings as a matter of French law) shall not impede ("*ne font pas obstacle*") the application of articles L. 211-36 *et seq.* of the Comofi. Consequently, the rules pertaining to the nullity of acts concluded during the hardening period (*période suspecte*) (as provided for in articles L. 632-1 of the French Commercial Code) will not apply in respect of guarantees governed by article L. 211-38-I of the French Monetary and Financial Code.

However, as for direct assignments, one cannot exclude the nullity of the Collateral Arrangement as a fraudulent act (*acte frauduleux*) if it is evidenced that, at the time of conclusion of the relevant act, the counterparty to such act knew that the Originator was already bankrupted (but not declared as such) as he was on that time unable to pay its debts due with its available funds (*en état de cessation des paiements*).

Considering the legal carve-out regime provided by the provisions of Article L.211-40 of the Comofi, the nullity of the collateral arrangement due to a hardening period is confined to a situation of knowledge by the counterparty of the very bad financial situation of its debtor on the time of execution of the collateral arrangement.

2.2 Enforcement of Collateral Arrangements

Article L. 211-38, French Monetary and Financial Code states that : " *As guarantee of the present or future financial obligations mentioned by article L. 211-36 [of French Monetary and Financial Code], the parties may foresee full transfer of ownership, enforceable towards third parties without any formalities, of financial instruments, bills, receivables, agreements or amounts of money, or the constitution of securities on such assets or rights, which may be exercised even when one of the parties is subjected to one of the proceedings provided by book VI of Commercial Code, or to an equivalent judicial or amicable proceeding governed by a foreign law, or an enforcement civil proceeding or the exercise of a writ of attachment.*"

Therefore, if there is an event of default under the Secured Loan, the Collateral Arrangement could be enforced even after the commencement of insolvency proceedings against one of the originators without suffering from the general stay of proceedings. It implies that the management company of the securitisation vehicle shall be entitled, at any time following the occurrence of an event of default of the Originator, to notify any transfer of any Collateral Security Assets to any debtor. Each such notice mentions, as it would have been the case within the framework of a direct transfer, the new payment instructions to be observed by the same with respect to the payment of sums due under the Collateral Security Assets. In any such case, any relevant debtor shall then pay the sums payable by it under each transferred receivables directly to the securitisation vehicle. Any payment made by any debtor to the Originator as from the date of receipt of the above mentioned notice to debtors will not discharge such debtor of its obligations under the relevant Collateral Security Assets.

As no right of the securitisation vehicle to enforce the Collateral Security shall be in any manner affected or limited by any insolvency proceedings mentioned under the book VI of the French *Code de commerce* the securitisation vehicle would become, even in the worst case scenario, definitively and without contest (except in case of fraud), the Receivables' owner. Consequently, the Receivables which are within the Collateral Arrangement would not be capable of being seized by the Originator's creditors and the administrator would not be able to consider the Receivables are entering within the defaulting Originators' balance-sheet.

As within the framework of a direct transfer, the management company of the securitization vehicle may rescind the servicing agreement by which the Originator was acting as servicer of the Receivables and, consequently, the Originator shall no longer be entitled to service the Receivables and shall refrain from taking any action towards the debtors.

Exactly as within the framework of a direct transfer in the form of a sale, after the enforcement of the Collateral Arrangement, the Société de Titrisation shall be vested in all the rights of title, discretion and other benefits with respect to the Receivables including rights, privilege, guarantee or security interest (*droit accessoire, privilège, garantie ou sûreté*) related to such Receivables.

One should note that the securitization vehicle is potentially subject to a commingling risk[30], as any transferee and regardless the form of the transfer to such vehicle, as long as debtors have not been notified and the Originator act as a servicer and to a risk of set off.

Whichever the form of the transfer, the debtor may exercise its potential right of set-off for mutual claims (*compensation de créances connexes*), irrespective of the date of assignment/transfer and notwithstanding the notification of the transfer (either in the form of a direct or indirect transfer), between the debtor and the Originator.

In order to limit the commingling risk at the intermediary level, the cash reimbursed by the beneficiary of the intermediary loan will be reimbursed directly on an account opened in the name of the SV. Note that this precaution is however inefficient as regards the commingling risk underneath (at the level of the credit claims).

2.3 Double assignements' risk

A double assignments (*double mobilisation*) of a credit claim refers to the situation where a credit claim is being transferred twice: even if the originator has already performed to an assignment of receivables, nevertheless, it is assigning the credit claim a second time in order to obtain, very likely fraudulently, another funding.

Such conflicts between the two transferees of the credit claim are settled by referring to the transfer dates where the earliest date of entry into force shall prevail.

We underlined the fact that this category of transactions, when perform in bad faith, is considered as a fraud (*escroquerie*) in France[31], and therefore, the penalty for which is high since article 313-1 of the French Penal Code provides that the fraud may be punished by a five years' imprisonment and by a fine of €375,000.00 [32].

[30] Upon the insolvency (*redressement judiciaire* or *liquidation judiciaire*) of the servicer, collections received in respect of the Receivables (either purchased or transferred) and standing to the credit of the accounts of the servicer may be commingled with other monies belonging to the servicer and may not be available to the transferee.

[31] Notably case Law from *Cour de Cassation* 22 February 1993.

[32] "Fraudulent obtaining is the act of deceiving a natural or legal person by the use of a false name or a fictitious capacity, by the abuse of a genuine capacity, or by means of unlawful manoeuvres, thereby to lead such a person, to his prejudice or to the prejudice of a third party, to transfer funds, valuables or any property, to provide a service or to consent to an act incurring or discharging an obligation. Fraudulent obtaining is punished by five years' imprisonment and a fine of €375,000."

Legal persons may be held accountable for frauds committed on their behalf, by their organs or representatives. They face a fine of up to 1,875,000.00 euros as well as additional penalties.

In this transaction, as described in paragraph 1.2, the relevant Collateral Arrangement will require that the Receivables shall be properly identified within the IT system of the borrower - Originator (e.g., by "flagging" the corresponding loan receivables in such borrower's IT systems).

We shall underline that this mean of identifying the Receivables within the Originators' IT systems are used with the same features for each and every transactions by which the Originators' receivables are either pledged, transfer by way of security, and assigned in order to be refinanced (which, therefore, includes direct transfer in the form of a sale). It constitutes a benchmark.

Therefore, this flagging system is implemented in a large range of transactions such as the one which have recourse to the "Dailly law" (provisions of L.313-23 and seq of the Comofi), currently used by the Eurosystem to finance the Originators either generally or through an LTRO, but also in the refinancing done by Sociétés de Financement de l'Habitat and Sociétés de Crédit Foncier (provisions of L.515-13 and seq of the Comofi, some of them using direct transfer in the form of a sale) which are part of the Originators' groups.

In all these occurrences, the flagging system allows both the Originators but also any of the third parties which have the mission to control them (such as their auditors, their specific controllers and the ACP) to determine for which specific transactions the Receivables are currently being refinanced.

Therefore, either to create Collateral Arrangements (and assimilated) or to implement a direct transfer, the IT flagging system is exactly alike. Accordingly the double assignments' risk, if ever it may occur, is potentially exactly the same for both of them.

Each Originator has therefore developed or will have to develop, if it is not yet the case, internal IT processes and procedures to ascertain and control that a Receivable cannot be sold and/or pledged with a double assignment risk.

Those flagging systems enable to identify each Receivable, to provide relevant and accurate information related to it and to manage the collateral (which does not differ from the management of a directly transferred pool of assets).

Besides, as proved in the past, the systems being alike for both the true sale direct transfers and to create a Collateral Arrangement, there is no reason to believe that the recourse to the Collateral Arrangements may trigger a higher degree of fraud, error and/or mismatch. Furthermore, provisions which may be requested in terms of servicing and safekeeping of the underlying Receivables will not be altered whichever route (direct or indirect) is selected as long as such provisions are related to each transaction specific provisions.

Article 313-9 of the French Penal Code further provides that:

"Legal persons may incur criminal liability for the offences set out under articles 313-1 to 313-3 and 313-6-1, in accordance with the conditions laid down under article 121-2.
The penalties incurred by legal persons are:
1° a fine in the manner prescribed under article 131-38;
2° the penalties referred to under article 131-39.
The prohibition referred to under 2° of article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed." (translations done by LegiFrance).

In essence Legal persons can be held accountable for frauds committed on their behalf, by their organs or representatives. They may face a fine of up to 1 875 000 euros as well as complementary penalties.

In compliance with the provisions of articles L. 214-49-2 and L. 214-49-7, the custodian has the mission to hold the cash and the receivables of an SV. The mission to keep the Receivables is legally the responsibility of the custodian and is governed by the principles of the Civil Code relating to consignment (*dépôt*) agreement. However, the custodian is not necessarily the custodian of all assets and it may appoint an originator and/or another servicer to perform its mission and hold these Receivables.

In almost all cases, these instruments governing the Receivables remain concretely within the premises of the agent, acting as servicer, for obvious practical grounds. It shall be the case in this transaction where the Originators will be appointed as servicer and shall be liable for safekeeping the Receivables.

In practice, when referring to the Receivables, the Comofi also includes all original contracts, deeds, documents, soft or hard wares and, generally, all instruments proving the very existence or governing these Receivables.

In compliance with provisions of article D 214-104 §2 b) of the Comofi, at the request of the management company or of the custodian, within delays which will be determined within a Master Transfer and Servicing Agreement concluded between the SV and the Originator, the Originator will have to provide to the custodian or any entity designated by the custodian and the management company, the original contracts and all other documents in relation to the Receivables.

In practice, the custodian may appoint, for example, an external audit firm to assess the security measure put in place in order to insure the safekeeping of these original contracts and all other documents in relation to the Receivables.

The inspection performed by the audit firm within the Originators' premises will have to check their records, computers or electronic data systems and the related hardware and software and the implementation of the servicing and safekeeping procedures or any other information or document related to, or in connection with, any Receivable. Among others, these audits will determine how the "flagging" of the Receivables is implemented in each Originator IT systems and to reconcile the information registered in the IT system with the ones enclosed in the file evidencing title to the Receivables in order to verify if there is no double assignment risk. These audits may be performed on a regular basis (annual, semi-annually or quarterly) and in specific cases to be determined between the parties.

2.4 The integration of the affiliates

In certain groups, there may be two levels of refinancing. The first one shall be the one described here above. The second one shall be put in place when there are affiliates which are also the Originators of Receivables to be refinanced indirectly by the Eurosystem (the "Affiliates"[33]). In that occurrence, one of the Affiliates (often a credit institution), which is either the group's mother company or a dedicated affiliate, shall act as intermediary towards the Eurosystem (the "Group Intermediary"). There are two possible frameworks which are known as the "pivot" scheme and the "solidarity" scheme.

These mechanisms shall allow:

(i) the SV to have only one "entry point" within a given group to set-up the refinancing which shall be dispatch, by the Group Intermediary, between the other Affiliates in accordance with their intra-Group's agreements;

[33] « Affiliates » in the widest sense of the term: within a given group, entities (either qualified as commercial companies or else) which have direct or indirect capitalistic bonds between themselves.

(ii) not to have any impact on the secured framework explained here above and the rights of the SV in case of occurrence of a worst case scenario; and

(iii) to create a more secured situation than the one where each Affiliates would be refinanced bilaterally by the SV.

2.4.1 – the "pivot" scheme

a- the scheme: the framework which shall be set-up for the relation between the Group Intermediary and the other Affiliates shall use the same legal tools as between the Group Intermediary and the SV:

(i) As between the SV and the Group Intermediary, each of these Affiliates shall conclude bilaterally, with the Group Intermediary, an Affiliate's Secured Loan[34] which shall be secured by a Collateral Security Arrangement over the Receivables originated by each of these Affiliates.

(ii) The Group Intermediary shall benefit, for the whole duration of the Affiliate's Secured Loan, of a transfer of full title by way of security over the Collateral Security Assets that has been transferred (*remise en pleine propriété à titre de garantie*) to the Group Intermediary by each of the Affiliate within the framework of Collateral Arrangement.

(iii) As the owner of the Collateral Security Assets, no mandate shall be given by each Affiliate to the benefit of the Group Intermediary although the Group Intermediary may be instated as Collateral Security agent for the purpose of selecting the appropriate assets to be granted as Collateral Security from within the asset pools of the Affiliates. On the other sense, under the Collateral Arrangements agreements, each of the Affiliates shall remain servicers of the Collateral Security Assets. The Group Intermediary and the Affiliates shall make their own business to determine how the financing shall be split within the group.

(iv) Each of the Affiliate's debt will be full recourse to the Affiliates and constitute irrevocable obligations of the Affiliates to repay interest, principal and other amounts due to the Group Intermediary under the Affiliate's Secured Loan.

[34] Or in some cases, a facility allowing several drawings.

b – a secured scheme: benefiting, for the whole duration of the Affiliates' Secured Loans, of a transfer of full title by way of security over the Collateral Security Assets (*remise en pleine propriété à titre de garantie*) to it, the Group Intermediary is entitled, on its side, as the owner, to transfer full title by way of security over the Affiliates' Collateral Security Assets within the framework of the Collateral Arrangement. Therefore, the transfers are done in the Group Intermediary's own name (*en son nom propre*) as the owner of the Collateral Security Assets. It is a difference with the "solidarity" scheme in which, in relation with the Collateral Security Assets of the Affiliates, the Group Intermediary is acting on their behalf (*au nom et pour le compte*).

In case of an acceleration of the Group Intermediary's debt towards the SV, it shall constitute an event of default triggering a cross acceleration of the Affiliates' Secured Loans and the enforcement of all Collateral Arrangements. Therefore, if the Group Intermediary is unable to reimburse to the SV all sums due under the Secured Loans' receivables, the Affiliates' Collateral Security Assets may be used to do so. Except in certain groups where the solidarity between the Affiliates is already established by application of specific provisions of the Law, the Affiliates' boards of directors (or equivalent) shall duly authorise, prior to its setting-up, such mechanism by which the Affiliates could be in a position to guarantee the obligations of the Group Intermediary towards the SV.

2.4.2 – the "solidarity" scheme

a – the scheme: the Group Intermediary is not acting only on its own name (*en son nom propre*) as the owner of the Collateral Security Assets but is also acting on behalf of the Affiliates (*au nom et pour le compte*) in relation with their Collateral Security Assets of the Affiliates. Therefore, the difference with "pivot" scheme is that the Group Intermediary is not the owner of the Collateral Security Assets since there is no transfer of full title by way of security over them. It is just acting as a mere intermediary for the purpose of the transaction.

As an "entry point", a mandate shall be given by each Affiliate to the benefit of the Group Intermediary in order (a) to conclude or establish, on behalf of each Affiliate, all agreements, acts and documents necessary to set-up the transaction with the SV and (b) to be an intermediary in the cash transfer. Therefore under the Secured Loan agreement, the sole party shall be the Group Intermediary acting as borrower on its own name and on behalf of all Affiliates. Each Affiliate shall give mandate to the Group Intermediary to conclude separate Collateral Arrangements by which each of the Affiliates shall proceed to the transfer of full title by way of security over its Collateral Security Assets.

b – a secured scheme: in case the Group Intermediary is unable to redeem the SV, it shall constitute an event of default triggering the enforcement of part or all the Collateral Arrangements. Each of the Affiliates shall contribute equally (percentage) to the loss incurred by the SV. Except in certain groups where the solidarity between the Affiliates is already established by application of specific provisions of the Law, the Affiliates' boards of directors (or equivalent) shall duly authorise, prior to its setting-up, such mechanism by which the Affiliates could be in a position to guarantee the obligations of the Group Intermediary towards the SV.

In certain groups, the current TRICP refinancing scheme may use both "pivot" and "solidarity" schemes at the same time depending on the Affiliates involved.

3 - The direct transfer: the emergence of operational issues

Within the framework of Collateral Arrangements, the securitisation vehicle has full legal title over the Receivable which have been transferred, provided that the latter shall be liable to return such Receivables upon the extinction of the Originator's obligations.

Such transfer has the same legal effect of a direct transfer (for instance under the regime of L.214-43 of the Comofi which organises the direct transfer to a securitisation vehicle) vis-à-vis the debtors, except that the definitive ownership of the Receivables is postponed compared to a direct transfer as it is subject to the Originator's default.

Therefore, since the beneficiary of the Collateral Arrangement shall return such collateralised Receivables in the absence of the Originator's default, the Receivables remain within the Originators' balance sheet, whereas a direct transfer in the form of a sale impact both at the same time the balance sheet of the assignor - Originator and the one of the assignee. There are various impediments which would arise in case the direct transfers of the Receivables were to be chosen rather than Secured Loans.

Please note that direct transfers of Receivables have already been set-up for other categories of receivables (residential home loans, auto-loans…) but when set-up on receivables such as the Receivables the impediments, explained below, have arisen. For example, several new Sociétés de Crédit Foncier ("SCF") were created during the last past years in order to refinance "public exposures", as provided by article L. 515-15 of the Comofi, constituted by Receivables in connection with export loans and aircraft financing loans entered into with Originators to finance projects, infrastructures and/or aircrafts and benefiting from a guarantee, indemnity or credit-insurance granted by a sovereign state or by one or more export credit agencies guaranteed by, or acting in the name and on behalf of, a sovereign state. In order to be compliant with the assessment of the risks and the standard of the markets, direct transfer by true sales has been implemented. However, it appears quickly that, partly due to the impediments described below, these SCF could not easily and with a cost competitiveness implements such transfers. It is the reason why several of these SCF have decided to privilege the refinancing of these categories of Receivables through Secured Loans.

3.1 Accounting issues

Because the FCT should be consolidated within the Originator's balance sheets (due to credit enhancement mechanisms[35]), recourse to the direct transfers would trigger discrepancies between the stand alone accounting of the Originator and its consolidated accounting. Those discrepancies are further detailed in Section 3.2; there are related to potential impacts on accounting, risks management, regulatory and tax treatments.

Accounting issues are also increased by the more complex nature and greater variety of the Receivables (plain or revolving facilities, secured loans,…). Currently, for most Originators, the Receivables (SME or corporate loans) may be registered in several separate IT systems because for example they are not generated by the same business lines or entities. As the Banque de France is aware of these various IT systems are much linked to the recent history of the Originators. Mergers and acquisitions, spin off, restructurings in each of the Originators business are most the time the reason explaining the use of several separate IT systems.

There is, at least, three IT loan management systems: one for investment vanilla loans, one for short term (treasury's needs) loans, one for complex loans with guarantees. It

[35] If the Receivables are sold to the SV, the Originator would retain the first loss, either by subscribing an equity tranch issued by the SV or by differing the payment of part of the purchase price; such first loss retention would be sized in order to capture the maximum expected loss on the Receivables portfolio. As a result, the risks on the Receivables portfolio would not be deemed to be transferred to the SV but instead, would be retained by the originator, which would therefore account them on its consolidated balance sheet (whilst the assigned Receivables would no longer be accounted for on its corporate balance sheet). Moreover, the originator would be in charge of the servicing and recovery of the Receivables, and as such, would be responsible for its performance, which would determine the amount of recovery of the first loss exposure (assuming that the senior tranche is not expected to be impacted by losses). This control over the management of the assets, which determines the variable performance, both in terms of risks and rewards of the portfolio, would result in the consolidation of the SV with the originator, both under SIC12 and IFRS10 (subject to the governance structure of the ST). Finally, we note that in the particular case where the securities issued by the ST are held by an entity of the group that is not the entity originating the Receivables, the accounting treatment would probably be impacted and will have to be determined within such group.

implies that the Originators' IT accounting systems will have to be first substantially modified and, probably, merged to be able to set-up a double accounting systems.

3.2 Other IT systems' issues

Furthermore, the loan management IT systems feed not only the accounting systems but also other IT systems: risk/provisioning systems, analytical accounting systems which allow the Originators to analyse the whole financial situation of its customers (loans, deposits, cash management…). Therefore, the use of direct transfers of the Receivables will imply at least large IT adaptations otherwise the Originator's risk procedures and customer management procedures will be destabilized.

Among these projects, the use of direct transfers will trigger the need to up-date the link between the accounting and the tax IT systems particularly the one which carries out the setting-up of tax bundles (*liasses fiscales*) which are performed almost automatically. It will make tax calculations more cumbersome. Actually, it will imply in order to determine the taxes to be paid in relation, directly or indirectly, to a given portfolio to connect the ST's IT accounting systems to the Originator's one. If it is not the case, employees dedicated to this task will have to perform such connection which was almost automatic before.

The same pattern applies to the IT systems which will provide regulatory and prudential reports and large exposures' risks calculations.

On the homogeneous-risk cohorts, if the Originator is in IRBA, it will trigger a difficulty to calculate Basel II capital charges for SME loans which are treated as homogeneous-risk cohorts from a regulatory point of view. This treatment has been approved by the ACP when setting-up the cohorts. Each of the portfolios part of the cohorts which will have a Receivables assigned by a direct transfer will be impacted. Therefore, in case of a direct transfer of a portion of the loans, the composition of these cohorts would have to be redefined under the supervision of the ACP.

Such an important decrease in an Originator's balance sheet due to the direct transfers may also have consequences on many corporate issues such as bookings, profit sharing of the various business lines, employees' benefits or, even, shareholders' dividends.

As a result, in consideration of the more complex nature and the greater variety of contemplated Receivables, implementation of a direct transfer mechanism would involve very significant IT development costs to solve hereabove outlined issues.

Furthermore, because of the accounting treatment applicable to the transaction (off balance sheet on a standalone; on balance sheet on a consolidated basis), IT developments which would be necessary to apply appropriate treatments for a direct transfer would not necessarily provide greater comfort/security in terms of operations versus the operational treatments applied under the indirect transfer route, which Banque de France have experienced and tested for a long time under the TRICP procedures.

3.3 Collateral management's issues

Within the framework of Collateral Arrangement, the flag of the Receivables can be performed by the way of a "line to line list", which allows to easily manage the Receivables, particularly substitution of non-eligible Receivables, addition to the collateral of new Receivables (for example for over-collateralisation) whereas this management is much more cumbersome within the direct transfers since it has to be performed by way of buybacks (substitutions) or new assignments which have immediate impacts in the respective accounting systems of the assignee and the assignors.

Following the example of the reportings already implemented within the framework of TRICP and the "additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral" which are already using Collateral Arrangements,

concerning the "line to line list" management of the Receivables, the management company of the FCT and the Originators shall implement similar procedures. These reportings shall allow the management company to have all information on the substitution of non-eligible Receivables by eligible ones. It would have to be further discussed between all parties their periodicity (monthly, quarterly…), their content and the way these reportings are transferred to the management company (through which IT systems) by each Originator, however, the Originators would favor the procedures already implemented on the transactions mentioned above.

Contrarily to direct transfers, it also avoids any cash transfer generated by the servicing of the Receivables since there are only the ones due under the receivables loans agreements which term and conditions are matching the ones of the bonds issued by the ST.

This mechanism is extremely simple in term of cash flows in Collateral Arrangements. Again, nothing would be new to Banque de France to the extent that such mechanism will derive from mechanisms currently applied under the TRICP procedures.

3.4 Clients management's issues

Within the framework of Collateral Arrangements, the management and the servicing of the Receivables remain unchanged (business relationships/ litigations…) which is extremely important for the Originators' clients who are very reluctant, particularly during the crisis, to have any potential modifications of the relationships they have established with the Originators and fear to have to deal with third parties which do not have a global approach of their needs.

By avoiding any modifications within the IT systems, which allow, as explained above, the Originators to analyse the whole situation of its clients, the Collateral Arrangements creates the favourable environment allowing the Originators to be able to manage the business relationships with their clients.

One important element in the clients' relationships will be the servicing of the Receivables. Within the framework of a more global business relationship, many events (such as set-off, discounts, refunds…) may trigger the need to reconcile all the client positions in order to determine what would be the final amount to be collected. Therefore, the servicing towards the client will not necessarily be on the Receivables' nominal amount. Accordingly, the need to reconcile all business and contractual data would be hazardous within the framework of direct transfers. Please note that all these events having a potential impact on the nominal amount of the Receivables shall be remedied by the standard structuration to solve dilution.

By splitting the information in relation with a given client, the recourse of the direct transfers may trigger hazards which could make the management of such relationships much more difficult.

In the worst case scenarii, the transferred Receivables may become delinquent/ defaulted/ contested claims. In most securitisation schemes, when transferred Receivables have become delinquent/ defaulted/ contested claims, these Receivables are not considered as eligible anymore to the refinancing.

Therefore, within the direct transfer by true sale, the original transfer of such Receivables will have to be rescinded (*résolution*) and such Receivables shall be transferred back to the Originator's balance-sheet and substitutions of these Receivables by eligible Receivables shall be implemented. This substitution mechanism needs two transfer deeds and is much more cumbersome in term of managing the Receivables than within the framework of Collateral Arrangements where no transfer deed is needed at all.

Conclusion:

As demonstrated here-above, the financial Collateral Arrangements would provide the same level of comfort/security as the direct transfer with no additional double assignment risk.

While providing the same level of comfort/security, financial Collateral Arrangements will prove to be much more operational for credit institutions with no potential additional risks.

Because of the nature and the variety of the underlying Receivables (much greater diversity than auto loans or residential home loans for example), financial collateral arrangements would prevent Originators from having to support very significant IT development costs and delays of implementation for a level of operational comfort/security which will not be higher than what is achievable under the indirect transfer route.

APPENDIX I

SECURITISATION
French Monetary and Financial Code
(Extracts)

PART I – LEGISLATION

SECTION 4: SECURITISATION VEHICLES

SUB-SECTION 1: PROVISIONS COMMON TO ALL SECURITISATION VEHICLES

Paragraph 1: General Provisions

ARTICLE L214-42-1

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The objects of securitisation vehicles are:

- first, to take on exposure to risk, including insurance risks, by purchasing receivables or entering into contracts on forward financial instruments or insurance risk transfer contracts;

- second, to finance or hedge such risks in their entirety by issuing shares, units or debt instruments, by entering into contracts on forward financial instruments or insurance risk transfer contracts or by raising borrowings or other forms of funding.

Securitisation vehicles take the form of either mutual securitisation funds (*fonds commun de titrisation* or "FCT") or securitisation companies (*sociétés de titrisation*).

Les organismes de titrisation ont pour objet:

- d'une part, d'être exposés à des risques, y compris des risques d'assurance, par l'acquisition de créances ou la conclusion de contrats constituant des instruments financiers à terme ou transférant des risques d'assurance ;

- d'autre part, d'assurer en totalité le financement ou la couverture de ces risques par l'émission d'actions, de parts ou de titres de créances, par la conclusion de contrats constituant des instruments financiers à terme ou transférant des risques d'assurance ou par le recours à l'emprunt ou à d'autres formes de ressources.

Ils prennent la forme soit de fonds communs de titrisation, soit de sociétés de titrisation.

ARTICLE L214-43

Amended by LAW n°2010-1249 of 22nd October 2010 - art. 69

Modifié par LOI n°2010-1249 du 22 octobre 2010 - art. 69

The securitisation vehicle may comprise two or more compartments if the by-laws of the company or the regulations of the fund so provide. Each compartment may issue units or shares and, if required, debt instruments. By exception to article 2285 of the Civil Code and unless provided otherwise in the constitutive documents of the vehicle, the assets of a specific compartment shall be applied only in satisfaction of the debts, commitments and obligations of such compartment and shall only be entitled to receive the benefit of the rights and assets associated with such compartment.

The terms on which the vehicle or, as the case may be, the compartments of the vehicle may borrow and enter into contracts on forward financial instruments are established by decree of the Conseil d'Etat. Such decree also establishes the rules governing the composition of the vehicle's assets.

For the purpose of realising its objects, a securitisation vehicle may, on a subsidiary basis, hold equity securities received by way of conversion, exchange or redemption of debt instruments or securities conferring entitlement to share capital.

The units or shares and debt instruments issued by the vehicle may confer different rights to share capital and interest. The regulations or by-laws of the vehicle, and any contract entered into on behalf of the vehicle, may provide that the rights of certain creditors are subordinated to the rights of other creditors of the vehicle. The rules governing the allocation of amounts received by the vehicle are binding on holders of units, shareholders, holders of debt instruments as well as on creditors that have acquiesced to such rules. They apply even on liquidation of the vehicle.

Civil enforcement measures applied against the assets of the securitisation vehicle are subject to the allocation rules set forth in the regulations or by-laws of the vehicle.

Holders of units or shares are not entitled to demand that the vehicle repurchase their units or shares.

Under and in accordance with its regulations or by-laws and subject to the provisions of article L. 214-49-1 and para. I of article L. 214-49-7, the vehicle or, as the case may be, its compartments may assign the receivables they purchase and the assets they hold and unwind or liquidate contracts on forward financial instruments.

For the purpose of realising its objects, a securitisation vehicle may, as provided by decree of the Conseil d'Etat, create or grant the types of security referred to in article L. 211-38, and, in accordance with the provisions of its regulations or by-laws, receive the benefit of any kind of guarantee or security.

The purchase or assignment of the receivables takes place by delivery of a single transfer document ("Bordereau"), the format and contents of which are specified by decree, or by any

other form of assignment available under French or foreign law. It takes effect as between the parties and becomes enforceable against third parties as from the date entered on the Bordereau when delivered, irrespective of the date the receivables arise, mature or become due and payable, without the need for any other formality and irrespective of the governing law of the receivables or the law of the country of residence of the debtors. Notwithstanding the commencement of any proceedings as referred to in Book VI of the Commercial Code or equivalent proceedings under foreign law against the assignee following the assignment, the effects of such assignment shall survive the judgment opening such proceedings. Delivery of a Bordereau shall imply both transfer by operation of law of all security, guarantees and ancillary rights attached to each receivable, including mortgages, and also enforceability thereof against third parties without any further formality.

By exception to the preceding paragraph, an assignment of receivables consisting of financial instruments shall take place in accordance with the rules applicable to the transfer of such instruments. If required, the vehicle may subscribe directly for an issue of such instruments.

The creation and realisation of guarantees or security granted for the benefit of the vehicle confers on it the right to acquire possession of or title to the relevant assets.

If the receivable assigned to the vehicle arises under a lease contract or finance lease, the commencement of proceedings under Book VI of the Commercial Code or any equivalent foreign law proceedings against the lessor or finance lessor shall not prevent the contract from continuing to be performed.

The assignment agreement may confer on the assignor a right of claim over all or part of the liquidation dividend, if any, of the vehicle or, as the case may be, any of its compartments.

L'organisme de titrisation peut comporter deux ou plusieurs compartiments si les statuts de la société ou le règlement du fonds le prévoient. Chaque compartiment donne lieu à l'émission de parts ou d'actions et, le cas échéant, de titres de créances. Par dérogation à l'article 2285 du code civil et sauf stipulation contraire des documents constitutifs de l'organisme, les actifs d'un compartiment déterminé ne répondent que des dettes, engagements et obligations et ne bénéficient que des droits et actifs qui concernent ce compartiment.

Les conditions dans lesquelles l'organisme ou, le cas échéant, les compartiments de l'organisme peuvent emprunter et conclure des contrats constituant des instruments financiers à terme sont fixées par décret en Conseil d'Etat. Ce décret fixe également les règles que respecte la composition de l'actif de l'organisme.

Pour la réalisation de son objet, un organisme de titrisation peut détenir, à titre accessoire, des titres de capital reçus par conversion, échange ou remboursement de titres de créances ou de titres donnant accès au capital.

Les parts ou actions et les titres de créances émis par l'organisme peuvent donner lieu à des droits différents sur le capital et les intérêts. Le règlement ou les statuts de l'organisme et tout contrat conclu pour le compte de l'organisme peuvent stipuler que les droits de certains créanciers sont subordonnés aux droits d'autres créanciers de l'organisme. Les règles d'affectation des sommes reçues par l'organisme s'imposent aux porteurs de parts, aux actionnaires, aux détenteurs de titres de créances ainsi qu'aux créanciers les ayant acceptées. Elles sont applicables même en cas de liquidation de l'organisme.

Les actifs de l'organisme de titrisation ne peuvent faire l'objet de mesures civiles d'exécution que dans le respect des règles d'affectation définies par le règlement ou les statuts de l'organisme.

Les parts ou actions ne peuvent donner lieu, par leurs détenteurs, à demande de rachat par l'organisme.

Dans les conditions définies par son règlement ou ses statuts et sous réserve des dispositions de l'article L. 214-49-1 et du I de l'article L. 214-49-7, l'organisme ou, le cas échéant, ses compartiments peuvent céder les créances qu'ils acquièrent et les actifs qu'ils détiennent et dénouer ou liquider les contrats constituant des instruments financiers à terme.

Pour la réalisation de son objet, un organisme de titrisation peut, dans les conditions définies par décret en Conseil d'Etat, octroyer les garanties mentionnées à l'article L. 211-38, et, dans les conditions définies par son règlement ou ses statuts, recevoir tout type de garantie ou de sûreté.

L'acquisition ou la cession des créances s'effectue par la seule remise d'un bordereau dont les énonciations et le support sont fixés par décret ou par tout autre mode de cession de droit français ou étranger. Elle prend effet entre les parties et devient opposable aux tiers à la date apposée sur le bordereau lors de sa remise, quelle que soit la date de naissance, d'échéance ou d'exigibilité des créances, sans qu'il soit besoin d'autre formalité, et ce quelle que soit la loi applicable aux créances et la loi du pays de résidence des débiteurs. Nonobstant l'ouverture éventuelle d'une procédure mentionnée au livre VI du code de commerce ou d'une procédure équivalente sur le fondement d'un droit étranger à l'encontre du cédant postérieurement à la cession, cette cession conserve ses effets après le jugement d'ouverture. La remise du bordereau entraîne de plein droit le transfert des sûretés, des garanties et des accessoires attachés à chaque créance, y compris les sûretés hypothécaires, et son opposabilité aux tiers sans qu'il soit besoin d'autre formalité.

Par dérogation à l'alinéa précédent, la cession de créances qui ont la forme d'instruments financiers s'effectue conformément aux règles applicables au transfert de ces instruments. Le cas échéant, l'organisme peut souscrire directement à l'émission de ces instruments.

La réalisation ou la constitution des garanties ou des sûretés consenties au bénéfice de l'organisme entraîne pour celui-ci la faculté d'acquérir la possession ou la propriété des actifs qui en sont l'objet.

Lorsque la créance cédée à l'organisme résulte d'un contrat de bail ou de crédit-bail, l'ouverture d'une procédure mentionnée au livre VI du code de commerce ou d'une procédure équivalente sur le fondement d'un droit étranger à l'encontre du bailleur ou du crédit-bailleur ne peut remettre en cause la poursuite du contrat.

La convention de cession peut prévoir, au profit du cédant, une créance sur tout ou partie du boni de liquidation éventuel de l'organisme ou, le cas échéant, d'un compartiment de l'organisme.

ARTICLE L214-44

Amended by Order n°2008-556 of 13th June 2008 - art. 16

Modifié par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

Where units, shares or debt instruments issued by the securitisation vehicle are admitted to trading on a regulated market or are offered to the public, a document describing the characteristics of the units and, if applicable, the debt instruments to be issued by the vehicle, the receivables it intends to purchase and the contracts on forward financial instruments or insurance risk transfer contracts it intends to enter into and assessing their associated risks, shall be prepared by an entity included on the list issued by the Minister for the Economy on the advice of the Autorité des marchés financiers (Financial Markets Authority or “AMF”). This document is appended to the document referred to in article L. 412-1 and communicated to subscribers of units and, if applicable, debt instruments.

The units, shares and debt instruments to be issued by the vehicle cannot be directly marketed, except to qualified investors as defined in para. II of article L. 411-2.

Lorsque les parts, actions ou titres de créances émis par l'organisme de titrisation sont admis à la négociation sur un marché réglementé ou font l'objet d'une offre au public, un document contenant une appréciation des caractéristiques des parts et, le cas échéant, des titres de créances que cet organisme est appelé à émettre, des créances qu'il se propose d'acquérir et des contrats constituant des instruments financiers à terme ou transférant des risques d'assurance qu'il se propose de conclure et évaluant les risques qu'ils présentent est établi par un organisme figurant sur une liste arrêtée par le ministre chargé de l'économie après avis de l'Autorité des marchés financiers. Ce document est annexé à celui mentionné à l'article L. 412-1 et communiqué aux souscripteurs de parts, et, le cas échéant, de titres de créances.

Les parts, actions et titres de créances que l'organisme est appelé à émettre ne peuvent faire l'objet de démarchage sauf auprès d'investisseurs qualifiés mentionnés au II de l'article L. 411-2.

ARTICLE L214-45

Amended by Order n°2008-556 of 13th June 2008 - art. 16

Modifié par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

Securitisation vehicles must provide to the Banque de France the information required for the purposes of compiling monetary statistics.

Les organismes de titrisation doivent communiquer à la Banque de France les informations nécessaires à l'élaboration des statistiques monétaires.

ARTICLE L214-46

Amended by Order n°2008-556 of 13th June 2008 - art. 16

Modifié par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

Where receivables have been transferred to the vehicle, they shall continue to be collected by the assignor or the entity responsible for their collection prior to the transfer, on the terms set forth in an agreement made with the vehicle's management company.

However, any other nominated entity may be appointed to collect all or some of the receivables, provided the debtor is informed thereof by letter.

The provisions of this article shall not apply to receivables consisting of financial instruments.

Lorsque des créances sont transférées à l'organisme, leur recouvrement continue d'être assuré par le cédant ou par l'entité qui en était chargée avant leur transfert, dans des

conditions définies par une convention passée avec la société de gestion de l'organisme.

Toutefois, tout ou partie du recouvrement peut être confié à une autre entité désignée à cet effet, dès lors que le débiteur en est informé par lettre simple.

Les dispositions du présent article ne sont pas applicables aux créances qui ont la forme d'instruments financiers.

ARTICLE L214-46-1

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The management company of the vehicle and any entity appointed to collect amounts owed to, or directly or indirectly benefitting, the vehicle, may agree that the sums collected directly or indirectly on behalf of the vehicle shall be credited to an account specially dedicated to the vehicle or, as the case may be, the compartment, against which the creditors of the collection agency may not pursue payment of their receivables, even where proceedings have been commenced against it under Book VI of the Commercial Code or any equivalent foreign law proceedings. The terms for operation of this account are established by decree.

Commencement of proceedings under Book VI of the Commercial Code or any equivalent foreign law proceedings against the assignor or, as the case may be, the entity appointed to recover or collect amounts owed to, or directly or indirectly benefitting, the vehicle, shall not result in either the termination of the agreement governing operation of the account referred to in the preceding paragraph or the closing of such account.

La société de gestion de l'organisme et toute entité chargée de l'encaissement des sommes dues ou bénéficiant directement ou indirectement à l'organisme peuvent convenir que les sommes encaissées directement ou indirectement pour le compte de l'organisme seront portées au crédit d'un compte spécialement affecté au profit de l'organisme ou, le cas échéant, du compartiment, sur lequel les créanciers de l'entité chargée de l'encaissement ne peuvent poursuivre le paiement de leurs créances, même en cas de procédure ouverte à son encontre sur le fondement du livre VI du code de commerce ou d'une procédure équivalente sur le fondement d'un droit étranger. Les modalités de fonctionnement de ce compte sont fixées par décret.

Aucune résiliation de la convention régissant le compte mentionné au précédent alinéa ni aucune clôture de ce compte ne peut résulter de l'ouverture d'une procédure mentionnée au livre VI du code de commerce ou d'une procédure équivalente sur le fondement d'un droit étranger à l'encontre du cédant ou, le cas échéant, de l'entité chargée du recouvrement ou de l'encaissement des sommes dues ou bénéficiant directement ou indirectement à l'organisme.

ARTICLE L214-47

Amended by Order n°2008-556 of 13th June 2008 - art. 16

Modifié par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The nature and characteristics of the receivables available for securitisation vehicles to purchase are established by decree.

Un décret fixe la nature et les caractéristiques des créances que peuvent acquérir les organismes de titrisation.

ARTICLE L214-48

Amended by Order n°2008-556 of 13th June 2008 - art. 16

Modifié par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

I.- The regulations or by-laws of the vehicle shall specify the duration of each financial accounting period which may not be longer than twelve (12) months. However, the first financial accounting period may be longer, subject to a maximum of eighteen (18) months.

II.- Separate accounts are kept within the vehicle's accounts for each of its compartments.

The management company shall, within a period of six (6) weeks of the end of each semester, prepare for each of the vehicles under its management, an inventory of the assets under the control of the custodian.

I.- Le règlement ou les statuts de l'organisme prévoient la durée des exercices comptables qui ne peut excéder douze mois. Toutefois, le premier exercice peut s'étendre sur une durée supérieure sans excéder dix-huit mois.

II.- Chaque compartiment de l'organisme fait l'objet, au sein de la comptabilité de l'organisme, d'une comptabilité distincte.

Dans un délai de six semaines à compter de la fin de chaque semestre de l'exercice, la société de gestion dresse, pour chacun des organismes qu'elle gère, l'inventaire de l'actif sous le contrôle du dépositaire.

III.- Les dispositions du livre VI du code de commerce ne sont pas applicables aux organismes de titrisation.

III.- The provisions of Book VI of the Commercial Code shall not apply to securitisation vehicles.

The liability of the securitisation vehicle or, as the case may be, each compartment of the vehicle, for its debts, including towards holders of debt instruments, is limited to the value of its assets, and its creditors shall rank in the order of priority prescribed by law or, pursuant to the third paragraph of article L. 214-43, as provided in the by-laws or regulations of the vehicle or under the terms of any contracts entered into by it.

L'organisme de titrisation ou, le cas échéant, un compartiment de l'organisme, n'est tenu de ses dettes, y compris envers les porteurs de titres de créance, qu'à concurrence de son actif et selon le rang de ses créanciers défini par la loi ou tel qu'il résulte, en application du troisième alinéa de l'article L. 214-43, des statuts ou du règlement de l'organisme ou des contrats conclus par lui.

Paragraph 2: Specific provisions applicable to securitisation companies

ARTICLE L214-49

Amended by Order n°2008-556 of 13th June 2008 - art. 16

Modifié par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

A securitisation company is a securitisation vehicle incorporated in the form of a limited company (société anonyme) or simplified company limited by shares (société par actions simplifiée).

The company must make reference on all deeds and documents intended for third parties to its status as a securitisation company.

La société de titrisation est un organisme de titrisation constitué sous la forme de société anonyme ou de société par actions simplifiée.

La société doit faire figurer sur tous les actes et documents destinés aux tiers sa qualité de société de titrisation.

ARTICLE L214-49-1

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

A securitisation company is managed by a portfolio management company as defined in article L. 532-9 or a mutual receivables fund management company as defined in para. I of article L. 214-48 as enacted prior to the date of publication of Order n° 2008-556 of 13th June 2008 transposing Directive 2005/68/EC of the European Parliament and Council dated 16 November 2005 relating to reinsurance and reforming the legal framework of mutual receivables funds. The appointed company is specified in the by-laws of the securitisation company.

Where the by-laws of the securitisation company permit the use of forward financial instruments to offer the company exposure or the assignment of unmatured or defaulted receivables, the management company referred to in the preceding paragraph shall submit a defined programme of activities to the approval of the Financial Markets Authority under and in accordance with the general regulations of the AMF. In the cases prescribed by decree of the Conseil d'Etat, such approval is not, however, required for certain assignments of unmatured or defaulted receivables.

However, the activities referred to in the second paragraph above may be delegated by the company referred to in the first paragraph to a portfolio management company, which shall carry them out under its own responsibility. The provisions of the second paragraph shall apply accordingly to such portfolio management company.

La gestion de la société de titrisation est assurée par une société de gestion de portefeuille relevant de l'article L. 532-9 ou une société de gestion de fonds communs de créances relevant du I de l'article L. 214-48 dans sa rédaction antérieure à la date de publication de

l'ordonnance n° 2008-556 du 13 juin 2008 transposant la directive 2005 / 68 / CE du Parlement européen et du Conseil du 16 novembre 2005 relative à la réassurance et réformant le cadre juridique des fonds communs de créances. Cette société est désignée dans les statuts de la société de titrisation.

Lorsque les statuts de la société de titrisation prévoient le recours à des instruments financiers à terme en vue d'exposer la société ou la cession de créances non échues ou déchues de leur terme, la société de gestion mentionnée au premier alinéa soumet à l'approbation de l'Autorité des marchés financiers un programme d'activité spécifique dans les conditions prévues par le règlement général de cette autorité. Dans les cas définis par décret en Conseil d'Etat, cette approbation n'est cependant pas requise pour certaines cessions de créances non échues ou déchues de leur terme.

Toutefois, les opérations mentionnées au deuxième alinéa peuvent être confiées par la société mentionnée au premier alinéa à une société de gestion de portefeuille, qui les effectue sous sa responsabilité. Les dispositions du deuxième alinéa sont alors applicables à cette société de gestion de portefeuille.

ARTICLE L214-49-2

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The cash and receivables of the securitisation company are held by a single custodian, independent from such company. Such custodian must be a credit institution established in a State party to the Agreement on the European Economic Area or a credit institution established in a State included in the list published by order of the Minister for the Economy or any other institution approved by such Minister. Its appointment is specified in the by-laws of the securitisation company. It ensures that the decisions of the management company as regards such securitisation company are taken in due and proper manner in accordance with the provisions of the general regulations of the Financial Markets Authority. The assignor or the receivables collection agent may, as provided by decree, act as custodian of the receivables under its own responsibility.

La trésorerie et les créances de la société de titrisation sont conservées par un dépositaire unique distinct de cette société. Ce dépositaire est un établissement de crédit établi dans un Etat qui est partie à l'accord sur l'Espace économique européen ou un établissement de crédit établi dans un Etat figurant sur une liste fixée par arrêté du ministre chargé de l'économie ou tout autre établissement agréé par ce ministre. Il est désigné dans les statuts de la société de titrisation. Il s'assure de la régularité des décisions de la société de gestion pour ce qui concerne cette société de titrisation selon les modalités prévues par le règlement général de l'Autorité des marchés financiers. La conservation des créances peut toutefois être assurée, sous leur responsabilité, par le cédant ou l'entité chargée du recouvrement des créances dans des conditions fixées par décret.

ARTICLE L214-49-3

Amended by Order n°2009-80 of 22nd January 2009 - art. 2

Modifié par Ordonnance n°2009-80 du 22 janvier 2009 - art. 2

I.- Where the securitisation company is incorporated in the form of a limited company (société anonyme), by exception to Sections II and III of Book II of the Commercial Code:

1° The shareholders' ordinary general meeting may meet without any quorum requirement; the same shall apply on second convocation of a shareholders' extraordinary general meeting;

2° One single natural person can simultaneously hold five mandates as chief executive officer, member of the executive board or sole managing director of a securitisation company. Mandates as chief executive officer, member of the executive board or sole managing director within a securitisation company are ignored for the purposes of the multiple mandates rules referred to in Book II of the Commercial Code;

3° Mandates as standing representative of a legal entity or board of directors or supervisory board of a securitisation company are ignored for the purposes of application of articles L. 225-21, L. 225-77 and L. 225-94-1 of the Commercial Code;

4° The board of directors or the executive board appoints the statutory auditors of the securitisation company. Appointment of alternate statutory auditors is not necessary.

The statutory auditors notify the managers of the securitisation company as well as the Financial Markets Authority of any irregularities or inaccuracies they discover during the performance of their duties;

5° If the shareholders' extraordinary general meeting decides to transform, merge or spin-off the company, it shall grant power to the board of directors or the executive board to value its assets and determine the exchange parity on a date of its choosing; these actions shall be conducted under the control of the statutory auditors without any requirement to appoint a special mergers auditor; the general meeting is not required to approve the accounts if these have been certified by the statutory auditors;

6° The minimum share capital requirement is as provided in article L. 224-2 of the Commercial Code.

II.- The provisions of Order n° 45-2710 of 2 November 1945 relating to investment companies, those of Book VI as well as articles L. 224-1, L. 225-4 to L. 225-7, the third and fourth paragraphs of article L. 225-8 and articles L. 225-9, L. 225-10, L. 225-13, L. 225-25, L. 225-26, L. 225-258 to L. 225-270, L. 228-39, L. 242-31 and L. 247-10 of the Commercial Code do not apply to securitisation companies.

I.- Lorsque la société de titrisation est constituée sous forme de société anonyme, par dérogation aux titres II et III du livre II du code de commerce :

1° L'assemblée générale ordinaire peut se tenir sans qu'aucun quorum soit requis ; il en est de même sur deuxième convocation de l'assemblée générale extraordinaire ;

2° Une même personne physique peut exercer simultanément cinq mandats de directeur général, de membre du directoire ou de directeur général unique de société de titrisation. Les mandats de directeur général, de membre du directoire ou de directeur général unique exercés au sein d'une société de titrisation ne sont pas pris en compte pour les règles de cumul mentionnées au livre II du code de commerce ;

3° Les mandats de représentant permanent d'une personne morale au conseil d'administration ou de surveillance d'une société de titrisation ne sont pas pris en compte

pour l'application des dispositions des articles L. 225-21, L. 225-77 et L. 225-94-1 du code de commerce ;

4° Le conseil d'administration ou le directoire désigne le commissaire aux comptes de la société de titrisation. La désignation d'un commissaire aux comptes suppléant n'est pas requise.

Le commissaire aux comptes signale aux dirigeants de la société de titrisation ainsi qu'à l'Autorité des marchés financiers les irrégularités et inexactitudes qu'il relève dans l'accomplissement de sa mission ;

5° L'assemblée générale extraordinaire qui décide de la transformation, fusion ou scission donne pouvoir au conseil d'administration ou au directoire d'évaluer les actifs et de déterminer la parité de l'échange à une date qu'elle fixe ; ces opérations s'effectuent sous le contrôle du commissaire aux comptes sans qu'il soit nécessaire de désigner un commissaire à la fusion ; l'assemblée générale est dispensée d'approuver les comptes si ceux-ci sont certifiés par le commissaire aux comptes ;

6° Le montant minimum du capital social est égal à celui fixé par l'article L. 224-2 du code de commerce.

II.- Les dispositions de l'ordonnance n° 45-2710 du 2 novembre 1945 relative aux sociétés d'investissement, celles du livre VI ainsi que les articles L. 224-1, L. 225-4 à L. 225-7, les troisième et quatrième alinéas de l'article L. 225-8 et les articles L. 225-9, L. 225-10, L. 225-13, L. 225-25, L. 225-26, L. 225-258 à L. 225-270, L. 228-39, L. 242-31 et L. 247-10 du code de commerce ne sont pas applicables aux sociétés de titrisation.

Paragraph 3: Specific provisions applicable to mutual securitisation funds (“fonds commun de titrisation”)

ARTICLE L214-49-4

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

A mutual securitisation fund is a securitisation vehicle constituted in the form of a co-ownership.

The fund does not have legal personality. The provisions of the Civil Code relating to joint ownership (“indivision”) as well as articles 1871 to 1873 of the same code relating to joint venture companies (“sociétés en participation”), do not apply to mutual securitisation funds.

The minimum value of a unit issued by a mutual securitisation fund is established by decree.

The fund, or a compartment of the fund, as the case may be, may be nominated instead and in place of the co-owners to perform all acts on behalf of the co-owners.

Le fonds commun de titrisation est un organisme de titrisation constitué sous la forme de copropriété.

Le fonds n'a pas la personnalité morale. Ne s'appliquent pas aux fonds communs de titrisation les dispositions du code civil relatives à l'indivision, ni celles des articles 1871 à 1873 du même code relatives aux sociétés en participation.

Le montant minimum d'une part émise par un fonds commun de titrisation est défini par décret.

Pour toutes les opérations faites pour le compte des copropriétaires, la désignation du fonds ou, le cas échéant, d'un compartiment du fonds peut être valablement substituée à celle des copropriétaires.

ARTICLE L214-49-5

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The regulations of the fund govern the terms and conditions on which the fund may issue new units after the initial issue of units.

The fund may issue transferable debt instruments and bonds or debt instruments issued under foreign law.

The regulations of the fund govern the terms and conditions on which the fund may issue debt instruments.

Les conditions dans lesquelles le fonds peut émettre de nouvelles parts après émission initiale des parts sont définies par son règlement.

Le fonds peut émettre des titres de créances négociables et des obligations ou des titres de créances émis sur le fondement d'un droit étranger.

Les conditions dans lesquelles le fonds émet des titres de créances sont définies par son règlement.

ARTICLE L214-49-6

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

A mutual securitisation fund is established jointly by a company acting as its management company and a legal entity acting as custodian of the fund’s cash and receivables.

Where units or debt instruments issued by the fund are admitted to trading on a regulated market or are offered to the public, this management company and the legal entity acting as custodian of the fund’s cash and receivables prepare the document referred to in article L. 412-1.

Le fonds commun de titrisation est constitué à l'initiative conjointe d'une société chargée de sa gestion et d'une personne morale dépositaire de la trésorerie et des créances du fonds.

Lorsque les parts ou les titres de créances émis par le fonds sont admis à la négociation sur un marché réglementé ou offertes au public, cette société de gestion et la personne morale dépositaire de la trésorerie et des créances établissent le document mentionné à l'article L. 412-1.

ARTICLE L214-49-7

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

I.- The company responsible for managing the fund referred to in article L. 214-49-6 is a portfolio management company as defined in article L. 532-9 or a mutual receivables fund management company as defined in para. I of article L. 214-48 as enacted prior to the date of publication of Order n° 2008-556 of 13th June 2008 transposing Directive 2005/68/EC of the European Parliament and Council dated 16 November 2005 relating to reinsurance and reforming the legal framework of mutual receivables funds. This company is appointed in the fund's regulations. It represents the fund as regards third parties and in any legal proceedings both as applicant and respondent.

Where the by-laws of the securitisation fund permit the use of forward financial instruments to offer the fund exposure or the assignment of unmatured or defaulted receivables, the management company referred to in the preceding paragraph shall submit a defined programme of activities to the approval of the Financial Markets Authority under and in accordance with the general regulations of the AMF. In the cases prescribed by decree of the *Conseil d'Etat*, such approval is not however required for certain assignments of unmatured or defaulted receivables.

However, the activities referred to in the second paragraph above may be delegated by the management company referred to in the first paragraph to a portfolio management company, which shall carry them out under its own responsibility. The provisions of the second paragraph shall apply accordingly to such portfolio management company.

II.- The legal entity acting as custodian of the fund's cash and receivables referred to in article L. 214-49-6 shall be a credit institution established in a State party to the Agreement on the European Economic Area or a credit institution established in a State included in the list published by order of the Minister for the Economy or any other institution approved by such Minister. It is custodian of the cash and receivables acquired by the fund and ensures that the decisions of the management company as regards such fund are taken in due and proper manner in accordance with the provisions of the general regulations of the Financial Markets Authority. The assignor or receivables collection agent may, as provided by decree, act as custodian of the receivables under its own responsibility.

I.- La société chargée de la gestion mentionnée à l'article L. 214-49-6 est une société de gestion de portefeuille relevant de l'article L. 532-9 ou une société de gestion de fonds communs de créances relevant du I de l'article L. 214-48 dans sa rédaction antérieure à la date de publication de l'ordonnance n° 2008-556 du 13 juin 2008 transposant la directive 2005 / 68 / CE du Parlement européen et du Conseil du 16 novembre 2005 relative à la réassurance et réformant le cadre juridique des fonds communs de créances. Cette société est désignée dans le règlement du fonds. Elle représente le fonds à l'égard des tiers et dans toute action en justice tant en demande qu'en défense.

Lorsque les statuts du fonds de titrisation prévoient le recours à des instruments financiers à

terme en vue d'exposer le fonds ou la cession de créances non échues ou déchues de leur terme, la société de gestion mentionnée au premier alinéa soumet à l'approbation de l'Autorité des marchés financiers un programme d'activité spécifique dans les conditions prévues par le règlement général de cette autorité. Dans les cas définis par décret en Conseil d'Etat, cette approbation n'est cependant pas requise pour certaines cessions de créances non échues ou déchues de leur terme.

Toutefois, les opérations mentionnées au deuxième alinéa peuvent être confiées par la société de gestion mentionnée au premier alinéa à une société de gestion de portefeuille, qui les effectue sous sa responsabilité. Les dispositions du deuxième alinéa sont alors applicables à cette société de gestion de portefeuille.

II.- La personne morale dépositaire de la trésorerie et des créances du fonds mentionnée à l'article L. 214-49-6 est un établissement de crédit établi dans un Etat qui est partie à l'accord sur l'Espace économique européen ou un établissement de crédit établi dans un Etat figurant sur une liste définie par arrêté du ministre chargé de l'économie ou tout autre établissement agréé par ce ministre. Elle est dépositaire de la trésorerie et des créances acquises par le fonds et s'assure de la régularité des décisions de la société de gestion pour ce qui concerne ce fonds selon les modalités prévues par le règlement général de l'Autorité des marchés financiers. La conservation des créances peut toutefois être assurée, sous leur responsabilité, par le cédant ou l'entité chargée du recouvrement de la créance dans des conditions fixées par décret.

ARTICLE L214-49-8

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The liability of unit holders for the debts of the fund and, as the case may be, each compartment is limited to the issue price of such units.

Les porteurs de parts ne sont tenus des dettes du fonds et, le cas échéant, du compartiment qu'à concurrence de la valeur d'émission de ces parts.

ARTICLE L214-49-9

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The board of directors, general manager (*gérant*) or the executive board of the management company appoints the statutory auditors of the fund.

The statutory auditors notify the managers of the management company as well as the Financial Markets Authority of any irregularities or inaccuracies they discover during the performance of their duties

Unit holders of the fund exercise the same rights as those conferred on shareholders by articles L. 823-6 and L. 225-231 of the Commercial Code.

Le conseil d'administration, le gérant ou le directoire de la société de gestion désigne le commissaire aux comptes du fonds.

Le commissaire aux comptes signale aux dirigeants de la société de gestion ainsi qu'à l'Autorité des marchés financiers les irrégularités et inexactitudes qu'il relève dans l'accomplissement de sa mission.

Les porteurs de parts du fonds exercent les droits reconnus aux actionnaires par les articles L. 823-6 et L. 225-231 du code de commerce.

ARTICLE L214-49-10

Established by Order n°2008-556 of 13th June 2008 - art. 16

Créé par Ordonnance n°2008-556 du 13 juin 2008 - art. 16

The management company liquidates the fund or any of its compartments under and in accordance with the regulations of the fund.

La société de gestion procède à la liquidation du fonds ou d'un de ses compartiments dans les conditions prévues par le règlement du fonds.

This translation from French into English is provided to you for information purposes only.

We thank you to take into account that this translation has been carried out by Matthew Jansen, a professional translator. It is therefore neither an official translation which has been provided by the French Government, nor a translation done by a "sworn translator" (traducteur assermenté) recognised as such by a French Court of Appeal.

Since it is neither a sworn translation nor an official one, this ordinary translation differs (i) from a sworn translation in that it is not certify by a sworn translator who is acting under oath and (ii) from the official one in that the government has not given its consent on its terms.

Consequently, only the French official version shall constitute a valid reference. For the official French version of these French Financial & Monetary Code's articles please refer to: http://www.legifrance.gouv.fr/

APPENDIX II

FINANCIAL OBLIGATIONS & FINANCIAL GUARANTEES
French Monetary and Financial Code
(Extracts)

SECTION IV

§ 1 – Set-off and assignment of receivables
Compensation et cessions de créances

Article L. 211-36, French Monetary and Financial Code

I. The provisions of the present paragraph are applicable:
Les dispositions du présent paragraphe sont applicables :

1. To the financial obligations resulting from operations on financial instruments when at least one of the parties is a credit institution, an investment services provider, a public corporation, a territorial authority, an institution, a legal person or an entity which is a beneficiary of the provisions of article L. 531-2 [of French Monetary and Financial Code], a clearing house, a non resident institution with a similar status, an organization or an international financial organization in which France or the European Community is a member;

   Aux obligations financières résultant d'opérations sur instruments financiers lorsque l'une au moins des parties à l'opération est un établissement de crédit, un prestataire de services d'investissement, un établissement public, une collectivité territoriale, une institution, une personne ou entité bénéficiaire des dispositions de l'article L. 531-2, une chambre de compensation, un établissement non résident ayant un statut comparable, une organisation ou organisme financier international dont la France ou la Communauté européenne est membre ;

2. To the financial obligations resulting from all agreement which gives rise to cash payment or to the delivery of financial instruments when all parties belong to one of the categories of persons mentioned in the previous paragraph, with the exception of the persons mentioned in paragraph c to n of the 2°of article L. 531-2 [of French Monetary and Financial Code];

   Aux obligations financières résultant de tout contrat donnant lieu à un règlement en espèces ou à une livraison d'instruments financiers lorsque toutes les parties appartiennent à l'une des catégories de personnes mentionnées à l'alinéa précédent, à l'exception des personnes mentionnées aux alinéas c à n du 2° de l'article L. 531-2 ;

3. To the financial obligations resulting from every agreement concluded within the framework of the system mentioned by article L.330-1 [of French Monetary and Financial Code].

   Aux obligations financières résultant de tout contrat conclu dans le cadre d'un système mentionné à l'article L. 330-1.

II. For the application of the present section, are also financial instruments option contracts, forward contracts, swaps contracts and every other agreement having a determined term except those mentioned in the III of article L.211-1 [of French Monetary and Financial Code], under the condition that, when these instruments have to be settled by physical delivery, they are to be registered by a recognized clearing house or subjected to regular margin calls.

Pour l'application de la présente section, sont également des instruments financiers les contrats d'option, contrats à terme ferme, contrats d'échange et tous autres contrats à terme autres que ceux mentionnés au III de l'article L. 211-1, à condition que, lorsque ces instruments doivent être réglés par livraison physique, ils fassent l'objet d'un enregistrement par une chambre de compensation reconnue ou d'appels de couverture périodiques.

Article L. 211-36-1, French Monetary and Financial Code

I. The agreements in relation with the financial obligations mentioned in article L. 211-36 [of French Monetary and Financial Code] may be early terminated, and their related debts and claims may be set-off. The parties may implement a consolidated balance, whether those financial obligations are governed by one or several agreements or master agreements.

Les conventions relatives aux obligations financières mentionnées à l'article L. 211-36 sont résiliables, et les dettes et les créances y afférentes sont compensables. Les parties peuvent prévoir l'établissement d'un solde unique, que ces obligations financières soient régies par une ou plusieurs conventions ou conventions-cadres.

II. The terms of the early termination, assessment and set-off of the transactions and obligations mentioned in article L. 211-36 and in I of the present article are enforceable towards third-parties. Those terms may be in particular implemented by agreements or master agreements. Every early termination, assessment and set-off of the transactions triggered because of an enforcement civil proceeding or the exercise of a writ of attachment is deemed to have been implemented before this proceeding.

Les modalités de résiliation, d'évaluation et de compensation des opérations et obligations mentionnées à l'article L. 211-36 et au I du présent article sont opposables aux tiers. Ces modalités peuvent être notamment prévues par des conventions ou conventions-cadres. Toute opération de résiliation, d'évaluation ou de compensation faite en raison d'une procédure civile d'exécution ou de l'exercice d'un droit d'opposition est réputée être intervenue avant cette procédure.

Article L. 211-37, French Monetary and Financial Code

The transfer of receivables pertaining to the financial obligations mentioned in article L. 211-36 is enforceable towards third-parties by the notification to the debtor of such transfer. The transfer of the agreements pertaining to the financial obligations mentioned in article L. 211-36 is enforceable towards third-parties by written consents of the parties [on such transfer].

La cession de créances afférentes aux obligations financières mentionnées à l'article L. 211-36 est opposable aux tiers du fait de la notification de la cession au débiteur. La

cession de contrats afférents aux obligations financières mentionnées à l'article L. 211-36 est opposable aux tiers du fait de l'accord écrit des parties.

§ 2 – Guarantee of the financial obligations
Garantie des obligations financières

Article L. 211-38, French Monetary and Financial Code

I. As guarantee of the present or future financial obligations mentioned by article L. 211-36 [of French Monetary and Financial Code], the parties may foresee full transfer of ownership, enforceable towards third parties without any formalities, of financial instruments, bills, receivables, agreements or amounts of money, or the constitution of securities on such assets or rights, which may be exercised even when one of the parties is subjected to one of the proceedings provided by book VI of Commercial Code, or to an equivalent judicial or amicable proceeding governed by a foreign law, or an enforcement civil proceeding or the exercise of a writ of attachment.

A titre de garantie des obligations financières présentes ou futures mentionnées à l'article L. 211-36, les parties peuvent prévoir des remises en pleine propriété, opposables aux tiers sans formalités, d'instruments financiers, effets, créances, contrats ou sommes d'argent, ou la constitution de sûretés sur de tels biens ou droits, réalisables, même lorsque l'une des parties fait l'objet d'une des procédures prévues par le livre VI du code de commerce, ou d'une procédure judiciaire ou amiable équivalente sur le fondement d'un droit étranger, ou d'une procédure civile d'exécution ou de l'exercice d'un droit d'opposition.

Debts and claims pertaining to these guarantees and to those pertaining to these obligations may then be set-off in accordance with I of article L. 211-36-1 [of French Monetary and Financial Code].

Les dettes et créances relatives à ces garanties et celles afférentes à ces obligations sont alors compensables conformément au I de l'article L. 211-36-1.

II. When the guarantees referred to in I are pertaining to the financial obligations mentioned by the 2° and 3° of article L. 211-36 [of French Monetary and Financial Code]:

Lorsque les garanties mentionnées au I sont relatives aux obligations financières mentionnées aux 2° et 3° de l'article L. 211-36 :

1. The constitution of such guarantees and their enforceability are not subordinated to any formality. They result from the transfer of the relevant assets and rights, the dispossession from the grantor or the control by the beneficiary or by a person acting on his behalf;

   La constitution de telles garanties et leur opposabilité ne sont subordonnées à aucune formalité. Elles résultent du transfert des biens et droits en cause, de la dépossession du constituant ou de leur contrôle par le bénéficiaire ou par une personne agissant pour son compte ;

2. The identification of the relevant assets and rights, their transfer, the dispossession from the grantor or the control by the beneficiary should be proved in writing;

L'identification des biens et droits en cause, leur transfert, la dépossession du constituant ou le contrôle par le bénéficiaire doivent pouvoir être attestés par écrit ;

3. The execution of such guarantees intervenes under standard market conditions, by set-off, appropriation or sale, without prior notice, in accordance with the assessment methodologies to be implemented by the parties as soon as the financial obligations have become payable.

   La réalisation de telles garanties intervient à des conditions normales de marché, par compensation, appropriation ou vente, sans mise en demeure préalable, selon les modalités d'évaluation prévues par les parties dès lors que les obligations financières couvertes sont devenues exigibles.

III. The act planning the constitution of securities mentioned by I. may determine the conditions under which the beneficiary of these securities may use or alienate the relevant assets or rights, on condition for him to restore to the grantor with equal assets or rights. The concerned securities are pertaining to equivalent assets and rights then restored as if they have been constituted from the very beginning on these assets and rights. This act may allow the beneficiary to set-off his restoration debt on the equivalent assets and rights with the financial obligations because of which the securities has been constituted, when they became payable.

L'acte prévoyant la constitution des sûretés mentionnées au I peut définir les conditions dans lesquelles le bénéficiaire de ces sûretés peut utiliser ou aliéner les biens ou droits en cause, à charge pour lui de restituer au constituant des biens ou droits équivalents. Les sûretés concernées portent alors sur les biens ou droits équivalents ainsi restitués comme si elles avaient été constituées dès l'origine sur ces biens ou droits équivalents. Cet acte peut permettre au bénéficiaire de compenser sa dette de restitution des biens ou droits équivalents avec les obligations financières au titre desquelles les sûretés ont été constituées, lorsqu'elles sont devenues exigibles.

Equivalent assets or rights mean:
Par biens ou droits équivalents, on entend :

1. When amounts of money is concerned, money of an equal amount and denominated in the same currency;

   Lorsqu'il s'agit d'espèces, une somme de même montant et dans la même monnaie ;

2. When financial instruments are concerned, financial instruments issued by the same issuer or debtor, parts of the same issue or of the same category, having the same nominal value, denominated in the same currency and with the same designation, or other assets, when foreseen by the parties, in case of the occurrence of a fact pertaining or modifying the financial instruments constituted as securities.

   Lorsqu'il s'agit d'instruments financiers, des instruments financiers ayant le même émetteur ou débiteur, faisant partie de la même émission ou de la même catégorie, ayant la même valeur nominale, libellés dans la même monnaie et ayant la même désignation, ou d'autres actifs, lorsque les parties le prévoient, en

cas de survenance d'un fait concernant ou affectant les instruments financiers constitués en sûreté.

When other assets or rights are concerned than those mentioned in 1° and 2°, the restoration relates to the same assets or rights.

Lorsqu'il s'agit d'autres biens ou droits que ceux mentionnés aux 1° et 2°, la restitution porte sur ces mêmes biens ou droits.

IV. The modes to exercise and to set-off of the guarantees mentioned by I. and the [financial] obligations mentioned in article L. 211-36 [of French Monetary and Financial Code] are enforceable towards third parties. Every exercise or set-off triggered because of an enforcement civil proceeding or the exercise of a writ of attachment is deemed to have been implemented before this proceeding.

Les modalités de réalisation et de compensation des garanties mentionnées au I et des obligations mentionnées à l'article L. 211-36 sont opposables aux tiers. Toute réalisation ou compensation effectuée en raison d'une procédure civile d'exécution ou de l'exercice d'un droit d'opposition est réputée être intervenue avant cette procédure.

Article L. 211-39, French Monetary and Financial Code

The rights and obligations of the guarantor, the beneficiary or any other third parties in relation with the financial guarantees mentioned in I of article L. 211-38 [of French Monetary and Financial Code] on the financial instruments are determined by the governing law of the State where the account on which these instruments are transferred or constituted as security is located.

Les droits ou obligations du constituant, du bénéficiaire ou de tout tiers relatifs aux garanties mentionnées au I de l'article L. 211-38 portant sur des titres financiers sont déterminés par la loi de l'Etat où est situé le compte dans lequel ces titres sont remis ou constitués en garantie.

§ 3 – Common provision
Disposition commune

Article L. 211-40, French Monetary and Financial Code

The provisions of the Book VI of the French Commercial Code or the ones regulating any equivalent judicial or amicable proceedings governed by a foreign law, do not constitute an obstacle to the implementation of the present Section .

Les dispositions du livre VI du code de commerce, ou celles régissant toutes procédures judiciaires ou amiables équivalentes ouvertes sur le fondement de droits étrangers, ne font pas obstacle à l'application des dispositions de la présente section.

APPENDIX III

COMPARAISON FCT & ST