

FRENCH LAW ON FINANCIAL SECURITY, 1st AUGUST 2003

Articles L. 214-5 and L. 214-43 to L. 214-49 of the Monetary and Financial Code *Loi Sécurité Financière (Modifications highlighted)*

Book II / Title I : Financial Instruments

Chapter IV Collective investment

Section 1 Undertakings for collective investments in transferable securities

Subsection 1 Provisions applicable to all undertakings for collecting investments in transferable securities

Art. L. 214-5

Shares of *fonds communs de créances* may not be held in excess of a percentage determined by Decree:

1. by an investment fund the manager of which is under the control, within the meaning of Article L. 233-3 of the Commercial Code, of a Bank having assigned debt to the fund;
2. by a SICAV (mutual fund) the employed company officers and managers of which are dependant on a Bank having granted debt to the fund.

Section 2 The *fonds communs de créances*

Article L214-43

The *fonds commun de créances* is a co-owned fund which has the sole purpose of acquiring debt and issuing shares representing such debt. It may issue debt securities.

The fund may be composed of one or several compartments if its regulations so provide. Each compartment gives rise to the issue of shares representing the assets of the fund allocated to it. As an exception to Article 2093 of the *code civil* and unless otherwise stipulated in the fund constituent documents, the assets of a given compartment are liable only for the debts, undertakings and obligations, and entitled to the debt, related to such compartment.

The fund has no legal personality. The provisions of the *code civil* concerning co-ownership (*indivision*) and Articles 1871 to 1873 of the same code concerning partnerships with a sleeping partner (*sociétés en participation*) do not apply to *fonds commun de créances*.

Conditions under which the fund may acquire debt and issue new shares after the initial issue of shares and the investment rules regarding amounts momentarily available and being allocated shall be defined by Decree. The conditions under which the fund or, where applicable, the compartments of the fund may borrow, issue debt securities referred to in Article L.211-1, enter into financial futures contracts and hold cash shall be determined by Decree of the Conseil d'Etat.

The shares and debt securities may give rise to different rights over the capital and interest.

The holders of shares may not require the fund to repurchase their shares. The minimum amount of a share issued by the *fonds commun de créances* is determined by Decree.

The fund or, where applicable, the compartments of the fund, may not assign debt for so long as such debt is not due or extinguished in the cases and under the conditions defined by Decree of Conseil d'Etat. It cannot grant securities over the debts held by it.

The assignment of debt shall be made by delivery of a note the details of which are determined by Decree. The assignment shall take effect between the parties and bind third parties on the date stated on the note upon delivery, whatever the date of creation, maturity or payment of the debt, without any further formality being required, and regardless of the law applicable to the debt or the law of the country of residence of the debtors. The delivery of the note automatically entails the assignment of any securities, guarantees and auxiliary rights attached to each debt including mortgages and their enforceability against third parties without any further formality being required.

The enforcement or execution of these securities entails the choice for the fund of acquiring possession or ownership of the assets subject to such securities.

The assignment agreement may provide that the assignor be entitled to all or part of any liquidation dividend of the fund or, where applicable, a compartment of the fund.

For all transactions made on behalf of the co-owners, the designation of the fund, or where applicable, the compartment of the fund, may be validly substituted for that of the co-owners.

Article L214-44

A document containing an assessment of the characteristics of the shares and, where applicable, the debt securities that the fund may issue, the debt it proposes to acquire and the financial futures contracts that it proposes to enter into and evaluating the risks presented by them shall be drawn up by a financial body included in the list prepared by the minister responsible for the economy after an opinion has been obtained from the Financial Markets Authority. It shall be attached as a schedule to the prospectus and communicated to the subscribers of shares and, where applicable, the debt securities.

The shares and debt securities that the fund may issue may not be the object of canvassing (*démarchage*).

Article L214-45

The *fonds communs de créance* shall communicate to the Bank of France any information required for the preparation of monetary statistics.

Article L214-46

The recovery of the assigned debt shall continue to be ensured by the assigning establishment under the conditions defined by an agreement with the FCC manager.

However, all or part of the recovery may be entrusted to a bank or to the *Caisse des dépôts et consignations*, provided that the debtor is notified thereof by ordinary letter.

The fund manager and the establishment responsible for recovery of the assigned debt may agree that the amounts recovered shall be credited to an account specially opened in favour of the fund or, where applicable, the compartment, and which may not be used by the creditors of the establishment responsible for recovery to enforce payment of their debt even in the event of administration or liquidation proceedings opened against such establishment. The operating conditions of this account shall be determined by Decree.

Article L214-47

The *fonds commun de créances* is set up at the joint initiative of a company responsible for the management of the fund and a legal entity that is the depositary of the fund assets.

The fund manager shall be approved by the *commission des opérations de bourse* (French equivalent of the Securities and Exchange Commission) which may withdraw its approval by a reasoned decision.

The fund manager and the depositary of the assets shall prepare an information note for the subscribers to the transaction according to the provisions of Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8.

A Decree shall determine the nature and characteristics of the debt that may be acquired by the *fonds communs de créances* and the guarantees against risk of default by the debtors of such debt.

Article L214-48

I. – The fund manager referred to in Article L. 214-47 shall be a commercial company, the sole purpose of which is to manage the *fonds communs de créances*. It shall represent the fund in dealings with third parties and in all legal proceedings, either as plaintiff or defendant.

II. – The depositary of the fund assets referred to in Article L. 214-47 shall be a bank approved in France, a branch established in France of a bank having its registered office in a State that is party to the European Economic Area agreement or any other establishment approved by the minister responsible for the economy. It shall be the depositary of the cash and debts acquired by the fund and shall ensure the legality of the decisions of the fund manager according to the conditions provided by the general regulations of the Financial Markets Authority. The safe custody of the debt may however be ensured by the assignor or the body responsible for recovering the debt under the conditions determined by Decree.

III. – Holders of shares are liable for the debts of the funds and, where applicable the compartment, within the limit of its assets and *pro rata* the portion of the assets represented by their shares.

IV. – The fund regulations shall provide the duration of the accounting periods which may not exceed twelve months. However the first period may continue for a longer period not exceeding eighteen months.

V. – Each compartment of the fund shall be accounted separately in the accounts of the fund. Within a period of six months from the date of the end of each half-year of the financial period, the fund manager shall prepare for each of the funds managed by it an inventory of the assets held by the depositary.

VI. – The fund auditor shall be appointed for six financial periods by the Board of Directors, the manager or the Supervisory Board of the fund manager after consent of the *commission des opérations de bourse*.

The provisions of Articles L. 225-218 to L. 225-227, L. 225-237, L. 225-238, Article L. 225-240 (2) and (3), Articles L. 225-241 and L. 225-242 of the Commercial Code shall apply.

The auditor shall notify the officers of the fund manager and the *commission des opérations de bourse* of any irregularities or inaccuracies that they note in the performance of its duties.

Holders of shares of the fund shall be entitled to the rights given to shareholders under Articles L. 225-230 and 225-231 of the Commercial Code.

Article L214-49

Within the six months following the extinction of the last debt of the fund or, where applicable, a compartment of the fund, the fund manager shall liquidate the fund or the compartment.

