

Law of 22 June 2018 amending the Law of 5 April 1993 on the financial sector, as amended, with respect to the introduction of renewable energy of covered bonds

(Mém. A 2018, No 521)

Single Article.

The Law of 5 April 1993 on the financial sector, as amended, shall be amended as follows:

1. In Article 12-1(1)(g), the final full stop shall be replaced by a semicolon and a new letter (h) shall be added after letter (g), which shall be worded as follows:

“(h) the granting of loans secured by rights in rem in moveable or immoveable property or by charges on moveable or immoveable property that relate to renewable energy property and by substitute rights in key project contracts,

and the issuing, on that basis, of debt instruments secured by the claims resulting from those loans, such instruments being known as covered bonds.”;

2. In the first subparagraph of Article 12-1(2), the final full stop in the last indent shall be replaced by a semicolon and the following two new indents shall be added:

“- or are issued by a securitisation vehicle or a compartment of a securitisation vehicle where a minimum of 90% of the assets is made up of claims secured by rights in rem in moveable or immoveable property or by charges on moveable or immoveable property that relate to renewable energy property and by substitute rights in key project contracts. This threshold is reduced to 50% where the cover pool of the renewable energy covered bonds of the bank includes no more than 20% of such instruments referred to in the previous sentence. These bonds or debt instruments must have at least a credit quality step 2 given by a credit rating agency registered on ESMA's list of credit rating agencies pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. A bank may only apply one of the two methods described in this indent;

- or are issued by an issuer other than a securitisation vehicle or a compartment of a securitisation vehicle where a minimum of 50% of the issuance proceeds are used to refinance renewable energy property, where the cover pool of the renewable energy covered bonds of the bank includes no more than 20% of such instruments. These bonds or debt instruments must have at least a credit quality step 2 given by a credit rating agency registered on ESMA's list of credit rating agencies pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.”;

3. Article 12-1(2) shall be completed with a new second subparagraph which shall read as follows:

“The property that is part of the cover pool of the renewable energy covered bonds of the bank must not be made up of more than 20% of bonds or other similar debt instruments as referred to in the second sentence of the eighth indent of the first subparagraph and in the ninth indent of the first subparagraph.”;

4. In Article 12-2(1)(d), the words “other than renewable energy undertakings” shall be inserted between the words “acquiring holdings in undertakings” and the words “, where such holdings are intended”, [the word “not” shall be inserted between the words “may” and “exceed 20%”,] and the following sentence shall be added “These rules shall apply without prejudice to the limits for the acquisition and ownership of a qualifying holding outside the financial sector by the issuing bank arising from Regulation (EU) No 575/2013;”;

5. A new letter (e) shall be added in Article 12-2(1) which shall be worded as follows:

“(e) acquiring holding in renewable energy undertakings, where such holdings are intended, in particular, to continue and promote the operations carried out in accordance with Article 12-1 and, in particular, to avoid losses on rights in rem in immoveable or moveable property or on charges on immoveable or moveable property that relate to renewable energy immoveable or moveable property, and that the liability of the banks issuing covered bonds resulting from those holdings is limited by the legal form of the undertaking, the amount of such holdings may not exceed 20% of

the issuing bank's own funds. These rules shall apply without prejudice to the limits for the acquisition and ownership of a qualifying holding outside the financial sector by the issuing bank, as laid down in Regulation (EU) No 575/2013.”;

6. In Article 12-3(1), the final full stop in the fourth indent shall be replaced by a semicolon and a fifth indent shall be added, which shall be worded as follows:

“- letter (h) are known as “renewable energy covered bonds”.”;

7. The first subparagraph of Article 12-3(2)(a) shall be completed with the following sentence:

“As regards rights in rem that relate to renewable energy immoveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions with regard to Article 12-4(1) where entering the relevant rights in rem in a public register is not required by the law.”;

8. The second subparagraph of Article 12-3(2)(a) shall be completed with the following sentence:

“As regards rights in rem that relate to renewable energy moveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions with regard to Article 12-4(1) where entering the relevant rights in rem in a public register is not required by the law.”;

9. The first subparagraph of Article 12-3(2)(b) shall be completed with the following sentence:

“As regards ordinary mortgages (*hypothèques*), mortgages in which the mortgagee takes possession and receives the produce, rents and profits (*antichrèses*) and all other similar charges on immoveable property that relate to renewable energy moveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions with regard to Article 12-4(1) where entering the relevant rights in rem in a public register is not required by the law.”;

10. The second subparagraph of Article 12-3(2)(b) shall be completed with the following sentence:

“As regards ordinary mortgages (*hypothèques*) and other charges that relate to renewable energy moveable property, independent, written and duly reasoned legal opinions shall confirm the legal validity of such rights and their enforceability against third parties in all the relevant jurisdictions with regard to Article 12-4(1) where entering the relevant rights in rem in a public register is not required by the law.”;

11. Article 12-3(2) shall be completed with the new letters (f) to (j), which shall be worded as follows:

(f) “Renewable energy” shall mean any energy produced from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal, ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases, and energy produced from similar sources.

(g) “Renewable energy property” shall mean any key project contract of a renewable energy undertaking, any income from such an undertaking, including, in particular, existing or future income claims and all the payments received which have been generated by renewable energy sources and any necessary equipment for the production, the storage and the transmission, including electricity storage facilities, transformers, power lines, whether under construction or finalised, used to produce this energy produced from renewable sources, where

- this production equipment is used exclusively in connection with renewable energies, and
- the use of storage or transmission equipment in connection with renewable energies amounts to over 50% of its actual use of storage or transmission.

This definition shall also include the rights of access to and use of the equipment, as described above, the right to feed the renewable energies into the electricity grid as well as all the rights relating to the marketing of renewable energies.

(h) “Free sources of renewable energies” shall mean any available source of renewable energy without additional inherent costs, such as the wind or the sun.

(i) “Key project contract” shall mean any of the following project contracts, agreements, rights, loans and commitments, linked to the sector of renewable energies:

- (i) insurance policies;
- (ii) if the renewable energy undertaking does not own the land, the surface rights and other

- rights of land access and use;
- (iii) during the construction phase, the construction and equipment supply contracts;
- (iv) electricity purchase agreements entered into with authorised purchasers, or other operating agreements or other trade arrangements;
- (v) grid connection agreements and grid connection use agreements; and
- (vi) operating, service and maintenance agreements;

(j) "Right of substitution" shall mean the legal or contractual right enabling the bank to be substituted in the renewable energy undertaking's position resulting from a key project contract in the case where the renewable energy undertaking was in default under the credit granted to it.;"

12. In Article 12-5(4)(b), the words "held in central banks" shall be replaced by the words "in any form including financial instruments issued by or claims against central banks" [remaining part of the sentence in the original is not relevant for the English version];

13. Article 12-5(4)(c), the final full stop shall be replaced by a semicolon;

14. Article 12-5(4) shall be completed with a new letter (d) which shall be worded as follows:

"(d) commitments made in any form by public entities, as provided for in Article 12-1(1)(d).";

15. A new paragraph 4a shall be inserted in Article 12-5, which shall read as follows:

"(4a) In order to ensure the liquidity of the cover pool for a period of 180 days, a daily reconciliation must be carried out between the claims becoming due under the collateral and the liabilities becoming due under the matured covered bonds, and the derivatives included in the cover pool and entered in the register.

Each day, the bank shall calculate the total daily differences between these claims and the liabilities becoming due. The largest negative result calculated for the following 180 days must be covered, at all times, by the sum of collateral which is:

- (i) eligible for the credit granted by central banks within the framework of the European System of Central Banks; or
- (ii) constituted of level 1 or 2A liquid assets within the meaning of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions, excluding covered bonds issued by the bank.

The obligation to maintain a mandatory liquidity buffer for the payments of the principal amount of covered bonds shall not apply where and insofar as the bank is entitled, in accordance with the relevant covered bonds' offering documentation, to delay the capital repayment for at least 180 days for covered bonds backed by such collateral or where the repayment obligation is subject to the availability of the liquid collateral in order to fulfil the repayment obligation under the covered bonds.;"

16. In the second subparagraph of Article 12-5(5), the words "financial futures" shall be replaced by the words "derivatives" and the following new sentences shall be inserted after the first sentence:

"Derivatives must not be either terminated or terminable by the bank's counterparty as a result of the opening of suspension of payments or winding up procedures, as provided for in Part I, Chapter 1, Section 3, Subsection 3, involving the bank or a patrimonial compartment. The use of derivatives entered or to be entered in the collateral register for a purpose other than to ensure global cover shall not be authorised.;"

17. In the third subparagraph of Article 12-5(5), the words "financial futures" shall be replaced by the word "derivatives";

18. In Article 12-5, two new paragraphs 7 and 8 shall be added, which shall be worded as follows:

"(7) Claims resulting from loans coupled with guarantees provided for in Article 12-1(1)(h) may be used as collateral only up to a maximum of 50% of the estimated realisation value of the renewable energy property serving as guarantee. This rate shall be raised to 60% when the estimated realisation value is based on a regulated and fixed remuneration or when the renewable energy project operates with free renewable energy resources and to 70% of the estimated realisation value when the two conditions are met. These limits may be increased by 10 percentage points in the case of renewable energy property whose construction phase has been completed. This estimated realisation value shall be determined on a genuine and prudent basis in accordance with the valuation rules laid down in Article

12-7(2); it shall take into consideration only the sustainable aspects of the property and the sustainable income it is capable of providing to any owner making normal use of it in accordance with its intended purpose. The valuation principles shall be based on prudent valuation standards for this class of property and shall be defined by the CSSF.

The provisions of the first subparagraph shall not apply to loans granted in the form of bonds or debt instruments.

As regards real estate, only real estate relating to renewable energy projects can be used as guarantee.

As regards moveable property, only moveable property relating to renewable energy projects can be used as guarantee.

Immoveable property and moveable property which are still under construction can be used as ordinary collateral only up to 20%.

(8) Paragraph 4a shall only apply to covered bonds issued after the entry into force of the Law of 22 June 2018 amending the Law of 5 April 1993 on the financial sector, as amended, with respect to the introduction of renewable energy covered bonds. However, banks may choose to apply paragraph 4a to covered bonds issued prior to the entry into force of the Law of 22 June 2018 amending the Law of 5 April 1993 on the financial sector, as amended, with respect to the introduction of renewable energy covered bonds.”;

19. Article 12-6(2) shall read as follows:

“(2) Banks issuing covered bonds shall publish information, inter alia, on the composition of the cover pools, on issues and on their structure as well as on the covered bond issuer. The list of information to be published and the publication procedure shall be defined by the CSSF.”;

20. “Article 12-7(2) shall be completed with a new fourth subparagraph which shall be worded as follows:

“The special *réviseur d'entreprises agréé* (approved statutory auditor) shall also be required to ascertain whether the realisation value of the renewable energy property used as collateral has been determined based on prudent valuation standards applicable to this class of property as defined by the CSSF. The special *réviseur d'entreprises agréé* (approved statutory auditor) shall also be required to ascertain whether the frequency of revaluation of the realisation value of the renewable energy property is consistent with the specific nature, facts and circumstances of the underlying property, this revaluation takes place at least annually and it is based on the current market data and adapted valuation assumptions.”;

21. In Article 12-8(3), the word “or” shall be replaced by a comma and the words “or renewable energy covered bonds” shall be inserted between the words “common covered bonds (*lettres de gage mutuelles*)” and the words “and the same preferential rights”.