

Law of 25 July 2018:

- 1. transposing Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy and amending the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and**
- 2. amending various provisions of the Law of 5 April 1993 on the financial sector, as amended**

(Mém. A 2018, No 628)

Chapter 1 - Ranking of unsecured debt instruments in insolvency hierarchy and amendment of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended

Art. 1.

Point (70) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, shall read as follows:

“70. “debt instruments”:

- a) for the purpose of points (8) and (11) of Article 61(1), shall mean bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments; and
- b) for the purpose of Article 152, shall mean bonds and other forms of transferable debt and instruments creating or acknowledging a debt;”.

Art. 2.

Article 152 of the same law shall be amended as follows:

1. In the title, the words “of deposits” shall be deleted;
2. In point (2) of paragraph 1, the words “subrogating, in case of insolvency, the rights” shall be replaced by the words “subrogated, in case of insolvency, to the rights”;
3. A new paragraph 3 shall be inserted after paragraph 2, which shall read as follows:

“(3) For entities referred to in points (1) to (4) of Article 2(1), unsecured claims resulting from debt instruments referred to in the second subparagraph shall have a lower priority ranking in insolvency hierarchy than that of claims of unsecured creditors.

Debt instruments that meet the following conditions are referred to for the purposes of the first subparagraph:

1. the original contractual maturity of these debt instruments is of at least one year;
2. the debt instruments contain no embedded derivatives and are not derivatives themselves; and
3. the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to their lower ranking in insolvency hierarchy under this paragraph.

Unsecured claims resulting from debt instruments that meet the conditions laid down in points (1), (2) and (3) of the second subparagraph shall have a higher priority ranking in insolvency hierarchy than the priority ranking of claims resulting from instruments referred to in points (1) to (4) of Article 49(1).

For the purposes of point (2) of the second subparagraph, debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in euros, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.”.

Chapter 2 - Amendment of the Law of 5 April 1993 on the financial sector, as amended Art. 3.

In letter (b) of the fourth subparagraph of Article 6(8) of the Law of 5 April 1993 on the financial sector, as amended, the words “or Directives” shall be replaced by the words “or Directive”.

Art. 4.

In letter (b) of the fourth subparagraph of Article 18(8) of the same law, the words “or Directives” shall be replaced by the words “or Directive”.

Art. 5.

The following new second and third subparagraphs shall be inserted in Article 33(1) of the same law:

“The CSSF shall check compliance by the financial institutions incorporated under Luxembourg law with the conditions set out in the first subparagraph of Article 31 and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in paragraph 2.

If a financial institution as referred to in the second subparagraph ceases to fulfil any of the conditions imposed, the CSSF shall notify the competent authorities of the host Member State and the activities carried out by that financial institution in the host Member State shall become subject to the law of the host Member State.”.

Art. 6.

The following new third and fourth subparagraphs shall be added in Article 34(1) of the same law:

“The CSSF shall check compliance by the financial institutions incorporated under Luxembourg law with the conditions set out in the first subparagraph of Article 31 and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in the second subparagraph.

If a financial institution as referred to in the third subparagraph ceases to fulfil any of the conditions imposed, the CSSF shall notify the competent authorities of the host Member State and the activities carried out by that financial institution in the host Member State shall become subject to the law of the host Member State.”.

Art. 7.

In Article 44-2(5) of the same law, the last sentence shall be supplemented with the following:

“; where applicable, with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which such an on-site inspection or check was carried out”.

Art. 8.

In the second subparagraph of Article 59-14(1) of the same law, the words “of a credit institution” shall be replaced by the words “of a CRR institution”, and the word “CRR” shall be inserted before the words “institution’s activities”,

Art. 9.

Article 63-2(1) of the same law shall be amended as follows:

1. In letter (n), the words “Articles 28, 51” shall be replaced by the words “Articles 28, 52”;
2. A letter (o) shall be restored, which shall be worded as follows:

“(o) a CRR institution is found liable for serious breach of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.”.