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Book III: Services

Fonds de Garantie des Dépôts

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Book III: Services

Deposit guarantee

Article L312-4

Approved credit institutions in France belong to a deposit guarantee fund (*Fonds de Garantie des Dépôts*) designed to compensate depositors if they lose their deposits or other reimbursable funds. The compensation paid does not include deposits or other funds from credit institutions, insurance companies, mutual investment funds, pension schemes, investment companies and entities listed under article L. 518-1 or section 1 of article L. 312-2. The compensation may also exclude, under terms defined by regulations of the French banking and finance committee (*comité de la réglementation bancaire et financière*), deposits or other funds resulting either from information concerning the company's situation or specific advantages enjoyed by the depositor, or the specific nature of certain funds or deposits, or the illegal origin of the funds concerned.

Article L312-5

I. - On request from the *commission bancaire* (French banking commission), the guarantee fund is engaged once the *commission bancaire* establishes that one of the institutions listed in article L. 312-4 is no longer in a position to reimburse the funds that it has received from the public under the relevant legal, regulatory or contractual terms, either immediately or in the near future. The engagement of the guarantee fund leads to the removal of this institution from the list of approved credit institutions.

II. - For preventive purposes, on the recommendation of the *commission bancaire* recommendation, the guarantee fund may also be engaged in respect of a credit institution whose situation implies a high risk that it will be unable to reimburse deposits or other reimbursable funds in view of the financial support available to it. If the guarantee fund agrees to preventive action on behalf of an institution, it will define the terms for this action, after seeking an option from the *commission bancaire*. It may order the entire or partial sale of the credit institution or the closure of its activity via the sale of its trade.

III. - For purposes of the present clause, on request from a national body listed under article L. 511-30, the guarantee fund may take part in an action taken by said body, by assuming a portion of the cost of the measures intended to guarantee the solvency of a credit institution affiliated with said body. For the purposes of the provisions of II and III, the guarantee fund may purchase shares in a credit institution, subject to the agreement of the relevant national body. Action taken against decisions of the guarantee fund

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The following English translations have been prepared for the convenience of English-speaking readers. However, only the legal french texts have any legal value. Consequently, these translations may not be relied upon to sustain any legal claim, nor should it be used as the basis of any legal opinion. The *Fonds de Garantie des Dépôts* expressly disclaims all liability for any inaccuracy here in.

made pursuant to the present article shall be handled by the administrative courts.

Article L312-6

The deposit guarantee fund is subrogated in the rights of the beneficiaries up to the amounts paid in compensation. The guarantee fund may take any legal action against the *de facto* or *de jure* directors of the institutions for which it acts for purposes of recovering all or part of the amounts it has paid over in compensation. It shall so inform the *commission bancaire*.

Article L312-7

I. - The member institutions of the guarantee fund provide the necessary financial resources for it to carry out its duties, under terms and conditions set by the banking and finance committee. The guarantee fund may also issue registered and non-negotiable certificates of association for which member companies apply when they join.

II. - If losses incurred by the guarantee fund are not covered by called-up contributions, the certificates of association stated under I can no longer earn any income. The nominal value of each certificate shall then be proportionately reduced in order to absorb the losses. These certificates of association are only reimbursable in the event that the member withdraws, under terms and conditions established by the banking and finance committee. If an institution's membership is withdrawn, its certificate of association is cancelled and all amounts paid over remain the property of the guarantee fund.

III. - Contributions owing from member credit institutions of the national bodies listed under article L. 511-30 are directly paid to the guarantee fund by the relevant national body.

IV. - The guarantee fund may borrow from its members. For this purpose, it may establish or request its members to establish on its behalf guarantees required by contract.

Article L312-8

Any member that does not pay its called-up contribution to the guarantee fund becomes subject to the penalties established under article L. 613-21 and to late penalties to be paid directly to the guarantee fund under terms defined by the fund's internal regulations.

Article L312-9

The deposit guarantee fund is a legal entity under private law. It is governed by a management board under the control of a supervisory board. The members of the management board and the supervisory board must meet the conditions stated in article 13 of Act no. 84-46 dated 24 January 1984 governing the trade and supervision of credit institutions.

Article L312-10

The supervisory board permanently supervises the management of the deposit guarantee fund. It sets the internal regulations of the guarantee fund

and the policies for applying its funds, which are authorised by a decree from the Economy Minister (*ministre chargé de l'économie*) after approval from the banking and finance committee. It elects its chairman from its members.

The supervisory board is responsible for approving the accounts and appointing auditors. At each financial year-end, the Economy Minister receives a copy of the approved accounts. The guarantee fund is subject to audit by the Financial audit office (*Inspection générale des finances*).

The supervisory board is made up of twelve members, each representing one or more members of the guarantee fund and broken down as follows :

1. Four members as of right, representing the four credit institutions, or groups of credit institutions linked to the same central body, which are the largest contributors;
2. Two representatives of institutions linked to a national body set forth in article L. 511-30 who are not members as of right;
3. Six members representing other credit institution categories, who are not members as of right.

Article L312-11

Decisions of the supervisory board are passed by simple majority. Voting rights of each member of the supervisory board depend on its total financial contribution to the guarantee fund and the contributions of the institutions that have appointed him as their representative. In the event of a tie vote, the chairman's vote shall be decisive. For purposes of article L. 312-10 and of the present article, the amount of the payments made by the national organisation on behalf of its member institutions shall be taken into account.

Article L312-12

The management board is made up of three members, including the chairman, appointed by the supervisory board. The members of the management board are not permitted to serve in or receive remuneration from the member institutions or companies of the guarantee fund at the same time. The chairman's appointment must be approved by the Economy Minister.

Article L312-13

The Economy Minister, the governor of the *Banque de France*, the chairman of the *commission bancaire*, the chairman of the *conseil des marchés financiers* (financial markets council) or their representative, may, on their request, consult with the supervisory board and the management board.

Article L312-14

The members of the management board and the supervisory board and any other person who, as a result of his/her position, has access to documents and information held by the guarantee fund are bound by a professional obligation of confidentiality. This confidentiality may not be invoked in a legal action in conjunction with criminal proceedings or against legal or civil

authorities ruling on a decision of the deposit guarantee fund, or against the *commission bancaire*.

Article L312-15

The members of the management board of the guarantee fund have access to all accounting and financial documents and auditors' reports of the institution for which the guarantee fund has been engaged by the *commission bancaire* in accordance with article L. 312-5.

Article L312-16

The following matters are established by regulations issued by the banking and finance committee :

1. The maximum compensation per depositor, procedures and deadlines for compensation payments, and the rules governing communication to customers;
2. The terms for certificates of association, including remuneration and reimbursement in the event a member's license is withdrawn, after allocation, if applicable, of losses incurred by the fund;
3. The total annual contributions due from members;
4. The terms and conditions under which a part of these contributions do not have to be paid to the guarantee fund in consideration for appropriate guarantees;
5. The minimum contribution for each member credit institution of the guarantee fund;
6. The allocation formula of these annual contributions, which is based on deposits and other reimbursable funds, adjusted for previously paid contributions and for indicators of the financial situation of each credit institution concerned, in particular the amount of shareholders' equity and commitments as well as the European solvency ratio reflecting the objective risks that the member creates for to the fund;
7. The conditions and procedures for the appointment of members of the supervisory board, and the term of their appointment.

These regulations cannot be amended without the recommendation of the chairman of the management board of the deposit guarantee fund.

Article L312-17

Insofar as they are not protected by a guarantee system in their home country, branches of credit institutions based in a member country of the European Community other than France are required to belong to a guarantee system in France under terms and conditions established by the banking and finance committee.

Article L312-18

A regulation of the banking and finance committee issued after a recommendation of the *Conseil des marchés financiers* establishes the conditions under which credit institutions and investment companies approved in another country belonging to the European Economic Area may belong to the guarantee fund.

Personnal details

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