

**Article 16 of Act No 69 – 1263 of 31 December 1969 on  
various economic and financial provisions  
– (O.J. of 4 January 1970)**

**Amended by Articles 12 and 13 of Act No 85 – 695 of 11 July 1985 on various economic and  
financial provisions (O.J. of 12 July 1985), and by Article 113 of Act No 99-532 of 25 June 1999  
relating to Savings and Financial Security (O.J. of 29 June 1999)**

I. The provisions of this article apply to promissory notes issued by credit institutions to realise long-term claims intended to finance real estate located in the European Economic Area or the overseas territories of the Republic and guaranteed:

- by a first-ranking mortgage or a real-estate surety providing at least an equivalent guarantee;
- or by a guarantee granted by a credit institution or an insurance company which is not part of the consolidation structure defined in Article 357-I of Act No 66-537 of 24 July 1966 on trading companies to which the credit institution having issued the promissory note belongs.

Shares in *fonds communs de créances* (FCC) (mutual claims funds) governed by Act No 88-1201 of 23 December 1988 on undertakings for collective investment in transferable securities and relating to the creation of FCC are placed in the same category as the claims referred to above, provided that at least 90% of the assets of these FCC consist of claims of the same type, to the exclusion of specific shares bearing the risk of default on the part of the debtors concerned.

As of 1 January 2002, claims realised by promissory notes must comply with the conditions laid down in Article 94, I, of Act No 99-532 of 25 June 1999 on savings and financial security in accordance with the terms and conditions laid down by a State Council decree. This decree stipulates the conditions under which the proportion may be exceeded if the amount of said claims exceeds that of the promissory notes they guarantee.»

II. – The contracts constituting these claims with their guarantees, the additional clauses to these contracts which may have been concluded to provide the lender with additional guarantees and the instruments signed by the borrower to ensure compliance with his obligations, if such instruments exist, must be made available to the bearer of the promissory note by the lending institution if the former so requests, for an amount in capital equal to the amount in capital of the promissory note.

The lending institution shall take custody of the contracts and instruments made available to the bearer of the promissory note and ensure that they are made available by keeping a nominative list in a file in the name of the latter, referring to this article, of each of the claims corresponding to the contracts and instruments referred to above, indicating the amount.

III. Apart from the application of V below, the lending body recovers, at the amount due, free disposal of the claims referred to in II as and when they fall due or are redeemed, or on its initiative, and being obliged, as long as the promissory note remains in circulation, to replace the contracts and instruments for which it has recovered free disposal uninterruptedly, by an amount equal in capital of other claim certificates made available to the bearer of the promissory note under the conditions laid down in II.

The claim certificates made available to the promissory note bearer in accordance with the above paragraph are automatically substituted, by means of real subrogation, for claims certificates for which the lending body recovers free disposal, as regards the rights of the bearer of the promissory note and in particular in application of IV of this article, even if the signature of the new claim certificates made available to this bearer post-dates the signature on the promissory note.

IV. Making claims or instruments available to the bearer of the promissory note constitutes a pledge in favour of successive bearers without any other formalities.

The right of the bearer of the promissory note is exercised on all the claims arising in favour of the lending body further to the contracts and instruments made available to this bearer in application of this

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article, without any other formalities. It also applies to all interest and related costs as well as to mortgage or other guarantees accompanying the loans, even if these guarantees result from deeds other than contracts or instruments.

This right is exercised by the bearer of the promissory note in preference to the lending body, and if the same claim is shared among several bearers of promissory notes, by these bearers on an equal footing.

While the promissory note is made available to the bearer, the lending body may not transmit these claims or instruments in any form whatsoever.

V. If payment either of the amount of the promissory note or of the amount of the interest attached to this note is not made upon the due date, and irrespective of any recourse he may take against the lending body, the bearer of the promissory note shall obtain the nominative list provided for in II above and, if appropriate, the instruments made available to him in application of this article, upon request and in return for this note. This action transfers to him, without any other formalities, ownership of the claims with the interest, the advantages and the guarantees attached thereto, within the limits of the rights he holds in respect of the promissory note held.

VI. In order to delete entries, no supporting documents are required to back up the statements of the deed of release establishing that instruments have been made available or ownership returned if said statements are certified true in this deed.

Those to whom the instruments are made available or to whom ownership is returned are not considered to be interested parties, within the meaning of Article 2157 of the Civil Code, if the deed of release does not attest to the operation effected in their favour.

VI bis. In addition, to guarantee payment on the due date, either of the amount of the promissory note referred to in paragraph I above or of the amount of the interest attached to this note, the bearer of this note may ask the lending body to place at his disposal contracts constituting long-term claims, with their guarantees, to be added to those already made available pursuant to paragraph II above, for an agreed amount, once these contracts may give rise to the creation of promissory notes with the characteristics of those referred to in paragraph I above.

The bearer of the promissory note referred to in paragraph I above is informed of the contracts thus made available to him, as a guarantee, at the same time as the contracts are made available, in accordance with the procedure described in paragraphs II and III above.

The effects of making these instruments available as a guarantee are those stipulated in paragraphs IV, V and VI above.

VII. The provisions of III, IV and V of this article are applicable notwithstanding all provisions to the contrary, and in particular those of Act No 84-148 of 1 March 1984 relating to the prevention and out-of-court settlement of companies' difficulties and Act No 85-98 of 25 January 1985 relating to the compulsory administration and liquidation subject to court supervision of companies. These provisions are applicable to claims realised before the publication of the aforementioned Act No 99-532 of 25 June 1999 in application of the provisions of this article.

VIII. The Banking Commission is responsible for ensuring that credit institutions comply with the provisions of this article.

## OTHER PROVISIONS

### Article 13 of Act No 85-695 of 11 July 1985

I. ...

(provisions amending Article 16 above, inserted therein).

II. The state guarantee may be granted to bonds issued by the bearer of promissory notes representing loans granted to finance real estate transactions guaranteed by a mortgage or a first-ranking real estate preferential right, provided that these loans represented a maximum loan-to-value ratio set by decree or that the amount of the contracts making up the claims provided as a guarantee of payment of these notes upon maturity is higher than the amount of these same notes by a minimum proportion set by decree.

The promissory notes referred to in the previous paragraph are created under conditions set in accordance with the provisions of Article 16 of the aforementioned Act No 69-1263 of 31 December 1969.

III. The bond loans referred to in paragraph II above may be issued by a company or an economic interest grouping having received special approval by means of a decree from the Minister responsible for the economy, finance and the budget.