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PRESSURE POINTS: THE FRENCH STATE GUARANTEE EXTENDED TO FACTORING (FRANCE)

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Legal Briefings - By **Vincent Hatton and Clervie Giscard d'Estaing**

The French National Assembly has passed, at first reading, an amendment proposed by the Government, to the third draft of the amended finance bill for 2020. The purpose of this amendment is to supplement the terms of Article 6 of the amended finance bill for 2020 No. 2020-289 dated 23 March 2020 which governs the guarantee granted by the State to certain financings as part of the measures put in place to support the economy in the context of the Covid-19 pandemic. It adds a paragraph VI quater to said Article 6 which, as currently written, provides that the State guarantee applies to assignments of receivables, made on a professional basis, as governed by Articles L. 313-23 to L. 313-34 of the French *Code monétaire et financier* executed between 1st August and 31 December 2020 and whose maturity date is before 30 June 2021 (or any other earlier date as defined by the order of the French Ministry of the Economy), provided that the receivables result from "orders confirmed by these companies". As is the case with the State guarantee which includes loans granted by credit institutions, financing companies or lenders in the context of crowd-funding, this guarantee will be managed by Bpifrance SA. This guarantee will be remunerated and will cover only a part of the financing. The framework will need to be completed by an order of the French Ministry of the Economy which will specify, in particular, the features of the guarantee and the eligibility criteria to be met in order to benefit from it, and whether or not these details will be the same as those applicable to loans granted by credit institutions, financing companies and lenders in the context of crowd-funding.

It should be noted that under French law, the purchase of unmatured receivables qualifies as a credit transaction (*opération de crédit*). In purchasing unmatured receivables against remuneration, the credit institution advances the payment of sums due over time to the seller by the assigned debtor. It is also possible to finance future receivables, which allows the assignor to obtain funding before the delivery of the purchased goods or services. In concrete terms, if the framework was adopted as it stands, it would allow companies to obtain funding once the order has been received, without having to wait for delivery and issuance of the corresponding invoices. The company would therefore stand to gain on average 45 days of cash flow compared to assignments under traditional factoring.

As currently written, the framework does, however, raise certain questions. Will the guarantee cover solely the payment obligations of the assigned debtors, or will it also include the assignor's possible obligations against the factor in connection with its recovery obligations where the assignment is not notified? Likewise, will the risk of dilution in the event of a cancellation, in whole or in part, of the receivables after the assignment or the set-off claim which the assigned debtor may raise against the assignor, be covered by the guarantee? Such are the questions which will need to be answered by the enforcement measures in the order of the French Ministry of the Economy.

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KEY CONTACTS

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