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## BOOK I

### The contract

**Articles L111-1 to L191-7**

#### TITLE I

#### Common rules applicable to non marine loss insurance and life insurance

**Articles L111-1 to L114-2**

#### CHAPTER I

#### General provisions

Articles L111-1 to L111-6

#### Article L111-1

*(Act no. 92-665 of 16 July 1992, Article 6, Official Journal of 17 July 1992)*

*(Act no. 94-5 of 4 January 1994, Article 34, II, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

Titles I, II and III of this Book shall apply to non-maritime insurance only. With the exception of Articles L111-6, L112-2, L112-4 and L112-7, they shall apply neither to marine and inland waterway insurance nor to credit insurance transactions. Reinsurance transactions that insurers and reinsurers enter into shall fall outside the scope thereof.

There shall be no departure from the Acts and regulations relating to tontine-like companies, to insurance contracted by company directors, for liability of work-related accidents occurring to their workers and employees or to agricultural mutual insurance and reinsurance companies or funds.

#### Article L111-2

*(Act no. 81-5 of 7 January 1981, Article 28-1, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

*(Act no. 82-600 of 13 July 1982, Article 9, Official Journal of 14 July 1982)*

*(Act no. 89-1014 of 31 December 1989, Article 7, Official Journal of 3 January 1990 in force on 1 July 1990)*

Apart from requirements that grant the parties a simple right, which are set forth in Articles L112-1, L112-5, L112-6, L113-10, L121-5 to L121-8, L121-12, L121-14, L122-1, L122-2, L122-6, L124-1, L124-2, L127-6, L132-1, L132-10, L132-15 and L132-19, titles I, II and III of this Book may not be amended by agreement.

#### Article L111-3

Whenever an insurer reinsures itself for the risks that it insured, it shall be solely liable to the insured.

#### Article L111-4

*(Act no. 85-608 of 11 June 1985, Article 12, Official Journal of 20 June 1985)*

*(Act no. 91-412 of 6 May 1991, Article 1, Official Journal of 7 May 1991)*

*(Act no. 94-5 of 4 January 1994, Article 3, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

The administrative authority may impose the use of standard contract clauses.

#### Article L111-5

*(Act no. 81-5 of 7 July 1981, Article 26, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

*(Decree no. 85-863 of 2 August 1985, Article 1, II, Official Journal of 15 August 1985)*

*(Act no. 90-500 of 25 June 1990, Article 3, Official Journal of 27 June 1990 in force on 1 August 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42 X, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Order no. 2000-352 of 19 April 2000, Article 1, Official Journal of 22 April 2000 in force on 1 July 2000)*

I Apart, however, from Articles L 122-7, L124-4, L 125-1 to L 125-6, L132-30 and L132-31, the provisions of titles I, II and III of chapter I contained in this code prior to Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions shall apply in French overseas territories.

II Apart from Articles L 124-4, L132-30 and L132-31, the provisions of titles I, II and III of chapter I shall apply in the collectivité territoriale of Mayotte.

Apart from the first and fourth paragraph of Article L125-6, Articles L122-7 and L125-1 to L125-6 shall however apply in the territory of the Wallis and Fatuna islands, subject to the following adaptations:

- the words "and the loss mentioned in articles L242-1" set forth in the second paragraph of Article L125-5 shall be deleted.

- the words "neither is this obligation binding" set forth in the second paragraph of Article L125-6 shall be replaced by the words "The obligation provided for in the first paragraph of Article L125-2 shall not be binding".

Nota bene: Article 75 of Act 2001-616 of 11 July 2001: In all laws and regulations in force in Mayotte, reference to the "collectivité territoriale of Mayotte" shall be replaced by reference to "Mayotte" and reference to the "collectivité territoriale" shall be replaced by reference to the "collectivité départementale".

## INSURANCE CODE

### Article L111-6

*(transferred by Act no. 94-5 of 4 January 1994, Article 6, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

Shall be regarded as major risks :

1 those that fall within the following categories:

- a) hulls of rail, air, marine, lake and inland waterway vehicles or vessels as well as public liability for said vehicles,
- b) goods in transit,
- c) credit and guarantee when the policyholder, in a professional capacity, carries on an industrial, commercial or professional activity, provided that the risk relates to such activity,

2 those relating to fire and natural elements, other damage to property, general public liability, various pecuniary losses, hulls of non marine motor vehicles and public liability, including that of the carrier relating to said vehicles, when the policyholder carries on an activity where the extent thereof exceeds certain thresholds defined by decree in Conseil d'Etat.

## CHAPTER II

Conclusion and evidence of the insurance contract – form and transfer of policies

Articles L112-1 to

L112-2-1

### Article L112-1

Insurance may be contracted pursuant to a general or special power of attorney or even without a power of attorney, on behalf of a specific person. In the latter case, the insurance shall benefit the person on behalf of whom it has been contracted even if the ratification thereof takes place after the loss.

Insurance may be contracted on behalf of whom it may concern. The clause shall be valid as insurance in favour of the policyholder of the contract and as a provision in favour of a third party in favour of the known or contingent beneficiary of said clause.

The policyholder of insurance contract on behalf of whom it may concern shall be solely liable to pay the premium to the insurer. The exclusions that the insurer may invoke against him shall also be invocable against the beneficiary of the contract, whomsoever he may be.

### Article L112-2

*(Act no. 89-1014 of 31 December 1989, Article 8, Official Journal of 3 January 1990 in force on 1 May 1990)*

*(Act no. 94-5 of 4 January 1994, Article 35, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 80 III, VII, Official Journal of 2 August 2003)*

The insurer must provide an information sheet on the prices and covers prior to the conclusion of the contract.

Prior to the conclusion of the contract, the insurer shall provide the insured with a copy of the draft contract and its attachments or a booklet on the contract that provides a precise description of the covers and exclusions as well as the insured's obligations. The documents handed over to the policyholder shall specify the governing law of the contract where the French law does not apply, the procedures for investigating claims that he may make under the contract, including in particular, if necessary, the authority in charge of such investigation, without prejudice to his right to bring a legal action, and the address of the head office and, if necessary, the address of the branch office offering the coverage. Prior to the conclusion of the contract comprising the covers for liability, the insurer shall provide the insured with an information sheet, whose model shall be determined by an order, describing the functioning, for the duration of the contract, of the covers triggered by the event causing liability, that of the covers triggered by claim as well as the consequences of the succession of contracts with different modes of trigger.

A decree in Conseil d'Etat shall define the means of recording the actual delivery of the documents stated under the previous paragraph. It shall also determine the exemptions justified by the nature of the contract or the circumstances in which it has been contracted.

The insurance offer shall not be binding on the insured or the insurer. Only the policy or the cover note shall witness their mutual agreement.

The offer made by registered letter to extend or to amend the contract or to bring a suspended contract back into force shall be deemed accepted if the insurer does not refuse said offer within ten days after receipt thereof.

The provisions of the previous paragraph shall not apply to life insurance (and) insurance covers for which the law shall stipulate other conditions for the implementation of the cover for the duration of the contract.

### Article L112-3

*(Act no.89-1014 of 31 December 1989, Article 9, Official Journal of 3 January 1990 in force on May 1990)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XXXI, Official Journal of 22 April 2001)*

The insurance contract and the information referred to in this code that the insurer sends to the policyholder shall be written in clear print, in French.

Notwithstanding the provisions of the previous paragraph relating to the use of the French language, when, pursuant to Articles L181-1 and L183-1, the parties to the contract have the possibility of applying a law other than French law, the documents referred to in the first paragraph of this article may be written in a language other than French. The choice of other language than French is made either by mutual agreement of the parties or by, excepting the case where the contract covers the major risks defined in Article L 111-6, the policyholder's unilateral written request.

When the parties to the contract do not have the possibility of applying a law other than French law, said documents may, however, by mutual agreement of the parties and upon the policyholder's sole request in writing, be written in the

## INSURANCE CODE

language or in one of the official languages of the State of which he is a national.

When, before the execution of the contract, the insurer may put questions to the insured in writing, in particular, by means of the loss reporting form or by any other means, it may not complain that a question expressed in general terms procured only a vague reply.

The parties must draw up and sign a rider in respect of any addition to or amendment of the previous insurance contract.

These provisions do not preclude that the insurer and insured entered into mutual agreements by the submission of a cover note, even prior to delivery of the policy or rider.

### Article L112-4

*(Act no. 81-5 of 7 January 1981, Article 30, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

*(Act no. 94-5 of 4 January 1994, Article 35, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

The insurance policy shall bear the date on which it was drawn up.

It shall state:

- the surnames and addresses of the contracting parties,
- the insured property or person,
- the nature of the risks covered,
- the moment from which the risk is covered and the term of said cover,
- the amount of said cover,
- the insurance premium or contribution,

The policy shall also state:

- the law governing the contract when it is not governed by French law,
- the address of the registered office of the insurer and, where appropriate, of the branch granting the cover,
- the name and address of the authorities in charge of controlling the insurance firm granting the cover,

The policy clauses that stipulate nullities, forfeitures or exclusions shall be valid only if they appear in very clear print.

### Article L112-5

The insurance policy may be a named person, to order or to bearer.

Policies to order shall be transferred by endorsement, even blank.

However, this Article shall apply to life insurance contract only on the terms of Article L132-6.

### Article L112-6

The insurer may invoke, against the policy bearer or a third party who claims under the policy, exclusions invocable against the initial policyholder.

### Article L112-7

*(Act no. 89-1014 of 31 December 1989, Article 3, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 91-716 of 26 July 1991, Article 1, I, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act no. 92-665 of 16 July 1992, Article 18, Official Journal of 17 July 1992 in force on 20 May 1993)*

When an insurance contract is offered within the scope of the freedom of services within the meaning of Article L351-1 and Article L353-1, the policyholder, prior to the conclusion of any agreement, shall be informed of the name of the member State of the European Union where is located insurer's establishment with whom the contract may be entered into.

The information referred to in the previous paragraph must appear on all documents submitted to the policyholder or the insured.

The contract or cover note must state the address of the establishment granting the cover, where appropriate, the address of the registered office and the name and address of the representative referred to in Article L351-6-1.

### Article L112-8

*(inserted by Act no. 94-5 of 4 January 1994, Article 35, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

When a contract covering the public liability ensuing from use of motor vehicles other than the carrier's public liability is concluded within the scope of the freedom of services within the meaning of Article L310-3, the contract or cover note must state the name and address of the representative for risk management that the insurer has appointed in France.

### Article L112-2-1

*(inserted by Order no. 2005-648 of 6 June 2005, Article 2, Official Journal of 7 June 2005 in force on 1 December 2005)*

I - 1° The supply of distance insurance contract services to customers shall be governed by the provisions of this Book and the provisions of sub-sections 2 and 3 of section 2 of Chapter I of Title II of Book I of the Consumer Code, except Articles L121-20-10, L. 121-20-12 and L121-20-17, reproduced hereafter:

"Sub-section 2: Specific provisions applicable to contracts for financial services

"Article L121-20-8

This sub-section shall govern the supply of financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier or an intermediary who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

## INSURANCE CODE

"It shall apply to services referred to in Books I to III and Title V of Book V of the Monetary and Financial Code as well as to the operations of businesses governed by the Insurance Code, of mutual insurance companies and unions governed by Book II of the Mutual Insurance Code and of provident institutions and unions governed by Title III of Book IX of the Social Security Code without violating the specific provisions provided for by these codes. "

### "Article L121-20-9

In the case of contracts for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions of this Directive shall apply only to the initial service agreement. In the case of contracts that are subject to tacit renewal, the provisions of this section shall apply only for and at the time of the conclusion of the initial agreement.

"In case there is no initial service agreement but the successive operations or the separate operations of the same nature performed over time are performed between the same contractual parties, the provisions of Article L121-20-10 shall apply only when the first operation is performed. Where, however, no operation of the same nature is performed for more than a year, the next operation will be deemed to be the first in a new series of operations and, accordingly, Articles 3 and 4 shall apply."

### "Article L121-20-11

The consumer shall receive all the contractual terms and conditions and the information referred to in Article L121-20-10 on paper or on another durable medium available and accessible to him in good time before the consumer is bound by any distance contract or offer. The supplier may fulfil his obligation referred to in Article L121-20-10 and this article by sending a single document to the consumer, provided it is on paper or on another durable medium and the information mentioned shall not vary up to and including the time at which the contract is concluded.

The supplier may fulfil his delivery obligation immediately after the conclusion of the contract, if the contract has been concluded at the consumer's request using a means of distance communication which does not enable providing the pre-contractual and contractual information on paper or on another durable medium.

At any time during the contractual relationship, the consumer is entitled, at his request, to receive the contractual terms and conditions on paper. In addition, the consumer is entitled to change the means of distance communication used, unless this is incompatible with the contract concluded or the nature of the financial service provided.

### "Article L121-20-13

"I. - Contracts to which the withdrawal period referred to in Article L121-20-12 applies may not be performed by the parties prior to the expiry of this period without the consent of the consumer. Where the latter exercises his right of withdrawal, he may be required to pay only an amount which is in proportion to the extent of the final service actually provided (in comparison with the full coverage of the contract), other than any penalty.

"The supplier may not require the consumer to pay any amount on the basis of the first paragraph unless he can prove that the consumer was duly informed about the amount payable, in conformity with Article L121-20-10. However, in no case may he require such payment if he has commenced the performance of the contract before the expiry of the withdrawal period without the consumer's prior request.

" In case of consumer credit contracts provided for in Chapter I of Title I of Book III, they may not be performed during the first seven days, even with the consent of the consumer, except in case of contracts for assigned credit referred to in Article L121-20-12 (IV) which may not be performed during the first three days.

II. - The supplier shall, without any undue delay and no later than within 30 calendar days, return to the consumer any sums he has received from him in accordance with the contract, except for the amount referred to in the first sub-paragraph of (I). This period shall begin from the day on which the supplier receives the notification of withdrawal. After the period of 30 calendar days, the due sum shall produce ipso jure interest at the rate in force.

The consumer shall return to the supplier any sums and/or property he has received from the supplier without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the consumer dispatches the notification of withdrawal.

### "Article L121-20-14

"The provisions of Article L34-5 of the Posts and Telecommunications Code, reproduced under Article L121-20-5, shall apply to financial services.

"Distance communication techniques intended for the marketing of financial services other than those referred to in Article L34-5 of the Posts and Telecommunications Code may be used only if the consumer has not expressed his opposition.

"The measures provided for in this article should not involve expenses for the consumer. "

### "Sub-section 3: Common provisions

### "Article L. 121-20-15

"Where the parties has chosen the law of a Non-Member State of the European Community to govern their contract, the judge before whom this law is invoked must avoid its application in favour of the more protective law of the State of the usual residence of the consumer that has transposed the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and the Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services, when the contract presents a close link with the territory of one or more State Members of the European Community. This condition shall be presumed to be met if the residence of the consumers is located in a Member State. "

### "Article L121-20-16

"The provisions of this section have a public policy nature.

"2° For the application of (1°), the reader shall substitute:

## INSURANCE CODE

"a) "the policyholder who is a natural person and acts for purposes that do not fall within the framework of his commercial or professional activity" where "the consumer" is mentioned;

"b) "the insurer or the insurance intermediary" where the "supplier" is mentioned;

"c) "the total amount of the premium or contribution" where the "total price" is mentioned;

"d) "right of termination" where the "withdrawal right" is mentioned;

"e) "Article L112-2-1 (II) of the Insurance Code" where "Article L21-20-12" is mentioned;

"f) "Article L112-2-1 (III) of the Insurance Code" where "Article L121-20-10" is mentioned;

"3° For the application of Article L121-20-11 of the Consumer Code, the contract terms must include, in addition to the information referred to, as the case may be, in Article L112-2 or Article L132-5-1, a customized letter intended to facilitate the exercise of the right of termination when this right exists.

"II. - 1° Any natural person who has concluded for purposes not falling within the framework of his commercial or professional activity a distance contract shall have a period of 14 calendar days to terminate (the contract) without giving any reason or paying any penalty. This period shall begin:

- either from the day of the conclusion of the distance contract, or

- from the day on which the consumer receives the contractual terms and conditions and the information in accordance with Article L121-20-12 of the Consumer Code, if that is later than the date referred to at (a).

"2° However, in respect to life insurance contracts, the above mentioned period shall be increased to 30 calendar days completed. This period shall begin:

"a) either from the day on which the interested party is informed that the distance contract has been concluded, or

"b) from the day on which the interested party receives the contractual terms and conditions and information, in accordance with Article L121-20-11, if that is later than the date referred to at (a).

"3° The right of termination shall not apply to:

"a) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration;

"b) insurance contracts referred to in Article L211-1 of this code;

"c) contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of termination.

III. - In good time before the policyholder is bound by any distance contract or offer, he shall be provided with the following information concerning:

"1° the identity of the insurance firm, the geographical address at which it is established; where the insurance firm is registered in the Register of Commerce and Companies, its registration number, the particulars of the relevant supervisory authority as well as, where appropriate, the address of the branch that has underwritten the insurance policy;

"2° the total amount of premium or contribution or, when an exact amount cannot be indicated, the basis for the calculation of the premium or contribution enabling the policyholder to check;

"3° the minimum duration of the contract as well as the covers and exclusions stipulated by it;

"4° any limitations of the period for which the information provided is valid, the conditions for the conclusion of the contract and the payment of the premium or contribution as well as a reference, where appropriate, to the additional cost related to the use of distance marketing technique;

"5° the existence or absence of a right of withdrawal and, where such right exists, its duration, practical instructions for exercising the right of withdrawal indicating, inter alia, the address to which the notification of a withdrawal should be sent. The policyholder must also be informed of the amount of premium or contribution that the insurer requires him to pay for the cover, at his express request, before the expiry of the withdrawal period;

"6° the law taken by the insurer for the establishment of the pre-contractual relations with the consumer as well as the law applicable to the contract and the language in which the insurer, with the agreement of the policyholder, undertakes to use during the duration of the contract;

"7° the conditions for the examination of the claims that the policyholder may present with respect to the contract including, where appropriate, the existence of the relevant authority responsible in particular for this examination, without prejudice to his right of action as well as, where appropriate, the existence of guarantee fund or other compensation arrangements.

"Information on contractual obligations, to be communicated to the consumer during the pre-contractual phase, shall be in conformity with the applicable law of the contract.

"This information, the commercial purpose of which must be made clear without ambiguity, shall be provided in a clear and comprehensible manner in a way appropriate to the distance marketing technique used.

"IV. - In cases of life insurance contracts, the insurer must also indicate the information referred to in Article L132-5-1, in particular, the maximum amount of the expenses which it can take and, when the guarantees of these contracts are expressed in units of account, it must indicate the main characteristics of the units of account. In this last case, it must moreover specify that it undertakes only on the number of the units of account and not on their value which can be prone to fluctuations.

"V. - A Conseil d'Etat decree shall determine the information to be communicated to the policyholder in the event of communication by vocal telephony.

"VI. - Offences provided for by the provisions of this Article shall be noted and sanctioned by the Inspection Committee of Mutual Instance and Provident Institutions under the conditions provided for under section 2 of the Single Chapter of Title I of Book III.

"Offences committed owing to the absence of the particulars referred to under (III) of this Article and the refusal of the insurer to refund the policyholder who is a natural person under the conditions set out in Article L121-20-13 of the

## INSURANCE CODE

Consumer Code can also be noted and brought to court under the conditions referred to in Article L121-20-17 of the same code.

"The conditions for the application of this Article shall be defined, if need be, by a Conseil d'Etat decree ".

### CHAPTER III

Obligations of the insurer and the insured

Articles L113-1 to

L113-15-1

#### **Article L113-1**

*(Act no. 81-5 of 7 January 1981, Article 28, II, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

Save formal and limited exclusions contained in the policy, the insurer shall bear the losses and damage caused by unforeseen accidentor caused by the insured's fault.

However, the insurer shall not be answerable for losses and damage caused by the insured's deliberate tortious intent or fraud.

#### **Article L113-2**

*(Act no. 89-1014 of 31 December 1989, Article 10, Official Journal of 3 January 1990 in force on 1 May 1990)*

The insured shall be obligated to:

1 pay the premium or contribution at the agreed times,

2 truthfully answer questions put by the insurer, in particular, in the loss reporting form whereby the insurer questions him at the time of executing the contract on circumstances that enable the insurer to assess the risks that it covers,

3 declare during the contract the new circumstances that have the effect of either increasing the risk or of creating new risks and which on this account render the answers, notably, in the form referred to in paragraph 2 above, made to the insurer either untrue or lapsed.

The insurer must declare such circumstances to the insurer by registered letter within two weeks or a fortnight from the moment it is aware thereof.

4 inform the insurer as soon as he is aware thereof and no later than the time set in the contract of any loss that may involve the insurer's cover. Said time may not be less than five working days.

Said minimum time shall be reduced to two working days in the event of theft and to twenty four hours in the event of livestock mortality.

The above times may be extended by mutual agreement of the contracting parties.

When provided for in a contact clause, forfeiture due to lateness of report of loss having regard for the times provided for in paragraphs 3 and 4 above may be invoked against the insured only if the insurer proves that it entailed a loss by reason of the late report of loss. In addition, it may not be invoked in all events where the late report of loss is the result of an accidental case or an act of God.

The provisions of paragraphs 1, 3 and A above shall not apply to life insurance.

#### **Article L113-3**

*(Act no. 81-5 of 7 January 1981, Article 31, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

The premium shall be payable at the address of the insurer or of the representative that it appoints for this purpose.

However, the premium may be payable at the address of the insured or at any other place agreed in the cases and terms restrictively set by decree in Conseil d'Etat.

In the event of non payment of a premium or a part of a premium within ten days as of its due date, and irrespective of the insurer's right to sue for performance of the contract, the cover may be suspended only thirty days after the insured has been served with formal notice. If the annual premium is payable by instalments, the suspension of the cover, in the event of non payment of one premium instalments, shall be valid until the expiry of the annual period in question. The premium or premium instalment shall be payable at the insurer's premises in all events, after formal notice has been served on the insured.

The insurer shall be entitled to terminate the contract ten days after expiry of the thirty day period referred to in the second paragraph of this Article.

The contract that has not been terminated shall be revived for the future at noon on the day after the premium in arrears or, in the event of the annual premium payable by instalments, the premium instalments that were the subject of the formal notice and those to fall due during the suspension period as well as legal fees and collection charges, have been paid to the insurer or to the representative that it appointed for this purpose.

The provisions of paragraphs 2 to 4 of this Article shall not apply to life insurance.

#### **Article L113-4**

*(Act no. 89-1014 of 31 December 1989, Article 11, Official Journal of 3 January 1990 in force on 1 May 1990)*

In the event of an increase of the risk during the contract, such that, if new circumstances had been declared at the time of conclusion or of renewal of the contract, the insurer would not have contracted or would have done so only in consideration of a higher premium, the insurer shall be entitled to terminate the contract or to offer a new premium amount.

In the first case, the termination shall take effect only ten days after notice and the insurer must then reimburse the insured for the part of the premium or contribution for the period during which the risk has not incurred. In the second

## INSURANCE CODE

case, if the insured has not followed up on the insurer's offer or if he expressly refuses the new contract within thirty days as from the offer, the insurer may terminate the contract at the end of said time limit, provided that it has informed the insured of such right, by stating it in clear print in the letter of offer.

However, the insurer may no longer complain of the increase of risks when, after it has been informed thereof, regardless of how it was informed, it expressed its consent to continuation of the insurance, in particular, by continuing to accept premiums or by paying a compensation after a loss.

The insured shall be entitled, in the event of a decrease of the risk during the contract, to a decrease of the amount of the premium. If the insurer does not agree thereto, the insured may terminate the contract. The termination shall then take effect thirty days after the notice of termination. The insurer must then reimburse the insured for the part of the premium or contribution for the period during which the risk has not been incurred.

The insurer must remind the insured of the provisions of this Article when the insurer informs it either of an increase or a decrease of the risks.

The provisions of this Article shall not apply to life insurance or health insurance when the insured's state of health has changed.

### **Article L113-5**

*(Article L81-5 of 7 January 1981, Article 33, I, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

Upon occurrence of the risk or the maturity of the contract, the insurer must perform the service defined in the contract within the agreed time and it may not be committed beyond said time.

### **Article L113-6**

*(Act n°81-5 of 7 January 1981, Article 31, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

*(Act n°85-98 of 25 January 1985, Article 221, I, Official Journal of 26 January 1985 in force on 1 January 1986)*

*(Act n°89-1014 of 31 December 1989, Article 36, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°2005-845 of 26 July 2005, Article 176, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)*

In the event of judicial liquidation of a firm referred to in Article L310-1, the contracts in its portfolio shall be subject to the provisions of Articles L326-12 and L326-13 as from the order or the decision announcing the withdrawal of the licence.

The insurance shall subsist in the event of judicial rehabilitation or liquidation proceedings of the insured.

The official receiver or the debtor authorised by the bankruptcy judge or the liquidator as the case may be and the insurer shall retain the right to terminate the contract during a three month period as from the date of the judgement of judicial rehabilitation or liquidation proceedings. The part of the premium for the time during which the insurer no longer covers the risk shall be returned to the debtor.

In the event of judicial liquidation of a firm referred to in Article L310-1, the contracts in its portfolio shall be subject to the provisions of Articles L326-12 and L326-13, as from the order or the decision announcing the withdrawal of the licence.

### **Article L113-8**

*(Act no. 81-5 of 7 January 1981, Article 32, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

Apart from the ordinary causes of nullity and subject to the provisions of Article L132-26, the insurance contract shall be null and void in the event of reluctance or intentional false statement of the insured, when such omission or fraudulent misrepresentation changes the subject of the risk or decreases the insurer's assessment thereof, even if the risk that the insured concealed or distorted has had no impact on the loss.

The insured shall then be entitled to the premiums paid. It shall be entitled to payment of all due premiums by way of damages.

The provisions of the second paragraph of this Article shall not apply to life insurance.

### **Article L113-9**

If the insured's bad faith has not been proved, omission or misrepresentation by the insured shall not entail the nullity of the insurance.

If this is recorded prior to any loss, the insurer shall be entitled either to continue the contract in consideration of an increase in premium accepted by the insured or to terminate the contract ten days after notice sent to the insured by registered letter by returning the part of the premium paid for the period not covered by the insurance.

In the event that the recording took place only after the loss has occurred, the compensation shall be reduced in proportion to the rate of the premiums paid in relation to the rate of premiums that would be owed if the risks had been truthfully and exhaustively declared.

### **Article L113-10**

In insurance where the premium is calculated either by reason of salaries or on the basis of the number of persons or amount of property covered by the contract, it may be provided that, for any mistake or omission in the statements serving as a basis to set the premium, the insured must pay, in addition to the amount of the premium, a compensation that may not under any circumstances exceed 50% of the omitted premium.

It may be stipulated that when the mistakes or omissions, due to their nature, extent and repetition, have a

## INSURANCE CODE

fraudulent character, the insurer shall be entitled to take action to recover losses paid by mistake, apart from payment of the compensation provided for above.

### Article L113-11

Shall be null and void:

1 All general clauses providing that the insured shall forfeit his rights in the event of violation of laws or regulations, unless such violation constitutes a crime or a deliberate offence.

2 All clauses providing that the insured shall forfeit his rights for simple lateness in reporting the loss to the authorities or submitting documents, without prejudice to the rights for the insurer to claim a compensation in proportion to the damage that it has caused to him.

### Article L113-12

*(Act no. 89-1014 of 31 December 1989, Article 12, Official Journal of 3 January 1990 in force on 1 May 1990)*

The policy shall specify the duration of the contract and the terms applicable to termination.

However, the insured shall be entitled to terminate the contract at the end of a one year period, by sending the insurer a registered letter at least two months before the expiry date. The insurer shall have the same right on the same terms. Said rule may be waived for individual health insurance contract and for the cover of risks other than those of private persons. The right to terminate the contract every year must be stated in each policy. The period of termination shall start from the date as postmarked.

The provisions of this Article shall not apply to life insurance.

### Article L113-14

*(Act no. 81-5 of 7 January 1981, Article 28, II, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

Whenever the insured is entitled to request termination, he may do so, at his discretion, either by declaration made against receipt at the registered office or to the insurer's representative in the area, or by extra judicial instrument or by registered letter, or by any other means stated in the policy.

### Article L113-15

*(Act no. 81-5 of 7 January 1981, Article 28, II, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

The term of the contract must be stated in very clear print in the policy.

The policy must also state that the term of the automatic renewal may not under any circumstances exceed one year.

### Article L113-16

*(Act no. 89-1014 of 31 December 1989, Article 13, Official Journal of 3 January 1990 in force on 1 May 1990)*

In the event of the occurrence of one of the following events:

- change of domicile,
- change of marital status,
- change of matrimonial property regime,
- change of occupation,
- professional retirement or permanent discontinuation of a professional activity,

each of the parties may terminate the insurance contract when it covers risks directly related to the earlier situation and which are not present in the new situation.

The contract may be terminated only three months after the date of the event.

The termination shall take effect one month after the other party to the contract has received notice thereof.

The insurer must reimburse the insured for the part of the premium or contribution for the period during which the risk was not incurred. Such period shall be calculated as from the effective date of the termination.

Payment of a compensation to the insurer in the aforementioned events of termination may not be provided for.

The provisions of this Article shall not apply to life insurance. They shall apply as from 9 July 1973 to contracts contracted prior to 15 July 1972.

A decree in Conseil d'Etat defines the terms of application of this Article, in particular, the date which, for each of the events listed in the first paragraph, shall be retained as the starting date of the period of termination.

### Article L113-17

*(inserted by Act no. 89-1014 of 31 December 1989, Article 14, Official Journal of 3 January 1990 in force on 1 May 1990)*

The insurer who takes over the management of a legal action brought against the insured shall also be deemed to have waived all exclusions that it was aware of when it took over management of the legal action.

The insured shall not forfeit his rights or no other penalty shall be imposed on him due to his involvement in the management of a legal action, if it was in his interest to do so.

### Article L113-15-1

*(inserted by Act n° 2005-67 of 28 January 2005, Article 2, Official Journal of 1 February 2005 in force on 1 August 2005)*

In the case of tacitly renewable contracts covering natural persons outside their professional capacity, the deadline for the exercise by the policyholder of his right to terminate the contract must be recalled with every premium or contribution advice note (sent to him). When said advice note is sent to him less than fifteen days prior to the deadline

## INSURANCE CODE

date, or when it is sent to him after this date, the policyholder must be informed by this advice note that he has a twenty days time-limit following the dispatch date of said advice note to terminate the renewal of the contract. In this case, the time-limit for the termination of the contract shall run starting from the date indicated on the postmark.

When this information was not sent to him in accordance with the provisions of the first paragraph, the policyholder can put an end to the contract, without any penalty, at any time as from the date of renewal by sending a registered letter to the insurer. The termination shall take effect on the day after the one indicated on the postmark.

The policyholder must pay part of the premium or contribution corresponding to the period during which the risk occurred. This period is calculated until the date on which the termination takes effect. The insurer must refund to the policyholder, within thirty days as from the date on which the termination takes effect, the part of the premium or contribution corresponding to the period during which the risk has not occurred. This period shall be calculated as from the aforementioned date on which the termination takes effect. In the absence of refunding under these conditions, the sums due shall produce interest at the legal rate.

The provisions of this article shall apply neither to life insurances nor to group contracts and other collective operations.

N.B. Act 2005-67 of 28 January 2005 Article 7:

I: These provisions come into effect six months as from the date of promulgation of this act.

II: These provisions shall apply to contracts in progress and their renewal on the aforementioned date of promulgation.

### CHAPTER IV

#### Competence and limitation period

Articles L114-1 to  
L114-2

#### Article L114-1

(Act no. 89-1014 of 31 December 1989, Article 15, Official Journal of 3 January 1990 in force on 1 May 1990)

All legal actions arising from an insurance contract shall be barred two years as from the event that gave rise thereto.

However, said time limit shall run:

1 in the event of non disclosure, omission, fraudulent representation or misrepresentation of the risk incurred, only as from the date on which the insurer is aware thereof,

2 in the event of loss, only as from the date the concerned parties are aware thereof, if they prove that they were unaware of such facts up till then.

When the insured's action against the insurer arises from a third party's recourse, the limitation period shall run only from the date on which said third party brings a legal action against the insured or the latter has paid it compensation.

The limitation period shall be increased to ten years for life insurance contract when the beneficiary is not the policyholder and in insurance contracts covering personal injury when the beneficiaries are the deceased insured's assigns.

#### Article L114-2

(Act no. 89-1014 of 31 December 1989, Article 48, Article 51, Official Journal of 3 January 1990 in force on 1 July 1990)

The limitation period shall be interrupted by one of the ordinary causes that interrupt the limitation period and by the appointment of experts following a loss. The limitation period of the legal action may also be interrupted by the insurer sending the insured a registered letter with acknowledgement of receipt in respect of the action for payment of the premium and by the insured to the insurer in respect of the settlement of the claim.

### TITLE II

#### Rules applicable to non marine loss insurance

Articles L121-1 to  
L128-4

### CHAPTER I

#### General provisions

Articles L121-1 to  
L121-17

#### Article L121-1

Insurance in respect of property is a compensation contract. The compensation that the insurer owes to the insured may not exceed the amount of the value of the insured property at the time of the loss.

It may be provided that the insurer must be his own insurer of a sum or a specific quota or that he shall bear a deduction fixed in advance on the compensation for the loss.

#### Article L121-2

The insurer shall cover the losses and damage caused by persons for whom the insured is legally liable pursuant to Article 1384 of the Civil Code, regardless of the nature and seriousness of such persons' faults.

#### Article L121-3

When an insurance contract has been granted for a sum in excess of the value of the insured property, if there has been fraud by one of the parties, the other party may take legal action to void the contract and also claim damages.

If there has been no fraud, the contract shall be valid, but only within the limit of the actual value of the insured

## INSURANCE CODE

property and the insurer shall not be entitled to premiums for the surplus. It shall be definitely entitled only to due premiums and to the premium for the current year when it is maturity.

### Article L121-4

*(Act no. 82-600 of 13 July 1982, Article 8, Official Journal of 14 July 1982)*

Who he is insured with several insurers under several policies for a same interest against a same risk must immediately inform each insurer of the other insurers.

The insured must, at the time of this communication, notify the name of the insurer with whom another insurance has been contracted and specify the sum insured.

When several insurances against the same risks have been fraudulently contracted, the penalties provided for in the first paragraph of Article L121-3 shall be applied.

When they have been contracted without fraud, each of them shall be valid within the limit of the contract's covers and in compliance with the provisions of Article L121-1, regardless of the date on which the insurance was contracted. Within said limits, the beneficiary of the contract may obtain compensation for his loss by contacting the insurer of his choice.

In the relations between insurers, each insurer's contribution shall be determined by applying the ratio between the compensation that it would be paid if it has been alone and the total amount of the compensation that each insurer would have borne if it had been alone to the amount of the loss.

### Article L121-5

If the estimates show that the value of the insured property exceeds the insured sum on the date of the loss, the insured shall be deemed to be his own insurer for the surplus and as a consequence shall bear a proportional share of the loss, unless otherwise agreed.

### Article L121-6

Any person who has an interest in safeguarding a property may have it insured.

Any direct or indirect interest in the non occurrence of a risk may be the subject of insurance.

### Article L121-7

The insurer shall not be liable for waste materials, decrease or loss sustained by the insured property which is attributable to an inherent defect, unless otherwise agreed.

### Article L121-8

The insurer shall not be liable for losses and damage caused either by a foreign war, civil war, riots or by civil commotion, unless otherwise agreed.

When such risks are not covered by the contract, the insured must prove that the loss has been caused by a act other than the foreign war. The insurer shall have the burden of proving that the loss has been caused by civil war, riots or civil commotion.

### Article L121-9

In the event of total loss of the insured property caused by an event not provided for in the policy, the insurance shall end ipso jure and the insurer must return to the insured the part of the premium paid in advance for the time during which the risk is no longer incurred.

### Article L121-10

*(Act no. 89-1014 of 31 December 1989, Article 13, Official Journal of 3 January 1990 in force on 1 May 1990)*

In the event of the death of the insured or transfer of the insured property, the insurance shall continue ipso jure in favour of the heir or buyer, with the onus on the latter to fulfil all of the insured's obligations with regard to the insurer under the contract.

However, the insurer, or the insured or buyer shall be at liberty to terminate the contract.

The insurer may terminate the contract within three months as from the date on which the final beneficiary of the insured property has requested that the policy be transferred to his name.

In the event of transfer of the insured property, the transferor shall be liable to the insurer for payment of due premiums, but he shall be released, even as a guarantor in respect of premiums to fall due, as from the moment he informs the insurer of the transfer by registered letter.

When there are several heirs or buyers, if the insurance continues, they shall be jointly and severally liable for payment of the premiums.

Payment of a compensation to the insurer in the aforementioned events of termination may not be provided for.

The provisions of this Article shall not apply in the event of transfer of a motor vehicle.

### Article L121-11

*(Act no. 81-5 of 7 January 1981, Article 34, I, II, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981)*

*(Act no. 89-1014 of 31 December 1989, Article 13, Official Journal of 3 January 1990 in force on 1 May 1990)*

In the event of transfer of a motor vehicle, its trailers or semi-trailers and only in respect of the transferred vehicle, the insurance contract shall be suspended ipso jure, as from the day after the date of the transfer, at midnight. Each of the parties may terminate the contract subject to ten days' notice.

In the event the contract is not continued by agreement of the parties or by termination by one of them, the termination shall take effect ipso jure at the end of the six month period as of the transfer.

## INSURANCE CODE

The insured must inform the insurer of the date of transfer by registered letter.

Payment of a compensation to the insurer in the aforementioned events of termination may not be provided for.

All of the provisions of this article shall apply in the event of the transfer of ships or yacht, regardless of the method of motion or of propulsion used.

### Article L121-12

The insurer who paid the insurance compensation shall be subrogated within the limit of such compensation in the insured's rights and actions against the third parties who, by their acts, caused the damage that gave rise to the insurer's liability.

The insurer may be released in whole or in part from its liability to the insured when the subrogation is no longer able, by the insured's act, to work in the insurer's favour.

Notwithstanding the above provisions, the insurer shall have no recourse against the children, descendants, ascendants, relations in direct line, officials, employees, workers or servants and in general any person normally living in the insured's home, except in the case of malevolence committed by one of such persons.

### Article L121-13

Indemnities owed further to fire, hail, livestock mortality insurance or insurance against other risks shall be allocated, without need for express delegation, to secured creditors or mortgagees, depending on their rank.

Nevertheless, payments made in good faith prior to stoppage of payment shall be valid.

The same shall apply for indemnities owed in the event of loss by the tenant or neighbour pursuant to Articles 1733 and 1382 of the Civil Code.

In the event of insurance of the rental risk or recourse by neighbours, the insurer may not pay all or part of the sum owed to anyone other than the owner of the leased property, the neighbour or the third party subrogated in their rights as long as said owner, neighbour or subrogated third party have not received settlement for the consequences of the loss, within the limit of said sum.

### Article L121-14

The insured may not abandon the insured property, unless otherwise agreed.

### Article L121-15

The insurance shall be null and void if, at the time of the contract, the insured property has already perished or can no longer be exposed to risks.

Premiums paid must be returned to the insured, less costs incurred by the insurer, other than commission, when the latter have been recovered from the agent or broker.

In the cases referred to in the first paragraph of this Article, if a party is proved to have acted in bad faith, it shall owe the other party a sum double the year's premium.

### Article L121-16

*(inserted by Act no. 95-101 of 2 February 1995, Article 17, Official Journal of 3 February 1995)*

Any insurance contract clauses that aim to subordinate the payment of a compensation in compensation for a loss caused by a natural disaster within the meaning of Article L 125-1 to a developed building to its reconstruction on the spot is deemed non written insofar as a prevention plan for foreseeable natural disasters is applicable to the area.

### Article L121-17

*(inserted by Act no. 95-101 of 2 February 1995, Article 90, Official Journal of 3 February 1995)*

Apart from the cases referred to in Article L 121-16, indemnities paid in compensation for a loss caused to a developed building must be used to actually refurbish said building or its land in a way that is compatible with the environment of said building.

Any insurance contract clauses that stipulate otherwise shall be null and void on the grounds of public policy.

A municipal bylaw shall stipulate the aforementioned measures in respect of refurbishment within two months after the insurer or insured has notified the loss to the mayor.

## CHAPTER II

### Fire insurance

Articles L122-1 to  
L122-8

### Article L122-1

The fire insurer shall be answerable for all damage caused by a conflagration or simple combustion. However, it shall not be answerable, unless otherwise agreed, for damage caused by the sole action of heat or by the direct and immediate contact of the fire or an incandescent substance if there has been no fire or a start of a fire that is liable to degenerate into a genuine fire.

### Article L122-2

The insurer, unless otherwise agreed, shall be answerable for the sole material damage caused directly by the fire or the start of the fire.

If, within three months as from the repair of the loss, the damage survey has not been completed, the insured shall be entitled to have interest accrue as from the demand for payment. If the damage survey has not been completed within six months, each of the parties may bring legal proceedings.

## INSURANCE CODE

### Article L122-3

The material damage caused to property covered by insurance by emergency and salvage measures shall be classed as direct material damage.

### Article L122-4

*(Act no. 81-5 of 7 January 1981, Article 28, II, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

The insurer shall be answerable for the loss or disappearance of insured property during the fire, unless it is able to prove that said loss or disappearance is the result of theft.

### Article L122-5

The insurer, in compliance with Article L121-7, shall not be answerable for losses and damage to the insured property as a result of an inherent defect, but it shall cover the damage caused by fire as a result of the inherent defect unless it is substantiated in bringing a legal action to nullify the insurance contract pursuant to the first paragraph of Article L113-8.

### Article L122-6

Unless otherwise agreed, the insurance shall not cover fires caused directly by volcanic eruptions, earthquakes and other disasters.

### Article L122-7

*(Decree no. 90-509 of 25 June 1990, Article 1, Official Journal of 27 June 1990)*

*(Act no. 91-5 of 3 January 1991, Article 34, Official Journal of 6 January 1991)*

*(Act no. 2000-1207 of 13 December 2000, Article 13, Official Journal of 14 December 2000)*

*(Act no. 2001-602 of 9 July 2001, Article 68, Official Journal of 11 July 2001)*

The insured shall be entitled under insurance contracts covering damage caused by fire or any other damage to property located in France as well as damage to the hulls of motor vehicles to cover against the effects of wind attributable to storms, hurricanes and cyclones on property covered by such contracts. The effects of wind attributable to a cyclone in respect of which the maximum surface winds recorded or estimated on the damaged area have reached or exceeded 145 kilometres an hour on average over ten minutes or 215 kilometres an hour in gusts, which fall within the scope of the provisions of Articles L125-1 et seq. of this Code, shall be excluded from such contracts.

Contracts covering damage caused by fire to not-harvested crops, to non-housed cultivation and livestock shall be excluded.

Contracts covering damage caused by fire to growing wood shall also be excluded.

In addition, if the insured is covered against business interruption, said cover shall be extended to the effects of storms, hurricanes or cyclones in accordance with the terms of the relevant contract.

### Article L122-8

*(inserted by Act n°2004-811 of 13 August 2004, Article 10, Official Journal of 17 August 2004)*

In the case where the damage covered by an insurance contract results from forest fire, the insurer may, where it is established that the insured has not been in conformity with the obligations stipulated under Articles L322-3 to L322-10 of the Forest Code, apply, besides the excesses stipulated eventually in the contract, additional excess not exceeding the amount of €5000.

## CHAPTER III

### Hail and livestock mortality insurance

Articles L123-1 to  
L123-4

### Article L123-1

*(Act no. 81-5 of 7 January 1981, Article 28 II, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

In respect of hail insurance, unless there has been a contractual extension of the time limit, the insured must send the report of loss within four days of the occurrence of the loss, save by unforeseen accident or act of God.

In respect of livestock mortality insurance, said time limit is reduced to twenty four hours, subject to the same reservations.

### Article L123-2

In the cases referred to in Article L121-9, the insurer may not claim the part of the premium for the period between the date of the loss and the date on which the crops should normally have been reaped or that of the end of the cover set in the contract, if the latter date predates the normal crop reaping date.

### Article L123-3

After transfer either of the real property or proceeds, in the event the insurer serves the buyer with notice of termination of the contract, the termination shall take effect only upon the expiry of the current insurance year. However, when the premium is payable in instalments, the seller shall forfeit the right to pay by instalment in respect of the premium for said period.

### Article L123-4

In respect of livestock mortality insurance, the insurance, which has been suspended by reason of non payment of

## INSURANCE CODE

the premium, in accordance with the terms of Article L113-3, shall be revived no later than the tenth day at noon, as from the date on which the premium in arrears and, where applicable, costs, have been paid to the insurer. The insurer may exclude losses following accidents and illness occurring during the cover suspension period from its cover.

### CHAPTER IV Liability insurance

Articles L124-1 to  
L124-5

#### **Article L124-1**

In respect of liability insurance, the insurer shall be liable only if, following a tort provided for in the contract, the injured third party makes an out of court claim or a court claim to the insured.

#### **Article L124-1-1**

*(inserted by Act n°2003-706 of 1 August 2003, Article 80 I, VII, Official Journal of 2 August 2003)*

Within the meaning of this Chapter, a loss means any damage or set of damages occurred to a third party implicating the insured's liability, resulting from an event causing liability and giving rise to one or more claims. The event causing liability is the event at the origin of the loss. A set of events causing liability having the same technical cause shall be assimilated to one event causing liability.

N.B. The provisions of this Article shall enter into force at the end of a three-month period as from the publication of this Act (Act 2003-706 of 1 August 2003).

#### **Article L124-2**

The insurer may stipulate that no acknowledgement of liability or no settlement shall be binding on it, without its involvement. The admission of material facts may be treated as an acknowledgement of liability.

#### **Article L124-3**

The insurer may not pay anyone other than the injured third party any part of the sum that it owes as long as said third party has not received settlement within the limit of said sum for the pecuniary consequences of the tort that entailed the insured's liability.

#### **Article L124-4**

In the case provided for in Article L 25-1 of the Traffic Regulations, as stated in said Article:

"the insurer of the owner of a vehicle shall be bound to cover, within the limits of the contract, the repair of the damage caused to the third party, save recourse, where applicable, against the public authorities which, by their acts, caused the damage which gave rise to the insured's liability and without the owner having to entail an increase in the premium as a result thereof. A decision shall be made on said recourse and on any legal action for damages in the event of non insurance of the vehicle in accordance with the terms of Article 1 of Act no. 57-1424 of 31 December 1957."

#### **Article L124-5**

*(inserted by Act n°2003-706 of August 2003, Article 80 II, VII, Official Journal of 2 August 2003)*

The cover shall be, according to the choice of the parties, triggered either by the event causing liability or by their claim. However, where it covers the liability of natural persons outside their professional activity, the cover shall be triggered by the event causing liability. A decree in Conseil d'Etat may also impose one of the modes of trigger for other covers.

The contract must, as the case may be, contain the text of the third or the fourth paragraph of this Article.

The cover triggered by the event causing liability shall guarantee the insured against the financial consequences of the damage as far as the event causing liability occurs between the first date where the cover takes effect and the cancellation or the expiry date, irrespective of the date of the other components of the loss.

The cover triggered by the claim shall guarantee the insured against the financial consequences of a loss as far as the event causing liability occurred before the cancellation or the expiry date and as far as the first claim is sent to the insured or his insurer between the first date where the cover takes effect and the expiry date of the time limit following the cancellation or the expiry date stipulated by the contract, irrespective of the other components of the damage. However, the cover shall guarantee the damage whose event causing liability was known to the insured after the cancellation or the expiry date only where, by the time where the insured took knowledge of the event causing liability, the cover has not been issued again or it has been issued based on a trigger by the event causing liability. The insurer shall not guarantee the insured against the financial consequences of the damage where he establishes that the insured had knowledge of the event causing liability on the date of the underwriting of the cover.

The subsequent time limit of the covers triggered by the claim may not be inferior to five years. The limit of the cover triggered during the subsequent time limit may not be inferior to that of the cover triggered during the year preceding the date of cancellation of the contract. A decree shall define the conditions of a longer time limit and a more important subsequent cover.

Where one and the same loss is liable to call the covers resulting from several successive contracts, the cover triggered by the event causing liability, which has already taken effect after the entry into force of Act n°2003-706 of 1st August 2003 relating to financial security, shall be considered in priority without the need to apply paragraphs four and five of Article L121-4.

The provisions of this Article shall not apply to covers of insurance for which the law provides other conditions for the application of the cover for the duration of the contract.

N.B. One provision of this article shall enter into force at the end of a three-month period as from the date of

## CHAPTER V

## Natural disasters insurance

Articles L125-1 to  
L125-6**Article L125-1***(Decree no. 85-863 of 2 August 1985, Article 1, Official Journal of 15 August 1985)**(Act no. 92-665 of 16 July 1992, Article 34, Official Journal of 17 July 1992)**(Act no. 2002-276 of 27 February 2002, Article 159 IV, Official Journal of 28 February 2002)**(Act n°2003-699 of 30 July 2003, Article 71, Official Journal of 31 July 2003)**(Act n°2004-811 of 13 August 2004, Article 11, Official Journal of 17 August 2004)*

Insurance contracts, issued by any natural or legal persons other than the State in order to insure against damage caused by fire or any other damage to property located in France as well as damage to hulls of motor vehicles, shall give rise to the insured's cover against the effects of natural disasters and subsidence of land due to underground cavities or due to Marl-pits on property covered by the insurance contracts.

In addition, when the insured is covered for trading loss, said cover shall be extended to the effects of natural disasters in accordance with the terms of the corresponding contract.

Non insurable direct material damage the determining cause of which was the abnormal intensity of a natural agent, when normal measures taken to avoid such damage have been unable to prevent the occurrence thereof or could not be taken, shall be deemed to be a natural disaster within the meaning of this chapter.

The state of natural disaster shall be recorded by inter ministerial order which shall determine the areas and the periods of the occurrence of the disaster and the nature of the damage as a result thereof guaranteed by the cover referred to under the first paragraph of this Article. This order shall state, for each Commune that has requested the recognition of the state of natural disaster, the decision of the Ministers. The representative of the State in each Département shall notify said decision, together with its grounds, to the Commune. The order must be published in the Official Journal within a three-month period as from the date of the filing of the requests before the prefecture. Exceptionally, where the period of the investigation of the representative of the State takes more than two-months, the Minister in charge of civil security shall publish the order at the latest two-months after the reception of the file.

The underground cavities considered here may be natural or man-made. In the latter case, damage resulting from the former or current exploitation of a mine shall be excluded from the application of this chapter.

**Article L125-2***(Decree no. 85-863 of 2 August 1985, Article 1, Official Journal of 15 August 1985)**(Act n°2003-699 of 30 July 2003, Article 70, Official Journal of 31 July 2003)**(Act n°2004-811 of 13 August 12, Official Journal of 17 August 2004)*

Insurance firms must insert, in the contracts referred to under Article L125-1, a clause that extends their cover to the damage referred to under the third paragraph of this Article.

The cover established in this manner may not exclude any of the property mentioned in the contract or make any reduction other than those set in the standard clauses provided for under Article L125-3.

It shall be covered by an additional premium or contribution, personalized in the premium notice of the contract referred to under Article L125-1 and it shall be calculated based on a single rate defined by order for each contract category. Said rate shall apply to the amount of the main premium or contribution or to the amount of the insured capital, depending on the contract category.

Compensation pursuant to said cover must be allotted within three-months as from the date of the submission of the estimate of damaged property or of damage sustained, without prejudice to more favourable contractual clauses or the date of publication of the administrative decision recording the state of natural disaster when it is published later. The compensation pursuant to said cover may not be subject to any excess not explicitly stipulated in the insurance contract. The eventual excesses must also be stated on each document furnished by the insurer, which describes the terms of compensation. Said terms must be recalled to the insured every new year.

In any case, an advance on the compensation owed pursuant to the said cover must be paid to the insured within a two-month period following the deposit of the inventory of the damaged property and the damage suffered, or the date of publication, where it is done later on, of the administrative decision recognising the state of the natural disaster.

**Article L125-3***(inserted by Decree no. 85-863 of 2 August 1985, Article 1, Official Journal of 15 August 1985)*

Notwithstanding any provision to the contrary, contracts referred to in Article L125-1 shall be deemed to contain such a clause.

Standard clauses that are deemed to be included in said contracts shall be determined by order (arrêté).

**Article L125-4***(Decree no. 85-863 of 2 August 1985, Article 1, Official Journal of 15 August 1985)**(Act no. 90-509 of 25 June 1990, Article 2, Official Journal of 27 June 1990 in force on 1 August 1990)**(inserted by Act no. 92-665 of 16 July 1992, Article 35, Official Journal of 17 July 1992)*

Notwithstanding any provision to the contrary, the cover referred to in Article L125-1 of this Code includes the reimbursement of the cost of geotechnics studies rendered necessary prior to repairing constructions affected by the effects of a natural disaster.

## INSURANCE CODE

### Article L125-5

*(inserted by Decree no. 85-863 of 2 August 1985, Article 1, Official Journal of 15 August 1985)*

Shall be excluded from the scope of this chapter the damage caused to non gathered crops, cultivation, soil and livestock outside premises. The compensation thereof is always governed by the provisions of Act no. 64-704 of 10 July 1964, as amended, which organises a cover scheme against agricultural disasters.

Damage sustained by the hulls of air, marine, lake and inland waterway vehicles as well as goods in transit and the damage referred to in Article L242-1 shall also be excluded from the scope of this chapter.

Insurance contracts covering the damage referred to in the previous paragraphs shall not be subject to payment of an additional premium or contribution.

### Article L125-6

*(Decree no. 85-863 of 2 August 1985, Article 1, Official Journal of 15 August 1985)*

*(Act no. 94-5 of 4 January 1994, Article 24 IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 94-679 of 8 August 1994, Article 80, Official Journal of 10 August 1994)*

*(Act no. 95-101 of 2 February 1995, Article 19, Official Journal of 3 February 1995)*

*(Act n°2003-699 of 30 July 2003, Article 69, Article 72, Article 73, Official Journal of 31 July 2003)*

On a land classified as unconstructible by a foreseeable natural risk prevention plan approved pursuant to Act n° 87-565 of 22 July 1987 relating to the organisation of emergency services, the protection of the forest against fire and the prevention of major risks, the obligation referred to under the first paragraph of Article L125-2 shall not be binding on insurance firms with regard to property and activities referred to under Article L125-1, apart, however, from property and activities existing prior to the publication of said plan.

Neither shall said obligation be binding on insurance firms with regard to a constructed real property and activities carried out in breach of administrative regulations in force at the moment of their setting and intended to prevent the damage caused by a natural disaster.

However, insurance firms may escape from said obligation only upon the conclusion of the initial contract or upon its renewal.

Having regard to property and activities located on a land guaranteed by a risk prevention plan, insurance firms may exceptionally depart from the provisions of the second paragraph of Article L125-2 upon a decision by a central rating office, the terms applicable to its foundation and operation shall be defined by decree in Conseil d'Etat, where the owner or the operator has not complied, within five years, with the measures referred to under 4° of II of Article L562-1 of the Environment Code.

The central rating office shall define special reductions whose maximum amounts shall be determined by order, depending on the contract category.

Where an insurance firm has denied to an insured the application of the provisions of this Chapter, he may submit the case to the central rating office, which may compel the concerned insurance firm to cover him from the effects of natural disasters. Where the risk has certain gravity or special conditions, the central rating office may request the insured to provide it with, according to the same terms, one or more other insurers in order to divide the risk among them.

Any insurance firm that continues to refuse to cover the insured in accordance with the terms defined by the central rating office shall be deemed to no longer operate in compliance with current regulations and shall incur the withdrawal of its accreditation provided for under Articles L321-1 or L321-7 to L321-9 shall be withdrawn.

Any clause of the treaties of reinsurance, intended to exclude the risk of natural disaster from the cover of reinsurance due to the terms of insurance fixed by the central rating office, shall be void.

The prefect or the chairperson of the central re-insurance office may submit a case to the central rating office where the terms according to which a property or an activity benefits from the cover provided for under Article L125-1 appear to them unjust with regard to the behaviour of the insured or with regard to the absence of any precautionary measure which may diminish the vulnerability of the property or the activity. The central rating office shall determine the special reductions according to the terms provided for under the fifth paragraph.

## CHAPTER VI

### Insurance against acts of terrorism

Articles L126-1 to  
L126-2

#### SECTION I

##### Bodily injury

Article L126-1

### Article L126-1

*(Act no. 90-589 of 6 July 1990, section 12, Official Journal of 11 July 1990 in force on 1 January 1991)*

The victims of terrorist attacks perpetrated on the national territory and French nationals victims abroad of such same acts shall be indemnified in accordance with the terms defined in Articles L422-1 to L422-3.

Compensation may be refused or the amount thereof reduced in case of the victim's fault.

#### SECTION II

##### Material damage

Article L126-2

### Article L126-2

Property insurance contracts may not exclude the insurer's cover for damage as a result of terrorist attacks or

## INSURANCE CODE

bombing perpetrated on the national territory. Any clause to the contrary shall be deemed non written.

A decree in Conseil d'Etat shall define the provisions for the application of this Article.

### CHAPTER VII

#### Legal expense insurance

Articles L127-1 to  
L127-7

##### **Article L127-1**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

Any transactions that consists, in consideration of the payment of a previously agreed premium or a contribution, in covering the costs of proceedings or in providing services arising from the insurance cover in the event of a dispute or litigation between the insured and a third party, with a view, in particular, of defending or representing the insured as a claimant in civil, criminal, administrative or other proceedings or against a claim brought against him or to obtain out of court compensation for the loss sustained shall be deemed to be a legal expense insurance transaction.

##### **Article L127-2**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

The legal expense insurance shall be covered by a contract separate from that drawn up for the other classes or a separate chapter of a sole policy, which specifies the content of the legal expense insurance and the relevant premium.

##### **Article L127-3**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

All legal expense insurance contracts shall explicitly stipulate that, when a lawyer or any other person qualified under current law or regulations is called on to defend, represent or serve the insured's interests in the circumstances provided for in Article L 127-1, insured shall be free to choose such person.

The contract shall also stipulate that the insured shall be free to choose a lawyer of, if he prefers, a qualified person to assist him whenever a conflict of interests arise between him and the insurer.

No contract clause shall interfere with the insured's freedom of choice, within the cover limit, under the previous two paragraphs.

##### **Article L127-4**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

The contract shall stipulate that in the event of disagreement between the insurer and the insured concerning the measures to be taken to settle a dispute, such difficulty may be referred to the assessment of a third party appointed by mutual agreement of the parties or, for want of such agreement, by the presiding judge of the Tribunal de grande instance ruling in summary proceedings. The insurer shall bear the costs incurred to implement such right. However, the presiding judge of the Tribunal de grande instance, ruling in summary proceedings, may decide otherwise when the insured implemented such right in abusive conditions.

If the insured brought contentious proceedings at his expense and obtains a more favourable solution than that proposed by the insurer or the third party mentioned in the previous paragraph, the insurer shall indemnify the insured for the costs incurred in bringing such legal action, within the limit of the cover amount.

When the proceedings referred to in the first paragraph of this Article are implemented, the time limit for the contentious proceedings shall be suspended for all courts covered by the insurance cover and that the insured is liable to bring as a claimant until the third party in charge of proposing a solution has notified the purport thereof.

##### **Article L127-5**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

In the event of a conflict of interest between the insurer and the insured or disagreement in respect of the settlement of the dispute, the legal expense insurer shall inform the insured of the right referred to in Article L127-3 and of the possibility of turning to the proceedings referred to in Article L127-4.

##### **Article L127-6**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

The provisions of this chapter shall not apply to:

1 legal expense insurance when it concerns litigation or risks arising from use of a seagoing vessels or vessels connected with such use.

2 the activity of the insurer in public liability for the defence or representation of its insured in all court or administrative proceedings when carried on at the same time in the insurer's interest.

##### **Article L127-7**

*(Act no. 89-1014 of 31 December 1989, Article 5, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-1336 of 16 December 1992, Article 333, Official Journal of 23 December 1992 in force on 1 March 1994)*

Persons who need to know the information provided by the insured for the requirements of its case, within the scope of a legal expense insurance contract shall be bound by professional secrecy in accordance with the terms and subject to the penalties laid down in Article 226-13 of the Penal Code.

### CHAPTER VIII

**Article L128-1**

*(inserted by Act n°2003-699 of 30 July 2003, Article 17, Official Journal of 31 July 2003)*

When an accident occurs in a facility provided for under Title 1 of Book V of the Environment Code and that destroys a number of real properties, the inventory of the technological disaster shall be established by a decision of an administrative authority which shall define the areas and the period of the occurrence of the damage to which apply the provisions of this chapter.

The same provisions shall apply to accidents relating to fret of dangerous materials or caused by the facilities mentioned under Article 3-1 of the Mining Code.

This chapter shall not apply to the nuclear accidents defined by the convention on the public liability on nuclear energy signed in Paris on the 29 July 1960.

A decree in Conseil d'Etat shall define the terms of the application of this Article.

**Article L128-2**

*(inserted by Act n°2003-699 of 30 July 2003, Article 17, Official Journal of 31 July 2003)*

The insurance contracts taken out by any natural person outside his professional activity and covering damage caused by fire or any other damage on property used as dwelling or deposited in premises used as dwelling located in France, as well as damage on hulls of land motor vehicles, shall give rise to a right of cover on behalf of the insured for the damage resulting from technological disasters affecting the object of said contracts.

Said cover shall apply also to contracts taken out by or in favour of syndicates of joint-tenancy and which cover the damage on parts of co-ownership of dwelling buildings of joint-tenancy, and to contracts taken out by organizations stipulated under Article L411-2 of the Code of Construction and Dwelling and which cover damage to dwelling buildings that they own.

Said cover shall guarantee the total compensation of the damage, within the limits, for chattels, of the value declared or the capital insured by the contract.

Except in case of favourable stipulations, the compensation resulting from said cover must be allotted to the insured within a three-month period as from the date of the deposit of the inventory of the damaged property and the damage suffered or the date of publication, where it is done later on, of the administrative decision provided for under Article L128-1.

N.B. Act 2003-699 2003-07-30 Article 81 III: These provisions shall apply to on-going contracts.

**Article L128-3**

*(inserted by Act n°2003-699 of 30 July 2003, Article 17, Official Journal of 31 July 2003)*

The insurance firm acting by virtue of Article L128-2 shall be subrogated to the rights of the compensated insured, up to the amounts paid on that basis.

Any person victim of the damage referred to under Article L128-2 or Article L421-16 shall establish with its insurance firm or insurance fund a description of the damage that he has suffered. The amount of the compensation paid according to Articles cited above shall be stated in the description. Where the amount of the compensation paid to the victim is inferior to the amounts fixed by a decree in Conseil d'Etat, the victim's damage shall be presumed to be the one stated in the description; and the compensation shall be presumed to have covered said damage pursuant to the terms of Articles cited above, even where an assessment by expert has not been done or where the assessment has been done by an expert chosen by the insurer or the guarantee fund. Said presumptions shall be simple ones. In any case, the victim shall keep the amount of the compensations paid to him.

**Article L128-4**

*(inserted by Act n°2003-699 of 30 July 2003, Article 68, Official Journal of 31 July 2003)*

In the areas, as defined in I of article L515-16 of the Environment Code, demarcated by technological risks prevention plan, approved pursuant to the terms provided for under Article L515-22 of same code, the obligation provided for under the first paragraph of Article L128-2 of this Code shall not apply to insurance firms with respect to the properties mentioned in the same article, with the exception, however, of properties existing prior to the publication of the plan.

Neither said obligation should apply to insurance firms with regard to real properties constructed in breach of administrative rules in force at the time of their implementation and intended to prevent the damage caused by a technological disaster.

However, the insurance firms may avoid said obligation only at the moment of the conclusion or renewal of the contract.

**TITLE III****Rules applicable to insurance of persons and to capitalisation transactions****Articles L131-1 to  
L133-1****CHAPTER I****General provisions****Articles L131-1 to  
L131-3**

## INSURANCE CODE

### Article L131-1

*(Act no. 81-5 of 7 January 1981, Article 1, I, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 89-1014 of 31 December 1989, Article 37, II, Article 50, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 22, Official Journal of 17 July 1992)*

In respect of life insurance and personal injury insurance, the sums insured shall be defined by contract.

In respect of life insurance or capitalisation, the capital or annuity insured may be expressed in unit linked terms comprised of investment securities or assets offering adequate protection of the savings invested and appearing on a list drawn up by decree in Conseil d'Etat. The contracting party or the beneficiary shall obtain payment in cash. He may, however, opt for the delivery of securities or shares when they are marketable and do not directly grant the right to vote at the general meeting of shareholders of a company listed on a stock exchange.

### Article L131-2

*(Act no. 92-665 of 16 July 1992, Article 21, Article 23, Official Journal of 17 July 1992)*

In respect of personal injury insurance, the insurer, after payment of the sum insured, may be subrogated in the rights of the contracting party or beneficiary against third parties due to the loss.

However, in contracts covering the compensation of losses as a result of personal injury, the insurer may be subrogated in the rights of the contracting party or assigns against the third party liable for reimbursement of compensatory benefits provided for in the contract.

### Article L131-3

*(Act no. 92-665 of 16 July 1992, Article 21, Article 23, Official Journal of 17 July 1992)*

When the transactions defined in Article 14 of Act no. 72-6 of 3 January 1972 relating to the selling of financial services and insurance transactions are associated with personal injury insurance transactions, the insured, by virtue of his exercising the right of termination provided for in Article 21 of the same Act, shall terminate the cover. The insured shall be entitled, where applicable, to reimbursement of the premium or portion of the premium for the period not covered by the cover.

## CHAPTER II

### Life insurance and capitalisation transactions

Articles L132-1 to  
L132-31

## SECTION I

### General provisions

Articles L132-1 to  
L132-26

### Article L132-1

*(Act no. 81-5 of 7 January 1981, Article 3, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 42, Official Journal of 17 July 1992)*

A person's life may be insured by oneself or by a third party.

Several persons may contract mutual insurance on each other lives in a sole and same instrument.

### Article L132-2

*(Act no. 81-5 of 7 January 1981, Article 3, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 42, Official Journal of 17 July 1992)*

Death benefit insurance contracted by a third party on the life of the insured shall be null and void if the latter has not consented thereto in writing with indication about the amount of the capital or annuity initially covered.

Under pain of nullity, the insured's consent must be given in writing for any assignment or giving of pledge and for the transfer by a third party of the benefit of the contract signed on his life.

### Article L132-3

*(Act n°92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

*(Act n°92-1336 of 16 December 1992, Article 322, Article 323, Official Journal of 23 December 1992 in force on 1 March 1994)*

*(Order n°2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)*

*(Act n°2005-102 of 11 February 2005, Article 85 III, Official Journal of 12 February 2005)*

All persons shall be prohibited from contracting a whole life insurance on a minor below twelve years of age, a person of full age put in wardship or a person placed in a psychiatric hospital.

Any insurance contracted in breach of said prohibition shall be null and void.

The nullity shall be decided at the request of the insurer, policyholder or the representative of the incapable person.

Premiums paid must be returned in full.

The insurer and the policyholder shall also be liable to a fine of €4,500 per insurance policy contracted in deliberate breach of said prohibition.

Said provisions shall not in any way prevent in the case of a death benefit insurance the reimbursement of

## INSURANCE CODE

premiums paid to perform a life insurance contract concluded on the life of one of the persons referred to in the first paragraph above or the reimbursement of premiums paid to perform a survivorship insurance of which one of the persons referred to in the paragraph above is beneficiary.

### Article L132-4

*(Act no. 62-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

A death benefit contract may not be contracted by another person on the life of a minor who has reached twelve years of age, without the authorisation of the parent(s) with parental authority, his tutor or guardian.

Even with such authorisation, the personal consent of the incapable person shall still be required.

For lack of such authorisation and consent, the nullity of the contract shall be declared at the request of any interested person.

### Article L132-5

*(Act no. 81-5 of 7 January 1981, Article 5, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Article 25, Official Journal of 17 July 1992)*

*(Act n°2003-706 of 1 August 2003, Article 85, I 1, Official Journal of 2 August 2003 in force 1 July 2004)*

The life insurance contract and the capitalisation contract must contain clauses that aim, for the security of the parties and the clarity of the contract, to define the purpose of the contract and the respective obligations of the parties, based on information specified by decree in Conseil d'Etat.

The contract shall define the terms of allocation of the technical and financial benefits.

### Article L132-5-1

*(Act no. 81-5 of 7 January 1981, Article 221, II, Official Journal of 8 January 1981, corrigendum Official Journal of the French Republic of 8 February 1981 in force on 1 July 1981)*

*(Act no. 85-608 of 11 June 1985, Article 1, Official Journal of 20 June 1985 in force on 1 January 1986)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Article 26, Article 30, I, IV, Official Journal of 17 July 1992)*

*(Act no. 94-5 of 4 January 1994, Article 7, I, Article 35, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-775 of 21 August 2003, Article 108, XIV 1°, Official Journal of 22 August 2003 in force on 1 January 2004)*

*(Decree n°2004-346 of 21 April 2004, Article 2, Official Journal of 22 April 2004)*

*(Act n°2003-706 of 1 August 2003, Article 85 I 2, Official Journal of 2 August 2003 in force on 1 July 2004)*

Any individual who has signed an insurance offer or a contract shall be entitled to withdraw wherefrom by registered letter with acknowledgement of receipt during a thirty-day period, as from the first payment.

The insurance offer or contract must include a draft letter intended to facilitate the exercise of said right of relinquishment. It shall in particular specify, for the popular retirement account created by Article 108 of Act n°2003-775 of 21 August 2003 relating to retirement reform, the transfer value; or for contracts which contain that, the surrender value as well as, in the same diagram, the amount of premiums or contributions paid at least at the end of each of the eight first years. The insurance or capitalisation firm must also deliver against receipt an information sheet on the main provisions of the contract including, where the contract contains covers stated in unit of accumulation, the main characteristics of the unit of accumulation, on the terms of exercise of the right of relinquishment, and on what happens to the death benefit cover in the event of exercise of said right of relinquishment. The non-delivery of the documents and information listed under the first paragraph shall ipso jure entail the extension of the time limit provided for under the first paragraph up to the thirtieth day following the date of the actual delivery of said documents. A new thirty-day period shall run as from the date of receipt of the contract when it makes reservations or essential changes to the initial offer or as from the written acceptance by the policyholder of said reservations or changes.

The withdrawal shall entail the return by the insurance or capitalisation firm of all sums paid by the contracting party within a maximum of thirty-day period as from the receipt of the registered letter. After said time limit, the sums that have not been returned shall bear interest ipso jure at the legal interest rate, which shall be increased by 50% during two-months, then, upon expiry of said two-month period, it shall be doubled.

The above provisions shall not apply to contracts for a maximum term of two-months. The provisions shall be specified, as required, by ministerial order.

N.B. Decision of the Constitutional court n°2004-196 L of 12 February 2004: Under Article L132-5-1 of this Code, the words "individual retirement account" shall be downgraded and have in the future regulatory nature.

N.B. Decree 2004-346- 02-04-2004, Article 2: The words "individual retirement account" shall be replaced by the words "popular retirement account".

### Article L132-6

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

Life insurance policies may be to order. They may not be bearer policies.

The endorsement of a life insurance policy to order must, under pain of nullity, be dated, state the name of the beneficiary of the endorsement and be signed by the endorser.

### Article L132-7

*(Act no. 81-5 of 7 January 1981, Article 6, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

*(Act no. 98-546 of 2 July 1998, Article 80, Official Journal of 3 July 1998)*

## INSURANCE CODE

The death benefit insurance shall be of no effect if the insured intentionally and knowingly commits suicide during the first year of the contract.

Said provisions shall not apply to the contracts referred to in Article L140-1 contracted by the institutions referred to in the last paragraph of Article L140-6.

### **Article L132-8**

*(Act no. 81-5 of 7 January 1981, Article 7, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

The capital or annuity insured may be payable upon the death of the insured to one or more specific beneficiaries.

A provision, whereby the benefit of the insurance is allocated to one or more persons who, without being named, are sufficiently identified in said provision to be able to be identified at the time of the payability of the capital or annuity insured, shall be deemed to have been stipulated in favour of specific beneficiaries.

The designation of the following beneficiaries shall, in particular, be deemed to satisfy such condition:

- children of the contracting party, insured or any other designated person born or to be born,
- the heirs or assigns of the insured or of a predeceased beneficiary.

Insurance contracted in favour of the spouse shall benefit the person who has such capacity at the time of payability.

The heirs, thus designated, shall be entitled to benefit from the insurance in proportion to their due portion of inheritance. They shall retain such right in the event of waiver of inheritance.

Where no beneficiary is designated in the policy or the beneficiary has not expressed his acceptance of the policy, the contracting party shall be entitled to designate a beneficiary or to substitute one beneficiary for another. Under pain of nullity, such designation or substitution may be made only with the insured's consent when the insured is not the contracting party. Such designation or substitution may be made either by rider to the contract or by carrying out the formalities laid down in Article 1690 of the Civil Code, or by endorsement when the policy is to order or by making a will.

### **Article L132-9**

*(Act no. 81-5 of 7 January 1981, Article 8, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

The provision whereby the benefit of the insurance is allocated to a specific beneficiary becomes irrevocable upon the beneficiary's express or implied acceptance thereof.

As long as there has been no acceptance, the person making the provision shall be solely entitled to revoke said provision, and as a consequence his creditors or legal representatives may not exercise such right during his lifetime.

His heirs may exercise said right of revocation after the death of the person who made the provision only after the payability of the sum insured and at the earliest three months after the beneficiary of the insurance has been served with a formal demand by extra judicial instrument to state whether he accepts the benefit of the insurance.

The allocation, without consideration, of the benefit of life insurance to a specific person shall be presumed to have made on the condition that the beneficiary exists at the time of the payability of the capital or annuity insured, unless the terms of the provision provide otherwise.

### **Article L132-10**

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

Insurance policies may be pledged either by rider or by endorsement as a security, if it is to order, or by instrument subject to the formalities of Article 2075 of the Civil Code.

### **Article L132-11**

*(Act no. 81-5 of 7 January 1981, Article 9, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

When death benefit insurance is contracted without designation of a beneficiary, the capital or rent insured shall be part of the assets or estate of the contracting party.

### **Article L132-12**

*(Act no. 81-5 of 7 January 1981, Article 9, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

The capital or annuity stipulated to be payable upon the insured's death to a specific beneficiary or to his heirs shall not be part of the insured's estate. The beneficiary, regardless of the form and date of his designation, shall be deemed to have been entitled thereto as from the date of the contract, even if his acceptance thereof is subsequent to the insured's death.

### **Article L132-13**

*(Act no. 81-5 of 7 January 1981, Article 9, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

The capital or annuity payable, upon the death of the contracting party, to a predetermined beneficiary shall be subject to neither to the rules applicable to the returning of property to the deceased's estate nor to those applicable to

## INSURANCE CODE

the reduction for undermining the portion of the estate allocated by law to the heirs of the contracting party.

Neither shall said rules apply to sums that the contracting party pays in premiums, unless they have been clearly excessive having regard to his possibilities.

### Article L132-14

*(Act no. 81-5 of 7 January 1981, Article 9, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 85-98 of 25 January 1985, Article 221, II, Official Journal of 26 January 1985 in force on 1 January 1986)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

The contracting party's creditors may not claim the capital or annuity insured in favour of a specific beneficiary. The contracting party's creditors shall be solely entitled to the reimbursement of their premiums, in the case specified in the second paragraph of Article L132-13, pursuant either to Article 1167 of the Civil Code or Articles 107 and 108 of Act no. 85-98 of 25 January 1985 in relation to the judicial rehabilitation or liquidation proceedings of firms.

### Article L132-15

*(Act no. 81-5 of 7 January 1981, Article 10, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

Any beneficiary, after he has accepted the provision made in his favour and if the assignability of said right has been expressly provided for or with the consent of the contracting party or the insured, may himself transfer the benefit of the contract either by an assignment in the form of Article 1690 of the Civil Code or, if the policy is to order, by endorsement.

### Article L132-16

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

The benefit of the insurance contracted by a spouse married under the regime of joint ownership of property comprising all property, present and future, in favour of his/her spouse, shall constitute such spouse's private property.

No award needs to be made to the communal estate by reason of premiums that it has paid, save in the cases specified in the second paragraph of Article L132-13.

### Article L132-17

*(Act no. 81-5 of 7 January 1981, Article 11, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 85-98 of 25 January 1985, Article 221, III, Article 233, Official Journal of 26 January 1985 in force on 1 January 1986)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

Articles 112 and 114 of aforementioned Act no. 85-98 of 25 January 1985 in respect of the rights of the spouse of the debtor affected by judicial rehabilitation proceedings shall not apply in the event of life insurance contracted by that a trader in favour of his/her spouse.

### Article L132-18

*(Act no. 81-5 of 7 January 1981, Article 12, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

In the event of omission or misrepresentation referred to in Article L113-8, if the insured intentionally and knowingly committed suicide during the period referred to in Article L132-7 or when the contract excludes the death benefit insurance for the cause of death, the insurer shall pay the contracting party or, in the event of the insured's death, the beneficiary, a sum equal to the mathematical reserve of the contract.

### Article L132-19

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)*

Any interested party may substitute himself for the contracting party to pay the premiums.

### Article L132-20

*(Act no. 81-5 of 7 January 1981, Article 13, I, II, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 89-1014 of 31 December 1989, Article 52, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 27, I, Article 30, I, Official Journal of 17 July 1992)*

An insurance or a capitalisation firm may not bring an action to demand payment of premiums.

When a premium or part of a premium is not paid within ten days of its due date, the insurer shall send the contracting party a registered letter in which it shall inform the insured that upon expiry of a forty day period as from the date of posting said letter, the non payment to the insurer or its appointed representative of the premium or part of the premium due and any premiums to fall due during said period shall entail either the termination of the contract in the event of the absence or inadequacy of the surrender value or the reduction of the contract.

The posting of the registered letter by the insurer renders the premium payable at the insurer's premises in any event.

Non payment of a contribution owed under a capitalisation contract may be penalised only by the suspension or pure and simple termination of the contract and, in the latter case, the surrender value that said contract has possibly

## INSURANCE CODE

acquired shall be made available to the bearer.

### Article L132-21

*(Act no. 81-5 of 7 January 1981, Article 15, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 85-608 of 11 June 1985, Article 3, Official Journal of 20 June 1985 in force on 1 January 1986)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Article 27, II, Article 30, I, Official Journal of 17 July 1992)*

*(Act n°2003-775 of 21 August 2003, Article 108, XIV 1, Official Journal of 22 August 2003 in force on 1 January 2004)*

The methods of calculating the surrender value or the value of the transfer of the popular retirement account as defined by Article 108 of Act n°2003-775 of 21 August 2003 cited above and, if necessary, the reduction value, shall be determined by a general regulation specified in the policy and drawn up by the insurance or capitalisation firm.

As soon as the contract is signed, the insurance or capitalisation firm shall inform the contracting party that said general regulation is at his disposal upon request. The insurance or capitalisation firm must provide the contracting party, upon his request, with a text of the general regulation.

The insurer may grant the contracting party advances within the limit of the surrender value or the value of the transfer of the popular retirement account as defined by Article 108 of Act n°2003-775 of 21 August 2003 cited above.

The insurance or capitalisation firm must, upon the contracting party's request, pay to the latter the surrender value of the contract within a period not exceeding two-months. After said time limit, the unpaid sums shall bear interest ipso jure at the legal interest rate, which shall be increased by 50% during two-months, then, upon expiry of a two-month period, it shall be doubled.

N.B. Decision of the Constitutional court n°2004-196 of 12 February 2004: Under Article L132-21 of this code, the words "individual retirement account" shall be downgraded and have in the future regulatory nature.

N.B. Decree 2004-346- 2004-04-02, Article 2: The words "individual retirement account" shall be replaced by the words "popular retirement account".

### Article L132-22

*(Act no. 81-5 of 7 January 1981, Article 16, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 85-608 of 11 June 1985, Article 4, I, Official Journal of 20 June 1985 in force on 1 January 1986)*

*(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Article 30, I, II, Official Journal of 17 July 1992)*

*(Act n°2003-775 of 21 August 2003, Article 108 XIV 1, Official Journal of 22 August 2003, in force on 1 January 2004)*

*(Decree n°2004-346 of 21 April 2004, Article 2, Official Journal of 22 April 2004)*

*(Act n°2003-775 of 21 August 2003, Article 108 XIV 1, Official Journal of 22 August 2003, in force on 1 January 2004)*

*(Act n°2003-706 of 1 August 2003, Article 85 II 1, Official Journal of 2 August 2003, in force on 1 August 2004)*

*(Decree n°2004-346 of 21 April 2004, Article 2, Official Journal of 22 April 2004)*

For those contracts whose mathematical reserve is equal or superior to an amount fixed by a decree of the Minister in charge of the Economy, the insurance or capitalisation firm shall notify once a year to the contracting party:

- the amount of surrender value or the value of the transfer of the popular retirement account as defined by Article 108 of Act n°2003-775 of 21 August 2003 cited above;

- when appropriate, the amount of the value of the reduction of his contract;

- the amount of guaranteed capital;

- the premium of the contract.

For said contracts, it (the insurance or capitalisation firm) shall also notify once a year, in accordance with the conditions specified by the order of the Minister in charge of the Economy, to the contracting party:

- the guaranteed yield and participation in the technical and financial benefits of the contract;

- the average rate of yield of the assets held to represent the undertakings by virtue of contracts of the same category;

- and, for the contracts whose guarantees are expressed in unit of accumulation, the values of these units of accumulation, their annual evolution as of the date of the underwriting of the contract and the significant modifications affecting each unit of accumulation.

The amounts may not take into account the participation in the benefits not allotted definitively.

The insurance or capitalisation firm shall indicate in precise and clear terms in the said notification what the surrender, transfer and reduction operations mean and what their legal and contractual consequences are.

For contracts whose mathematical reserve is inferior to the amount defined under the first paragraph and for the contracts or bearer funding-bond, the details defined in this article shall be notified for a given year to the contracting party who requests the same.

The contract shall refer to the obligation to inform provided for under the preceding paragraphs.

N.B. Decision of the Constitutional court n°2004-196 L of 12 February 2004: Under Article L132-22 of this code, the words "individual retirement account" shall be downgraded and have in the future regulatory nature.

N.B. Decree 2004-346 02-04-2004, Article 2: The words "individual retirement account" shall be replaced by the words "popular retirement account".

### Article L132-23

*(Act no. 81-5 of 7 January 1981, Article 18, I, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)*

*(Act no. 85-608 of 11 June 1985, Article 6, I, Official Journal of 20 June 1985 in force on 1 January 1986)*

## INSURANCE CODE

(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Article 29, Article 30, VI, Official Journal of 17 July 1992)

Temporary death benefit insurance and immediate annuities or annuities in the course of service may not include reduction or surrender. Survival capital and contingent survivorship insurance, life insurance without counter insurance and deferred annuities without counter insurance may not include surrender.

Group life insurance contract whose benefits are related to the discontinuation of professional activity shall not include the possibility of surrender. However, said contract must provide for a right of surrender when one or more of the following events occur:

- expiry of the insured's right to unemployment benefit insurance provided for in the Labour Code in the event of dismissal,
- discontinuation of the non wage earning activity of the insured as a result of a judgement in respect of liquidation pursuant to the provisions of Act no. 85-98 of 25 January 1985 relating to the judicial rehabilitation and liquidation of firms,
- disability of the insured corresponding to classification in the second and third categories provided for in Article L341-4 of the Health Insurance Code.

Group life insurance whose benefits are related to the discontinuation of professional activity must include a transferability clause.

In respect of other life insurance, the insurer may refuse the reduction or surrender when 15 per cent of the premiums or contributions provided for in the contract have been paid. The right to surrender or reduction shall be acquired when at least two annual premiums have been paid.

The insurer may of its own motion substitute the surrender for the reduction if the surrender value of the contract is less than an amount defined by decree.

In respect of capitalisation, the insurer may not refuse the surrender when 15 per cent of the premiums or contributions provided for in the contract have been paid. In any event, the right to surrender shall be acquired when at least two annual premiums have been paid.

### Article L132-24

(Act no. 81-5 of 7 January 1981, Article 19, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)

(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)

The insurance contract shall cease to have effect with regard to the beneficiary who has been sentenced by a court for the murder of the insured.

The insurer must pay the contracting party or his assigns the amount of the mathematical reserve unless they have been sentenced by a court as the perpetrators or accomplices to the murder of the insured.

If the beneficiary attempted to murder the insured, the contracting party shall be entitled to revoke allocation of the benefit of the insurance even if the beneficiary has already accepted the clause made in his favour.

### Article L132-25

(Act no. 81-5 of 7 January 1981, Article 20, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)

(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)

When the insurer had no knowledge of the designation of the beneficiary by will or otherwise or of the acceptance of another beneficiary or of the revocation of a designation, payment of the capital or annuity insured to the party who would be entitled thereto, without such designation, acceptance or revocation, shall constitute discharge for the insurer acting in good faith.

### Article L132-26

(Act no. 81-5 of 7 January 1981, Article 21, Official Journal of 8 January 1981, corrigendum, Official Journal of the French Republic of 8 February 1981)

(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)

An error in regard to the age of the insured shall entail the nullity of insurance only when his actual age is outside the limits set for the conclusion of contracts according to the insurer's rates.

In any other event, if, as a result of an error of this type, the premium paid is inferior to what should have been paid, the capital or annuity insured shall be reduced in proportion to the premium paid or that which would have corresponded to the actual age of the insured. If, on the contrary, as a result of an error in regard to the age of the insured, excessive premium has been paid, the insurer shall be bound to return the part of the premium overpaid, without interest.

## SECTION IV

Insurance for the purpose of real property purchase by means of life annuities      Articles L132-30 to L132-31

### Article L132-30

(Act no. 92-665 of 16 July 1992, Article 21, Article 24, Official Journal of 17 July 1992)

(Act no. 94-5 of 4 January 1994, Article 34 V, Official Journal of 5 January 1994 in force on 1 July 1994)

Contracts in respect of real property purchase transactions by means of life annuities shall be governed by the provisions of this Article.

The annuity holders shall individually retain the lien provided for under paragraph 1 of Article 2103 of the Civil Code for the service of their annuities on the assigned building, even if agreed otherwise.

## INSURANCE CODE

If there are heirs in direct line to the annuity holders, the latter may deal with the insurer only after they have been authorised to do so by judgement handed down in court chambers upon an ordinary application.

The estimate of the actual value, in full ownership, of the assigned buildings shall be expressly stated in the annuity contracts and confirmed by an expert, appointed by the tribunal de grande instance of the jurisdiction where the said building are located, to be genuine and real. The certificate signed by the expert shall appear in the contracts.

### Article L132-31

Any concerned party and the public prosecutor may request the nullity of contracts in which one of the requirements of Article L132-30 has not been complied with.

## CHAPTER III

### Access to life or disablement insurance

Article L133-1

### Article L133-1

*(Act no. 2002-303 of 4 March 2002, Article 99 I, Official Journal of 5 March 2002)*

Access to life or disablement insurance is guaranteed according to the terms provided for in the hereafter reproduced Articles L1141-1 to L1144-3 of the Public Health Code:

"Article L1141-1 The firms and organisations, that propose a life or disablement insurance, shall not take into account the results of genetic characteristics of a person who desires to benefit from such insurance policy even when the said results are transmitted to them by that person or with his consent.

In addition, they shall not be allowed neither to ask any questions relating to genetic tests and results, nor to subject a person to pass genetic tests before the conclusion of the contract and during the performance of said contract".

"Article L1141-2 An agreement, relating to insurance of persons exposed to a risk which is aggravated by the state of their health conditions, shall fix the specific terms and conditions of the access to disablement or life insurance in favour of these persons who may not obtain, within the framework of normal insurance market, consumption, mortgage or professional loans.

Any person showing, due to his health situation, an aggravated risk may take advantage of the provisions of the agreement.

The provisions that stipulate the conditions for the collection, utilisation and the warranties for confidentiality of personal medical data, at the moment of subscription of the loans mentioned in the first paragraph, the agreement is subjected to, prior to its signature, a consultation of the National Commission for Data processing and Rights which shall give its opinion on the agreement's conformity with the Act n° 78-17 of January 1978 relating to data processing, files and rights.

In the absence of an agreement or in case of denunciation which shall undermine the implementation or the everlastingness of the agreed scheme, the conditions for the collection, utilisation and the warranties for confidentiality of personal medical data, shall be defined by a decree in Conseil d'Etat, after the opinion given by the National Commission for Data Processing and Rights.

"Article L1141-3 The agreement is concluded between the State, associations representing the sick or the handicapped, organisations representing firms which are regulated by the Insurance Code, loan institutions, mutual insurance companies regulated by the provisions of Title III of Book IX of the Social security Code.

A follow-up committee shall supervise the implementation of the agreed scheme. It is composed of the representatives of the signatories as well as persons chosen for their expertise. A qualified person shall be nominated by Ministers responsible for economy and health to preside over the committee".

## TITLE IV

### Group insurances

Articles L141-1 to  
L142-5

## CHAPTER I

Articles L141-1 to  
L141-7

### Article L141-1

*(inserted by Act no. 2005-842 of 26 July 2005, Article 1 III, Official Journal of 27 July 2005)*

A group insurance contract is a contract contracted by a legal entity or a head of business in view of membership by a group of persons meeting the conditions stipulated in the contract in order to cover risks happening during a lifespan, risks affecting a person's physical integrity or maternity risks, risks of incapacity for work or risks of disability or risk of unemployment.

The members must have a common link with the policyholder.

### Article L141-2

*(inserted by Act n° 2005-842 of 26 July 2005, Article 1 III, Official Journal of 27 July 2005)*

The sums owed by the member to the policyholder for the insurance must be counted separately from those which he may owe him pursuant to another contract.

### Article L141-3

*(inserted by Act n° 2005-842 of 26 July 2005, Article 1 III, Official Journal of 27 July 2005)*

The policyholder may exclude a member from the benefit of the group insurance contract only if the link which units

## INSURANCE CODE

them (the member and the policyholder) is broken or if the member ceases paying the premium.

The exclusion can take effect only after forty days as from the dispatch by the policyholder of a registered letter of formal demand. This letter can be sent only ten days at the earliest after the date on which the sums due must be paid.

At the time of the formal demand, the policyholder shall inform the member that at the expiry of the time-limit provided for in the preceding paragraph, the non-payment of the premium may lead to his exclusion from the contract.

This exclusion cannot avoid, as the case may be, satisfying the established rights of the insured in consideration of the premiums or contributions formerly paid by him.

### **Article L141-4**

*(Act n° 2005-842 of 26 July 2005, Article 1 III, Official Journal of 27 July 2005)*

*(Act n° 2005-1564 of 15 December 2005, Article 10 II, Official Journal of 16 December 2005 in force on 1 January 2006)*

The policyholder must:

- give to the member a note prepared by the insurer which explains the covers and the conditions for entry into force as well as the formalities to be fulfilled in the event of damage;
- inform in writing the members of the modifications made to their rights and obligations, at least three months prior to the date provided for their entry into force.

The burden of proof of the delivery of the note to the member and the information relating to the contractual modifications falls on the shoulders of the policyholder.

The member can terminate his membership owing to these modifications.

However, the right to terminate the membership is not granted to the member when the link which units him with the policyholder makes compulsory his membership to the contract.

Group insurances whose object is to guarantee the refunding of a loan and which are governed by special laws shall not be submitted to the provisions of this article.

### **Article L141-5**

*(inserted by Act n° 2005-842 of 26 July 2005, Article 1 III, Official Journal of 27 July 2005)*

As exception to the provisions of Articles L132-2 and L132-3, the legal representative of a disqualified person can enter, in the latter's name, into a whole life group insurance contract concluded for the performance of a labour agreement or company agreement.

### **Article L141-6**

*(Act n° 2005-842 of 26 July 2005, Article 1 III, Official Journal of 27 July 2005)*

*(Act n° 2005-1564 of 15 December 2005, Article 15, Official Journal of 16 December 2005)*

In the case of group insurance contracts within the meaning of Article L141-1, other than those which are governed by Title I of Act n° 89-1009 of 31 December 1989 reinforcing the guarantees offered to insured persons against certain risks, and in case of collective agreements of capitalization which have the same characteristics as group contracts within the meaning of Article L141-1, the policyholder shall, with respect to membership to the contract and its execution, be deemed to be acting, with regard to the member, the insured and the beneficiary, as a representative of the insurance firm by which the contract was underwritten, except for the acts brought to the knowledge of the member in the manner provided for by an order of the Minister responsible for the Economy and that the policyholder is not entitled to perform. In the event of dissolution or liquidation of the policyholder organization, the contract will continue ipso jure between the insurance firm and the members of the group contract.

This article shall not apply to endowment insurance contracts whose services are related to the discontinuance of professional activity, contracted by a firm or a group of firms for the profit of their employees or by a professional body representing firms for the profit of employees or by an organization representing self-employed professionals or officials of local public bodies for the profit of its members. It does not apply to group contracts entered into by a credit institution whose object is to guarantee the refunding of a loan.

### **Article L141-7**

*(inserted by Act n° 2005-1564 of 15 December 2005, Article 12, Official Journal of 16 December 2005 in force on 16 June 2007)*

The board of directors of policyholder associations of endowment or capitalization group insurance contracts, whose link uniting the member with the policyholder does not make compulsory the membership to the contract, is composed of, for more than half, members who do not hold or who have not held during the two years preceding their appointment any interest nor any mandate in the insurance body that underwrites the group insurance contract, and who do not receive or who have not received during the same period any remuneration from these same organizations or companies.

The members of these contracts shall be ex-officio members of the policyholder association.

They have voting rights at the general meeting and can propose a resolution at the general meeting. A Conseil d'Etat decree shall specify the rights of the members at the general meetings of associations.

## CHAPTER II

Articles L142-1 to  
L142-5

### **Article L142-1**

*(Act n° 2005-842 of 26 July 2005, Article 1 II, Official Journal of 27 July 2005)*

## INSURANCE CODE

(Order no. 2006-344 of 23 March 2006, Article 1, Official Journal of 24 March 2006)

Endowment insurance firms shall be authorized to contract, in the form of group insurance contracts as defined in Article L. 141-1, under the conditions provided for in this Chapter, commitments relating to contracts governed by Chapter III of this Title and commitments in endowment insurances or whole life insurances non-related to the discontinuance of professional activity, except for commitments of temporary whole life insurance, which give rise to a provision intended to absorb the fluctuations of the assets of the contract and on which each member holds an individualized right in the form of shares.

### Article L142-2

(inserted by Act n° 2005-842 of 26 July 2005, Article 1 II, Official Journal of 27 July 2005)

Notwithstanding the provisions of the Commercial Code on corporate accounts, the insurance firm shall draw up, for each contract, a subsidiary account for appropriation.

### Article L142-3

(inserted by Act n° 2005-842 of 26 July 2005, Article 1 II, Official Journal of 27 July 2005)

If the commitments of a contract are inadequately represented (in the accounts), the insurance firm shall complete their representation by way of transfer of assets representative of its reserves or provisions other than those representing its regulated commitments. When the level of the representation of its commitments relating to this contract allows it, the insurance firm shall reallocate assets of the contract for the representation of other reserves or provisions.

### Article L142-4

(Act no. 2005-842 of 26 July 2005, Article 1 II, Official Journal of 27 July 2005)

(Order no. 2006-344 of 23 March 2006, Article 1, Official Journal of March 24 2006)

Without prejudice to the rights of the holders of claims arising from the management of these operations, no creditor of the insurance firm, other than the members, the insured or beneficiaries of the operations dealt with in this chapter, can claim a right on the property and rights resulting from the entry in the accounts established pursuant to Article L142-2, even based on Book VI of the Commercial code, Articles 2101 and 2104 of the Civil code, Articles L. 310-25, L. 326-2 to L. 327-6 and L. 441-8 of the Insurance code, Article L932-24 of the Social Security Code or Article L212-23 of the Mutual Insurance Code.

### Article L142-5

(inserted by Order no. 2006-344 of 23 March 2006, Article 1, Official Journal of 24 March 2006)

A Conseil d'Etat decree shall specify the technical rules as well as the conditions for the application of this chapter, in particular the cases where, notwithstanding Article L132-23, contracts are or are not redeemable or transferable.

## TITLE VII

### Marine insurance contract and inland waterway and lake insurance

Articles L171-1 to  
L174-6

#### CHAPTER I

##### General provisions

Articles L171-1 to  
L171-6

### Article L171-1

(Act no. 92-665 of 16 July 1992, Article 37, I, II, Official Journal of 17 July 1992)

This title shall govern all insurance contracts covering risks in respect of a marine transaction.

Save for Articles L172-5, L172-11, L172-17, L172-26, L173-7, L173-13 (paragraph 4) and L173-21 (paragraph 2), the provisions of this title shall govern inland waterway and lake navigation insurance contracts.

### Article L171-2

(Decree no. 85-863 of 2 August 1985, Article 2, I, Official Journal of 15 August 1985)

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The parties to the contract may not depart from the provisions of Articles L171-3, L172-2, L173-3, L172-6, L172-8, L172-9 (1st paragraph), L172-13 (2nd paragraph), L172-17, L172-20, L172-21, L172-22, L172-28 and L172-31.

### Article L171-3

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

All legitimate interests, including the profit hoped for may be covered by insurance.

No-one may claim the benefit of insurance if he has not sustained a loss.

### Article L171-4

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

Insurance may be contracted either on behalf of the policyholder or on behalf of a specific person or on behalf of whom it may concern.

The declaration that the insurance has been contracted on behalf of whom it may concern shall be valid as insurance in favour of the policyholder and as a provision in favour of a third party in favour of the beneficiary of said clause.

### Article L171-5

## INSURANCE CODE

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

This title shall not apply to insurance contracts whose aim is to cover risks relating to yachting.

Said contracts shall be governed by the provisions of titles I, II and III of this Book. However, the provisions of Article L124-3 shall not preclude application of rules relating to the allocation of the insurance compensation to the establishment of the limitation fund as provided for in Articles L173-23 and L173-24

### Article L171-6

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

This title shall apply to French overseas territories and to the collectivité territoriale of Mayotte.

Nota bene – Article 75 of Act 2001-616 of 11 July 2001: In all legislative and regulatory texts in force in Mayotte, reference to the “collectivité territoriale of Mayotte” shall be replaced by reference to “Mayotte” and reference to the “collectivité territoriale ” shall be replaced by reference to the “collectivité départementale ”.

## CHAPTER II

Rules applicable to various marine insurance

Articles L172-1 to  
L172-31

### SECTION I

Execution of the contract

Articles L172-1 to  
L172-10

### Article L172-1

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Legal consequence shall not ensue from the insurance contract when the risks have not begun within two months of the parties' agreement or the date set for attachment.

Said provision shall not apply to open policies for the first risk only.

### Article L172-2

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Any omission or false statement by the insured, that is liable to substantially decrease the insurer's assessment of the risk whether or not it has had an effect on the damage or loss of the insured property, shall nullify the insurance at the insurer's request.

However, save for the cases where the insurer proves that it would not have covered the risks if it had known of them, if the insured proves his good faith, the insurer shall cover the risk in proportion to the premium paid compared to that it should have been paid, unless there is a more favourable provision in favour of the insured.

The insurer shall be entitled to the premium in the event of the insured's fraud.

### Article L172-3

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Any modification of pending contract either of what has been agreed upon at the moment of its formation or of the insured property, from which results a substantial increase of the risk, shall entail the termination of the insurance if it has not been notified to the insurer within three days of the insured having had knowledge thereof, exclusive of public holidays, unless the insured proves its good faith, in which case the provisions of the second paragraph of Article L172-2 shall apply.

If such increase is not attributable to the insured, the insurance shall continue in consideration of an increase in premium corresponding to the increase of risk.

If the increase is attributable to the insured, the insurer may either terminate the contract within three days as from the moment it has had knowledge thereof besides the premium to which it is entitled or demand that the premium corresponding to the increase of risk be increased.

### Article L172-4

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Any insurance contracted after the loss or the arrival of the insured property or the carrier ship shall be null and void if the news thereof was known, prior to the conclusion of the contract, at the place where it was signed or at the place of the insured's or insurer's place of residence.

### Article L172-5

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Lost or not lost insurance shall be null and void if it is proved, prior to the conclusion of the contract, that the insured had personal knowledge of the loss or the insurer had knowledge of the arrival of the insured property.

### Article L172-6

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

If the insurer proves that the insured or his representative acted fraudulently, the insurance contracted for a sum in excess of the actual value of the insured property shall be null and void and it shall be entitled to the premium.

The same shall apply if the insured value is an agreed value.

### Article L172-7

## INSURANCE CODE

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Where there is no fraud, the contract shall be valid within the limit of the actual value of the insured property and, if the value has been agreed, for the entire sum insured.

### **Article L172-8**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Overlapping insurance for a total sum in excess of the value of the insured property shall be null and void if they were contracted with intent to fraud.

### **Article L172-9**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Overlapping insurance contracted without fraud for a total sum in excess of value of the insured property shall be valid only if the insured informs the insurer from whom it requests payment.

Legal consequence shall ensue from each of them in proportion to the sum to which it is applied within the limit of the entire value of the insured property.

### **Article L172-10**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Unless the value has been agreed, when the sum insured is inferior to the actual value of the insured property, the insured shall be its own insurer for the difference.

## SECTION II

Obligations of the insurer and the insured

Articles L172-11 to  
L172-23

### **Article L172-11**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The insurer shall be liable for material damage caused to the insured property by any perils of the sea by act of God.

The insurer shall also be liable:

1 for the contribution of the insured property to the general average, unless it ensues from a risk excluded by the insurance,

2 for costs incurred as a result of a risk covered to protect the insured property from material damage or to limit the damage.

### **Article L172-12**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The clause "free of average" shall free the insurer from all averages whether common or special, apart from the cases that give rise to abandonment: in this case, the insured may choose between the abandonment and the action for damage.

### **Article L172-13**

*(Decree no. 85-863 of 2 August 1985, Article 2, II, Official Journal of 15 August 1985)*

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The risks insured shall be covered even in the event of the fault of the insured or his employees on land, unless the insurer proves that the damage was caused by the insured's lack of reasonable care in sheltering the property from the risks that occurred.

The insurer shall not be liable for the wilful or criminal negligence of the insured.

### **Article L172-14**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The risks shall be covered on the same terms in the event of fault of the captain or crew, apart from that stated in Article L173-5.

### **Article L172-15**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The risks insured shall be covered even in the event of forced change of route, voyage or ship or in the event of change decided by the captain not involving the ship owner and the insured.

### **Article L172-16**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The insurer shall not cover the risks of:

- a) civil or foreign war, mines and any engines of war,
- b) piracy,
- c) capture, seizure or holding by any governments or authorities whatsoever,
- d) riots, civil commotion, strikes and lock out, acts of sabotage or terrorist attacks,
- e) damage caused by the insured property to other property or persons, apart from that stated in Article L173-8,
- f) losses attributable to the direct or indirect effects of explosion, emission of heat, irradiation from the transmutation of atom nuclei or radioactivity as well as losses attributable to the effects of radiation caused by artificial particle

INSURANCE CODE  
acceleration.

**Article L172-17**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

When it is not possible to prove that the loss was caused by a risk of war or an event at sea, it shall be deemed to have been caused by an event at sea.

**Article L172-18**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The insurer shall not cover:

- a) material damage and loss caused by an inherent defect in the insured property, apart from that stated in Article L173-4 in respect of a hidden defect in the ship,
- b) material damage and loss as a result of fines, confiscation, impoundment, requisitions, health or disinfection measures or measures as a result of the violation of blockades, smuggling, or prohibited or illicit trading,
- c) compensation or other indemnities by reason of any attachments or securities given to release the attached property,
- d) losses that do not constitute material damage and losses directly affecting the insured property, such as laying up, delay, difference in price, impediment to the insured's business.

**Article L172-19**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The insured must:

- 1 pay the premium and charges, at the agreed place and times,
- 2 take reasonable care in all matters relating to the ship or goods,
- 3 truthfully declare, at the time of conclusion of the contract, all circumstances known to him that are liable to have an impact on the insurer's assessment of the risk that it covers,
- 4 disclose to the insurer, to the extent of his knowledge thereof, the increase of risk occurring during the pending contract.

**Article L172-20**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event of non payment of a premium, the insurer may either suspend the insurance or demand the termination thereof.

The suspension or termination shall take effect eight days only after the insured has been sent a formal demand to pay by registered letter to his last address known to the insurer.

**Article L172-21**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The suspension and termination of the insurance by reason of non payment of a premium shall be without effect towards third parties in good faith, beneficiaries of the insurance by virtue of a transfer prior to notice of suspension or termination.

In the event of loss, the insurer, by means of an express clause in the documentary rider, may demand that said beneficiaries pay the premium on the insurance whose benefit they claim, within the limit of the amount.

**Article L172-22**

*(Act no. 89-1014 of 31 December 1989, Article 36, II, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event of the judicial rehabilitation or liquidation of the insured, the insurer may, if the default notice is not followed by payment, terminate the policy in progress, but the termination shall be without effect towards the third party in good faith, beneficiary of the insurance, by virtue of a transfer prior to any loss and to notice of the termination.

In the event of withdrawal of licence, or the judicial rehabilitation or liquidation of the insurer, the insured shall have the same rights.

**Article L172-23**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The insured must help to salvage insured property and take all protective measures of his rights against third parties liable.

He shall be liable to the insurer for damage caused by the non performance of said obligation, which is attributable to his fault or negligence.

SECTION III

Settlement of the claim

Articles L172-24 to  
L172-31

**Article L172-24**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Damage and loss shall be settled by adjustment of average, save the insured's right to opt for abandonment in the cases determined by law or by agreement.

## INSURANCE CODE

### Article L172-25

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The insurer may not be compelled to repair or replace the insured property.

### Article L172-26

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The insurer shall reimburse the general average contribution, whether it is provisional or definitive, as well as the costs of assistance and salvage in proportion to the value that it insured, less, where applicable, any particular average payable by it.

### Article L172-27

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The abandonement may be neither partial nor conditional.

This transfers the rights of the insured, on the insured property, to the insurer on condition that he meets the entire sum insured and the effects of the transfer shall date back, between the parties, to the moment where the insured has notified the insurer about his will to abandon.

### Article L172-28

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The insured who makes in bad faith a false statement in respect of the loss shall forfeit his right to benefit from the insurance.

### Article L172-29

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The insurer who paid the insurance compensation shall be entitled, within the limit of its payment, to all of the insured's rights in respect of damage that gave rise to cover.

### Article L172-30

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

If several insurers cover a same risk, each shall be bound only in proportion to the sum that it insured, without joint and several liability with the others. Such proportion shall constitute the limit of its obligation.

### Article L172-31

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

Legal actions arising under the insurance contract shall be subject to a two year limitation period. The limitation period shall run in respect of minors and other incapable persons.

## CHAPTER III

### Rules specific to various marine insurance

Articles L173-1 to  
L173-26

## SECTION I

### Hull insurance

Articles L173-1 to  
L173-16

### Article L173-1

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

Ship insurance shall be contracted either for a voyage or for several consecutive voyages, or for a fixed term.

### Article L173-2

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

In respect of insurance per voyage, the cover shall be effective as from the start of loading operations until the end of unloading operations, and two weeks or a fortnight after the ship's arrival at destination at the latest.

In the event of a ballast voyage, the cover shall be effective as from the time the ship starts its voyage until the mooring of the ship upon its arrival.

### Article L173-3

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

In time insurance, the risks of the first and last day shall be covered by the insurance. Days shall be reckoned by twenty four hour system, based on the time of the country where the policy was issued.

### Article L173-4

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The insurer shall not cover damage and loss caused by an inherent defect in the ship, unless it is a hidden defect.

### Article L173-5

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

The insurer shall not cover damage and loss caused by the captain's wilful negligence.

### Article L173-6

(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)

## INSURANCE CODE

When the insured value of the ship is an agreed value, the parties refrain mutually from making any other estimate, subject to the provisions of Articles L172-6 to L172-26.

### **Article L173-7**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Under pain of nullity, insurance on safe arrival may be contracted only with the agreement of the ship's insurers.

When a sum is insured in this respect, the insurable interest is evidenced by acceptance of the sum thus covered.

The insurer shall be liable only in the events of total loss or abandonment of the ship as a result of a risk covered by the policy. It has no right to the abandoned property.

### **Article L173-8**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Apart from personal injury, the insurer shall cover the reimbursement of damage of any kind that the insured is liable for following third party recourse in the event of collision by the insured ship or said ship's impact against a building, floating, mobile or fixed objects.

### **Article L173-9**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of insurance per voyage or for several consecutive voyages, the insurer shall be entitled to the entire premium as soon as the risks have begun to take effect.

### **Article L173-10**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of time insurance, the premium stipulated for the entire cover period shall be earned in the event of total loss or abandonment covered by the insurer. If the insurer is not liable for the total loss or abandonment, it shall earn the premium in relation to the time expired up to the total loss or notice of the abandonment.

### **Article L173-11**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In respect of average adjustment, the insurer shall only reimburse the costs of replacements and repairs acknowledged to be necessary to make the ship seaworthy again, to the exclusion of any other compensation for depreciation or laying up, or any other ground whatsoever.

### **Article L173-12**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Whatever the number of events occurring during the term of the policy, the insured shall be covered for each event within the limit of the capital insured, save for the insurer's right to request a surcharge after each event.

### **Article L173-13**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The ship may be abandoned in the following cases:

- 1 total loss,
- 2 repairs liable to reach three quarters of the agreed value,
- 3 it is beyond repair,
- 4 no news for more than three months; the loss shall be deemed to have occurred on the date of the last news.

### **Article L173-14**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event of transfer or bare hull chartering of the ship, the insurance shall continue ipso jure in favour of the new owner or charterer, with the onus on him to inform thereof the insurer within ten days and to fulfil all of the insured's obligations with regard to the insurer under the contract.

However, the insurer shall be free to terminate the contract within one month of the day on which it received notice of the transfer or chartering. Said termination shall take effect only two weeks or a fortnight after notice thereof.

The transferor or the charterer shall be liable for payment of premiums due prior to the transfer or chartering.

### **Article L173-15**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The mere transfer of the majority of the shares of a ship in shared ownership shall entail application of Article L173-14.

### **Article L173-16**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The provisions of this section shall also apply to insurance contracts for the ship that is insured only for the term of its stay in ports, harbours or other places, whether it is afloat or in dry dock.

They shall apply to ships under construction.

## SECTION II

## Cargo insurance

Articles L173-17 to  
L173-22

## INSURANCE CODE

### **Article L173-17**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Goods shall be insured either under a policy which is effective only for a voyage or under a floating policy.

### **Article L173-18**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Goods shall be insured on a continuous basis, regardless of where they are located, within the limit of the voyage defined under the policy.

### **Article L173-19**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

When a part of the voyage is made over land, on inland waterways or by air, the rules of marine insurance shall apply to the entire voyage.

### **Article L173-20**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Cargo may be abandoned if the goods are:

- 1 totally lost,
- 2 lost or damage for amount of three quarters of their value,
- 3 sold by reason of material damage in transit to insured property caused by a risk that is covered.

### **Article L173-21**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Cargo may also be abandoned in the event:

- 1 of the unseaworthiness of the ship and if the dispatching of goods, regardless of the means of transportation, could not start within three months,
- 2 of lack of news of the ship for more than three months.

### **Article L173-22**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In case the insured that contracted the floating policy has not complied with the obligations provided for by decree, the contract may be terminated forthwith upon the insurer's request besides his right to premiums for non disclosed shipments.

If the insured acted in bad faith, the insurer may exercise the right to take action to recover payments that it made for the losses in respect of shipments subsequent to the first wilful omission by the insured.

## SECTION III

### Liability insurance

Articles L173-23 to  
L173-26

### **Article L173-23**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

The insured shall be entitled to reimbursement under liability insurance only if the wronged third party has been compensated and to the extent thereof, unless the insurance compensation is allocated to form the limitation fund pursuant to the terms of Article 62 of Act no. 67-5 of 3 January 1967 outlining the status of ships and other seagoing vessels.

### **Article L173-24**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

In the event a limitation fund is formed, the creditors whose right is subject to limitation pursuant to the terms of Articles 58 to 60 of Act no. 67-5 of 3 January 1967 outlining the status of ships and other seagoing vessels, shall have no right of legal action against the insurer.

### **Article L173-25**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Legal consequence shall ensue from liability insurance for the purpose of compensating losses that the ship caused to third parties, which are covered by the terms of Article L173-8, only in the event of the inadequacy of the sum insured under the hull policy.

### **Article L173-26**

*(Act no. 92-665 of 16 July 1992, Article 37, II, Official Journal of 17 July 1992)*

Whatever the number of events occurring during the term of the liability insurance, the sum insured by each insurer shall constitute the limit of its agreement for each event.

## CHAPTER IV

### Rules specific to various inland waterway and lake navigation insurance

Articles L174-1 to  
L174-6

## SECTION I

## INSURANCE CODE

### Hull insurance

Articles L174-1 to  
L174-3

#### **Article L174-1**

*(inserted by Act no. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The hull insurance shall cover the losses and material damage to the boat and its insured appurtenances caused by all shipping accidents or acts of God, save for formal and limited exclusions provided for in the insurance contract.

#### **Article L174-2**

*(inserted by Act no. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The insurer shall not cover losses and damage when the boat undertakes a voyage in a state that renders it unsuitable for shipping or it is inadequately equipped.

Similarly, it shall not cover losses and damage as a result of the normal wear and tear of the boat or its ageing.

#### **Article L174-3**

*(inserted by Act no. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The insurer shall be answerable for the contribution of the insured property to the general average. Similarly, when the insured owns all of the goods on board, the insurer shall cover losses that would have formed a general average if the goods had belonged to a third party.

## SECTION II

### Cargo insurance

Articles L174-4 to  
L174-5

#### **Article L174-4**

*(inserted by Act no. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

Cargo insurance shall cover losses and material damage caused to goods by all shipping accidents or acts of God, save for formal and limited exclusions provided for in the insurance contract.

#### **Article L174-5**

*(inserted by Act no. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The insurer shall not be liable for damage or loss that the consignor or consignee, as such, caused by wilful or criminal negligence.

It shall not be liable for damage caused by an inherent defect in the goods, due to internal deterioration, decline, wastage, lack of packaging or defect in packaging, leakage in transit or on account of rodents. However, the insurer shall cover damage caused by delay when the voyage has been abnormally delayed by an event for which it is answerable.

## SECTION III

### Liability insurance

Article L174-6

#### **Article L174-6**

*(inserted by Act no. 92-665 of 16 July 1992, Article 37, III, Official Journal of 17 July 1992)*

The insurer may not pay all or part of the sum owed to any one other than the wronged third party as long as said third party has not received settlement within the limit of said amount for the pecuniary consequences of the tort that entailed the insured's liability.

## TITLE VIII

**Applicable law to insurance contracts for risks located on the territory of one or more States party to the European Economic Space Agreement and for the agreements made therein** **Articles L181-1 to L183-2**

### CHAPTER I

#### Non compulsory insurance against damage

Articles L181-1 to  
L181-4

#### **Article L181-1**

*(Act no. 89-1014 of 31 December 1989, Article 2, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 17, I, II, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 7, II, Article 36, Official Journal of 5 January 1994 in force on 1 July 1994)*

1 When the risk falls within the meaning of Article L310-4 in France and the policyholder has his main residence or its head office in France, French law shall apply to the exclusion of any other law.

2 When the risk falls within the meaning of Article L310-4 in France and the policyholder does not have his main residence or head office in France, the parties to the contract may choose to apply either French law or the law of the country where the policyholder has his main residence or head office.

Similarly, when the policyholder has his main residence or head office in France and the risk does not fall within the meaning of Article L310-4, the parties to the insurance contract may choose to apply French law or the law of the country where the risk is located.

## INSURANCE CODE

3 When the policyholder carries on a commercial, industrial or professional activity and the contract covers two or more risks relating to said activities located in France and in one or more other member States of the European Economic Space, the parties to the contract may choose the law of one of the States where said risks are located or that of the country where the policyholder has its main residence or head office.

4 When the cover of risks located in the State or States referred to in 1, 2 and 3 above is limited to losses that may occur in another member State of the European Economic Space, the parties to the insurance contract may choose the law of the State where the loss occurs.

5 In respect of major risks as defined in Article L111-6, the parties shall be free to choose the law applicable to the contract.

However, the choice by the parties of a law other than French law may not, when all factors of the contract are located at the time of said choice in France, preclude the application of laws and regulations that may not pursuant to Article L111-2 be departed from by contract.

### Article L181-2

*(Act no. 89-1014 of 31 December 1989, Article 2, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 17, I, II, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 36, I, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

When the parties have to choose the applicable law in one of the cases referred to in Article L181-1, said choice shall be express or result with certainty from the clauses of the contract or the circumstances of the cause.

Want of choice, the contract shall be governed by the law, amongst the States taken into account in the previous article, of the State with which it has the closest links. The contract shall be presumed to have the closest links with the member State of the European Economic Space where the risk is located. If a part of the contract is separable from the remainder of the contract and has a closest link with one other country of those taken into account, in accordance with the previous article, the law of said other country may be applied to such part of the contract.

### Article L181-3

*(Act no. 89-1014 of 31 December 1989, Article 2, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 17, I, II, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 36, I, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

Articles L181-1 and L181-2 may not preclude public policy provisions of French law, which shall be applicable regardless of the law that governs the contract.

However, the court may give effect in France to public policy provisions of the law of a member State of the European Economic Space where the risk is located or that of a member State that imposes the obligation to insurance, if, according to the law of said countries, said provisions are applicable regardless of the law that governs the contract.

When the contract covers risks located in several member State of the European Economic Space, the contract shall be deemed, for the application of this Article, to constitute several contracts, each one of which relates to one State only.

### Article L181-4

*(Act no. 89-1014 of 31 December 1989, Article 2, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 17, I, II, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 36, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Subject to the provisions of Articles L181-1 to L181-3 and for the remainder, the general rules of private international law in respect of contractual obligations shall apply.

## CHAPTER II

### Compulsory insurance against damage

Article L182-1

### Article L182-1

*(Act no. 89-1014 of 31 December 1989, Article 2, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 17, I, III, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 36, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Contracts drawn up in order to comply with an obligation to insure imposed by a French law shall be governed by French law.

## CHAPTER III

### Life insurance and capitalisation

Articles L183-1 to

L183-2

### Article L183-1

*(Act no. 92-665 of 16 July 1992, Article 17, IV, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 7, III, Article 36, I, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

When the agreement is made in France within the meaning of Article L310-5, the contract shall be governed by French law, to the exclusion of any law.

However, if the policyholder is an individual and national of another member State of the European Economic State, the parties to the insurance contract may choose to apply either French law or the law of the State of which the policyholder is a national.

## INSURANCE CODE

### Article L183-2

*(Act no. 92-665 of 16 July 1992, Article 17, IV, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 36, I, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of Article L183-1 may not preclude public policy provisions of French law, which shall apply regardless of the law that governs the contract.

However, the court may give effect in France to public policy provisions of the law of the member State of the agreement was made if the law of said State provides that said provisions shall be applicable regardless of the law that governs the contract.

## TITLE IX

### Provisions specific to the Départements of of Bas-Rhin, Haut-Rhin and the Moselle Articles L191-1 to L191-7

#### CHAPTER I

##### General provisions

Articles L191-1 to L191-7

### Article L191-1

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

The insurance code shall govern risks located in the départements of Bas-Rhin, Haut-Rhin and the Moselle, subject to the provisions set forth hereinafter.

### Article L191-2

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

The risk shall be deemed to be located in said départements:

1 if the property is located in said départements when the insurance relates either to real property or to real property and its contents,

2 when the contract was signed in said départements,

3 when it relates to a contract for a term less than or equal to four months in respect of risks incurred during a trip, regardless of the branch in question,

4 in all cases other than those referred to above, if the policyholder has its main residence in said départements or, if the policyholder is a legal entity, the establishment of said legal entity covered by the contract is located in said départements.

### Article L191-3

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

Save for the requirements that grant the parties a simple right, which are set forth in Articles L191-7, L192-2 and L192-3, the requirements of this title may not be amended by agreement.

### Article L191-4

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

There shall be no need for termination or reduction pursuant to Article L113-9 if the insurer knew of the risk that had been concealed or distorted or if it did not change the scope of its obligations or if it had no impact on the occurrence of the loss.

### Article L191-5

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

In the event the insured breaches one of his obligations after the occurrence of the loss, the insurer shall forfeit his rights only in the event of his gross misconduct or wilful breach.

### Article L191-6

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

Each party shall be entitled to terminate the contract, after the occurrence of the loss, within one month following the conclusion of negotiations in respect of the compensation.

The insurer must give one month's notice. It shall return the part of the premium paid in advance for the period during which the risk was not incurred. Such time limit shall be calculated as from the effective date of termination.

### Article L191-7

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

Without prejudice to the provisions of Articles L211-17 and L242-1, the compensation owed to the insured shall bear interest at the legal interest rate as from the expiry of the month following the report of the loss.

If the loss has still not been completely assessed on said date, the insured may request payment of a provision equal to the amount of the loss that has already been proved.

The time limit shall not run insofar as the valuation of the loss is delayed through the insured's fault.

## BOOK II

### Compulsory insurance

Articles L211-1 to L252-2

**TITLE I****Motor vehicle, trailer or semi-trailer insurance****Articles L211-1 to  
L214-3****CHAPTER I****The duty of the insurer****Articles L211-1 to  
L211-27****SECTION I****Persons liable****Articles L211-1 to  
L211-2****Article L211-1***(Act no.81-5 of 7 January 1981, Article 2-i, Official Journal of 8 January 1981 in force on 1 July 1981)**(Act no. 85-677 of 5 July 1985, Article 7 and 8, Official Journal of 6 July 1985 in force on 1 January 1986)**(Act no. 89-1014 of 31 December 1989, Article 50, Official Journal of 3 January 1990 in force on 1 July 1990)**(Act no. 93-1444 of 31 December 1993, Article 18, Official Journal of 5 January 1994)**(Act no. 99-505 of 18 June 1999, Article 5, Official Journal of 19 June 1999)*

Any individual or legal entity other than the State, whose public liability may be incurred due to damage sustained by third parties as a result of personal injury or material damage, during the occurrence of which a motor vehicle as well as its trailers or semi-trailers is involved must, to drive such vehicles, be covered by insurance covering such liability in accordance under the terms defined by decree in Conseil d'Etat.

Insurance contracts covering the liability referred to in the first paragraph of this article must also cover the public liability of any person who has custody of the vehicle or who drives the vehicle, even if not so authorised, with the exception of professionals involved in the repair, sale and inspection of the car, as well as the public liability of passengers of the vehicle covered by insurance. However, in the event of the theft of a vehicle, said contracts shall not cover compensation for losses sustained by the perpetrators, co-perpetrators or accomplices.

The insurer shall be subrogated in the creditor of the compensation's rights against the person liable for the accident when the custody of the vehicle was obtained or when the vehicle was driven against the owner's will.

Said contracts must be contracted with an insurance firm that it is authorised to provide motoring accident insurance.

The members of the driver's or the insured's family as well as the pupils of an authorised motor driving school during training or examination shall be deemed to be third parties within the meaning of the first paragraph of this Article.

**Article L211-2**

The provisions of Article L211-1 shall not apply to damage caused by railways and tramways.

**SECTION II****Scope of compulsory insurance****Articles L211-4 to  
L211-7****Article L211-4***(Act no. 91-716 of 26 July 1991, Article 1, II, Official Journal of 27 July 1991 in force on 20 November 1992)**(Act no. 94-5 of 4 January 1994, Article 40, I, Official Journal of 5 January 1994)*

The insurance provided for in Article L211-1 must include cover of public liability extending to all of the territories of the member States of the European Community as well as to the territories of all third party States in respect of which the national offices of all of the member States of the European Community shall individually guarantee settlement of the accidents occurring on their territory and caused by the traffic of vehicles that are normally parked in said third party State. The insurer shall grant such cover, when it is applicable outside France, within the limits and terms of the national law of the State on whose territory the accident occurred or by that of the State where the vehicle is normally parked when the insurance cover is more favourable there.

Said insurance must also include a public liability cover in the event of an accident occurring during the journey directly between two territories where the treaty establishing the European Economic Community is applicable, when there is no national insurance office for the territory crossed.

In such case, the insurer shall be bound only to cover the harm that nationals of the States referred to in the first paragraph of this Article may suffer, in accordance with the terms of the national law in respect of the insurance obligation in force in the State where the vehicle that caused the accident is normally parked.

The State where the vehicle is normally parked shall be either the State where the vehicle is registered or, failing an obligation to register, the State on whose territory the person with custody of the vehicle has a place of residence.

**Article L211-5**

The decree in Conseil d'Etat referred to in Article L211-1 defines the terms for the application of this title, and in particular, the scope of the insurance contract's cover, the methods of drawing up supporting documents and validity thereof provided in order to exercise powers of control as well as the obligations imposed on users of vehicles in international traffic in possession of a national letter other than the French letter.

Notwithstanding any clauses to the contrary, any insurance contract signed by a person subject to the obligation

## INSURANCE CODE

established under Article L211-1 shall be deemed to include covers that are at least equivalent to those defined by the decree in Conseil d'Etat provided for in the previous paragraph.

### Article L211-6

*(Act no. 2003-87 of 3 February 2003, Article 2, Official Journal of 4 February 2003)*

Shall be deemed non written any clause that stipulates the forfeiture of the insured's cover in the event of a conviction for drunken driving, driving under the influence of alcohol or driving after the consumption of substances or plants classified as narcotics.

### Article L211-7

The provisions of this title shall not affect the regulatory requirements in force insofar as said requirements relate to different risks or impose wider obligations.

## SECTION VI

### Compensation procedures

Articles L211-8 to  
L211-25

### Article L211-8

*(Decree no. 88-260 of 18 March 1988, article 2, Official Journal of 20 March 1988)*

With the exception of railways and tramways running on dedicated tracks, the provisions of this section shall apply even when they are transported under a contract to the victims of a traffic accident in which a motor vehicle and its trailers or semi-trailers are involved.

### Article L211-9

*(Act n°2003-706 of 1 August 2003, Article 83 I, Official Journal of 2 August 2003)*

Irrespective of the nature of the damage, where the liability is not disputed and the damage has been fully quantified, the insurer who covers public liability resulting from a motor vehicle accident shall be bound to make a reasoned offer of compensation to the victim within three-months at most as from the accident. Where the liability is disputed or is not clearly established, or where the damage is not fully quantified, the insurer must, within the same time limit, give a reasoned response on the items raised in the petition.

An offer of compensation must be made to the victim who has sustained a physical injury within an eight-month period as of the date of the accident. If the victim dies, the offer shall be made to his heirs and, where applicable, to his/her spouse. The offer shall include all compensable items of the damage, including the items related to material damage, when they have not been the subject of prior settlement.

The offer may be of a provisional one where the insurer has not been informed, within three-months as of the accident, of the stabilisation of the victim's condition. The final offer of compensation must then be made within five-months following the date on which the insurer was informed of said stabilisation.

In any event, the most favourable time limit for the victim shall apply.

In the event more than one vehicle is involved and if there are several insurers, the offer shall be made by the insurer acting on behalf of the other insurers.

### Article L211-10

*(Act n°2003-706 of 1 August 2003, Article 83 II, Official Journal of 2 August 2003)*

At the time of its first correspondence with the victim, the insurer must, under pain of nullity of the settlement that may be made, inform the victim that he may be, upon a simple request, provided with a copy of the police report or that of the gendarmerie, and remind him that he may be assisted by a lawyer, and in the event of a medical check-up, by a doctor of his free choice.

Subject to the same penalty, this correspondence shall inform the victim of the provisions of the third paragraph of Article L211-9 and those of Article L211-12.

### Article L211-11

*(Act n°2003-1199 of 18 December 2003, Article 8 III, Official Journal of 19 December 2003)*

As the insurer, without committing any wrong, was not able to know that the accident had imposed outlays on third party payers referred to under Article 29 of Act no. 85-677 of 5 July 1985 and under Article L211-25, said third party payers shall lose all right to repayment against it and against the person liable for the damage. However, the insurer may not plead such ignorance with regard to institutions paying social security benefits.

In any event, if third party payers fail to produce their claims within four-months as of the request made by the insurer, they shall forfeit their rights against the insurer and the person liable for the damage.

In the event that the claim made by the insurer fails to refer to the stabilisation of the victim's condition, claims produced by the third party payers shall be of provisional nature. This shall be the case where social benefits are paid after the opinion of the committee of special education at the Département level or that of the technical committee for the orientation and vocational rehabilitation.

### Article L211-12

When the third party payers have been unable on account of the victim to exercise their rights against the insurer, they shall have recourse against the victim within the limit of the compensation that he received from the insurer by way of the same ground of damage and within the limits provided for in Article 31 of Act no. 85-677 of 5 July 1985. They must act within two years as from the claim for payment of the benefits.

## INSURANCE CODE

### **Article L211-13**

When the offer has not been within the time limit prescribed by Article L211-9, the amount of the compensation offered by the insurer or awarded by the court to the victim shall bear interest ipso jure at double the legal interest rate as from the expiry of the time limit and until the date of the offer or the final judgement. This penalty can be reduced by the court for circumstances not attributable to the insurer.

### **Article L211-14**

If the court that sets the amount of the compensation considers that the insurer's offer was clearly inadequate, it shall order the insured, on its own motion, to pay a sum equal at most to 15 per cent of the compensation awarded to the guarantee fund provided for under Article L421-1, without prejudice to damages owed to the victim on this account.

### **Article L211-15**

The insurer must submit any planned settlement in respect of a minor or a person of full age put under wardship, to the guardianship judge or board of guardians that is empowered, as the case may be, to authorise it. It must also give the guardianship judge at least two weeks or a fortnight's advance notice, without formality, of the payment of the first annuity instalment or of any sum to be paid as a compensation to the legal representative of the protected person.

Payment not preceded by the required notice or an unauthorised settlement may be cancelled at the request of any concerned party or the public prosecutor, with the exception of the insurer.

Any clause whereby the legal representative vouches that the minor or a person of full age put under wardship will approve one of the instruments referred to in the first paragraph of this Article shall be null and void.

### **Article L211-16**

The victim may, by registered letter with acknowledgement of receipt, terminate the settlement within two weeks or a fortnight of its conclusion.

Any clause of the settlement whereby the victim waives his right of termination shall be null and void.

The above provisions must be set forth in very clear print in the settlement offer and in the settlement, under the penalty of the latter's revocation.

### **Article L211-17**

Sums agreed must be paid within one month after the expiry of the period of termination set in Article L211-16. In the opposite case, sums not paid shall bear interest ipso jure at the legal interest rate, which shall be increased by 50% during two months, then, upon expiry of said two month period, it shall be doubled.

### **Article L211-18**

In the event of a conviction as a result of an enforceable court decision, even if it is provisionally enforceable, the rate of the legal interest rate shall be increased by 50 per cent upon expiry of a two month period and it shall be doubled upon expiry of a four month period, as from the date of the court decision when such court decision was handed down after an adversarial procedure and, in all other cases, on the date of service of the decision.

### **Article L211-19**

The victim may, within the time limit provided for in Article 2270-1 of the Civil Code, claim compensation for the increase in the damage that he sustained from the insurer who paid the compensation.

### **Article L211-20**

When the insurer invokes an objection based on the legal or contractual cover, it shall be bound to comply with the requirements of Articles L211-9 to L211-17 on behalf of whom it may concern. The settlement may be contested before the court by the person on behalf of whom it was made, without the amount of the sums awarded to the victim or its assigns being called into question.

### **Article L211-21**

*(Act no. 96-314 of 12 April 1996, Article 85, I, Official Journal of 13 April 1996 in force on 1 January 1997)*

For the application of Articles L211-9 to L211-17, the State and the public authorities, firms or institutions entitled to an exemption under Article L211-2 or granted a derogation from compulsory insurance under Article L211-3 shall be treated as an insurer.

### **Article L211-22**

*(Act n°2003-706 of 1 August 2003, Article 81 a I 2, Official Journal of 2 August 2003)*

The provisions of Articles L211-9, L 211-10 and L211-13 to L211-19 shall apply to the guarantee fund of compulsory general insurance established by Article L421-1, in its relations with the victims or their assigns. However, the time limit provided for under Article L211-9 shall run against the fund as from the date on which it has received items proving its intervention.

The application of Articles L211-13 and L211-14 shall not preclude the special provisions that govern legal actions against the fund. When the guarantee fund is liable for the interest provided for under Article L211-14, it shall be paid to the Public Treasury.

### **Article L211-23**

Subject to the control of the authorities, a periodical publication shall review the indemnities awarded by judgements and settlements.

### **Article L211-24**

## INSURANCE CODE

A decree in Conseil d'Etat defines the measures required to apply this section. In particular, it determines the causes of suspension or extension of the time limit referred to in Article L211-9 as well as the information that the insurer, the victim and third party payers must give one another.

### Article L211-25

The first two paragraphs of Article 33 of Act no. 85-677 of 5 July 1985 shall apply to insurers.

When provided for by contract, the subrogation recourse of the insurer who paid the victim an advance on the compensation on account of the accident may be exercised against the insurer of the person liable for compensation within the limit the balance subsisting after payments to the third parties provided for in Article 29 of the same Act of 5 July 1985. It must be exercised, where applicable, within the time limits that third party payers are allowed by law to produce their claims.

## SECTION VII

### Penalties

Articles L211-26 to  
L211-27

### Article L211-26

*(Act no. 85-1407 of 30 December 1985, Article 63, Official Journal of 31 December 1985)*

*(Decree no. 88-260 of 18 March 1988, Article 2, Article 3, Official Journal of 20 March 1988)*

*(Act no. 94-5 of 4 January 1994, Article 40, II, Official Journal of 5 January 1994)*

*(Act n°2004-204 of 9 March 2004, Article 59, Article 59 II 1°, Official Journal of 10 March 2004)*

*(Act n°2004-204 of 9 March 2004, Article 59, Article 59 II 2°, Official Journal of 10 March 2004)*

The provisions of the Traffic Regulations Code that punish the driving of a land motor vehicle without being covered by an insurance policy to guarantee one's tort liability in conformity with the provisions of Article L211-1 of this code are cited hereafter:

Article L324-2-1 - I. The act, including negligence, of putting and maintaining a land motor vehicle in traffic as well as its trailers or semi-trailers without being covered by an insurance policy guaranteeing one's tort liability in conformity with the provisions of Article L211-1 of the Insurance Code shall be punished to pay a €3 750 fine.

II. - Any person guilty of the offence provided for in this article shall also face the additional penalties below:

1° a community service work, according to the procedures provided for under Article 131-8 of the Criminal Code and according to the conditions provided for under Articles 131-22 to 131-24 of the same code;

2° a daily fine for the number of days according to the conditions fixed under Articles 131-5 and 131-25 of the Criminal Code;

3° suspension, for a period not exceeding three years, of the driving accreditation; said withdrawal might not be limited to the driving for purposes other than the professional activity;

4° cancellation of the driving licence with prohibition to demand for a new licence during a maximum of three years;

5° prohibition to drive certain types of land motor vehicles, including those for which a driving licence is not required, for a maximum period of five years;

6° obligation to take at his own expense a practical course on the awareness of road security;

7° confiscation of the vehicle that the convicted has used to commit the offence provided that he owns it.

III. - The detention of the vehicle may be expired according to the conditions provided for under Articles L325-1 to L325-3.

### Article L211-27

*(inserted by Act n°2004-204 of 9 March 2004, Article 59 II 1°, Official Journal of 10 March 2004)*

The fines pronounced for infringement of the obligation to take out an insurance policy provided for under Article L211-1, including the fines that an amnesty measure has substituted to imprisonment sentence, shall be subject to a 50% increase, at the time of collection, in favour of the guarantee fund established by Article L420-1 (1).

If a serious objection, relating to the existence or the validity of the insurance policy, is referred to a civil court, the criminal court asked to pronounce a sentence on the lawsuits initiated for infringement of the obligation to take out an insurance policy should postpone its sentence until a final judgement on the objection before the civil court.

The provisions of this Article shall not apply where the insurance policy of tort liability concerns the vehicles that have their regular parking lot in a territory of a State referred to under Article L211-4 with the exception of France and Monaco.

## CHAPTER II

### Obligation to insure – the central rating office

Articles L212-1 to  
L212-3

### Article L212-1

*(Act no. 91-716 of 26 July 1991, Article 1, III, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act no. 94-5 of 4 January 1994, Article 37, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any person subject to compulsory insurance who, having applied to underwrite a contract to an insurance firm that covers the risks of public liability in France as a result of use of motor vehicles, is refused an insurance contract may submit his request to the central rating office, the terms applicable to the establishment and operation of which are defined by the decree in Conseil d'Etat provided for in Article L211-1.

The exclusive role of the central rating office is to set the amount of the premium in consideration of which the

## INSURANCE CODE

insurance firm in question is bound to cover the risk proposed to it. In accordance with the terms defined by the aforementioned decree in Conseil d'Etat, it may determine the amount of a deductible payable by the insured.

### Article L212-2

Any clauses of reinsurance treaties that aim to exclude certain risks from the reinsurance cover for reason of the rating adopted by the central rating office shall be null and void.

### Article L212-3

*(Act no. 91-716 of 26 July 1991, Article 1, IV, Official Journal of 27 July 1991 in force on 20 November 1992*

*(Act no. 94-5 of 4 January 1994, Article 37, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

A ny insurance firm covering the risk of public liability ensuing from use of motor vehicles that continues to refuse to cover the risk whose premium has been set by the central rating office shall be deemed to no longer operate in accordance with current regulations. It shall incur, as the case may be, either a withdrawal of licences provided for in Articles L321-1, L321-7, L321-8 or L321-9 or the penalties provided for in Articles L351-7, L351-8 and L363-4.

## CHAPTER III

### Contribution to the Social Security Service

Articles L213-1 to

L213-2

### Article L213-1

*(Act no. 96-314 of 12 April 1996, Article 85, I, Official Journal of 13 April 1996 in force on 1 January 1997)*

*(Act no. 98-1194 of 23 December 1998, Article 13, Official Journal of 27 December 1998 in force on 1 January 1998)*

*(Act no. 99-641 of 27 January 1999, Article 12, Official Journal of 28 July 1999 in force on 1 January 2000)*

A contribution shall be owed by any individual or legal entity that either in his/its capacity as employer or in his/its capacity as member pays contributions to a compulsory health insurance scheme or benefits from such a scheme in his/its capacity as eligible member or pays the contribution sociale généralisée on income from his/its activity or replacement income which is subject to compulsory insurance in respect of motor vehicles established by Article L211-1. Said contribution shall be collected in favour of the national health insurance office of employed persons.

Said contribution shall be proportional to premiums or contributions for compulsory insurance in respect of motor vehicle traffic established by Article L211-1. It shall be collected by insurance firms in accordance with the same terms and at the same time as said premiums.

Individuals or legal entities that do not pay contributions either in their capacities as employers or in their capacities as eligible members of a compulsory health insurance scheme or that do not benefit from such a scheme in their capacities as eligible members or that do not pay the contribution sociale généralisée on income from their activities or replacement income shall be responsible for providing proof thereof by all means and in particular by making a declaration to the insurance institutions with which they have underwritten contracts pursuant to the aforementioned Article L211-1.

A decree in Conseil d'Etat defines the provisions for application of this Article and, in particular, the rate of the contribution.

### Article L213-2

*(Act no. 92-1336 of 16 December 1992, Article 322, Article 329, Official Journal of 23 December 1992 in force on 1 March 1994)*

Any one who, to provide the proof laid down in paragraph 4 of Article L213-14 commits fraud or makes a misrepresentation, shall be fined €3,750.

Chapitre IV: Provisions specific to overseas départements and territories and to the collectivité territoriale of Mayotte

## CHAPTER IV

Provisions specific to overseas départements and territories and to the collectivité territoriale of Mayotte

Articles L214-1 to

L214-3

### SECTION I

Provisions specific to overseas départements

Article L214-1

### Article L214-1

*(Order no. 92-255 of 4 March 1992, Article 1, Official Journal of 20 March 1992)*

Decrees in Conseil d'Etat define the effective dates and the provisions for application or adaptation of chapters I and II to overseas départements.

Nota bene: Article 75 of Act 2001-616 of 11 July 2001: In all laws and regulations in force in Mayotte, reference to the "collectivité territoriale of Mayotte" shall be replaced by reference to "Mayotte" and reference to the "collectivité territoriale" shall be replaced by reference to the "collectivité départementale".

### SECTION II

Provisions specific to overseas territories

Article L214-2

### Article L214-2

*(Decree no. 88-260 of 18 March 1988, Article 2, Official Journal of 20 March 1988)*

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

## INSURANCE CODE

*(Order no. 92-255 of 4 March 1992, Article 1, Article 2, Official Journal of 20 March 1992)*

The third paragraph of Article L211-26 and Articles L212-1 to 212-3 shall apply to French overseas territories.

The aforementioned provisions shall take effect in the territories of Wallis and Fatuna on the first day of the calendar quarter following publication of the order enforcing the deliberation that establishes compulsory insurance for public liability in respect of motor traffic.

The provisions for the application of this Article are defined by decree in Conseil d'Etat.

Nota bene: Article 75 of Act 2001-616 of 11 July 2001: In all laws and regulations in force in Mayotte, reference to the "collectivité territoriale of Mayotte" shall be replaced by reference to "Mayotte" and reference to the "collectivité territoriale" shall be replaced by reference to the "collectivité départementale".

### SECTION III

Provisions specific to the collectivité territoriale of Mayotte

Article L214-3

#### Article L214-3

*(inserted by Order no. 92-255 of 4 March 1992, Article 3, Official Journal of 20 March 1992)*

Save for Articles L211-12, L211-4, L213-1, L214-1 and L214-2, the provisions of title I of chapter II shall apply to the collectivité territoriale of Mayotte.

Nota bene: Article 75 of Act 2001-616 of 11 July 2001: In all laws and regulations in force in Mayotte, reference to the "collectivité territoriale of Mayotte" shall be replaced by reference to "Mayotte" and reference to the "collectivité territoriale" shall be replaced by reference to the "collectivité départementale".

### TITLE II

**Insurance of machines used for mechanical lifting**

**Articles L220-1 to  
L220-8**

#### SOLE CHAPTER

Articles L220-1 to  
L220-8

#### Article L220-1

Any individual or legal entity other than the State that operates a funicular, rack railway, cableway, ski tow or any other mechanical lifts that use carrier or traction cables for the transportation of passengers under any legal scheme whatsoever must be covered by insurance that covers its public liability for all damage caused by said means of transportation.

#### Article L220-3

*(Act no. 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March 1994)*

Anyone who knowingly breaches the provisions of Article L220-1 shall be punished by a six month prison sentence and a fine of €9,000 or one only of said penalties.

As soon as the lack of insurance has been recorded, the prefect shall suspend the licence of activity until the situation has been put in order.

#### Article L220-4

No licence of activity shall be granted unless the existence of the insurance contract referred to in Article L220-1 is proved.

#### Article L220-5

*(Act no. 89-1014 of 31 December 1989, Article 53, Official Journal of 3 January 1990 in force on 1 July 1990)*

Any person subject to compulsory insurance that has been unable to underwrite a contract for the risks referred to in Article L220-1 with at least three of the firms licensed in the relevant branch for said risks may contact the central rating office, whose terms applicable to the establishment and operation of which are defined by decree in Conseil d'Etat.

The exclusive role of the central rating office is to set the amount of the premium in consideration of which the insurance firms to which a request to underwrite a contract has been made, as stated in the above paragraph, shall be bound to cover the risk proposed to them. It may, in accordance with the terms defined by decree in Conseil d'Etat, determine the amount of a deductible payable by the insured.

Any insurance firm that continues to refuse to cover a risk whose premium has been set by the central rating office shall be deemed to no longer operate in accordance with current regulations and its licence provided for in Article L321-1 shall be withdrawn.

Any clauses of reinsurance treaties that aim to exclude certain risks to which this penalty relates from the reinsurance cover shall be null and void.

#### Article L220-6

*(Act no. 89-1014 of 31 December 1989, Article 50, Official Journal of 3 January 1990 in force on 1 July 1990)*

A decree in Conseil d'Etat defines the terms of application of this chapter and, in particular, the nature and scope of the cover contained in the insurance contract.

#### Article L220-7

Notwithstanding any clause to the contrary, any insurance contract that covers the public liability of the operator of

## INSURANCE CODE

one of the means of transportation referred to in Article L220-1 shall be deemed to contain covers that are at least equal to those defined by the decree in Conseil d'Etat referred to in Article L220-6.

### Article L220-8

Decrees in Conseil d'Etat enacted in accordance with the terms of decree no. 60-406 of 26 April 1960 relating to the adaptation of the legislative system and administrative organisation of the départements of Guadeloupe, Guyane, Martinique and the Réunion, outlining for said départements the effective date and provisions for application and adaptation of this chapter.

## TITLE IV

### Construction works insurance

### Articles L241-1 to L243-1-1

#### CHAPTER I

#### Compulsory liability insurance

#### Articles L241-1 to L241-2

### Article L241-1

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, II, III Official Journal of 9 June 2005)*

Any natural person or legal entity whose decennial responsibility may be incurred on the basis of the presumption provided for in Articles 1792 and following of the Civil Code must be covered by an insurance policy.

Upon the commencement of the building work, he/it must be able to prove that he/she has underwritten an insurance contract that covers his/its liability.

Notwithstanding any clause to the contrary, any insurance contract underwritten by virtue of this Article shall be deemed to contain a clause ensuring that the cover shall be maintained for the term of the decennial responsibility imposed on the person who is submitted to the compulsory insurance.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L241-2

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, IV, V, Official Journal of 9 June 2005)*

The person who has building works carried out on behalf of someone else must be covered by liability insurance that covers the damage referred to in Articles 1792 and 1792-2 of the Civil Code which is the consequence of his/its wrongdoing.

The same shall apply when the building works are carried out for sale.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

#### CHAPTER II

#### Compulsory insurance against damage

#### Articles L242-1 to L242-2

### Article L242-1

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Act n°81-5 of 7 January 1981, Article 36, III, Official Journal of 8 January 1981)*

*(Act n°89-1014 of 31 December 1989, Article 47, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°94-5 of 4 January 1994, Article 6, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 30 VIII, Official Journal of 2 August 2003)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, VI, Official Journal of 9 June 2005)*

Any natural person or legal entity who, acting as owner of a work, seller or representative of the owner of the work, has building works carried out, must, before the opening of the building site, on his/its behalf or on behalf of successive owners, take out insurance policy that covers, on a no-fault basis, payment of the entire reparation work of the damage of the type that builders are liable for within the meaning of Article 1792-1, manufacturers and importers or a consulting engineer are liable for under Article 1792 of the Civil Code.

However, the obligation provided for in the first paragraph above shall not apply to public corporations or to legal entities that operate an activity the scope of which exceeds the thresholds referred to in the last paragraph of Article L111-6, when said public corporation or legal entity has building works carried out on their behalf for a purpose other than for housing.

The insurer has a maximum period of sixty days as from receipt of the report of loss to notify the insured of its decision on the performance of the covers provided for in the contract.

If the performance of the covers provided for in the contract is accepted, the insurer will make a compensation offer, where applicable on temporary basis, to cover the cost of the reparation work of the damage, within a maximum period of ninety days as from receipt of the report of loss. If the insured accepts the offer made, the insurer will settle the compensation within two weeks.

When the insurer fails to comply within the time-limits provided for in the two paragraphs above or proposes a

## INSURANCE CODE

compensation offer that is clearly inadequate, the insured may, after it has notified the insurer, incur the expenses necessary to repair the damage. In such event, an interest double the legal interest rate shall be applied ipso jure to the compensation to be paid by the insurer.

In the event of exceptional difficulties due to the nature or scope of the damage, the insurer may, at the same time as it notifies the insured of its agreement in principle to perform the cover, propose an additional time-limit to make its compensation offer. The proposal must be based exclusively on technical considerations and explained.

The additional time-limit provided for in the previous paragraph must expressly be accepted by the insured and may not exceed one hundred and thirty five days.

The insurance referred to in the first paragraph of this Article shall take effect after the expiry of the period of the completion bond referred to in Article 1792 of the Civil Code. However, it shall cover the payment of necessary repairs when:

Prior to delivery, following an unsuccessful formal demand, the works contract entered into with the contractor has been terminated on ground of the latter's failure to perform its obligations.

After delivery, following an unsuccessful formal demand, the contractor has not performed its obligations.

Any insurance firm accredited in accordance with the terms set out in Article L321-1, even if it does not manage the risks governed by Articles L. 241-1 and L. 241-2 above, may cover the risks referred to in this Article.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L242-2

*(Act n° 78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

In the cases provided for in Articles 1831-1 to 1831-5 of the Civil Code on property development contracts as well as in Articles L222-1 to L222-5 of the Code of construction and housing, the property developer shall assume the obligations defined in Articles L241-2 and L242-1.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

## CHAPTER III

### Common provisions

Articles L243-1 to  
L243-1-1

### Article L243-1

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Act n°89-1014 of 31 December 1989, Article 47, Official Journal of 3 January 1990 [in force] on 1 July 1990)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

The compulsory insurance shall not apply to the State when it builds on its own behalf.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-2

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

Persons subject to the obligations provided for in Articles L241-1 to L242-1 of this Code must prove that they have complied with said obligations.

When the purpose of a deed concluded before the expiry of the ten year period provided for in Article 2270 of the Civil Code is to transfer the ownership or possession of the property, regardless of the nature of the contract granting said rights, with the exception however of rental agreements, reference must be made to the existence or lack of insurance policy in the body of the deed or its attachment.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-3

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Act n°92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March 1994)*

*(Order n°2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

Any one who breaches the provisions of Articles L241-1 to L242-1 of this Code shall be punished by a six months prison sentence and a fine of €75,000 or by only one of said two sanctions.

The provisions of the previous paragraph shall not apply to any natural person who builds a house which he or his spouse, ascendants, descendants or those of his spouse is to occupy.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-4

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)*

*(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

## INSURANCE CODE

Any person who must have a compulsory insurance but who, after having applied for an insurance policy to an insurance firm whose statutes do not preclude cover of the risk in question due to its nature, is refused insurance cover, may submit his request to the central rating office. A Conseil d'Etat decree shall set out the conditions of its formation and operation.

The central rating office is the exclusive authority to set the amount of the premium in consideration of which the insurance firm in question must cover the risk proposed to it. It may determine the amount of a deductible payable by the insured.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-5

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)  
(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

Any clause of reinsurance treaties that aim to exclude certain risks from the reinsurance cover due to the rating adopted by the central rating office shall be null and void.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-6

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)  
(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

Any insurance firm that continues to refuse to cover a risk whose premium has been set by the central rating office shall be deemed to no longer operate in compliance with current regulations and face the withdrawal of the licence provided for in Articles L321-1 of this Code.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-7

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)  
(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

The provisions of Article L113-16 and of the second paragraph of Article L121-10 of this Code shall not apply to compulsory insurance provided for in this Title.

The victims of a loss provided for in Act n°78-12 of 4 January 1978 may act directly against the insurer of the party liable for such loss if the latter is affected by a judicial rehabilitation or liquidation of assets proceedings.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-8

*(Act n°78-12 of 4 January 1978, Article 12, Official Journal of 5 January 1978 in force on 1 January 1979)  
(Order n°2005-658 of 8 June 2005, Article 3 I, Official Journal of 9 June 2005)*

Notwithstanding any clause to the contrary, any insurance contract underwritten by a person subject to compulsory insurance by virtue of this Title shall be deemed to contain covers that are at least equal to those appearing in the standard clauses provided for in Article L310-7 of this Code.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

### Article L243-1-1

*(inserted by Order no. 2005-658 of 8 June 2005, Article 3 VII, Official Journal of 9 June 2005)*

I - Maritime, lake and river works, road, harbour, airport, heliport and railway infrastructure works, municipal, industrial, liquid wastes treatment works as well as parts of the equipment of one of these works shall not be submitted to compulsory insurance provided for in Articles L241-1, L241-2, and L242-1.

Roads, pedestrian works, parking lots, various networks, drains, lines or cables and their stands, transport, production, storage and distribution of energy works, telecommunications works, non-insured sporting works as well as parts of their equipment shall also be excluded from compulsory insurance referred to in the first paragraph, except if the work or part of the equipment is incidental to a work submitted to compulsory insurance.

II - Compulsory insurance does not apply to the existing works before the commencement of the building works, except for those which are completely incorporated in the new work and become technically inseparable from it.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

## TITLE V

### Medical professional liability insurance

#### CHAPTER I

##### The obligation to be insured

### Articles L251-1 to L252-2

### Articles L251-1 to L251-2

## INSURANCE CODE

### Article L251-1

*(Act n° 2002-303 of 4 March 2002, Article 100, Official Journal of 5 March 2002)*

*(Act n° 2002-1577 of 30 December 2002, Article 1 II, Official Journal of 31 December 2002)*

As it is provided for in the hereafter reproduced Article L1142-2 of the Public Health Code:

"Article L1142-2 Health professionals who practise independently, health institutions, health services and organisations mentioned in article L1142-1 and any other legal person than the State that is engaged in activities of prevention, diagnosis or care, as well as procurers, traders and suppliers of health products, as finished products, mentioned in article L5311-1, except those of 5°, subject to the provisions of article L1229-9, 11°, 14° and 15°, used during those activities, shall be obliged to subscribe an insurance policy destined to cover their third party and administrative liabilities susceptible to be engaged when third parties suffer damages or as a result of personal injuries occurred within the framework of their activities of prevention, diagnosis or care.

Insurance policies subscribed to implement the preceding paragraph may stipulate a ceiling to the cover. The terms in accordance to which the amount of cover may be limited concerning health professionals practising independently shall be determined by a decree in Conseil d'Etat.

Insurance subscribed by institutions, services and organisations mentioned in the first paragraph covers the employees who have acted within the limits of their mission which is fixed for them despite the fact that they have independence in the practice of their medical skill.

A lessor of health products or the rental company assimilated to the lessor shall not be obliged to subscribe an insurance policy provided for in the first paragraph.

In case of non-respect of the obligation to subscribe an insurance policy provided for in this article, the competent disciplinary authority may pronounce disciplinary sanctions.

### Article L251-2

*(Act n° 2002-1577 of 30 December 2002, Article 4, Official Journal of 31 December 2002)*

*(Act n° 2003-706 of 1 August 2003, Article 80 V, VII, Official Journal of 2 August 2003, in force on 2 November 2003)*

A loss means, for the purpose of risks mentioned under Article L1142-2 of Public Health Code, any damage or group of damages caused to third parties, engaging the liability of the insured, resulting from one event or group of events having the same technical cause attributable to the activities of the insured covered by the insurance policy and having given rise to one or several claims.

A claim means any amicable or court legal action for compensation engaged by the victim of damage or by his assigns and sent to the insured or his insurer.

Any insurance contract concluded to implement Article L1142-2 of the same Code shall cover the insured against the financial consequences of the damage for which the first claim is engaged during the validity period of the contract, however the date of the other constitutive factors of the loss, as far as the event has taken place during the activities of the insured covered at the moment of the first claim.

Furthermore, the insurance contract shall cover damage whose first claim is presented during a period fixed by the contract as of the date on which the guarantees shall be expired or cancelled in part or in whole provided that the damage are attributable to the activities of the insured on the same date and that the damage come from the event causing liability occurred during the validity period of the contract. This period may not be lower than five years.

Furthermore, the last contract concluded, before his cessation of professional activities or his death, by a health professional referred to in part IV of the Public Health Code who practices independently shall cover the damage for which the first claim is presented during a period fixed by the contract as of the date of its partial or total expiry or cancellation as far as the event has taken place during the validity period of the contract or prior to this period in the activities of the insured covered at the time of the first claim. Said period may not be lower than 10 years. Said guarantee shall not cover the damage whose first claim is posterior to a possible resumption of business. The contract may not stipulate for this guarantee a limit lower than that of the year preceding the end of the contract.

The contract shall not cover the damage produced by an event causing liability known to the insured on the day of underwriting.

When the same loss may bring into play the covers of several contracts signed one after another, it is covered primarily by the contract in force at the time of the first claim, without the application of the provisions of the third and fourth paragraphs of Article L121-4.

N.B. Act 2003-706 of 1 August 2003, Article 80 VII: The provisions of this Article shall take effect at the end of a three-month period as of the date of publication of this Act.

## CHAPTER II

Central Rating Office

Articles L252-1 to  
L252-2

### Article L252-1

*(Act no. 2002-303 of 4 March 2002, Article 100, Official Journal of 5 March 2002)*

Any person subjected to the obligation of insurance required in Article L1142-2 of the Public Health Code, whose application to subscribe a contract in an insurance firm who covers in France risks civil liability mentioned in the same article is refused twice, may refer his case to the Central Rating Office whose conditions of constitution and rules of operation shall be fixed by a decree in Conseil d'Etat.

The exclusive role of the Central Rating Office shall be to fix the amount of the premium in exchange of which the interested insurance firm is liable to guarantee the risk which was brought to its knowledge.

## INSURANCE CODE

It may, in accordance with the conditions fixed by the decree in Conseil d'Etat, determine the amount of the excess supported by the insured.

The Central Rating Office refers to the representative of the State in the Département when a person, who is subject to the obligation to be insured required in Article L1142-2 of the Public Health Code, faces exceptionally excessive insurance risk. It shall keep the concerned professional informed about it. In this case, it shall fix the amount of the premium of the contract whose period does not exceed six months.

Shall be null and void any clause of reinsurance treaties intended to exclude certain risks of reinsurance cover because of the tariffs adopted by the Central Rating Office.

### Article L252-2

*(Act no. 2002-303 of 4 March 2002, Article 100, Official Journal of 5 March 2002)*

Any insurance firm which persists in its refusal to cover a risk whose premium has been fixed by the Central Rating Office created in Article L252-1 shall be deemed no longer operating in conformity with the regulation in force. It incurs, as the case may be, either the withdrawal of the license provided for in Articles L321-1, L321-7, L321-8, L352-9 or the sanctions provided for in Articles L351-7, L351-8 and L363-4.

## BOOK III

### The firms

### Articles L310-1 to L364-1

#### TITLE I

#### General provisions and State control

#### Articles L310-1 to L310-28

#### SOLE CHAPTER

#### Articles L310-1 to L310-28

#### SECTION I

#### General provisions

#### Articles L310-1 to L310-11

### Article L310-1

*(Act no. 81-5 of 7 January 1981, Article 33, II, Official Journal of 8 January 1981)*

*(Act no.89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 8, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 94-678 of 8 August 1994, Article 14, VI, Official Journal of 10 August 1994)*

*(Act no. 94-679 of 8 August 1994, Article 1, I, Official Journal of 10 August 1994 in force on 1 January 1995)*

The State shall exercise control in the interest of insured, policyholders and beneficiaries of insurance and capitalisation contracts. Said control concerns:

1 firms which, in the form of direct insurance, contract obligations whose performance depends on human longevity, undertake to pay capital in the event of marriage or the birth of children or invite investment by the public with a view to capitalisation and contract specific obligations for said purpose.

2 firms which, in the form of direct insurance, cover the risks of bodily injury related to accidents and illness.

3 firms which, in the form of direct insurance, cover other risks including those related to an assistance activity.

The provisions of this Code shall not apply to mutual insurance societies governed by the French Mutual Insurance Code, the institutions governed by chapter IX of the French Social Security Code and by Article 1050 of the Rural Code.

Firms authorised on the date of 1 January 1993 which invite investment by the public with a view to capitalisation, without contracting specific obligations, shall also be subject to State control.

### Article L310-1-1

*(inserted by Act no. 94-679 of 8 August 1994, Article 1, II, Official Journal of 10 August 1994 in force on 1 January 1995)*

Firms underwriting reinsurance but not underwriting direct insurance whose registered office is located in France shall be subject to State control in accordance with the special terms defined in this Book.

### Article L310-2

*(Act no. 89-1014 of 31 December 1989, Article 31, Article 38, Article 54, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 9, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 94-679 of 8 August 1994, Article 1, III, Official Journal of 10 August 1994 in force on 1 January 1995)*

Subject to the provisions of Article L310-10, the direct insurance transactions defined in Article L310-1 may be underwritten in France only by:

1 firms that have their registered offices in France, from their registered offices or branches lawfully established in a member State of the European Communities, when they are licensed in accordance with the provisions of Article L321-1.

2 foreign firms that have their registered offices in a member State of the European Communities, from their registered offices or branches lawfully established in a member State of the European Communities, in accordance with

## INSURANCE CODE

the terms laid down in title VI of this Book.

3 the foreign firms referred to in Article L310-1, from their branches lawfully established in France, when they have been licensed in accordance with the provisions of Article L321-9.

4 foreign firms other than those referred to in paragraphs 2 and 3 above, from their branches lawfully established in France, when they comply with the terms laid down in Article L321-9.

5 the firms referred to in paragraphs 1 and 2 above, from their branches lawfully established in the States parties to the European Economic Space agreement that are not members of the European Communities in accordance with the terms laid down in title V of this Book as well as, in accordance with the same terms, by the firms referred to in paragraph 1 of Article L310-10-1, from their registered offices or branches lawfully established in a State party to the European Economic Space agreement other than France.

Contracts underwritten in violation of this article shall be null and void. However, said nullity shall not have effect with regard to insured, policyholders and beneficiaries when they acted in good faith.

### Article L310-2-1

*(inserted by Act no. 94-679 of 8 August 1994, Article 7, I, Official Journal of 10 August 1994)*

For the application of this code, States party to the European Economic Space agreement that are not members of the European Communities shall be treated, subject to reciprocity, as States member of the European Communities, save for application of Article L321-2.

### Article L310-2-2

*(Inserted by Act n°2003-706 of 1 August 2003, Article 83 III, Official Journal of 2 August 2003)*

Any insurance firm shall, subjected to State inspection pursuant to the provisions of the third paragraph (2°) of Article L310-1 and which has obtained the accreditation that allows it to cover risks of tort liability emanating from the use of land motor vehicles, with the exception of the liability of a carrier, appoint freely in each of the member States of the European Economic Space an agent with a mission to deal with and settle, in the State where the injured person resides, the damage emanating from a traffic accident, in which a vehicle that it insures is involved, occurred in the territory of the States designated above, with the exception of the State where the injured person resides, and that has caused damages to this person.

The agent has also a mission to deal with and settle, in the State where the injured person resides, the damage emanating from the accident in which a vehicle insured by the insurance firm that appointed him, occurred in the territory of a third country whose national insurance office is a member of the international insurance card system and that has caused damages to a person residing in a Member State of the European Economic Space agreement.

The agent must reside or he must be established in a State where he has been appointed and has the means to examine the case in the one official langue (s) of said State. He may represent one or several insurance firms.

The firms referred to under the first paragraph of this Article shall notify, through an information centre provided for under Article L451-1, to the information centres of all the Member States of the European Economic Space agreement, the name and address of the agent in charge of the settlement of damage that they designate in each of the Member States.

### Article L310-3

*(order no. 86-1243 of 1 December 1986, Article 57, Official Journal of 9 December 1986)*

*(Act no. 89-1014 of 31 December 1989, Article 31, Article 54, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 10, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

In this Code:

1 the expression "State of origin" means the State where an insurance firm's registered office is located.

2 the expression "State of the branch" means the State where an insurance firm's branch is located.

3 the expression "scheme of establishment" means the arrangements under which an insurance firm covers a risk or assumes an undertaking located in a State from a branch located in said State.

4 the expression "freedom of services" means the transaction whereby a firm of a member State of the European Economic Space covers or assumes from its registered office or a branch located in a State party to the European Economic Space agreement a risk or an undertaking located in another of said States, which is referred to as the "State of the freedom of services".

5 the expression "foreign firm" means a firm whose registered office is not located in France.

### Article L310-4

*(Act no. 89-1014 of 31 December 1989, Article 31, Article 46, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(transferred by Act no. 94-5 of 4 January 1994, Article 3, II, Article 10, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

For transactions referred to in paragraphs 2 and 3 of Article L310-1, the State of the location of the risk is considered to be:

1 the State where the property is located when the insurance relates either to real property or to real property and its contents insofar as the latter is covered by the same insurance policy.

2 the State of registration when the insurance relates to vehicles of any kind.

3 the State where the contract was underwritten when it is a contract for a term less than or equal to four months relating to risks incurred during a journey, regardless of the insurance branch in question.

4 in all cases other than those referred to in paragraphs 1, 2 and 3 above, the State where the policyholder has his main place of residence or, if the policyholder is a legal entity, the State where the establishment of said legal entity

## INSURANCE CODE

covered by the contract is located.

### **Article L310-5**

*(Act no. 83-453 of 7 June 1983, Article 1, Official Journal of 8 June 1983)*

*(Order no. 86-1243 of 1 December 1986, Article 57, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(transferred by Act no. 94-5 of 4 January 1994, Article 3, III, Article 10, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

For transactions referred to in the first and last paragraph of Article L310-1, the State, where the policyholder has his main place of residence or, if the policyholder is a legal entity, the State where the establishment of said legal entity covered by the contract is located, is considered to be the State of the undertaking.

### **Article L310-6**

*(Act no. 89-1014 of 31 December 1989, Article 31, Article 46, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(transferred by Act no. 94-5 of 4 January 1994, Article 3, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

A French firm may underwrite reinsurance only if it has been established in one of the following legal forms: public limited company, partnership limited by shares or mutual insurance society.

A foreign firm may not underwrite one of the transactions referred to in Article L310-1 or reinsurance transactions in France unless it complies with the provisions of its national law.

### **Article L310-6-1**

*(inserted by Act no. 99-532 of 25 June 1999, Article 53, III, Official Journal of 29 June 1999)*

The headquarters of French reinsurance firms must be located in France.

The headquarters of foreign reinsurance firms licensed by virtue of Articles L321-7 or L321-9 must be located on the same territory as their registered seat.

### **Article L310-7**

*(Act no. 89-1014 of 31 December 1989, Article 31, Article 34, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 3, V, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 2001-420 of 15 May 2001, Article 136, I, Official Journal of 16 May 2001)*

*(Order no. 2001-766 of 29 August 2001, Article 1, I, Official Journal of 31 August 2001)*

A decree in Conseil d'Etat determines the terms applicable to the establishment of firms subject to State control pursuant to Article L310-1 and Article L310-1-1. It specifies the terms in which the provisions of Act no. 66-537 of 24 July 1966 in respect of business corporations and other laws governing public limited companies shall apply to said firms. Special provisions take account of the non-commercial nature of mutual insurance societies.

The same decree defines the obligations incumbent on French and foreign firms, the guarantees that they must provide, the reserves and technical reserves that they must build up, the general rules applicable to the operation, internal control thereof and exercise of the State's control.

### **Article L310-8**

*(Act no. 89-1014 of 31 December 1989, Article 30, Article 31, Official Journal of 3 January 1990 in force on 1 January 1990)*

*(Act no. 94-5 of 4 January 1994, Article 11, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 91, Official Journal of 29 June 1999)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XXXII, Official Journal of 22 April 2001)*

*(Act n°2003-706 of 1 August 2003, Article 22 III 1°, Official Journal of 2 August 2003)*

The minister may require the disclosure of contractual or advertising documents for the purpose of an insurance or capitalisation.

If it appears that a document breaches the law or regulations, the minister may require that it be modified or decide on the withdrawal thereof after he has heard the opinion of the consultative committee of the financial sector. In the event of an emergency, the opinion of the consultative committee of the financial sector shall not be required.

### **Article L310-9**

*(Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 99-532 of 25 June 1999, Article 41, I, Official Journal of 29 June 1999)*

Costs of any kind arising from the application of the provisions of this Code relating to the State control and supervision in respect of insurance and reinsurance shall be covered by means of contributions in proportion to the amount of the premiums or contributions defined hereinafter and which are set yearly for each firm by the administrative authority.

The premiums or contributions retained shall be calculated by adding the total of premiums or contributions earned for the year and not issued to the amount of premiums or contributions issued and accepted, including the additional charges to the premiums and policy costs, net of taxes, assignments and cancellations of the year and all earlier years. Only half of the amount of premiums or contributions accepted in reinsurance or in retrocession shall be retained for said calculation. Assignments or retrocessions shall not be deducted.

### **Article L310-9-1**

*(Act no. 94-5 of 4 January 1994, Article 12, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Order no. 200-766 of 29 August 2001, Article 1, II, Official Journal of 31 August 2001)*

The provisions of Article L310- shall not apply to firms that are not concerned by the licences provided for in Articles

## INSURANCE CODE

L321-1, L321-7 and L321-9 or that have not been granted the permission provided for in Article L321-1-1.

### Article L310-10

*(Act no. 89-1014 of 31 December 1989, Article 18, Article 31, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 32, Official Journal of 17 July 1992)*

*(Act no. 94-5 of 4 January 1994, Article 13, I, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 1°, Official Journal of 2 August 2003)*

It is prohibited to underwrite direct insurance for a risk concerning a person, property or liability located in France with foreign firms other than those referred to under Article L310-2.

However, the provisions of the above paragraph shall not apply to the insurance of risks related to marine and air transportation. Moreover, the provisions of the previous paragraph may be waived by decision of the insurance firms' committee if it has been established that the insurance firms referred to under Article L310-2 are unable to provide insurance cover for a risk.

### Article L310-10-1

*(Act no. 92-665 of 16 July 1992, Article 33, Official Journal of 17 July 1992 in force on 4 July 1993)*

*(Act no. 94-5 of 4 January 1994, Article 14, Official Journal of 5 January 1994 in force on 1 July 1994)*

The firms referred to in paragraph 3 of Article L310-2 are:

1 foreign firms that have their registered offices in a State party to the European Economic Space agreement that is not a member of the European Communities.

2 foreign firms that have their registered offices in Swiss Confederation and referred to in paragraphs 2 and 3 of Article L310-1.

For the application of this Book, the firms referred in paragraph 2 of this Article shall be subject to the same provisions as the firms that have their registered offices in a State party to the European Economic Space agreement that is not a member of the European Communities. However, Article L321-8 and title V of this Book shall not apply to them.

### Article L310-11

*(Act no. 89-1014 of 31 December 1989, Article 31, Article 48, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

I Book III of this Code shall apply to the collectivité territoriale of Mayotte.

II The provisions of Article L310-1 to L310-3, L310-8 and L310-10, as this Code was drafted prior to the taking effect of Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions, shall apply in French overseas territories.

Nota bene: Article 75 of Act 2001-616 of 11 July 2001: In all laws and regulations in force in Mayotte, reference to the "collectivité territoriale of Mayotte" shall be replaced by reference to "Mayotte" and reference to the "collectivité territoriale" shall be replaced by reference to the "collectivité départementale".

## SECTION II

Insurance Supervisory commission

Articles L310-12 to  
L310-25

### Article L310-12

*(Act n°89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act n°92-665 of 16 July 1992, Article 16, Official Journal of 17 July 1992)*

*(Act n°94-5 of 4 January 1994, Article 15, I, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°94-679 of 8 August 1994, Article 1, IV, V, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act n°97-277 of 25 March 1997, Article 19, III, Official Journal of 26 March 1997)*

*(Act n°99-532 of 25 June 1999, Article 43, I, Official Journal of 29 June 1999)*

*(Act n°2001-420 of 15 May 2001, Article 42, I, Official Journal of 16 May 2001)*

*(Order n°2001-766 of 29 August 2001, Article 2, I, Official Journal of 31 August 2001)*

*(Act n°2003-706 of 1 August 2003, Article 30 (a) I, Official Journal of 2 August 2003)*

*(Order n°2004-1201 of 12 November 2004, Article 4, Official Journal of 16 November 2004)*

The supervisory committee for insurance companies, mutual insurance companies and provident institutions is an independent public authority with a legal personality entrusted to ensure that the firms referred to in Articles L310-1 and L310-1-1 of this Code, the mutual insurance company, unions and federations governed by the Social Security Code, complementary retirement institutions governed by Title IV of Book IX of the same code and the organizations governed by Article L727-2 of the Rural Code, respect the law and regulations applicable to them, as well as the contractual commitments which bind them with the insured and members.

The committee shall ensure that the firms referred to in Article L310-2 (1°), (3°) and (4°) as well as the mutual insurance companies and institutions referred to in the first paragraph of this Article always respect the commitments that they have contracted with regard to the insured and have the prescribed solvency margin. For this purpose, it shall examine their financial situation and business conditions. It shall also ensure that the formation and functioning of the decision-making and management bodies of the organizations, which are subject to the committee's inspection, are done in conformity with the provisions that govern them.

The committee shall ensure that any organization, which is subject to its inspection pursuant to the first paragraph and plans to open a branch office or to carry out for the first time activities within the framework of the freedom of

## INSURANCE CODE

services in the territory of another Member State of the European Communities or to modify the nature or conditions in which it carries out said activities, has an adequate administrative structure and financial situation having regard to its plans. If it considers that said conditions have not been met, the supervisory committee shall not transmit the documents allowing the exercise of the desired activity to the regulatory authority of said other Member State. A Conseil d'Etat decree shall set out the conditions for the application of this paragraph, in particular, the prior measures of inspection and the time-limit in which the committee must make a ruling.

The committee may decide to subject to inspection any individual or legal entity that has received from a firm referred to in Article L310-1 the power to underwrite or manage, or that exercises insurance brokerage or presents insurance transactions in any account whatsoever. Furthermore, it may decide to subject to its inspection any legal entity or natural person that is involved, directly or indirectly, between a mutual insurance company or a union governed by the Mutual Insurance Code, or an institution governed by Title III of Book IX of the Social Security Code, on the one hand, and a person wishing to be a member of or who is a member of the mutual insurance company, of the said union or institution, on the other hand.

The committee shall also ensure that firms subject to State inspection pursuant to Article L310-1-1, group insurance companies and mixed group insurance companies defined under Article L322-1-2 as well as any entity belonging to a financial conglomerate referred to in Article L334-5 whose supervision is coordinated by the supervisory committee according to the conditions provided for in Article L334-9, respect the law and regulations applicable to them pursuant to this Book. An order by the Minister responsible for the Economy shall determine the nature, periodicity and contents of the information and documents that the firms referred to in the first paragraph must send periodically to the insurance supervisory committee to enable it to carry out its duties.

The committee shall also ensure that the firms referred to in Article L310-1, the mutual insurance companies governed by the mutual insurance and institutions Code and the institutions governed by the Book IX of the Social Security Code as well as the natural persons or legal entities referred to in the fourth paragraph and subject to its inspection apply the provisions of Title VI of Book V of the Monetary and Financial Code.

The management operations of the basic scheme of health and maternity insurance and insurance against work accidents and professional illness, stipulated under Title IV of Book IV of this Code, shall not be submitted to the committee's inspection.

The complementary retirement operations carried out by the institutions governed by Book IX of the Social Security Code subject to cross-professions and general set-off shall not be submitted to the committee's inspection.

Management operations of health and maternity insurance and those of management of exercise and services on behalf of the State or other public communities referred to by Article L111-1 (I) (4°) of the Mutual Insurance Code shall not be submitted to the committee's inspection.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### **Article L310-12-1**

*(Act no. 94-5 of 4 January, 1994 Article 3 VI, Official Journal of 5 January 1994, in force on July 1 1994)*

*(Act no. 2003-706 of 1 August 2003, Article 30 a II, Official Journal of 2 August 2003)*

*(Act no. 2004-1343 of 9 December 2004, Article 74, Official Journal of 10 December 2004)*

The supervisory committee for insurance companies, mutual insurance companies and provident institutions shall be made up of nine members:

- 1° a chairperson named by decree;
- 2° the governor of the Bank of France, a chairperson of the banking committee;
- 3° a Conseiller d'Etat, suggested by the vice-president of the Conseil d'Etat;
- 4° a Conseiller at the Cour de cassation, proposed by the first president of the Cour de cassation;
- 5° a Conseiller Maître at the Cour des comptes, proposed by the first president of the Cour des comptes;
- 6° four members chosen for their competence as regards insurance, mutual insurance system and contingency.

The members mentioned under 3° and 6° shall be named by a joint order of the ministers in charge of the economy, social security and mutual insurance system. A vice-chairperson of the supervisory committee shall also be named among these members by joint order of the ministers, taken after opinion of the chairperson. The vice-chairperson shall exercise competences of the chairperson in the absence or impossibility of the chairperson.

The governor of the Bank of France may be represented. Substitutes for the members mentioned in 3° with 6° are named under the same conditions as the holders. The substitute for the member appointed as vice-chairperson of the supervisory committee shall replace him when he shall exercise the competences of the chairperson pursuant to the preceding paragraph.

The director of the Treasury, or his representative, and the director of the social security, or his representative, shall sit on the supervisory committee in their capacity of Government commissioners, without deliberative vote. They may, except as regards sanctions, ask a second deliberation under the conditions fixed by decree in Conseil d'Etat. When it decides on a sanction, the supervisory committee shall deliberate without their presence.

The chairperson and the members mentioned under 3° with 6° shall be named for a five year period. Their mandate is renewable once.

In the event of vacancy of a seat of member of the supervisory committee for whatever cause, he shall be replaced for the term of the office remaining to run. A mandate exercised during less than two years shall be taken into account for the application of the rule of renewal. The regular members and substitutes of the committee may not be revoked.

The decisions of the supervisory committee shall be taken by majority of the votes. In the event of equal division of

## INSURANCE CODE

votes, that of the chairperson shall be a casting vote.

Under matters and conditions fixed by decree in Conseil d'Etat, the Supervisory committee may create internally one or more specialised committees and give them delegation to make decisions of individual range. There shall be created at least one specialised committee with regard to the organizations governed by Book III of the code of mutual insurance system.

The supervisory committee may also establish advisory committees, in which it names experts if necessary, to prepare and investigate its decisions.

The chairperson of the Supervisory committee shall have the capacity to act in the name of said committee before any jurisdiction.

He may delegate his signature in the matters where he holds pursuant to law and regulations a specific competence.

A secretary-general named, among members of the organization of insurance inspection, by joint decree of the ministers in charge of the economy, social security and mutual insurance system, after the opinion of the committee, shall direct the departments of the supervisory committee.

The staff of the departments of the committee shall be composed of public sector employees placed at its disposal under conditions fixed by decree in Conseil d'Etat, contractual employees of public law and of employees of private law.

On proposal of the secretary-general, the supervisory committee shall define the rules of good conduct applicable to the staff of the of the committee's departments.

The supervisory committee for insurance companies, mutual insurance companies and provident institutions and the banking committee shall meet jointly at least twice per annum and as the need shall arise, on subjects of common interest.

### **Article L310-12-2**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 30 A III, Official Journal of 2 August 2003)*

Any Member of the supervisory committee must inform the chairperson:

1° of the interests that it held during two years preceding its nomination, which it holds or which it has just held;

2° of the functions in a social, economic or financial activity that it exercised during two years preceding its nomination, whether it shall exercise or has just exercised;

3° of any mandate within a legal entity that it held during two years preceding its nomination, whom it holds or has just held.

These particulars, as well as those in respect to the chairperson, shall be put at the disposal of the members of the supervisory committee.

The members of the committee may, in no case, throughout their mandate, receive remuneration from an insurance firm or a credit institution, a mutual insurance company, union or federation governed by the mutual insurance code or an institution governed by Book IX of the social security code.

No member of the supervisory committee may deliberate or take part in the latter's operations, in a case in which himself, or if necessary, a legal entity within which he shall exercise functions or hold a mandate or of which he is a lawyer or an advisor has an interest; he may not any more take part in a deliberation concerning a case in which himself or, if necessary, a legal entity within which he shall exercise functions or hold a mandate or of which he shall be a lawyer or an advisor represented one of the interested parties during two years preceding the deliberation.

The chairperson of the supervisory committee shall take suitable steps to ensure the respect of the obligations and prohibitions resulting from this Article.

### **Article L310-12-3**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 30 A IV, Official Journal of 2 August 2003)*

The supervisory committee for insurance companies, mutual insurance companies and provident institutions shall have financial autonomy. It shall adopt its budget on proposal of the secretary-general. It shall receive the sums coming from the contribution established by Article L. 310-12-4.

### **Article L310-12-4**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 30 A V, Official Journal of 2 August 2003)*

The firms subjected to the committee's inspection under the terms of the this code shall be subjugated to a contribution for costs of inspection whose taxes base consist of premiums or contributions issued and accepted between January 1 and December 31 of each year, including the accessories of premiums, contributions, costs of contracts and payments and costs of insurance policy, duty free, transfers and cancellations of the financial year and all the former financial years, to which are added the total of the premiums or contributions acquired during the financial year and not issued.

The rate of the contribution, fixed by decree, lies between 0,05 per thousand and 0,15 per thousand. This same decree may fix a rate distinct for the organizations governed by Book III from the mutual insurance code.

The contribution shall be liquidated, scheduled and recovered according to the terms and conditions provided for for the revenue of State administrative establishments. The disputes in relation to said contribution shall be referred to administrative tribunal.

The provisions of Act of 10 August 1922 relating to the organization of the inspection of the committed expenditure shall not be applicable to the supervisory committee.

A decree in Conseil d'Etat shall define the accounting basis of the supervisory committee and the terms and conditions for the application of this Article.

## INSURANCE CODE

### **Article L310-12-5**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 30 A VI, Official Journal of 2 August 2003)*

The contribution, mentioned under Article L. 310-12-4, shall not be owed by the companies that are not subjected to the accreditation procedure provided for under Articles L. 321-1, L. 321-7 and L. 321-9 or which have not obtained the authorization provided for under Article L. 321-1-1.

### **Article L310-12-6**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 31 I, Official Journal of 2 August 2003)*

When the supervisory committee plans to resort to the guarantee fund, it shall hear the chairperson of said fund. The chairpersons of guarantee funds shall also be heard upon their request.

### **Article L310-13**

*(Act n°89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act n°94-678 of 8 August 1994, Article 14, I, Official Journal of 10 August 1994)*

*(Act n°94-679 of 8 August 1994, Article 2, II, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Order n°2001-766 of 29 August 2001, Article 2, II, Official Journal of 31 August 2001)*

*(Act n°2003-706 of 1 August 2003, Article 3 II, Official Journal of 2 August 2003)*

*(Order n°2004-1201 of 12 November 2004, Article 4, Official Journal of 16 November 2004)*

The inspection of firms referred to in Articles L310-1 and L310-1-1, of group insurance companies and of mixed group insurance companies defined under Article L322-1-2, of mixed financial holding companies provided for in Article L.334-2 as well as of the persons referred to in the first paragraph of Article L310-12 shall be based on records and carried out on the spot. The committee shall organise and define the terms and conditions of the inspection. A body of insurance auditors shall be made available to the committee for this purpose.

The members of the inspectorate general for social affairs shall also be made available to the committee, as required, on the terms defined by decree.

In addition, for the exercise of its powers, the supervisory committee may invite any qualified person within the framework of the agreements drawn up for this purpose by the inspectorate general.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### **Article L310-14**

*(Act n°89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act n°94-679 of 8 August 1994, Article 2, II, Official Journal of 11 August 1994 in force on 1 January 1995)*

*(Order n°2001-766 of 29 August 2001, Article 2 III, Official Journal of 31 August 2001)*

*(Act n°2003-706 of 1 August 2003, Article 31 III, official Journal of 2 August 2003)*

*(Order n°2004-1201 of 12 November 2004, Article 4, Official Journal of 16 November 2004)*

*(Order n°2005-861 of 28 July 2005, Article 1 I, Official Journal of 29 July 2005)*

*(Act n°2005-1564 of 15 December 2005, Article 14, Official Journal of 16 December 2005)*

The authority may request the firms referred to in Articles L310-1 and L310-1-1, group insurance companies and mixed group insurance companies referred to in Article L322-1-2, mixed financial holding companies provided for in Article L.334-2 as well as persons referred to in the first paragraph of Article L310-12 to provide it with all information that it needs to carry out its duties.

It may also request them to provide statutory auditors' with reports and in general all accounting documents. It may, as required, request that such documents be certified. It may request the reprocessing be certified according to the conditions set out by the regulation for the calculation of the adjusted solvency margin of firms following the international accounting standards ratified by a European Commission regulation. It may request the presentation of commercial or advertising documents. It may require the modification or decide the withdrawal of any document contrary to the law and regulations. In that case, it shall decide according to the conditions provided for in Article L310-18.

It shall ascertain the proper implementation of the publications that the firms referred to in Articles L310-1 and L310-1-1 must carry out regularly. It may order the concerned firms to publish corrective statements if inaccuracies or omissions have been noted. It may inform the public of all information that it considers necessary.

The insurance regulatory authority may request from firms subject to additional supervision pursuant to Article L334-3 the data or information in the possession of their subsidiaries that it needs to carry out such supervision. If such firms fail to provide such data or information, the regulatory authority may directly ask the subsidiaries.

Firms submitted to additional supervision and whose registered offices are located in France shall send the data or information needed to their affiliated firms which have their registered offices in a Member State of the European Community or in a State party to the European Economic Space Agreement for carrying out the additional supervision by the proper authorities of said State.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### **Article L310-15**

*(Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act no. 2001-420 of 15 May 2001, Article 136, II, Official Journal of 16 May 2001)*

*(Order no. 2001-766 of 29 August 2001, Article 2, IV, Official Journal of 31 August 2001)*

*(Act n°2003-706 of 1 August 2003, Article 31 IV, Official Journal of 2 August 2003)*

The committee may decide, if so necessary, to carry out its duty and within the limit thereof, to extend the inspection

## INSURANCE CODE

on the spot of a firm referred to under Article L310-1 to its subsidiary firms within the meaning of paragraph 4 of Article L334-2 as well as to institutions of any kind that directly or indirectly have entered into a management, reinsurance agreement or an agreement of any other kind that may alter the autonomy of its action and decision taking in respect of any one of its spheres of activity. In any event, said extension of inspection shall may only concern the auditing of the actual financial situation of the audited insurance firm as well as the auditing of said firm's compliance with the undertakings that it contracted with regard to the insured or beneficiaries of the contract or to ensure that the legal entities directly or indirectly inspecting it within the meaning of Article L233-3 of the Commercial Code and which belong to the same insurance group within the meaning of 6° of Article L334-2 of this Code are capable of participating in any relief and safeguard measures in respect of said firm.

The supervisory committee may carry out verification, on the spot, of information necessary for a complementary inspection established by Articles L334-3 of this Code, L212-7-2 of the mutual insurance code or L933-3 of the Social Security Code, in insurance firms, mutual insurance companies or unions, provident institutions and related organizations.

Where, within the framework of complementary inspection, the supervisory committee needs to verify useful information for the carrying out of the inspection with respect to a firm located in a Member State of the European Community or in another State party to the European Economic Space agreement, it shall request the competent authorities of said State to carry out the verification.

The inspection on the spot may also, within the context of international agreements, be extended to branches or subsidiaries of insurance firms operating under French law established abroad.

### Article L310-16

*(inserted by Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

A report shall be drawn up in the event of an audit performed on the spot. If the controller makes comments, the firm shall be informed thereof. The commission shall take cognisance of the controller's comments and the firm's replies thereto.

The result of audits performed on the spot shall be communicated either to the board of directors or to the management board and supervisory board of the audited firm. They shall also be sent to the statutory auditors.

### Article L310-17

*(Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act no. 94-5 of 4 January 1994, Article 15, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 32 I, Official Journal of 2 August 2003)*

The supervisory committee may send to all organizations or persons subjected to inspection a recommendation in order to take all appropriate steps to restore or reinforce its financial condition, improve its management methods or ensure the capacity of its organisation to implement its activities and objectives. The organization shall be bound to answer within a two-month time limit in specifying the steps taken following the recommendation.

### Article L310-18

*(Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act no. 92-665 of 16 July 1992, Article 13, Official Journal of 17 July 1992)*

*(Act no. 94-5 of 4 January 1994, Article 15, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 2, Official Journal of 29 June 1999)*

*(Act no. 2001-420 of 15 May 2001, Article 12, III, Official Journal of 16 May 2001)*

*(Act n°2003-706 of 1 August 2003, Article 32 II, Official Journal of 2 August 2003)*

If a firm mentioned under Article L310-1-1, under 1°,3°,4° of Article L310-2 or under Article L322-1-2 has infringed law or regulations applicable to it or has practices that put in danger its margin of solvency or the performance of its undertakings that it has entered into towards the insured, members or assigns, the committee may pronounce against it or its leaders, one or more of the following disciplinary sanctions, according to the gravity of the infringement:

1. Warning,
2. Reprimand,
3. Prohibition on carrying out certain transactions and any other restrictions on the pursuit of the activity,
4. Temporary suspension of one or more of the firm's corporate officers,
5. Total or partial withdrawal of accreditation,
6. Ex officio transfer of all or part of the portfolio of contracts.

The supervisory committee may decide to postpone its decision to the end of a time limit that it grants to the firm in order to take all steps allowing to stop the infringements or practices referred to under the first paragraph.

In addition, the committee may impose a pecuniary penalty either instead of or in addition to said measures. The amount of said pecuniary penalty must be commensurate with the seriousness of the breaches committed, without exceeding 3 per cent of the revenues, exclusive of tax, made during the last year ended, calculated over a twelve-month period. Said maximum shall be increased to 5 per cent in the event of a further breach of the same obligation. The relevant sums shall be paid to the Public Treasury. They shall be recovered as receivables of the State unrelated to tax and eminent domain.

For group insurance firms defined under Article L322-1-2, the maximum amount of the monetary sanction shall be determined in relation to the turn-over of the firm among insurance firms included by full consolidation in the consolidation or policy plan the total of the premiums of which during the closed financial year is the highest.

## INSURANCE CODE

In all cases referred to in this Article, the supervisory committee for insurance companies, mutual insurance companies and provident institutions shall decide after adversary proceedings. It shall have the obligation to inform the concerned persons about their right to be heard. Where they exercise this right, they may be represented or assisted.

The persons sanctioned may, within two-months following notice of the decision, lodge an appeal of full jurisdiction (on matters of law and facts) before the Conseil d'Etat.

When a sanction pronounced by the supervisory committee for insurance companies, mutual insurance companies and provident institutions has become final, the committee may, at the expense of the firm concerned, order that its decision be published in three newspapers or publications that it names and that it be displayed at the places and for the time that it specifies.

### Article L310-18-1

*(Act no. 94-679 of 8 August 1994, Article 2 III, Official Journal of 10 August 1994, in force on 1 January, 1995)*

*(Act no. 2001-420 of 15 May 2001, Article 136 III, Official Journal of 16 May 2001)*

*(Ordinance no. 2001-766 of 29 August 2001, Article 10 I, Official Journal of 31 August 2001)*

*(Act no. 2003-706 of 1 August 2003, Article 32 VI A, Official Journal of 2 August 2003)*

*(Act no. 2004-1343 of December 9 2004, Article 75, Official Journal of December 10 2004)*

If a physical or legal person referred to under the fourth paragraph of Article L. 310-12 has infringed a provision of Title VI of the Book V of the Monetary and Financial Code, or Book V of this code, the committee may pronounce, against him (it) or, if necessary, against the leaders, one of the following disciplinary actions, according to the gravity of the failure:

1. Blame;
2. Warning.

Moreover, the committee may, instead or in addition to these sanctions, pronounce a pecuniary penalty at most equal either to 3 % of the sales turnover net of tax realized during the last closed financial year or to 37 500 euros if this last sum is higher. The corresponding sums shall be paid to the Treasury. They shall be collected like claims of the State, separate from tax and State property.

The committee may decide to defer its decision at the end of a time limit that it assigns to the person, to take any step likely to put an end to the infringements or practices referred to under the first paragraph.

In all the cases aimed at in this Article, the committee shall rule after an adversary procedure. The people referred to under the first paragraph are obligatorily put capable being heard before the committee takes its decision. They may be represented or assisted.

The sanctioned persons may, within a two-month time limit, following the notification of the decision, lodge an appeal of full jurisdiction (on matters of law and facts) before the Conseil d'Etat.

When a sanction imposed by the committee became final, it may, with the expenses of the sanctioned person, order the publication of its decision in three newspapers or publications which it shall specify and the posting in places and for a period that it shall state.

### Article L310-19

*(Act n°89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act n°94-679 of 8 August 1994, Article 2, IV, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act n°99-532 of 25 June 1999, Article 55, I, Official Journal of 29 June 1999)*

*(Order n°2001-766 of 29 August 2001, Article 2, V, Official Journal of 31 August 2001)*

*(Act n°2003-706 of 1 August 2003, Article 31 V, Official Journal of 2 August 2003)*

*(Order n°2004-1201 of 12 November 2004, Article 4, Official Journal of 16 November 2004)*

The insurance supervisory committee may request from the statutory auditors of a firm referred to in Article L310-1, a firm referred to in Article L310-1-1, a group insurance firm or a mixed group insurance firm referred to in Article L322-1-2 or a mixed financial holding company belonging to a financial conglomerate whose supervision is coordinated by the supervisory committee according to the terms provided for in article L.334-9 any information on the activity of the institution concerned by the audit. The statutory auditors shall then be released from their professional secrecy thereof.

The supervisory committee may also transmit to statutory auditors of the persons referred to in the first paragraph the information necessary for carrying out their duties. Said information shall be protected by professional secrecy.

The supervisory committee may furthermore transmit written remarks to statutory auditors who must answer in said form.

The statutory auditors must notify the insurance supervisory committee as quickly as possible of any act concerning the firm or company referred to in the previous paragraph or any decision taken by its corporate officers coming to their attention in the course of their assignment that may:

- constitute a violation of laws and regulations that apply to them and may have a significant impact on the financial situation, result or assets,
- harm the continuity of its activity,
- bring about a refusal to certify its accounts or the issue of reservations.

The same obligation shall apply to acts and decisions coming to their attention in the course of their assignment as statutory auditors of a parent firm or subsidiary of the firm referred to in Article L310-1 or Article L310-1-1 or of companies referred to in Article L322-1-2 or a company within the perimeter of the preparation of the combined accounts within the meaning of Article L345-2 or company belonging to a financial conglomerate whose supervision is coordinated by the supervisory committee according to the terms provided for in article L.334-9 whose accounts they certify.

The statutory auditors may not be held liable for information or disclosure of acts made pursuant to the obligations

## INSURANCE CODE

imposed on them in this Article.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### **Article L310-19-1**

*(inserted by Act no. 99-532 of 25 June 1999, Article 55, II, Official Journal of 29 June 1999)*

*(Act n°2003-706 of 1 August 2003, Article 31 VI, Official Journal of 2 August 2003)*

The supervisory committee may be requested to give its opinion on any proposition to designate or renew the mandate of statutory auditors of organizations subjected to its inspection under the conditions determined by decree. The committee may furthermore, where the circumstances dictate, carry out the designation of an additional statutory auditor.

The insurance regulatory committee, when it is aware that a statutory auditor of a firm subject to its inspection has breached the provisions of Section 6 of chapter IV of Title I of Act no. 66-537 of 24 July 1966 relating to business corporations and of Article L310-19 of this code, may request the court with jurisdiction to remove the statutory auditor from office in accordance with the procedures provided for under Article 227 of aforementioned Act no. 66-537 of 24 July 1966.

The insurance supervisory committee may also report said breach to the proper disciplinary authority. It may, for this purpose, disclose the information that it considers necessary to properly inform said authority.

### **Article L310-20**

*(Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act no. 98-546 of 2 July 1998, Article 40, I, Official Journal of 3 July 1998)*

*(Act no. 99-532 of 25 June 1999, Article 54, Official Journal of 26 June 1999)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 9°, Article 46 V 1°, Official Journal of 2 August 2003)*

The insurance supervisory committee, the Financial Markets Authority, the Banking Committee, the Financial Markets Board, the financial management disciplinary council, the Competition Board, market firms and the clearing houses referred to under Article 68 of Act no. 96-597 of 2 July 1996 relating to the modernisation of financial activities, the deposit guarantee fund established under Article 52-1 of aforementioned Act no. 84-46 of 24 January 1984, the guarantee fund for insured established under Article L421-1 of this Code shall be authorised to exchange the information needed to carry out their respective assignments. The information thus gathered shall be covered by professional secrecy in force in accordance with the terms applicable to the institution that disclosed it and to the recipient institution.

N.B. Act n°2003-706 of 1 August 2003, Article 46 V 1° and 2°:

1° The references to the Stock Exchange operations committee, the Council for discipline of financial management shall be replaced by reference to the Financial Markets Authority.

2° The references to the regulations of the Stock Exchange operations committee and to the general regulation of the financial markets council shall be replaced by a reference to the general regulation of the Financial Markets Authority.

### **Article L310-20-1**

*(inserted by Act n°2003-706 of 1 August 2003, Article 31 VII, Official Journal of 2 August 2003)*

The supervisory committee for insurance companies, mutual insurance companies and provident institutions shall be authorized to supply to the National Statistics and Economic Surveys Institute and to statistical services of the ministries in charge of social security and mutual insurance system, the documents which are submitted to it by the organizations subjected to its inspection when these documents are likely to bring information as regards health, retirement and contingency. The nature of the transmitted documents and the methods of their transmission shall be determined by decree.

### **Article L310-21**

*(Act n°89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act n°92-1336 of 16 December 1992, Article 333, Official Journal of 23 December 1992 in force on 1 March 1994)*

*(Act n°99-532 of 25 June 1999, Article 64 and Article 91, paragraph 3, Official Journal of 29 June 1999)*

*(Order n°2001-766 of 29 August 2001, Article 2, VI, Official Journal of 31 August 2001)*

*(Order n°2004-1201 of 12 November 2004, Article 4, Official Journal of 16 November 2004)*

The members as well as the officials of the insurance supervisory committee shall be bound by the professional secrecy under the sanctions set out by Article 226-13 of the Penal Code. Said secrecy shall not be binding on the judicial authority acting in the scope of criminal proceedings.

The insurance supervisory committee may send information to the authorities responsible for supervising insurance firms in other countries, subject to reciprocity, and on condition that said authorities are themselves bound by professional secrecy with the same safeguards as in France.

The committee for insurance companies, mutual insurance companies and provident institutions may transmit to the Central banks of Member States or other States party to the European Economic Space Agreement, to the European System of Central banks, the European Central Bank and other organizations acting under their monetary competences, and, where appropriate, to other public authorities responsible for monitoring payment systems, information for carrying out their duties. The information received within this framework shall be protected by the professional secrecy.

As exception to the provisions of Act n°68-678 of 26 July 1968 relating to the disclosure of documents and economic, commercial, industrial, financial or technical information to foreign natural persons or legal entities, the insurance supervisory committee may also enter into bilateral agreements with the insurance regulatory authorities of

## INSURANCE CODE

countries that are not parties to the European Economic Space Agreement, on condition that said authorities are themselves bound by professional secrecy, for the purpose, in addition to the exchange of information provided for in the previous paragraph, of extending the Commission's audits performed on the spot to the branches or subsidiaries of insurance firms subject to its inspection which are located within the territorial jurisdiction of the contracting authority and, vice versa, to enable said authority to participate in audits performed on the spot on French branches or subsidiaries of insurance firms subject to its inspection. At the request of said authority, the insurance supervisory committee shall perform audits on the spot on French branches or subsidiaries of insurance firms subject to the inspection of said foreign authority or, where applicable, jointly with it. Only the insurance supervisory committee may impose sanctions on the branch or subsidiary audited in France. The insurance supervisory committee may refuse the foreign authority's request for assistance when the implementation of the request is liable to violate the sovereignty, security, essential economic interests or French public policy or when any criminal proceedings have already been instituted in France on the basis of the same acts and against the same persons or when the latter has already been punished by a final decision for the same acts. When the authorities of a State member of the European Economic Community or another State party to the European Economic Space Agreement wishes to check information relevant to supervise a company located in France and which is a firm affiliated to an insurance firm subject to their additional supervision, the insurance supervisory committee must satisfy to their request either by carrying out said checking itself or by allowing the representatives of said authorities to do so. Where it does not carry out the checking itself, the authority that has brought the request may be invited to participate if it wishes so.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L310-22

*(Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

*(Act no. 94-679 of 8 August 1994, Article 2, V, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 4, Official Journal of 29 June 1999)*

When the commission discovers acts that may justify criminal proceedings, it shall send the file with a reasoned opinion to the public prosecutor with territorial jurisdiction, without prejudice to the penalties that it may impose pursuant to Article L310-18 or Article L310-18-1. If the seriousness of the acts discovered justifies such measure, the file shall be sent to the public prosecutor before the joint report referred to in Article L310-16 has been prepared.

### Article L310-23

*(inserted by Act no. 89-1014 of 31 December 1989, Article 31, Official Journal of 3 January 1990 in force on 25 June 1990)*

When the commission discover anti-competitive practices within the meaning of Articles 7 and 8 of Order no. 86-1243 of 1 December 1986 relating to the freedom of prices and competition, it shall inform the Minister in charge of the Economy and Finance thereof.

### Article L310-25

*(Act no. 94-5 of 4 January 1994, Article 3, VII, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 94-475 of 10 June 1994, Article 95, Official Journal of 11 June 1994 in force on 1 October 1994)*

*(Act no. 94-679 of 8 August 1994, Article 2, VI, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XIX, Official Journal of 22 April 2001)*

The judicial rehabilitation or liquidation established by the aforementioned Act no. 85-98 of 25 January 1985 may be opened with regard to a firm referred to in Articles L310-1 or L310-1-1 only upon application of the insurance regulatory commission. The court may also act of its own motion or the public prosecutor may submit an application to open said proceedings to the court after obtaining the consent of the insurance regulatory commission. The provisions of Article L326-4 shall apply to the judicial rehabilitation proceedings.

An application to open the friendly settlement proceedings established by Act no. 84-148 of 1 March 1984 relating to the prevention and friendly settlement of the difficulties that firms experience with regard a firm referred to above may to referred to the presiding judge of the court only after the consent of the insurance regulatory commission has been obtained.

## SECTION IV

### Penalties

Articles L310-26 to  
L310-28

### Article L310-26

*(transferred by Act no. 94-5 of 4 January 1994, Article 3, VIII, Article 16, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any violation of the provisions of Article L310-10 shall be punished by a fine of € 4,500 and, in the event of a repetition of a breach, of €9,000. The judgement shall be published at the costs of the convicted persons or of the firms legally liable.

### Article L310-27

*(Act no. 94-5 of 4 January 1994, Article 3, VIII, Article 16, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Order no. 96-267 of 28 March 1996, Article 14, Official Journal of 31 March 1996 in force on 1 May 1996)*

Should one of the transactions referred to in paragraphs 1, 2 and 3 of Article L310-1 be underwritten in France in

## INSURANCE CODE

violation of the provisions of Articles L310-2 and L310-6, such act shall be punished by a three year prison sentence and a fine of €75,000.

When an individual commits one of the offences provided for in the previous paragraph, in accordance with the terms of Article 712-2 of the Penal Code, the publication of the decision may be ordered as an additional penalty.

In accordance with the terms of Article 121-2 of the Penal Code, legal entities may be held criminally liable for the same offences. They shall incur the following penalties:

1 a fine, in accordance with the provisions of Article 131-38 of the Penal Code,

2 the penalty referred to in paragraph 4 of Article 131-39 of the Penal Code,

Persons who in good faith contracted a contract with a firm whose closure is ordered by court shall enjoy the same liens and covers as those that this Code reserves to policyholders and beneficiaries of contracts in the event of the liquidation of an insurance firm.

### Article L310-28

*(Act n°94-5 of 4 January 1994, Article 3, VIII, Article 16, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°94-679 of 8 August 1994, Article 3, I, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act n°99-532 of 25 June 1999, Article 44 and Article 91, paragraph 5, Official Journal of 29 June 1999)*

*(Order n°2001-766 of 29 August 2001, Article 10, III, Official Journal of 31 August 2001)*

*(Order n°2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)*

*(Order n°2004-1201 of 12 November 2004, Article 4, Official Journal of 16 November 2004)*

Should any corporate officer of a group insurance company or a mixed group insurance company referred to in Article L322-1-2, a mixed financial holding company provided for in Article L. 334-2 or a firm subject to State inspection pursuant to Article L310-1 or L310-1-1, after a formal demand, fails to reply to requests for information by the insurance supervisory committee or prevent it in any way from carrying out its inspection duties or knowingly provide it with incorrect information, it shall be punished by a two year prison sentence and a fine of €300,000. Any impediments to the insurance supervisory's action carried out pursuant to Article L323-1-1 shall be punished by the same sanctions. The same provisions shall apply to the corporate officers of legal entities and natural persons that the insurance supervisory committee decides to inspect pursuant to the fifth paragraph of Article L310-12. Restrictions of the action of the supervisory committee carried out in compliance with Article L. 323-1-1 shall be punished by the same sanctions.

Should the same persons make false statements or make fraudulent concealments in any document submitted to the Minister responsible for the Economy and Finance, the same sanctions shall apply.

The same sanctions shall also apply to any one, who in the course of activities governed by this Code, makes false statements in any document brought to the attention of the public or customers.

Legal entities may also be held criminally liable in accordance with the conditions provided for in Article 121-2 of the Penal Code for offences set out in this Article and incur a fine in accordance with the provisions of Article 131-38 of the Penal Code.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

## TITLE II

### Administrative scheme

### Articles L321-1 to L328-16

#### CHAPTER I

##### Licences

##### Articles L321-1 to L321-11

#### SECTION I

##### Administrative licence of French firms

##### Articles L321-1 to L321-1-2

### Article L321-1

*(Act n°83-453 of 7 June 1983, Article 2, Official Journal of 8 June 1983)*

*(Act n°85-608 of 11 June 1985, Article 11, Official Journal of 20 June 1985)*

*(Act n°89-1014 of 31 December 1989, Article 55, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°91-716 of 26 July 1991, Article 1, IV, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act n°94-5 of 4 January 1994, Article 1, I, IV, Article 8, II, Article 9, II, Article 17, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 10°, Official Journal of 2 August 2003)*

*(Order n°2004-1201 of 12 November 2004, Article 3, Official Journal of 16 November 2004)*

The firms referred to in Article L310-2 (1°) may start their transactions only after they have been granted accreditation issued by the insurance firm committee referred to in Article L413-1. However, in respect of reinsurance acceptance transactions, said accreditation shall not be required.

The accreditation shall be granted upon application by the firm for the transactions of one or more insurance branch offices. The firm may only underwrite transactions for which it has been granted accreditation.

The same firm may not be granted accreditation for the transactions set out in Article L310-1 (1°) and for those set out at (3°) of the same Article.

## INSURANCE CODE

The same firm may not be granted accreditation for the transactions set out in the last paragraph of Article L310-1 and for those set out at (1°), (2°), and (3°) of the same Article.

A tontine-like firm may not be granted accreditation for transactions other than in tontine form.

Before granting accreditation to an insurance firm which is:

- a) either a subsidiary of an insurance firm accredited in another Member State or in a State party to the European Economic Space Agreement;
- b) or a subsidiary of the parent firm of an insurance firm accredited in another Member State or in a State party to the European Economic Space Agreement;
- c) or a firm controlled by a natural person or a legal entity, which also controls an insurance firm accredited in another Member State or in a State party to the European Economic Space Agreement.

The relevant authorities of the other Member State or of the State party to the European Economic Space Agreement shall be consulted.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L321-1-1

*(Act no. 89-1014 of 31 December 1989, Article 19, Article 20, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 16, I, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 17, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 2001-420 of 15 May 2001, Article 136, V, Official Journal of 16 May 2001)*

The firms referred to in Article L310-1-1 may start their transactions only after they have been granted permission to underwrite reinsurance.

A decree in Conseil d'Etat shall specify the terms of application of this Article, in particular, in respect of reinsurance firms established on the date of publication of Act no. 2001-420 of 15 May 2001 relating to new economic regulations and subject to State control pursuant to Article L310-1-1.

### Article L321-2

*(Act n°83-453 of June 1983, Article 3, Official Journal of 8 June 1983)*

*(Act no. 83-453 of 1989, Article 22, Article 50, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 1, I, IV, Article 18, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II, 2°, 3°, Official Journal of 2 August 2003)*

The insurance firms' committee shall inform the European Communities Commission of any decision of accreditation given to a firm controlled by a firm whose registered office is established in a State not party to the European Economic Space agreement. The inspection is extended, in the sense of articles 355-1 and 357-1 of Act n° 66-537 of 24 July 1966 relating to business corporations.

Upon application by the proper authority of the European Communities based on the discovery that insurance firms having their registered offices in a Member State of the Community do not have access to the market of a State not party to the European Economic Space agreement or does not enjoy the same treatment as firm having their registered offices there, the Minister shall stay any decision to authorise a firm controlled by a firm having its registered office in said State for a three-month period. The three-month period may be extended by a decision of the Council of the Communities.

The provisions of the previous paragraph shall not apply to the establishment of an insurance firm controlled by an insurance firm that it already established on the territory of a Member State of the European Communities.

When, for a three-month period that may be extended by a decision of the Council of the Communities, the Committee of the European Communities shall decide to stay any decision with respect to accreditation of insurance firms that are direct or indirect subsidiaries of firms governed by the law of a third party country, the accreditation granted during the aforementioned period to said firms by the proper authority of a State party to the European Economic Space agreement, but not party to the European Community, shall not entail any legal effect in France during said period and in particular shall not entitle the firm in question to carry out insurance transactions.

### Article L321-1-2

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 3, Official Journal of 16 November 2004)*

The insurance firms committee shall advise the authority responsible for supervising credit institutions or investment companies when it decides on an accreditation application presented by a subsidiary of a credit institution or an investment company accredited in a Member State or in another State party to the European Economic Space Agreement or a subsidiary of the parent firm of investment company or credit institution accredited in a Member State or in another State party to the European Economic Space Agreement controlled by a natural person or legal entity, who also controls a company of State party to the European Economic Space Agreement.

N.B. Order 2005-658 2005-06-08, Article 5: The provisions of this Title, excluding those of Article 2, shall apply only to procurement contracts, agreements and contracts concluded subsequent to the publication of this order.

## SECTION II

Licence of non Community firms whose registered offices are located in a  
member State of the European Economic Space

Articles L321-7 to  
L321-8

### Article L321-7

*(inserted by Act no. 94-5 of 4 January 1994, Article 1, I, Article 19, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

## INSURANCE CODE

1994)

Firms subject to State control pursuant to Article L310-1 and referred to in the paragraph 3 of Article L310-2 may start their transactions under arrangements in respect of the right of establishment in France only after they have been granted licence. Said licence is not required for acceptance transactions in reinsurance.

The licence referred to in the first paragraph of this Article shall be granted in accordance with the provisions of the second and third paragraphs of Article L321-1.

### **Article L321-8**

*(inserted by Act no. 94-5 of 4 January 1994, Article 1, I, Article 19, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II, 2°, Official Journal of 2 August 2003)*

Firms referred to under 5° of Article L310-2 may not cover or take, in France, through freedom of services, the risks referred to under Article L351-5 or the undertakings referred to under Article L353-5, unless they have received the accreditation for free provision of services referred to in said articles.

The accreditation referred to under the previous paragraph shall be granted by the insurance firms' committee in accordance with the terms defined under the first two paragraphs of Article L321-10.

A decree in Conseil d'Etat shall define the methods of calculating technical reserves for said contracts, the presentation rules of said reserves and rules applicable to the location of assets representing reserves.

### SECTION III

Special accreditation for firms whose registered offices are located in a State Article L321-9

Non-member of the European Economic Space

### **Article L321-9**

*(transferred by Act no. 94-5 of 4 January 1994, Article 1, I, II, Article 19, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II, 2° Official Journal of 2 August 2003)*

Firms referred to under 4° of Article L310-2 may underwrite transactions subject to State inspection pursuant to Article L310-1 in France only after they have received an accreditation issued in accordance with the provisions of the second and third paragraphs of Article L321-1 and a special accreditation in respect of the acceptance of a general agent. The insurance firms' committee shall issue the accreditation. Said firms may also be compelled to provide a suretyship or guarantees if their country took or was taking similar measures with regard to French firms.

A decree in Conseil d'Etat shall define the provisions for the application of the previous paragraph and in particular outlines the conditions that the general agent must satisfy.

### SECTION IV

Conditions of licences

Articles L321-10 to  
L321-10-1

### **Article L321-10**

*(Act no. 94-5 of 4 January 1994, Article 1, I, III, Article 20, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 53, I, Official Journal of 29 June 1999)*

*(Act n°. 2001-420 of 15 May 2001, Article 11, 12, II, Official Journal of 16 May 2001) and I*

*(Act n°2003-706 of 1 August 2003, Article 29 II, 4°, Official Journal of 2 August 2003)*

The insurance firms' committee, to grant or refuse accreditations provided for under Articles L321-1, L321-7 and L321-9, shall take account of:

- the technical and financial resources of proposed for implementation and their suitability to the firm's programme of activity,
- the honourability, expertise and experience of the persons with responsibility for management of the firm, which shall be assessed in accordance with the conditions defined under Article L322-2,
- the breakdown of its capital and the shareholder status or for the companies referred to under Article L322-26-1, the procedures for setting up the establishment fund.

The insurance firms' committee shall refuse accreditation, after he has had heard the opinion of the supervisory committee for insurance companies, mutual insurance companies and provident institutions, if the exercise of the duty of inspection of the firm is liable to be hampered either by the existence of capital links or of direct or indirect control between the applicant firm and other individuals or legal entities or by the existence of law, regulations or administrative provisions of a State not party to the European Economic Space agreement and which govern one or more of said persons.

The list of documents to be submitted in support of an application for accreditation submitted in accordance with the provisions of Articles L321-1, L321-7, L321-8 and L321-9 of the Insurance Code shall be defined by order of the Minister in charge of the Economy and Finance for each type of accreditation.

The granting of an accreditation may be subjected to the respect of undertakings contracted by the applicant firm.

### **Article L321-10-1**

*(Act no. 2001-420 of 15 May 2001, Article 136, VI, Official Journal of 16 May 2001)*

*(Act n°2003-706 of 1 August 2003, Article 29 II, 3°, Official Journal of 2 August 2003)*

The minister, to grant or refuse accreditation to underwrite reinsurance coverage provided for under Article

## INSURANCE CODE

L321-1-1, shall take into account:

- the breakdown of its capital and the shareholder status or for the companies referred to under Article L322-26-1, the procedures for setting up the establishment fund,
- the honourability and qualification of the persons with responsibility for management of the firm,
- the technical and financial resources of proposed for implementation in order to guarantee the firm's solvency considering its programme of activity.

The Minister shall refuse accreditation, after he has heard the opinion of the insurance supervisory committee, when the assignment to supervise the firm is liable to be hampered either by the existence of capital links or of direct or indirect control between the applicant firm and other individuals or legal entities or by the existence of law, regulations or administrative provisions of a State not party to the European Economic Space agreement and which govern one or more of said persons.

The list of documents to be submitted in support of an application for authorisation submitted in accordance with the provisions of Articles L321-1-1 shall be defined by order of the Minister for Economy and Finance.

### SECTION V

Provisions specific to overseas departments and territories and collectivité

Article L321-11

territoriale of Mayotte

#### Article L321-11

*(Transferred by Act N° 94-5 of 4 January 1994 art. 1 I, art. 42 II Official Journal of 5 January 1994 in force on 1st July 1994)*

The provisions of chapter I of title II of Book III, in the wording of this Code prior to the entry in force of Act N° 91-716 of 26 July 1991 on various provisions of economic and financial nature, are applicable in the territories of overseas.

### CHAPTER II

Rules of formation and operation

Articles L322-1 to  
L322-29

### SECTION I

Common provisions

Articles L322-1 to  
L322-3

#### Article L322-1

*(Act n°89-1014 of 31 December 1989, Article 46, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°91-716 of 26 July 1991, Article 1, VI, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act n°94-5 of 4 January 1994, Article 3, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2005-842 of 26 July 2005, Article 14 I, Official Journal of 27 July 2005)*

Any French firm referred to in Article L310-1 must be established as a European company, a stock company or a mutual insurance company.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

#### Article L322-1-1

*(inserted by Act no. 99-532 of 25 June 1999, Article 53, II, Official Journal of 29 June 1999)*

The headquarters of French insurance firms must be located in France.

#### Article L322-1-2

*(Order n°2001-766 of 29 August 2001, Article 3, Official Journal of 31 August 2001)*

*(Order n°2004-1201 of 12 November 2004, Article 3, Official Journal of 16 November 2004)*

In this Code:

1° The expression "group insurance company" refers to firms other than mixed financial holding companies within the meaning of Article L334-2 and whose main activity consists of acquiring and managing holdings within the meaning of Article L334-2 (2°) in firms subject to State inspection pursuant to Article L310-1 or Article L310-1-1 or in insurance or reinsurance firms whose registered offices are located outside France or in establishing or managing substantial long term financial solidarity links with mutual insurance companies, pension bodies or unions governed by Book II of the Mutual Insurance Code, provident institutions or unions governed by Title III of Book IX of the Social Security Code, mutual insurance companies governed by Insurance Code or mutual or co-operative insurance or reinsurance firms or such firms under joint management which have their registered offices in a member State of the European Union or in another State party to the European Economic Space Agreement. At least one of said institutions shall be a firm subject to State inspection pursuant to Article L310-1 and has its registered office in France.

2° The expression "mixed group insurance companies" refers to parent firms, within the meaning of Article L334-2 (1°), of which at least one firm which is subject to State inspection pursuant to Article L310-1 and which has its registered office in France other than group insurance companies defined in the previous paragraph, firms subject to State inspection pursuant to Article L310-1 or Article L310-1-1, mutual insurance companies or unions governed by Book II of the Mutual Insurance Code, provident institutions or unions governed by Title III of Book IX of the Social Security Code or mutual or co-operative insurance or reinsurance firms or such firms under joint management which

## INSURANCE CODE

have their registered offices in another Member State of the European Community or in a State party to the European Economic Space Agreement and insurance firms whose registered offices are located outside France or mixed financial holding companies within the meaning of Article L334-2.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L322-1-3

*(inserted by Order no. 2001-766 of 29 August 2001, Article 4, Official Journal of 31 August 2001)*

When a group insurance company has substantial long term financial solidarity links that are not the result of holdings within the meaning of paragraph 2 of Article L334-2 with a subsidiary firm within the meaning of paragraph 4 of Article L334-2, said links shall be defined in an affiliation agreement.

A mutual insurance company may be affiliated to a group insurance company only if its statutes expressly provide for such possibility.

The group insurance company may decide to operate without share capital on condition that it has at least two subsidiary firms, at least one of which is a mutual insurance company. Moreover, subsidiary firms must be mutuals, pension bodies or unions governed by Book II of the French Mutual Insurance Code, provident institutions or unions governed by title III of Book IX of the French Social Security Code, mutual insurance companies governed by the Insurance Code or mutual or co-operative insurance or reinsurance firms or such firms under joint management having their registered offices in another member State of the European Community or party to the European Economic Space agreement. If it fails to satisfy such conditions, the group insurance company may be referred to as "group mutual insurance company". The conditions of the functioning of said group mutual insurance company are defined by decree in Conseil d'Etat.

### Article L322-1-4

*(inserted by Act no. 2003-706 of 1 August 2003, Article 29 II 11, Official Journal of 2 August 2003)*

The conclusion by a firm of a convention of affiliation to a group insurance company or the cancellation of this one shall be subject to a preliminary declaration to the insurance firms' committee. The latter shall have a time limit whose duration shall be fixed by decree in Conseil d'Etat as from the reception of the file to be opposed to the projected operation if the said operation appears contrary to the interests of the policyholders. The same shall apply when a company is subject to an exclusion measure from the group insurance company. A decree in Conseil d'Etat shall determine the terms and conditions for the application of this article and specify the operating conditions of said group of insurance companies.

### Article L322-2

*(Act n°89-1014 of 31 December 1989, Article 40, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°92-1336 of 16 December 1992, Article 372, Official Journal of 23 December 1992 in force on 1 March 1994)*

*(Act n°94-5 of 4 January 1994, Article 21, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°94-679 of 8 August 1994, Article 3, II, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act n°2001-420 of 15 May 2001, Article 12, I and Article 42, II, Official Journal of 16 May 2001)*

*(Order n°2001-766 of 29 August 2001, Article 10, I, Official Journal of 31 August 2001)*

*(Order n°2004-1201 of 12 November 2004, Article 3, Official Journal of 16 November 2004)*

No one may in any respect whatsoever establish, run or manage a firm subject to State inspection pursuant to Article L310-1 or Article L310-1-1 or a group insurance company defined in Article L322-1-2 or a mixed financial holding company within the meaning of Article L334-2:

1° if sentenced:

- a) for a crime,
- b) for violation of the provisions of Articles 441-1, 432-11 and 441-8, 433-2, 433-1, 433-3, of the Penal Code,
- c) for theft, fraud or breach of trust,
- d) for an offence punished under special laws and to the sanctions provided for in Articles 313-1 to 313-3 and 1 of the Penal Code,
- e) for theft committed by public depositories, extortion of funds or assets, bankruptcy, harm to the State's credit status or violation of foreign exchange laws,
- f) pursuant to the provisions of Book II, Title IV of the Commercial Code, those of Article L313-5 of the Consumer Code and Article L353-1 of the Monetary and Financial Code, for money lending and certain operations of door-step selling and advertisement, of Article L. 353-4 of the Monetary and Financial Code or Article 40 of Act n°83-1 of 3 January 1983 relating to the expansion of investments and the protection of savings,
- g) for receiving property obtained as a result of said offences,
- h) pursuant to the provisions of Articles L571 to L571-9, L571-14 to L571-16 of the Monetary and Financial Code.
- i) pursuant to Articles 222-38, 324-1 and 324-2 of the Penal Code or Article 415 of the Customs Code,

2° if sentenced to more than two months of imprisonment pursuant to Article L. 163-2 of the Monetary and Financial Code.

3° if sentenced by a foreign court and if such sentence has become res judicata, which constitutes a sentence under French law for one of the crimes or offences, referred to in this Article. The criminal court with territorial jurisdiction at the convicted person's place of residence shall judge the regularity and lawfulness of such decision on motion by the public prosecutor and rule in court chambers with respect to the implementation of the prohibition in France after having duly summoned the concerned party.

## INSURANCE CODE

4° If a measure of personal bankruptcy or another measure of prohibition provided for in Articles L. 625-1 to L. 625-10 of the Commercial Code or, under earlier regulations, Article 108 of Act n°67-563 of 13 July 1967 relating to judicial insolvency procedure, the liquidation of assets, personal bankruptcy and bankruptcies have been pronounced against such person or if such person has been declared bankrupt by a foreign court when the declaratory judgement has been declared enforceable in France and if such person has not been discharged.

5° If a measure to remove such person from his office as judicial officer has been imposed pursuant to a court decision.

The courts may also impose said prohibitions on any person sentenced for violation of insurance law or regulations.

Persons who establish, run or manage a firm or company referred to in the first paragraph must be honest, knowledgeable and experienced to carry out their duties.

When he examines the honesty, knowledge and experience of managers and directors who carry out these same functions in entities other than those referred to in the first paragraph and belonging to the same group within the meaning of Article L. 334-2, the insurance firms committee will discuss with the relevant authorities on behalf of such entities. It shall send to these authorities the information necessary for carrying out their duties.

The provisions of this Article shall apply to the general agents appointed by firms operating under arrangements in respect of the right of establishment.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### **Article L322-2-1**

*(Act no. 88-1201 of 23 December 1988, Article 52, Official Journal of 31 December 1988)*

*(Act no. 88-1014 of 31 December 1989, Article 54, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 96-314 of 12 April 1996, Article 8, I, Official Journal of 13 April 1996)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XX, Official Journal of 22 April 2001)*

*(Act n°2003-706 of 1 August 2003, Article 46, V 1°, Article 89 II, Official Journal of 2 August 2003)*

I - Mutual insurance companies and mutual agricultural insurance and reinsurance funds subject to accreditation may issue bonds, equity loans or subordinated bonds in accordance with the terms of chapter V of Title I (Articles 263, 266 and 339-7, chapters II b and III) of Act no. 66-537 of 24 July 1966 relating to business corporations and subject to the penalties provided for under Article 441 and, for bonds, under Articles 470, 471 (1° and 3°), 472, 473, 474 (1 to 5), 475 to 478 of said Act. The issue may be made by inviting investment by the public and shall then be subject to inspection by the Securities and Exchange in accordance with the terms of order no. 67-833 of 28 September 1967.

For the application of the aforementioned Act no. 66-537 of 24 July 1966, the word "shareholders" means "members". Penalties relating to the board of directors, management board or company manager provided for under the provisions referred to under the previous paragraph shall apply to persons or organizations with responsibility for management in accordance with the company's articles of association.

Prior to the issue of bonds, equity loans or subordinated bonds, any company or fund in question must be registered with the trade and companies register.

II - Notwithstanding Article 287 of the aforementioned act, the members' general meeting shall be solely empowered to define the main features of the issue of bonds, equity loans or subordinated bonds. However, it may delegate to the board of directors, in the framework thus defined, the powers required to determine the practical arrangements thereof. The board of directors shall submit a report on said delegation to the very next general meeting. Contract issuing may in any case be devised to favour a category of members, persons tied to the company by an employment contract, its de jure or de facto corporate officers or any other persons. Contracts signed in violation of this provision shall be nul and void.

III - In respect of the remuneration of equity loans, the variable part may not be calculated by reference to a criterion that represents the issuer company's volume of business.

IV - A decree in Conseil d'Etat shall define the provisions for application of this Article, in particular, in respect of the inspection of said issues by the insurance supervisory committee.

N.B. Act n°2003-706 of 1 August 2003, Article 46 V 1° and 2°:

1° The references to the Stock Exchange operations committee, the Council for discipline of financial management shall be replaced by reference to the Financial Markets Authority.

2° The references to the regulations of the Stock Exchange operations committee and to the general regulation of the financial markets council shall be replaced by a reference to the general regulation of the Financial Markets Authority.

### **Article L322-2-2**

*(Act no. 89-1014 of 31 December 1989, Article 39, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-679 of 8 August 1994, Article 1, VI, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act n°2003-706 of 1 August 2003, Article 54 II, Official Journal of 2 August 2003)*

Transactions other than those referred to under Articles L310-1 and L310-1-1 and under Article L341-1 of the Monetary and Financial Code may be carried out by the firms referred to under Articles L310-1 and L310-1-1 only if the scope thereof is limited in relation to the firm's entire business. A decree in Conseil d'Etat shall define the provisions for the application of this Article.

### **Article L322-2-3**

*(transferred by Act no. 94-5 of 4 January 1994, Article 2, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

## INSURANCE CODE

Firms subject to State control pursuant to Article L310-4 that underwrite legal expense insurance shall opt for one of the following procedures for functioning:

- the members of the staff responsible for managing losses of the "legal expense" branch or of legal advice relating to said management may not simultaneously carry on a similar activity in another branch underwritten by the firm that employs them or in another firm that has financial, business or administrative links with the latter.
- losses of the "legal expense" branch shall be entrusted to a legally independent firm.
- the insured is entitled under the legal expense insurance contract to entrust the defence of his interests from the moment that he is entitled to claim insurance cover under the policy to a lawyer or a qualified person of his choice.

A decree in Conseil d'Etat defines the provisions for the application of this Article.

### Article L322-2-4

*(Act no. 98-546 of 2 July 1998, Article 67, I, Official Journal of 3 July 1998)*

*(Act no. 99-532 of 25 June 1999, Article 42, Official Journal of 29 June 1999)*

*(Act n°2003-706 of 1 August 2003, Article 32 III, Official Journal of 2 August 2003)*

At the closure of each financial year, the board of directors or management board shall draw up a written solvency report. Said report shall explain how the firm, by creating adequate technical reserves whose methods of calculation and assumptions adopted are explained and justified, guarantees its undertakings to the insured. The report shall recall the defined orientations in relation to investment, present and analyse the results obtained and state if the solvency margin has been formed in accordance with the applicable regulations. The solvency report must analyse how the firm will be able to face all of its undertakings in the medium and long term.

The provisions of the first paragraph shall apply to firms referred to under 1° of Article L310-2 and under Article L310-1-1, as well as to branches of foreign firms referred to under 3° and 4° of Article L310-2. For the last ones, the general agent representing the company shall establish the solvency report.

The solvency report referred to in the previous paragraph shall be sent to the statutory auditors and to the insurance supervisory committee.

### Article L322-3

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of section I of chapter II of title II of Book III, as this code was drafted prior to Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions, shall apply to French overseas territories.

## SECTION II

Public limited insurance and capitalisation companies

Articles L322-4 to

L322-4-2

### Article L322-4

*(Act n°89-1014 of 31 December 1989, Article 46, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°94-5 of 4 January 1994, Article 22, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2001-420 of 15 May 2001, Article 11, II, and Article 14, Official Journal of 16 May 2001)*

*(Order n°2001-766 of 29 August 2001, Article 5, Official Journal of 31 August 2001)*

*(Act n°2003-706 of 1 August 2003, Article 25 II, Article 29, II 2°, 5°, Official Journal of 2 August 2003)*

*(Order n°2004-1201 of 12 November 2004, Article 3, Official Journal of 16 November 2004)*

To protect the interests of the insured, the acquisition, extension or assignment of direct or indirect stakes in the firms referred to in Article L310-2 (1°) may be subject to a prior declaration or authorization procedure in accordance with the terms set out by Conseil d'Etat decree. Said provisions shall also apply to acquisitions, extensions or assignments of stakes in group insurance companies whose registered offices are located in France as well as mixed financial holding companies whose registered office is located in France and belonging to a financial conglomerate whose supervision is coordinated by the supervisory committee according to the conditions provided for in Article L334-9.

The authorization granted for the transactions referred to in the first paragraph may be made conditional on one or more persons who filed an application for authorization comply with their commitments.

In the event of breach of the requirements enacted by a Conseil d'Etat decree referred to in the first paragraph of this Article and without prejudice to the provisions of Article L233-14 of the Commercial Code on motion by the insurance firms committee, public prosecutor, insurance supervisory committee or by any shareholder, the court shall suspend the exercise of voting rights attached to shares or proprietorship equity held unlawfully, either directly or indirectly, in the firms referred to in the first paragraph of this Article, until curing the situation.

Any person who plans filing a draft public offer with the Financial Markets Board pursuant to chapter III of Title III of Book IV of the Monetary and Financial Code in order to acquire a specific quantity of securities of an insurance firm accredited to operate in France must inform the insurance firms committee thereof two working days prior to filing said draft offer or its public announcement if it predates the offer.

Within the framework of concentration operation relating, directly or not, to a company referred to in Articles L310-1 or L310-1-1, the insurance firms committee may, if it deems necessary for its full understanding, pronounce its decision on the ground of this Article after the decision pronounced by the Minister responsible for the Economy pursuant to Articles L. 430-1 and following of the Commercial Code or that pronounced by the European Commission pursuant to Council Regulation (EEU) No 4064/89 of the 21 December 1989 on the control of concentrations between undertakings.

## INSURANCE CODE

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L322-4-1

*(transferred by Act no. 94-5 of 4 January 1994, Article 2, II, Article 22, II, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29, II 2°, 3°, Official Journal of 2 August 2003)*

The insurance firms' committee shall inform the European Communities Commission of any acquisition of holdings that may grant control of a firm referred to under Article L310-1 and referred to under 1° of Article L310-2 to a firm whose registered office is located in a State not party to the European Economic Space agreement. Control shall be construed within the meaning of Articles 355-1 and 357-1 of Act n° 66-537 of 24 July 1966 relating to business corporations.

Upon application by the proper authority of the European Communities, in the circumstances referred to under the second paragraph of Article L321-2, the insurance firms' committee shall object during a three-month period to any acquisition of holdings liable to have the consequences referred to under the previous paragraph. The three-month time limit may be extended by the Communities' Council decision.

The provisions of the previous paragraph shall not apply to acquisitions of holdings liable to grant the control of an insurance firm referred to under Article L310-1 to a firm that is already established on the territory of a State party to the European Economic Space agreement.

### Article L322-4-2

*(Act n° 2002-1303 of 29 October 2002, Article 3 III, Official Journal of 30 October 2002)*

For the application of Article L225-51 of Commercial Code, counts as one power the powers of the administrator of a limited company belonging to a group of insurance companies which is controlled, within the meaning of 1° of Article L334-2 of this Code, by a mutual insurance.

## SECTION III

National insurance and capitalisation firms, and central insurance companies      Articles L322-5 to L322-24

### Paragraph 1

#### Establishment

Articles L322-5 to L322-13

### Article L322-5

*(Act no. 92-665 of 16 July 1992, Article 2, I, Official Journal of 17 July 1992)*

Subject to the waivers set out in this Article, insurance and capitalisation firms nationalised pursuant to Article 1 of Act no. 46-835 of 25 April 1946, relating to the nationalisation of certain insurance companies and the insurance industry in France, shall have the status of business corporations.

### Article L322-12

*(Act no. 77-574 of 7 June 1977, Article 37, III, IV, V, Official Journal of 8 June 1977)*

*(Act no. 86-912 of 6 August 1986, Article 7, I, Official Journal of 7 August 1986)*

*(Act no. 89-1014 of 31 December 1989, Article 35, Official Journal of 3 January 1990 in force on 26 February 1990)*

*(Act no. 92-665 of 16 July 1992, Article 2, III, Official Journal of 17 July 1992)*

The role of central insurance companies established by Act no. 73-8 of 4 January 1973 relating to the implementation of shareholding by the staff in national banks and national insurance firms is to directly or indirectly hold all of the shares of the companies forming the groups of national insurance firms, to exercise the rights attached to said shares and to grant said rights to their own shareholders.

The provisions of Articles 95 and 111 of Act no. 66-537 of 24 July 1966 shall not apply to central insurance firms. The provisions of the same Act shall not preclude the application of this section.

### Article L322-13

*(Act no. 891014 of 31 December 1989, Article 35, Official Journal of 3 January 1990 in force on 26 February 1990)*

*(Act no. 92-665 of 16 July 1992, Article 1, Official Journal of 17 July 1992)*

Central insurance firms are public limited companies belonging to the public sector pursuant to aforementioned Act no. 46-835 of 25 April 1946 and the aforementioned Act no. 73-8 of 4 January 1973.

### Paragraph 2

#### Management

Articles L322-14 to L322-15

### Article L322-14

*(Act no. 89-1014 of 31 December 1989, Article 35, Official Journal of 3 January 1990 in force on 26 February 1990)*

National insurance firms referred to in Article L322-5 may be managed by the board of directors of the central company of their group. They may also have the same président-directeur général as the central company.

The right provided for in the first paragraph above shall be implemented by decision of the general meeting of shareholders of the national insurance firm.

## INSURANCE CODE

### Article L322-15

*(Act n°2003-706 of 1 August 2003, Article 22 III 2°, Official Journal of 2 August 2003)*

Boards of directors of central insurance firms shall include, in addition to the président-directeur général:

- a) three directors representing the State appointed by the Minister for Economy and Finance,
- b) a director appointed for his technical expertise by the Minister for Economy and Finance, after hearing the opinion of the national insurance board. A second director shall be appointed on the same terms when only one director represents the shareholders other than the State,
- c) three directors representing respectively the wage-earning staff, the staff of executives, inspectors and general agents. The Minister shall appoint said three directors with responsibility for Social Affairs based on a proposal by the most representative trade union organisations,
- d) three directors representing the insured, appointed by the Minister for Economy and Finance, based on a proposal by the national organisations of producers and consumers most qualified by insurance branch to participate in the management of the firms in question,
- e) one or two directors representing shareholders other than the State, depending on whether their shareholding of the central insurance companies exceeds or does not exceed 10%. At least one of said directors shall represent individual shareholders. Said directors shall be appointed according to the procedures defined by decree in Conseil d'Etat.

#### Paragraph 3

Distribution and transfer of the shares of central insurance companies

Articles L322-22 to  
L322-24

### Article L322-22

*(Act no. 89-1014 of 31 December 1989, Article 35, Official Journal of 3 January 1990 in force on 26 February 1990)*

Subject to the provisions of Article L322-13, the shares of central insurance companies may:

- a) either be distributed free of charge to members of the staff of national insurance companies,
- b) or be transferred for valuable consideration.

### Article L322-23

*(Act no. 89-1014 of 31 December 1989, Article 35, Official Journal of 3 January 1990 in force on 26 February 1990)*

A decree in Conseil d'Etat defines the terms and conditions applicable to the distribution of shares free of charge provided for in Article L322-22. When shares have been distributed free of charge to the staff, account shall be taken of the seniority of employees and of their ranks in the firm.

### Article L322-24

*(Act no. 89-1014 of 31 December 1989, Article 35, Official Journal of 3 January 1990 in force on 26 February 1990)*

The shares of central insurance companies shall be in registered form.

Shares assigned for valuable consideration or free of charge in accordance with Article L322-22 shall be marketable on the financial market at the end of the time limits and on the terms defined by Decree in Conseil d'Etat.

## SECTION IV

Mutual insurance companies

Articles L322-26-1 to  
L322-26-6

### Article L322-26-1

*(Act no. 85-703 of 12 July 1985, Article 15, Official Journal of 13 July 1985)*

*(inserted by Act no. 89-1014 of 31 December 1989, Article 26, Official Journal of 3 January 1990 in force on 1 July 1990)*

Mutual insurance companies are established to carry out a non commercial object. They insure their members' risks. In consideration of the payment of a fixed or variable contribution, they guarantee members that they will settle their contracted undertakings in full. However, mutual insurance companies underwriting life insurance or capitalisation may not receive variable contributions.

Said companies operate without a share capital on terms defined by decree in Conseil d'Etat for all of the categories referred to in Article L322-26-4.

### Article L322-26-2

*(Act no. 85-703 of 12 July 1985, Article 16, Official Journal of 13 July 1985)*

*(Act no. 89-1014 of 31 December 1989, Article 27, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°2003-706 of 1 August 2003, Article 89, Official Journal of 2 August 2003)*

A board of directors shall manage a mutual insurance company. However, articles of association of any mutual insurance company may stipulate that a board of directors or supervisory board may manage it. The inclusion of such provision under articles of association, or its deletion, may be decided during the life span of the company.

A decree in Conseil d'Etat shall define the conditions of application of the first paragraph.

In addition to the directors, the number and method of appointment of which are provided for in this Code, the board of directors or the supervisory board shall include one or two directors appointed by the wage-earning staff. The number of said directors, which is set by articles of association, may not exceed four or exceed one third of the number of the other directors. When the number of directors or members of the supervisory board appointed by the wage-earning staff

## INSURANCE CODE

are equal to or superior to two, the management and assimilated staff shall have one less seat.

For the application of this Article, the procedures for the appointment of directors or members of the supervisory board appointed by the wage-earning staff shall be outlined in accordance with Articles L225-28, L225-29, the first paragraph, and L225-30 to L225-34 of the Commercial Code.

The articles of association may not subject to any other condition the appointment of members, who have paid their contributions, to the board of directors or supervisory board.

Any appointment made in violation of this Article shall be null and void. Said nullity shall not entail the nullity of the deliberations that the irregularly appointed director took part in.

### **Article L322-26-2-1**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 26, Article 28, Official Journal of 3 January 1990 in force on 1 July 1990)*

Statutes that make attendance of members who are up to date with their contributions at the general meeting or make the appointment of members to the general meeting subject to the amount of the contribution shall be null and void with effect on 1 July 1991.

### **Article L322-26-2-2**

*(inserted by Act no. 96-314 of 12 April 1996, Article 8, II, Official Journal of 13 April 1996)*

The provisions of Articles 244, 246 second paragraph and 247 of Act no. 66-537 of 24 July 1966 relating to business corporations shall apply to mutual insurance companies.

### **Article L322-26-3**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 26, Article 28, Official Journal of 3 January 1990 in force on 1 July 1990)*

Unions may be set up between mutual insurance companies underwriting insurance of the same nature for the sole purpose of reinsuring in full contracts underwritten by said mutual insurance companies and to give them their joint and several guarantee.

Said unions may be established only between mutual insurance companies that undertake to assign their risks in full to the union under a reinsurance treaty.

The union shall be a separate legal entity from its member companies.

Unions of mutual insurance companies shall operate in accordance with the rules applicable to mutual insurance companies, subject to the adaptations provided for by the decree in Conseil d'Etat.

For application of Book III of this code, transactions in respect of which the unions act as guarantors with joint and several liability shall be deemed to be direct insurance transactions.

### **Article L322-26-4**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 26, Article 28, Official Journal of 3 January 1990 in force on 1 July 1990)*

Mutual insurance companies, tontine-like companies and agricultural mutual insurance and reinsurance companies governed by Article 1235 of the Rural Code shall constitute special forms of mutual insurance companies.

A decree in Conseil d'Etat shall define the special terms in which the provisions of this section shall apply to them.

### **Article L322-26-5**

*(transferred by Act no. 89-1014 of 31 December 1989, Article 26, Article 54, Official Journal of 3 January 1990 in force on 1 July 1990)*

In the event of non reasoned dissolution, by a withdrawal of a mutual insurance company's authorisation, the net assets exceeding liabilities shall vest, by decision of the general meeting, either to the other mutual insurance companies or to associations recognised as being of public benefit.

### **Article L322-26-6**

*(transferred by Act no. 94-5 of 4 January 1994, Article 31, Article 4, VI, Official Journal of 5 January 1994 in force on 1 July 1994)*

Mutual companies and their unions may accept risks in reinsurance only on the terms defined by the decree provided for in Article L310-7.

## SECTION VI

Agricultural mutual insurance and reinsurance companies or funds

Article L322-27

Paragraph 1

General provisions

Article L322-27

### **Article L322-27**

*(Act no. 93-1444 of 31 December 1993, Article 21, Official Journal of 5 January 1994)*

Article 1235 of the Rural Code shall govern the foundation of insurance or reinsurance companies or firms.

A decree in Conseil d'Etat determines the provisions for application of this Article and defines the provisions applicable to the transactions referred to in Article L310-1 that they may be authorised to underwrite. Membership of the company or fund may be limited to persons who carry on agricultural or related occupations or embrace other categories of individuals or legal entities provided for under their statutes.

**Article L322-28**

*(inserted by Act n° 2005-842 of 26 July 2005, Article 14 II, Official Journal of 27 July 2005)*

Subject to the provisions of this section, the European company shall be governed by the provisions of the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the statute of the European company (SE), by the provisions of Chapter IX of Title II of Book II of the Commercial Code and by the rules of this Code applicable to joint stock companies, if they do not contradict with the latter.

**Article L322-29**

*(inserted by Act n° 2005-842 of 26 July 2005, Article 14 II, Official Journal of 27 July 2005)*

When an insurance firm, registered in France, formed in the form of a European company, plans to transfer its registered office outside France, it will inform the insurance firms committee at the latest on the day of the publication of the project of transfer.

Without prejudice to the provisions of Article L229-4 of the Commercial Code and after consultation of the committee referred to in Article L. 310-12 of this code, the insurance firms committee is also qualified to oppose, according to the provisions of Article 8(14) and Article 19 the Council Regulation (EC) No 2157/2001 of 8 October 2001 referred to above, to the transfer of the registered office of an insurance firm, registered in France, formed in the form of a European company, giving rise to change of the applicable law as well as to the formation of a European company by way of a merger involving an insurance firm accredited in France. This decision shall be subject to an appeal before the Conseil d'Etat.

CHAPTER III

Rehabilitation and safeguard proceedings

Articles L323-1 to  
L323-8

SECTION I

General rules

Articles L323-1 to  
L323-2

**Article L323-1**

*(Order n°2004-504 of 7 June 2004, Article 1 I, Official Journal of 10 June 2004)*

If the circumstances so require, the administrative authority may order a firm to suspend payment of surrender value or the payment of advances on contracts.

**Article L323-1-1**

*(Act no. 94-5 of 4 January 1994, Article 23, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 6, Official Journal of 29 June 1999)*

*(Act n°2003-706 of 1 August 2003, Article 32 IV, Official Journal of 2 August 2003)*

*(Order n°2004-504 of 7 June 2004, Article 1 I, Official Journal of 10 June 2004)*

When the financial situation of an organisation inspected by the supervisory committee pursuant to Article L310-12, or its operating conditions are such that the interests of the insured and beneficiaries of contracts are compromised or risk being compromised, the insurance supervisory committee shall take the necessary emergency measures to safeguard the interests of the insured, members and assigns.

It may place the firm under special supervision for this purpose.

It may also restrict or prohibit the free disposal of all or part of the firm's assets, temporarily limit or suspend certain transactions or appoint a provisional director to whom the powers required to manage and run the company shall be transferred. Said appointment shall be made either at the request of corporate officers when they consider that they are no longer able to carry out their duties under normal conditions or on the committee's initiative when the establishment can no longer be managed under normal conditions or when the penalty provided for under 4° of Article L310-18 has been imposed.

The supervisory committee may require from the firm a solvency margin more important than that prescribed by the regulation so that the company is able quickly to satisfy the whole of the requirements for solvency. The level of this additional requirement of solvency margin shall be determined according to terms and conditions defined by decree in Conseil d'Etat.

The supervisory committee may, company by company, reduce the items admitted to constitute the solvency margin under the conditions fixed by decree in Conseil d'Etat.

The measures referred to under the third paragraph shall be lifted or confirmed by the committee, after all parties have defended their cause, within a time limit provided for by the decree in Conseil d'Etat.

This same decree shall specify the terms and conditions for the application of this article.

**Article L323-1-2**

*(inserted by Act no. 2001-420 of 15 May 2001, Article 136, VII, Official Journal of 16 May 2001)*

When the financial situation of a firm subject to State control pursuant to Article L310-1-1 is such that its solvency is compromised or risk being compromised, the insurance regulatory commission may place the firm under special

## INSURANCE CODE

supervision for this purpose.

It may also restrict or prohibit the free disposal of all or part of the firm's assets, temporarily limit or suspend certain transactions or appoint a provisional director to whom the powers required to manage and run the company shall be transferred. Said appointment shall be made either at the request of corporate officers when they consider that they are no longer able to carry out their duties under normal conditions or on the commission's initiative when the establishment can no longer be managed under normal conditions or when the penalty provided for in paragraph 4 of Article L310-18-2 has been imposed.

A decree in Conseil d'Etat shall define the provisions for application of this Article. In particular, it shall specify the time limit within which the commission, after a due hearing of the parties, shall withdraw or confirm the measures referred to in the previous paragraph.

### Article L323-2

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Order n°2004-504 of 7 June 2004, Article 1 I, Official Journal of 10 June 2004)*

The provisions of section I of chapter III of Title II of Book III, as this Code was drafted prior to Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions shall apply in French overseas territories.

## SECTION II

Reorganization measures of European community firms

Article L323-8

### Article L323-8

*(Order no. 2004-504 of 7 June 2004, Article 1, Official Journal of 10 June 2004)*

*(Act n°2005-845 of 26 July 2005, Article 174 II, Official Journal of 27 July 2005, in force on 1 January 2006 subject to Article 190)*

The reorganization measures referred to in this section shall be measures taken, in France or in any Member State, by an administrative or legal authority, intended to preserve or restore the financial standing of an insurance firm and which affect the pre-existing rights of the parties other than the insurance firm itself.

When they are taken in France, these measures shall be, when they affect these rights:

1° measures referred to in Article L323-1 and in the third paragraph of Article L323-1-1, except for the appointment of a provisional administrator;

2° a sanction provided for in Article L310-18 (3°), partial withdrawal of accreditation provided for at (5°) or the partial transfer of portfolio provided for at (6°) of the same Article;

3° Repealed.

4° a reorganization procedure referred to in Title II of Book VI of the Commercial Code.

## Chapter IV

Solvency of firms and addition supervision of group insurance companies and financial conglomerates

## CHAPTER IV

Portfolio transfer

Articles L324-1 to  
L324-7

## SECTION I

General rules

Articles L324-1 to  
L324-4

### Article L324-1

*(Act no. 89-1014 of 31 December 1989, Article 25, Article 57, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 24, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, 8°, Official Journal of 2 August 2003)*

French insurance firms and their branches referred to under 1° of Article L310-2 as well as French branches of the insurance firms referred to under 3° and 4° of the same Article may be authorised, in accordance with the terms defined in this Article, to transfer all or part of their portfolio of contracts covering risks or undertakings located on the territory of a Member State of the European Communities with its rights and obligations to one or more French insurance firms or their branches referred to under 1° of Article L310-2, to one or more firms whose State of origin is Member of the European Communities or their branches established on the territory of the European Communities or to one or more insurance firms established in the State of the risk or undertaking and authorised in said State. This Article shall not apply to the transfers of portfolios of contracts underwritten in freedom of services by firms authorised in accordance with the provisions of Article L321-7.

Creditors shall be informed of the transfer request by notice published in the Official Journal. The notice shall allow them a two-month period to make their comments. The insurance firms' committee shall approve the transfer by order if he considers that the transfer shall not harm the interests of creditors and insured.

The insurance firms' committee shall approve the transfer only if the regulatory authorities of the State where the assignee firm is established certifies that the latter, considering the transfer, has the required solvency margin. However, when the State of origin of the assignee firm is a party to the European Economic Space agreement, the certificate referred to under this paragraph shall be issued by the regulatory authority of said State.

When the assignor is a branch located in a Member State of the European Communities other than France, the

## INSURANCE CODE

insurance firms' committee shall first obtain the consent of the regulatory authority of the State where the branch is located.

When the transferred risks or undertakings are located in a Member State of the European Communities other than France, the Minister in charge of the Economy and Finance shall first obtain the consent of the regulatory authorities of the State of the risk or undertaking.

For transfers concerning life insurance or capitalisation firms, said approval shall in addition be based on information on actual inspection data provided for under Article L344-1.

The approval shall render the transfer binding on the insured, policyholders and beneficiaries of the contract as well as on creditors and shall preclude the right to make a higher bid provided for under Article 5 of the Act of 17 March 1909 relating to the sale and pledging of businesses. The transfer shall be enforceable from the date of publication in the Official Journal of the order referred to under the second paragraph of this Article. The insured shall be entitled to terminate the contract within one-month following the date of said publication.

### **Article L324-1-1**

*(inserted by Act no. 94-5 of 4 January 1994, Article 25, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

For the application of the provisions of Article L324-1, mutual insurance companies governed by the French Mutual Insurance Code and provident institutions referred to in Article L732-1 of the French Social Security Code and Article 1050 of the Rural Code shall be treated as insurance firms authorised in accordance with the provisions of Article L321-1.

### **Article L324-2**

When the merger or demerger transactions referred to in Article 371 of Act no. 66-537 of 24 July 1966 relating to business corporations entail transfers of portfolios of contracts underwritten in accordance with the terms provided for in Article L324-1, the provisions of Articles 313, paragraph 3, 321-1, 380, 381 paragraphs 2 et seq., 381 a, 384 and 386 paragraph 2 of said Act shall not apply thereto.

### **Article L324-3**

*(Act no. 89-1014 of 31 December 1989, Article 25, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 1°, 3°, Official Journal of 2 August 2003)*

When merger or demerger operations shall not entail transfers of portfolios of contracts underwritten in accordance with the terms of Article L324-1, the firms governed by this Book shall be bound to submit a declaration that includes all relevant documents explaining the aims together with the terms and conditions of the planned transaction to the insurance firms' committee one-month prior to the final completion thereof. The insurance firms' committee may object to the transaction within said time limit if he considers that the transaction does not respect the interests of the insured or creditors or that the consequence thereof is to decrease the realisation value, determined in accordance with the provisions of Article L344-1, of investments corresponding to the undertakings made to the insured. He may also request any further documents needed to assess the transaction. In the later case, the one-month time limit that the Minister is allowed to object to the pursuit of the transaction shall begin from the date of submission of the requested documents and the transaction may not be finally completed before the end of said time limit.

Firms established in the form of public limited companies shall also be governed by all of the provisions of the Act of 24 July 1966 in respect of merger or demerger transactions that do not entail transfers of portfolios of contracts.

### **Article L324-4**

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, V, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of section I of chapter IV of title II of Book III, as this Code was drafted prior to Act no. 89-1014 of 31 December 1989 outlining adaptations of the Insurance Code to the opening of the European Market, shall apply in French overseas territories.

## SECTION II

### Automatic Transfer

### Article L324-5

### **Article L324-5**

*(Act no. 89-1014 of 31 December 1989, Article 46, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(inserted by Act no. 99-532 of 25 June 1999, Article 45, Official Journal of 29 June 1999)*

*(Act n°2003-706 of 1 August 2003, Article 81 a VIII, Official Journal of 2 August 2003)*

When a firm is concerned by a procedure of ex officio transfer of portfolio, the insurance supervisory committee may, if it considers that the conduct of individuals or legal entities, other than the agents and employees of insurance firms, through whose intermediary contracts covering the risks referred to under Article L421-9 and L423-1 were presented or underwritten contributed to the difficulties of said firm, decide at the end of an adversary proceeding that the aforementioned persons must, all or part of the committees or remunerations of any nature, whether direct or indirect, collected at the time of the presentation or underwriting of said contracts during the eighteen-month period prior to the month during which the procedure to transfer the portfolio was launched, pay back to the assignee of the portfolio or, failing the later, to the guarantee fund.

A decree in Conseil d'Etat shall define the provisions for the application of this Article.

## SECTION III

## INSURANCE CODE

Rules applicable to accounting allocation of assets transferred with a portfolio of contracts Article L324-7

### Article L324-7

(Act no. 89-1014 of 31 December 1989, Article 25, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act no. 94-5 of 4 January 1994, Article 4, I, Official Journal of 5 January 1994 in force on 1 July 1994)

The assets transferred with a portfolio of contracts by a life insurance or capitalisation firm shall be posted to an accounting section separate from the balance sheet of the assignee firm of the contracts.

To calculate the profit sharing related to said assets provided for in Article L331-13, account shall not be taken of the respective extent of the equity capital and undertakings made to the insured posted on the firm's balance sheet.

## CHAPTER V

Withdrawal of the licence

Articles L325-1 to  
L325-1-1

## SECTION I

General rules

Articles L325-1 to  
L325-1-1

### Article L325-1

(Act no. 89-1014 of 31 December 1989, Article 23, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act no. 94-5 of 4 January 1994, Article 25, II, Official Journal of 5 January 1994 in force on 1 July 1994)

(Act n°2003-706 of 1 August 2003, Article 25 II, Official Journal of 2 August 2003)

Without prejudice to the provisions of Article L310-18, the insurance firms' committee may withdraw the accreditation provided for under Articles L321-1, L321-7 and L321-9 in the event of a prolonged lack of activity, disruption of the equilibrium between the financial resources of the firm and its activity or, if so required in the public interest, in the event of substantial changes in the structure of the share capital or management organs.

### Article L325-1-1

(inserted by Act no. 2001-420 of 15 May 2001, Article 136, VIII, Official Journal of 16 May 2001)

(Act n°2003-706 of 1 August 2003, Article 29 II 2°, Article 32 IV c, Official Journal of 2 August 2003)

Without prejudice to the provisions of Article L310-18, the insurance firms' committee may also withdraw the authorisation to underwrite reinsurance in the event of prolonged lack of activity, disruption of the equilibrium between the financial resources of the firm and its activity or, if so required in the public interest, in the event of substantial changes in the structure of the share capital or management organizations.

## CHAPTER VI

Liquidation

Articles L326-2 to  
L326-29

## SECTION I

General rules

Articles L326-2 to  
L326-15

### Article L326-2

(Act no. 89-1014 of 31 December 1989, Article 33, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act no. 94-5 of 4 January 1994, Article 4, II, Official Journal of 5 January 1994 in force on 1 July 1994)

(Order no. 2001-350 of 19 April 2001, Article 6, XXI, Official Journal of 22 April 2001)

(Act n°2003-706 of 1 August 2003, Article 29 II 1°, Official Journal of 2 August 2003)

The decision by the insurance firms' committee or the insurance supervisory committee concerning total withdrawal of accreditation shall entail ipso jure, as from the date of the publication of said decision if it concerns a French firm, the dissolution of the legal entity or, if it concerns a foreign firm, the liquidation of the assets and liabilities of the special balance sheet in respect of its transactions in France.

In both cases, the insurance supervisory committee shall open the liquidation upon application. It shall be governed by chapter II of Title II of Book VI of the Commercial Code, subject to the provisions of this chapter.

The insurance supervisory committee shall appoint a liquidator with responsibility for checking the insurance's receivables as well as the statement of its assets directly related to the liabilities such as receivables with regard to the insured, assignors, re-insurers and co-insurers.

The court with jurisdiction, upon ruling on the opening judgement of the liquidation proceedings, shall appoint one or more court officers at the same time as it appoints the liquidator. Said court officers need not necessarily be chosen from the list of court officers with responsibility for turnaround and liquidation of firms. Said liquidator shall be responsible for drawing up a statement of other assets and of liquidation operations.

At the same time, the court shall appoint an official receiver with responsibility for supervising the liquidation transactions. One or more auditors appointed by the insurance supervisory committee shall assist said official receiver.

### Article L326-3

(order no. 2001-350 of 19 April 2001, Article 6, XXII, Official Journal of 22 April 2001)

## INSURANCE CODE

The official receiver may at all times request auditors to perform audits on records and on the spot.

### **Article L326-4**

*(Act no. 89-1014 of 31 December 1989, Article 33, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 4, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XXIII, Official Journal of 22 April 2001)*

In the event of the opening of the liquidation proceedings of an insurance firm, the insured, policyholders, members and beneficiaries of insurance contracts and of the guarantee fund referred to in Article L423-1 shall, without prejudice to Article L113-2 or contractual obligations, be exempted from the declaration provided for in Article L621-43 of the Commercial Code. A decree in Conseil d'Etat defines the terms of application of this Article.

### **Article L326-9**

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 7, Official Journal of 29 June 1999)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XXIX, Official Journal of 22 April 2001)*

Where applicable, the liquidator shall return first and foremost the premiums paid by the persons who exercised their right of waiver pursuant to Article L132-5-1.

### **Article L326-12**

*(Act no. 89-1014 of 31 December 1989, Article 33, Article 36, III, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 8, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 1°, Official Journal of 2 August 2003)*

In the event of the withdrawal of an accreditation granted to a firm referred to in 2° and 3° of Article L310-1, all of the contracts that it underwrote shall lapse on the fortieth day at noon, as from publication in the Official Journal of the decision concerning the withdrawal by the insurance firms' committee or the insurance supervisory committee. Premiums or contributions due prior to the date of the decision concerning the withdrawal of accreditation by the insurance firms' committee or the insurance supervisory committee and which have not been paid on said date shall be owed in full to the firm, but the firm shall be definitively entitled thereto only in proportion to the period covered up to the date of the termination. Premiums or contributions falling due between the date of the decision concerning the withdrawal of accreditation by the insurance firms' committee or the insurance supervisory committee and the ipso jure date of termination of contracts shall be owed only in proportion to the period covered.

However, in respect of marine insurance contracts, a decree shall define the terms on which the provisions provided for under the previous paragraph may be departed from.

### **Article L326-13**

*(Act no. 89-1014 of 31 December 1989, Article 33, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 8, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 8, Official Journal of 29 June 1999)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 5°, Official Journal of 2 August 2003)*

After publication in the Official Journal of the decision of the insurance firms' committee or that of the insurance supervisory committee pronouncing the withdrawal of the accreditation granted to a firm referred to under 1° and the last paragraph of Article L310-1, the standard and special terms shall govern the contracts underwritten by the firm as long as the decision of the insurance supervisory committee provided for under the following paragraph has not been published in the Official Journal, but the liquidator may, with the approval of the official receiver, defer payment of all sums owed under contracts. The premiums collected by the liquidator shall be paid to a special account that shall be separately liquidated.

The insurance supervisory committee, at the liquidator's request and based on the report by the official receiver, may set the date on which contracts shall lapse, authorise the transfer of all or part thereof to one or more firms, extend the expiry date thereof, decide to reduce the sums payable on life insurance or death benefit insurance as well as the profits declared and surrender values so as to bring the value of the firm's undertakings to the amount coverable according to the statement of the liquidation.

Insurance supervisory committee setting the date on which contracts shall lapse shall suspend the payment of scheduled payments ten days after appointment of the liquidator and until publication of the decision. In the event of transfer of the portfolio, the suspended payments shall be made to the assignee firm less the rate of reduction defined by the insurance supervisory committee.

### **Article L326-14**

*(Act no. 89-1014 of 31 December 1989, Article 33, Official Journal of 3 January 1990 in force on 1 July 1990)*

The court, upon application by the insurance regulatory commission, may declare the nullity of one or more transactions carried out by the corporate officers of a firm in respect of which a liquidator was appointed following the withdrawal of licence, with the onus of the insurance regulatory commission to provide evidence that the persons who contracted with the firm knew that the assets were inadequate to guarantee the preferential debt of the insured and that said guarantee would be decreased as a consequence of the transaction at issue.

### **Article L326-14-1**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 81 a IX, Official Journal of 2 August 2003)*

When a company was the subject of a withdrawal of accreditation within the framework of the provisions of Article L. 421-9, the supervisory committee for insurance companies, mutual insurance companies and provident institutions may

## INSURANCE CODE

decide, if necessary, that natural persons or legal entities, doing insurance broking by the intermediary of which contracts were taken out in said firm, must transfer to the liquidation a share of the commissions received irrespective of the cause, at the time of these contracts, within the limit of the quarter of the commissions received since 1st January of the year preceding that during which the accreditation is withdrawn. The same provision shall apply to the non-salaried agents of the same firm, who were not bound to reserve for this one the sole rights of their contributions of contracts.

### Article L326-15

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, VI, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of section I of chapter VI of title II of Book III, as this Code was drafted prior to Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions, shall apply in French overseas territories.

## SECTION II

Rules specific to firms underwriting compulsory motor vehicle insurance

Articles L326-17 to  
L326-19

### Article L326-17

*(decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

In the event of the withdrawal of licence in France of a firm that underwrites motor vehicle insurance transactions, the guarantee fund established under Article L421-1 shall settle the losses referred to in Article L211-1 on behalf of the firm in liquidation.

### Article L326-18

When a firm's licence has been withdrawn in accordance with the terms of Article L326-17, individuals or legal entities carrying on an insurance brokerage business through whose intermediary the contracts covering the risks referred to in Article L211-1 were underwritten with said firm must pay back to the liquidation account one quarter of the amount of commissions collected, in any respect whatsoever at the time of said contract, since 1 January of the year prior to that during which said licence was withdrawn.

The same provision shall apply to non wage earning representatives of the same firm who were not obligated to exclusively contribute contracts obtained to the firm.

### Article L326-19

*(Act no. 89-1014 of 31 December 1989, Article 48, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, VII, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of Articles L326-17 and L326-18, as this Code was drafted prior to the aforementioned Act no. 91-716 of 26 July 1991, shall apply in French overseas territories.

## SECTION III

Effects of liquidation proceedings on European Community firms

Articles L326-20 to  
L326-29

### Article L326-20

*(inserted by Ordinance no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

Subject to the provisions of Articles L. 326-21 to L. 326-29, the reorganization measures, defined under Article L. 323-8 and decisions concerning the opening of a liquidation proceedings taken by the proper authorities of a Member State of the European Community other than France with regard to an insurance firm having its seat on the territory of said State, shall produce all their effects on the territory of the French Republic without any other formality, including with regard to thirds parties, as soon as they take effect in said State. These provisions shall apply also when reorganization measures or decisions opening liquidation proceedings are taken with regard to a branch of an insurance firm whose seat is located outside the European Community.

The same shall apply to decisions intervening in a Member State other than France within the framework of a voluntary liquidation of an insurance firm implying an administrative or court intervention.

The reorganization measures defined under Article L. 323-8 and decisions opening liquidation proceedings taken by the qualified French public authority with regard to a firm having received the accreditation referred under Articles L. 321-1, L. 321-7 and L. 321-9 shall produce all their effects on the territory of the other Member States of the European Community, subject to contrary provisions provided for by the laws of these States, as provided for in directive 2001/17/CE of the European Parliament and the Council of 19 March 2001 relating to the reorganization and liquidation of insurance firms.

### Article L326-21

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

Notwithstanding the provisions of Article L. 326-20, the effects of a reorganization measure defined under Article L. 323-8 or of a liquidation proceedings on the contracts and the rights enumerated hereafter shall be determined by the following rules:

a) employment contracts and the working relationships shall exclusively be governed by the law of the State applicable to said contract or said relation;

b) a contract giving the right to enjoy a real property or to acquire it shall exclusively be governed by French law if said property is located on the territory of the French Republic;

## INSURANCE CODE

c) the rights, which a European Community insurance firm holds on a real property, a ship or an aircraft, which are subjected to registration on a public register held by a French public authority shall be governed by French law.

### **Article L326-22**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

Adoption of a reorganization measure defined under Article L. 323-8 or the opening of a liquidation proceedings in another Member State with regard to a European Community insurance firm shall not affect the rights in rem, within the meaning of the applicable law, of a creditor or a third party on tangible property or intangible property, chattels or real properties, belonging to the insurance firm and which is, at the moment of the opening of such a procedure, on the French territory.

### **Article L326-23**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

Adoption of a reorganization measure defined under Article L. 323-8 or the opening of a liquidation proceedings in a Member State of the European Community other than France with regard to a European Community insurance firm which bought a property shall not affect the rights of the salesman based on a reserve of property, when said property was, at the time of the adoption of a reorganization measure or the opening of the proceedings, on the French territory.

When such a company sells a property, the adoption of a reorganization measure or the opening of a liquidation proceedings against it in another Member State, shall not make obstacle to acquisition by the purchaser of said property when it is, at the time of the opening of such proceedings, on the territory of the French Republic.

### **Article L326-24**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

The provisions of the law of the Member State in which the reorganization measure is taken or the liquidation proceedings is opened with regard to a European Community insurance firm relating to nullity, cancellation or opposability of the acts prejudicial to the whole of the creditors shall not be applicable, if the beneficiary of such an act brings the proof that the latter is subjected to the law of another Member State and that said law shall not allow by any means of attacking said act in the case in action.

### **Article L326-25**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

Adoption of a reorganization measure or the opening of a liquidation proceedings in a Member State of the European Community other than France shall not affect the right of a creditor to call upon the compensation of its credit with the credit of the insurance firm, when said compensation is allowed by the law applicable to the credit of the insurance firm.

This provision shall not make obstacle with the exercise of the actions for annulment, cancellation or of opposability of the acts prejudicial to the whole of the creditors provided for by the law of the State of origin.

### **Article L326-26**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

Subject to the provisions of Article L. 326-22, the effects of the adoption of a reorganization measure or opening of liquidation proceedings on the rights and obligations of the participants in a regulated market shall be governed exclusively by the law applicable to that market.

This provision shall not make obstacle to the exercise of the actions for annulment, cancellation or of opposability of the acts prejudicial to the whole of the creditors provided for by the law of the State of origin.

### **Article L326-27**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

When an insurance firm alienates subject to payment, by an act concluded after the adoption of a reorganization measure or the opening of liquidation proceedings:

- 1° a real property;
- 2° a ship or an aircraft subjected to registration on a public register;
- 3° financial instruments whose existence or transfer supposes an registration in account;

the validity of said act shall be governed by the French law if said property is located on the territory of the French Republic or if said register, or said account, is held under its authority.

### **Article L326-28**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

The effects of the reorganization measure or the opening of liquidation proceedings on a pending action in France concerning a property or a right whose insurance firm is dispossessed shall be governed exclusively by the provisions of the new civil procedure code

### **Article L326-29**

*(inserted by Order no. 2004-504 of 7 June 2004, Article 2, Official Journal of 10 June 2004)*

The administrator or the liquidator designated by the proper authority of another Member State shall be entitled to exercise on the territory of the French Republic all the powers that it is entitled to exercise on the territory of said State.

In the exercise of said capacities, the administrator or the liquidator shall respect French law, in particular concerning the terms and conditions of realization of the assets or the information of employees. Said capacities may not include execution measures requiring the use of force or the right to rule on litigation or a disagreement.

## INSURANCE CODE

People charged to assist the administrator or the liquidator may be designated in accordance with the legislation of the law of the Member State of origin.

### CHAPTER VII

#### Liens

Articles L327-1 to  
L327-6

#### **Article L327-1**

Movable assets allocated to represent mathematical reserves in respect of insurance transactions against work-related accidents shall be allocated first and foremost to pay the relevant annuities. Said lien shall take precedence over the general lien established in the first paragraph of Article L327-2.

#### **Article L327-2**

*(Act no. 94-5 of 4 January 1994, Article 26, I, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 9, Official Journal of 29 June 1999)*

Movable assets of French firms subject to State control pursuant to Article L310-1 shall be encumbered by a general lien to guarantee settlement of their undertakings with regard to the insured and beneficiaries of contracts and repayment first and foremost of premiums paid by the persons who exercised their right of waiver pursuant to Article L132-5-1. Said lien shall rank after paragraph 6 of Article 2101 of the Civil Code.

The same shall apply for immovable assets. Said lien shall rank after paragraph 2 of Article 2104 of the Civil Code.

In respect of the foreign firms referred to in paragraphs 3 and 4 of Article L310-2, the movable and immovable assets representing the technical reserves and surety bonds shall be encumbered by a special lien to guarantee settlement of their direct insurance transactions for contracts underwritten or performed in France.

#### **Article L327-3**

*(Act no. 94-5 of 4 January 1994, Article 26, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

When the assets of an insurance firm are inadequate to represent its regulated undertakings or when the financial situation of said firm is such that the interests of the insured and beneficiaries of contracts risk being compromised within a short period, the real property forming part of the firm's assets may be encumbered by a mortgage registered upon application by the insurance regulatory commission. When a firm's licence has been withdrawn, said mortgage shall be registered ipso jure on the date of such withdrawal.

#### **Article L327-4**

*(Act no. 94-5 of 4 January 1994, Article 4, IV, Article 8, V, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act no. 99-532 of 25 June 1999, Article 91, paragraph 10, Official Journal of 29 June 1999)*

In respect of firm underwriting the transactions referred to in paragraph 1 and the last paragraph of Article L310-1, the receivable guaranteed by the lien or statutory lien shall be drawn up at the amount of premiums to be repaid first and foremost in the event of waiver of the contract and of the mathematical reserve decreased, where applicable, by advances on policies, including interest and increased, where applicable, by the amount of the individual profit sharing account opened in the insured's name when said profits are not payable immediately after the liquidation of the year in which they were generated.

In respect of other insurance, the guaranteed receivable shall be drawn up, concerning direct insurance, at the amount of indemnities owed following losses and at the amount of premium instalment paid in advance or premium reserves for the period during which the risk has not been incurred; compensation receivables shall be paid first and foremost. In respect of compensations owed in the form of annuities, they shall be drawn up at the amount of the mathematical reserve.

In respect of all types of reinsurance transactions, they shall be drawn up at the amount of the relevant reserves as defined by decree in Conseil d'Etat provided for in Article L310-7.

#### **Article L327-5**

When a French firm creates guarantees in a foreign country in favour of creditors holding their rights under insurance contracts performed in said country, the lien established pursuant to the first paragraph of Article L327-2 may not place such creditors in a more favourable situation than that of creditors holding their rights under contracts performed in France.

#### **Article L327-6**

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 94-5 of 4 January 1994, Article 42, VIII, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of chapter VII of title II of Book III, as this Code was drafted prior to Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions, shall apply in French overseas territories.

### CHAPTER VIII

#### Penalties

Articles L328-1 to  
L328-16

#### **Article L328-1**

*(Act no. 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March 1994)*

*(Act no. 94-5 of 4 January 1994, Article 27, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

## INSURANCE CODE

Disregard of the disabilities provided for in Article L322-2 shall be punished by a three year prison sentence and a fine of €75,000.

### Article L328-2

(Act no. 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March 1994)

(Act no. 94-5 of 4 January 1994, Article 27, I, Official Journal of 5 January 1994 in force on 1 July 1994)

(Act no. 94-679 of 8 August 1994, Article 3, III, Official Journal of 10 August 1994 in force on 1 January 1995)

Any one convicted pursuant to Article L328-1 may not be employed in any respect whatsoever in the firm where he discharged management duties or where he was a member of the board of directors or supervisory board or where he had signatory powers or in the subsidiaries of said firm subject to State control pursuant to Article L310-1.

Any one who disregards the prohibition provided for in the previous paragraph and his employer shall be punished by the penalties provided for in Article L328-1.

### Article L328-3

(Act no. 94-5 of 4 January 1994, Article 27, I, Official Journal of 5 January 1994 in force on 1 July 1994)

The provisions of Articles 433, paragraph 2, 3 and 4 of Article 437, Articles 439, 455 and 458 of Act no. 66-537 of 24 July 1966 relating to business corporations shall apply to insurance firms, even when such provisions do not govern them ipso jure.

### Article L328-4

(Act no. 94-5 of 4 January 1994, Article 27, I, Official Journal of 5 January 1994 in force on 1 July 1994)

Articles 197 to 200, 207 and 211 to 214 of Act no. 85-98 of 25 January 1985 relating to the judicial rehabilitation and liquidation of firms shall apply to any one who directly or indirectly empowered to commit the insurance firm, including, inter alia, the general agent of a foreign insurance firm established in France, even when such Articles do not govern him ipso jure.

### Article L328-5

(Act no. 85-98 of 25 January 1985, Article 221, VII, Official Journal of 26 January 1985 in force on 1 January 1986)

(Act no. 94-5 of 4 January 1994, Article 27, I, Official Journal of 5 January 1994 in force on 1 July 1994)

Any violation of the provisions of Articles L322-1, L322-2-2, L322-4 and L323-1 shall be punished by the penalty provided for in Article L310-26.

### Article L328-13

(Act no. 85-98 of 25 January 1985, Article 221, VIII, Official Journal of 26 January 1985 in force on 1 January 1986)

In the event of liquidation carried out in accordance with the terms of Article L326-2, the following provisions shall apply:

1 If the financial situation of the firm dissolved following the total withdrawal of licence shows that the assets are inadequate in relation to the liabilities that must be paid during the liquidation, the court, in the event of mismanagement that contributed to said asset shortfall, may decide at the liquidator's request or on its own motion that the firm's debts be borne in whole or in part, with or without joint and several liability, by all of the de jure or de facto corporate officers, whether remunerated or not, or by some of them.

The legal action shall be barred three years as from the date on which the liquidator's fourth half-yearly report is filed at the clerk's office.

2 Corporate officers guilty of actions referred to in Articles 188 and 189 of the aforementioned Act no. 85-98 of 25 July 1985 may be punished by the penalties provided for in title VI of said Act and disqualification and prohibition may be withdrawn in accordance with the terms of Article 195 of the same Act.

### Article L328-16

(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act no. 94-5 of 4 January 1994, Article 42, IX, Official Journal of 5 January 1994 in force on 1 July 1994)

Chapter VIII of title II of Book III, as this Code was drafted prior to Act no. 91-716 of 26 July 1991 outlining various economic and financial provisions, shall apply in French overseas territories.

## TITLE III

### Financial scheme

### Articles L331-1 to L334-19

#### CHAPTER I

#### Regulated agreements

Articles L331-1 to L331-4

#### SECTION II

Technical reserves of life insurance, wedding-birth and capitalisation insurance transactions

Articles L331-1 to L331-4

### Article L331-1

(inserted by Decree no. 85-863 of 2 August 1985, Article 3, Official Journal of 15 August 1985)

To determine the undertaking of the insured or the policyholder, mathematical reserves built up by life insurance

## INSURANCE CODE

and capitalisation firms shall be calculated by factoring in premium instalments to be paid by the concerned party which represent the acquisition costs of the contract when the firm posted said costs as deductible expenses before the end of the year on the closing of which the reserve is capitalized.

As required, a decree defines the terms of application of this Article.

### Article L331-2

*(transferred by Act no. 94-5 of 4 January 1994, Article 5, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

The maximum compensation that the insurer may retain in the event of surrender is set by decree.

### Article L331-3

*(transferred by Act no. 94-5 of 4 January 1994, Article 5, I, Official Journal of 4 January 1994 in force on 1 July 1994)*

Life insurance or capitalisation firms must share the technical and financial profits that they make with the insured in accordance with the terms imposed by order of the Minister for Economy and Finance.

### Article L331-4

*(transferred by Act no. 94-5 of 4 January 1994, Article 3, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

The administrative authority may define the actuarial calculation rules applicable to life insurance or capitalisation contracts.

## CHAPTER IV

Solvency of firms and addition supervision of group insurance companies and financial conglomerates	Articles L334-1 to L334-19
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## SECTION I

General provisions	Articles L334-1 to L334-2
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### Article L334-1

*(Act n°94-679 of 8 August 1994, Article 4, I, Official Journal of 10 August 1994 in force on 1 January 1995)*

*(Act n°98-261 of 6 April 1998, Article 8, I, Official Journal of 7 April 1998)*

*(Act n°2001-420 of 15 May 2001, Article 136, IX, Official Journal of 16 May 2001)*

*(Order n°2001-766 of 29 August 2001, Article 6, Official Journal of 31 August 2001)*

*(Order n°2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

The firms referred to in Article L310-1 must always have a solvency margin in accordance with the terms defined by a Conseil d'Etat decree.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-2

*(Order n°2001-766 of 29 August 2001, Article 7, Official Journal of 31 August 2001)*

*(Order n°2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

For the application of the law and regulations relating to solvency of firms:

1° The expression "parent firm" refers to a firm that entirely controls a firm within the meaning of (II) of Article L233-16 of the Commercial Code or that exercises a dominant influence over a firm due to the existence of a substantial and long term relationship as a result of financial commitments, corporate directors or common services. Said second firm is referred to as the "subsidiary". Any subsidiary of a subsidiary shall be deemed to be a subsidiary of the parent firm.

2° The expression "stake" refers to the ownership, directly or indirectly, of 20% or more of the voting rights or capital of a firm or a set of rights in the capital of another firm, which, by creating a lasting relationship with the latter, is intended to contribute to the activity of the company.

3° The expression "holding firm" refers to a parent firm or a firm that owns a stake in a firm or a firm which is associated with another firm by a relationship specified at (7°) of this article.

4° The expression "affiliated firm" refers to a firm which is either a subsidiary or any other firm which has acquired a stake or a firm related to another firm by a relationship defined at (7°) of this Article.

5° The expression "associated firm" refers to any affiliated firm or holding firm or a firm affiliated to the holding firms of the insurance firm.

6° The expression "insurance group" refers to a group formed of:

(a) at least two firms subject to State inspection pursuant to Article L310-1 and which has its registered office in France,

(b) or, on the other hand, at last one firm submitted to State inspection pursuant to Article L310-1 and which has its registered office in France and, on the other hand, a group insurance company, a firm submitted to State inspection pursuant to Article L310-1-1, a provident institution or a union governed by Title III of Book IX of the Social Security Code, a mutual insurance company or union governed by Book II of the Mutual Insurance Code or an insurance or reinsurance firm whose registered office is located outside France.

The entities referred to at (a) and (b) must be interconnected by one of the relationships defined at (1°) to (5°) above.

7° The expression "group" refers to a set of firms made up of a parent firm, its subsidiaries and entities in which the

## INSURANCE CODE

parent firm or its subsidiaries have invested, as well as dependent entities whose administration, management or supervisory bodies are composed mostly of the same persons or they are placed under a single management pursuant to an agreement or articles of association. Establishments affiliated to a network and the central body within the meaning of Article L. 511-31 of the Monetary and Financial Code are regarded as forming the same group for the application of this chapter. The same shall apply to entities belonging to co-operative groups governed by similar provisions of the law which is applicable to them.

8° The expression "regulated entity" refers to an insurance body, a credit institution or an investment company that has its registered office in a Member State or in a State party to the European Economic Space Agreement.

9° The expression "mixed financial holding company" refers to a parent firm other than a regulated entity, which, with its subsidiaries, of which at least one subsidiary is a regulated entity that has its registered office in a Member State or in another State party to the European Economic Space Agreement, constitutes a financial conglomerate.

10° The expression "financial sector" refers to a sector made up of one or more entities belonging to the following sectors:

a) the banking and investment services sector which comprises credit institutions, investment companies, financial establishments or firms of financial nature whose registered office is located in a Member State or a State party to the European Economic Space Agreement;

b) the insurance sector which comprises insurance firms, group insurance companies, mutual insurance companies, unions of mutual insurance companies, provident institutions, unions of provident institutions, group of provident institutions under joint management or reinsurance companies whose registered office is located in a Member State or in another State party to the European Economic Space Agreement.

The financial sector also comprises, where appropriate, one or more mixed holding financial companies.

11° The expression "relevant authority" refers to any national authority of a Member State or another State party the European Economic Space Agreement given, by a law or regulation, the capacity to supervise, individually or on the scale of the group, one or several of the categories of the following regulated entities:

a) insurance firms;

b) mutual insurance companies;

c) provident institutions;

d) credit institutions;

e) investment companies;

12° The expression "concerned relevant authority" refers to:

1° any relevant authority of the States responsible for the consolidated sectorial supervision of the regulated entities belonging to a financial conglomerate;

2° the coordinator appointed in accordance with Article L. 334-9, if it is different from the authorities referred to at (1°);

3° other relevant authorities when the authorities referred at (1°) and (2°) consider it convenient;

13° The expression "sectorial rules" refers to rules of prudential supervision of regulated entities and rules of additional supervision of entities belonging to a group of insurance companies.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### SECTION II

Provisions on additional supervision of group of insurance companies

Article L334-3

#### Article L334-3

*(Order n°2001-766 of 29 August 2001, Article 8, Official Journal of 31 August 2001)*

*(Order n°2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

The financial situation of firms subject to State inspection pursuant to Article L310-1, which have their registered office in France and belong to a group of insurance companies within the meaning of Article L334-2 (6°), shall be submitted to additional supervision.

Firms subject to State inspection pursuant to Article L310-1, which have their registered office in France and are affiliated to a mixed group insurance company within the meaning of Article L334-2 (6°), shall also be submitted to additional supervision in accordance with the terms of this Article and Articles L310-12 to L310-15.

The additional supervision shall take account of firms associated with the aforementioned firms. The insurance supervisory committee may decide not to subject an associated firm to additional supervision if it considers that said firm's interest is negligible or contrary to the objectives of said supervision.

A Conseil d'Etat decree shall set out the terms for the application of this Article.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### SECTION III

Provisions on additional supervision of regulated entities belonging to a financial conglomerate

Articles L334-4 to L334-19

#### Article L334-4

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

Regulated entities belonging to a financial conglomerate shall be submitted to additional supervision under the

## INSURANCE CODE

conditions provided for in this section, without prejudice to the sectorial rules which are applicable to them.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-5

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

I - A group within the meaning of Article L334-2 (7°) shall form a financial conglomerate when the following conditions are met:

1° a regulated entity manages the group or at least one of the subsidiaries of the group is a regulated entity, and:

a) If a regulated entity manages the group, it is either a parent firm of an entity of the financial sector, or it is an entity which has acquired a stake in an entity belonging to the financial sector or it is an entity related to an entity belonging to the financial sector within the meaning of Article L334-2 (7°);

b) If no regulated entity manages the group, the activities of the latter are carried out mainly in the financial sector;

2° At least one of the entities of the group belongs to the insurance sector and at least one belongs to the banking sector and investment services.

3° The consolidated or incorporated activities of group of entities in the insurances sector and the consolidated or incorporated activities of entities in the banking sector and that of the investment services are very large.

II - The following shall be determined by a regulation:

1° the thresholds from which the activities of a group are regarded as being carried out mainly in the financial sector;

2° the thresholds from which the activity in each sector is regarded as very large;

3° thresholds, criteria or conditions according to which the concerned relevant authorities can decide by mutual agreement not to regard the group as a financial conglomerate or not to apply the provisions on the additional supervision to it.

III - Any sub-group of a group which meets the criteria referred to under (I) of this Article shall be exempted from additional supervision when it belongs to a group identified as a financial conglomerate submitted, for this reason, to additional supervision. Nevertheless, the coordinator of the conglomerate or, where appropriate, the coordinator appointed in accordance with Article L334-9 for the additional supervision of the sub-group can, by a reasoned decision, submit the sub-group to additional supervision under conditions set out by a regulation.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-6

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

The committee of insurance companies, mutual insurance companies and provident institutions, the commission bancaire, the Autorité des marchés financiers (AMF), in cooperation, where appropriate, with the supervisory authorities of regulated entities of Member States or other States party to the European Economic Space Agreement, identify the groups falling within the scope of the additional supervision of financial conglomerates and exchange for this purpose any information useful for the implementation of their respective duties.

When a group was identified as financial conglomerate and the supervisory committee is appointed, in accordance with the provisions of the article L334-9, as coordinator of the additional supervision, it will inform the entity managing the group or, failing this, the regulated entity which has the highest total balance-sheet of the biggest financial sector of the group. It will also inform the relevant authorities that have accredited the regulated entities of the group and the relevant authorities of the Member State or other State party to the European Economic Space Agreement in which the mixed holding financial company has its registered office, as well as the European Commission.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-7

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

I - The additional supervision carried out with respect to the conglomerate shall apply to any regulated entity meeting one of the following criteria.

1° It manages the conglomerate.

2° It has in its parent firm a mixed financial holding company that has its registered office in a Member State or another State party to the European Economic Space Agreement.

3° It is related to another entity of the financial sector within the meaning of Article L334-2 (7°).

II - In cases other than those mentioned under (I) and in Article L334-18, when persons who have acquired a stake in one or more regulated entities, or have a link by virtue of stakes with these entities or exercise on them a notable influence which results neither from a stake nor from a link by virtue of stakes, the concerned relevant authorities shall determine, by mutual agreement, with respect to the objectives of the additional supervision, if and up to what extent the additional supervision of the regulated entities in this group must be carried out as if it formed a financial conglomerate.

To carry out this additional supervision, the conditions provided for in Article L334-5 (I) (2°) and (3°), must be met.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-8

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

## INSURANCE CODE

The regulated entities belonging to a financial conglomerate shall be submitted to, under the conditions specified by regulations, to additional requirements as regards capital adequacy, trading between the various entities of the conglomerate, concentration and risk management and internal audit.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-9

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

I - The coordinator is the relevant authority responsible for the coordination and the implementation of the additional supervision. One of the relevant authorities of a Member State or of any other State party to the European Economic Space Agreement which meets the criteria set out by a regulation shall be the coordinator.

II - It can decide, after consultation of the concerned relevant authorities and the financial conglomerate, which method of calculation of the additional requirements as regards capital adequacy shall be applied, and it can decide not to include a particular entity in the perimeter of calculation of the additional requirements as regards capital adequacy in cases specified by regulations.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-10

*(Inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

When the supervisory committee is the coordinator, it will ensure, for the purpose of the additional supervision:

1° the coordination of the collection and the diffusion of useful information in the normal operation of a business and urgent situations, and in particular, any important information that concerns the prudential supervision carried out by a relevant authority according to the sectorial rules;

2° the prudential supervision and the evaluation of the financial standing of a financial conglomerate;

3° the evaluation of the application of the rules on capital adequacy, the concentration of risks and the trading between the various entities of the conglomerate in accordance with the provisions of Article L334-8;

4° the evaluation of the structure, organization and internal supervision devices of the financial conglomerate;

5° the planning and coordination of the prudential activities, in co-operation with the concerned relevant authorities.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-11

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

When the coordinator of a financial conglomerate is an authority of another Member State or that of a State party to a European Economic Space Agreement, it will ensure, with regard to the entities established in France, the duties set out in Article L334-10.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-12

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

In order to facilitate the implementation of the additional supervision, the supervisory committee shall conclude with the concerned relevant authorities and, if necessary, with any other interested relevant authority, coordination agreements. These agreements shall be published in the Official Journal of the French Republic. They can entrust the additional duties to the coordinator and specify the procedures to be followed within the framework of the additional supervision. They can also specify the methods of coordination with other relevant authorities.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-13

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

The supervisory committee shall cooperate with the relevant authorities responsible for supervising the regulated entities belonging to a financial conglomerate and, when it does not carry out this role, with the coordinator.

For the purposes of carrying out their respective duties, the relevant authorities can exchange information on the regulated entities belonging to a financial conglomerate, in accordance with the sectorial rules, with central banks of Member States or other States party to the European Economic Space Agreement, the European System of central banks and the European Central Bank. The conditions for application of this article shall be set out by regulations.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-14

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

As exception to Act n° 68-678 of 26 July 1968 on transmission of documents and information of economic, commercial, industrial, financial or technique nature to foreigners or foreign entities, any entity established in France, belonging to a financial conglomerate whose coordinator is an authority of a Member State or another State party to the European Economic Space Agreement must transmit to the coordinator, at his request, any information that may concern the additional supervision.

## INSURANCE CODE

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-15

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

When the relevant authorities of a Member State or another State party to the European Economic Space Agreement wish, in determined cases, to check information concerning an entity established in France, regulated or not, belonging to a financial conglomerate and referred to in Article L310-12, they will ask the supervisory committee to have this checking carried out.

The supervisory committee shall take action, within the framework of its powers, either by carrying out itself the checking, or by allowing the authority which presented the request to do it itself, or by allowing that an auditor or an expert to do it.

When it does not carry out itself the checking, the relevant authority which presented the request can, if it wishes, participate in the checking process.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-16

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

When the supervisory committee, in carrying out its duties of coordination, notes that the solvency of the regulated entities belonging to a financial conglomerate is likely to diminish, or trading between the various entities of the conglomerate or concentration of risks threatens the financial standing of these regulated entities, or a regulated entity does not conform to the requirements of Article L334-8, or a mixed financial holding company does not respect the law and regulations related to its activity, the supervisory committee can pronounce, against this company or to its managers:

1° One or more of the sanctions provided for in Article L310-18 (1), (2), (4) and 4 (a);

2° either instead of, or besides these sanctions, a pecuniary sanction whose amount must be determined according to the gravity of violations and cannot exceed the higher of the two following amounts:

3 % of the net sales turnover obtained, during the last closed trading year to be calculated over twelve months, by the regulated entity of the insurance branch which is the subsidiary of the mixed financial holding company that has obtained the most important sales turnover. This maximum shall go up 5 % in the event of new violation of the same obligation.

The minimum capital to be met by the regulated entity, which is a subsidiary of the mixed financial holding company belonging to the banking sector and investment services; when the latter comprises several subsidiaries which are regulated entities, the ceiling of the fine will be determined by reference to the capital of the regulated entity belonging to this sector which must meet the highest minimum capital.

The corresponding sums shall be paid to the Treasury and recovered as State claims other than tax and State property.

The supervisory committee can decide to defer its decision until the expiry of a time-limit given to the regulated entities or the mixed financial holding company placed at the head of the group to take any measure intended to restore or reinforce their financial balance or to correct their practices.

In the cases referred to the preceding paragraphs, the provisions of the last three paragraphs of Article L310-18 shall apply.

The supervisory committee shall inform the relevant authorities responsible for the sectorial supervision of the regulated entities of the financial conglomerate of these findings.

When the coordinator is a relevant authority of another Member State or another State party to the European Economic Space Agreement, it can pronounce against a mixed financial holding company that has its registered office in France under the conditions provided for in the preceding paragraph, the sanctions provided for in this article or take the measures provided for by its national law.

The sectorial relevant authorities, including the supervisory committee when it acts in this capacity, can make use, for purposes of the additional supervision, of its power to impose sanctions that it has for the sectorial supervision with regard to the regulated entities submitted to their inspection.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-17

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

When a regulated entity uses its membership of a financial conglomerate to avoid, entirely or partially, the application of the sectorial rules to which it is submitted, the supervisory committee can make use of the power provided for in Section II of the single Chapter of Title I of Book III as well as in Chapter III of Title II of Book III.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-18

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

Where the parent firm of regulated entities, belonging to a group that runs activities in the banking and insurance sectors, is a company whose registered office is located in a non member State or in a State not party to the European

## INSURANCE CODE

Economic Space Agreement, the inspection committee, while accomplishing the requirements set out in Article L334-9 to become coordinator, shall check, of its own initiative or at the request of the parent firm or that of a regulated entity accredited in a Member State or in another State party to the European Economic Space Agreement, that these regulated entities are submitted to additional supervision equivalent to the one provided for in this Section by a relevant authority of the non-member state. This authority shall consult the concerned relevant authorities. In the absence of equivalence, it is applied to these regulated entities the provisions on additional supervision.

In order to carry out the additional supervision on the regulated entities belonging to a financial conglomerate whose parent firm has its registered office in a State which is not party to the European Economic Space, the relevant authorities can also apply other methods that they consider suitable. These methods must have been validated by the supervisory committee, while accomplishing the requirements set out in Article L334-9 to become coordinator, after consultation of the other concerned relevant authorities. The relevant authorities can in particular require the formation of a mixed financial holding company that has its registered office in a Member State or in another State party to the European Economic Space Agreement and apply the provisions on additional supervision to the regulated entities of the financial conglomerate controlled by this mixed financial holding company. The methods mentioned in this paragraph shall be notified to the concerned relevant authorities and the European Commission.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

### Article L334-19

*(inserted by Order no. 2004-1201 of 12 November 2004, Article 1, Official Journal of 16 November 2004)*

For purposes of the additional supervision provided for in this Chapter, the supervisory committee can conclude the agreements provided for in Article L334-12 with the relevant authorities of a State not member or not party to the European Economic Space Agreement for the inspection of any entity, regulated or not, belonging to a financial conglomerate.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

## TITLE IV

### Accounting and statistics provisions

### Articles L341-1 to L345-2

#### CHAPTER I

##### Main principles

##### Article L341-1

### Article L341-1

*(Act no. 89-1014 of 31 December 1989, Article 46, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(inserted by Act no. 94-5 of 4 January 1994, Article 28, Official Journal of 5 January 1994 in force on 1 July 1994)*

A decree in Conseil d'Etat defines the terms in which the provisions of this chapter shall apply to firms underwriting the transactions referred to in paragraphs 1 and 2 of Article L310-1 of the Insurance Code in order to provide separate management to protect the interests of the insured of each of said two categories of transactions.

#### CHAPTER II

##### Accounting of insurance and capitalisation firms

##### Article L342-1

### Article L342-1

*(inserted by Act no. 94-679 of 8 August 1994, Article 4, II, Official Journal of 10 August 1994 in force on 1 January 1995)*

Firms subject to State control pursuant to Article L310-1-1 shall assess their assets and undertakings, keep their accounts, present and publish their accounts in accordance with the same terms as firms subject to State control pursuant to Article L310-1 and having their registered office in France, subject to officially determined adaptations.

#### CHAPTER IV

##### Insurance categories and statements to be produced

##### Article L344-1

### Article L344-1

*(inserted by Act no. 89-1014 of 31 December 1989, Article 25, Official Journal of 3 January 1990 in force on 1 July 1990)*

Firms underwriting life insurance or capitalisation transactions shall draw up at each year end a statement which shall be attached to their accounts. Said statement shall record the book value and the realisation value of all investments listed as assets.

Moreover, said statement shall show the share of investments that corresponds to undertakings made to the insured and beneficiaries of the contracts, such as such share would be recorded in the event of the transfer of the portfolio of contracts.

A decree in Conseil d'Etat defines the rules for application of the two previous paragraphs.

#### CHAPTER V

##### Consolidated accounts

##### Articles L345-1-1 to L345-2

## INSURANCE CODE

### Article L345-1-1

(Act no. 99-532 of 25 June 1999, Article 53, IV, Official Journal of 29 June 1999)

(Order no. 2001-766 of 29 August 2001, Article 10, II, Official Journal of 31 August 2001)

The headquarters of group insurance companies defined in Article L322-1-2 must be located in France.

### Article L345-2

(Act n°94-679 of 8 August 1994, Article 4, IV, Official Journal of 10 August 1994 in force on 1 January 1995)

(Act n°98-261 of 6 April 1998, Article 8, II, III, Official Journal of 7 April 1998)

(Act n°99-532 of 25 June 1999, Article 52, II, Official Journal of 29 June 1999)

(Order n°2001-350 of 19 April 2001, Article 6, XXIV, Official Journal of 22 April 2001)

(Order n°2001-766 of 29 August 2001, Article 9, Official Journal of 31 August 2001)

(Order n°2004-1201 of 12 November 2004, Article 2, Official Journal of 16 November 2004)

(Order n°2005-861 of 28 July 2005, Article 1 I, Official Journal of 29 July 2005)

(Act n°2005-1554 of 15 December 2005, Article 14, Official Journal of 16 December 2005)

Firms subject to State inspection pursuant to Article L310-1 and which have their registered office in France, firms referred to in Article L310-1 and group insurance companies defined in Article L322-1-2 and mixed financial holding companies referred to in Article L. 334-2 (9°) must draw up and publish consolidated accounts in accordance with the conditions set out by a regulation of the accounting regulation committee. However, they shall be exempted from being in conformity with these rules if they use international accounting standards ratified by a European Commission regulation. However, firms included by way of global integration in the consolidated accounts of a firm which is obliged to consolidate its accounts pursuant to this paragraph shall not be submitted to such obligation.

When the insurance supervisory committee considers that the consolidated accounts of a group insurance company does not enable it to pertinently judge compliance with the additional supervision rules laid down in Article L334-3, said committee shall exempt said group insurance company from the obligation provided for in the previous paragraph.

When two or more firms subject to State inspection pursuant to Article L310-1 or Article L310-1-1, group insurance companies referred to in Article L322-1-2, provident institutions or unions governed by Title III of Book IX of the Social Security Code or mutual insurance companies or unions governed by Book II of the Mutual Insurance Code form a group whose cohesion does not ensue from capital links, one of them shall draw up and publish combined accounts. A decree shall determine the institution, among those mentioned in the previous paragraph, which is submitted to such obligation. The combined accounts shall be formed by grouping all of the accounts of the concerned institutions drawn up, where applicable, on a consolidated basis in accordance with the conditions set out by a rule of the accounting regulatory committee.

N.B. Order 2004-1201, Article 20: The provisions of this Order shall apply, for the first time, to the inspection of the accounts of the trading year beginning on 1 January 2005 or during this year.

## TITLE V

### Freedom of services and coinsurance relating to States, non members of the EU, Articles L351-1 to L354-2 parties to the European Economic Space agreement

#### CHAPTER I

Provisions relating to the freedom of services in assurance against damage

Articles L351-1 to  
L351-10

#### SECTION I

General provisions

Articles L351-1 to  
L351-2

### Article L351-1

(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)

(Act no. 94-5 of 4 January 1994, Article 30, I, II, Official Journal of 5 January 1994 in force on 1 July 1994)

In this title:

1 the word "State" means the State party to the European Economic Space agreement non member of the European Communities,

2 the expression "freedom of services" means the rules applicable to transactions carried out within the framework of freedom of services defined in paragraph 4 of Article L310-3 when the following circumstances or any one of them occurs:

- a) the transaction is carried out from a State that is not a member of the European Communities,
- b) the State of origin of the firm that carries out the transaction is not a member of the European Communities,
- c) the State where the risk covered or undertaking made is located is not a member of the European Communities.

### Article L351-2

(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)

(Act no. 91-716 of 26 July 1991, Article 1, VII, Official Journal of 27 July 1991 in force on 20 November 1992)

(Act no. 92-665 of 16 July 1992, Article 32, III, Official Journal of 17 July 1992 in force on 20 May 1993)

(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)

## INSURANCE CODE

This title shall not apply to insurance transactions related to:

- work-related accidents and occupational diseases,
- public liability of motor vehicles, apart from the carrier's liability,

Moreover, this chapter shall not apply to risks related to building work which is covered by compulsory insurance.

### SECTION II

#### Conditions of exercise

Articles L351-4 to  
L351-6-1

#### Article L351-4

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 91-716 of 26 July 1991, Article 1, VIII, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 6, I, II, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, Official Journal of 2 August 2003)*

Any insurance firm may cover major risks as defined under Article L111-6 in France in the framework of freedom of services, subject to the sole condition that it first informs the insurance firms' committee thereof. A decree in Conseil d'Etat shall specify the documents to be produced in support on said information.

#### Article L351-5

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, Official Journal of 2 August 2003)*

Any insurance firm may cover risks other than those referred to under Article L351-4 in France in the framework of freedom of services when such firm does not have an establishment in France that has been granted the accreditation provided for under Article L321-7 for the concerned branches.

However, such firm may operate in France in the framework of freedom of services only after it has been granted accreditation issued by the insurance firms' committee in accordance with the terms of Article L321-8.

#### Article L351-6

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, 12° Official Journal of 2 August 2003)*

Any insurance firm that covers a risk other than those referred under Article L351-4 in France in the framework of freedom of services must submit all documents that it may be requested to provide to the insurance firms' committee in accordance with the same terms as for the firms accredited under Article L321-1.

#### Article L351-6-1

*(Act no. 91-716 of 26 July 1991, Article 1, IX, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any firm that covers the risks of public liability ensuing from use of motor vehicles in the framework of freedom to provide service shall appoint a representative in France to handle claims by reason of said risks, apart from the carrier's public liability. A decree in Conseil d'Etat defines the assignments of the representative which preclude any insurance transaction on behalf of the firm that he represents with respect to claims handling.

### SECTION III

#### Administrative penalties

Articles L351-7 to  
L351-10

#### Article L351-7

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

When an insurance firm that operates in France in the framework of freedom of services breaches the rules applicable to it, the insurance regulatory commission shall order the firm in question to comply with the rules.

If the firm disregards the order given pursuant to the previous paragraph, the insurance regulatory commission shall inform the regulatory authorities of the member State of the establishment of said firm and, where applicable, the State of its registered office thereof and request them to take all appropriate measures to ensure that the firm complies with the rules.

#### Article L351-8

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

If the firm persists in violating the rules applicable to it in France, the insurance regulatory commission may take

## INSURANCE CODE

appropriate measures to prevent further violation and if, the circumstances so require, prohibit the firm from continuing to conclude insurance contracts in the framework of freedom of services in France and impose, in accordance with the terms of Article L310-18, the penalties listed in said same Article, apart from those provided for in the fifth (4) and seventh (6) paragraphs of said Article. The insurance regulatory commission shall publish the measures that it ordered in newspapers and publications of its choice and display them at the places and for the time that it specifies at the firm's expense.

### Article L351-9

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, V, Official Journal of 5 January 1994 in force on 1 July 1994)*

When the proper regulatory authority informs the insurance regulatory commission that a firm operating in France in the framework of freedom of services is concerned by a recovery plan or a short term financing plan or a measure that restricts or prohibits the free disposal of its assets, it shall take restriction or prohibition measures in respect of the assets of said firm located in France in order to safeguard the interests of the insured and beneficiaries of the contracts.

### Article L351-10

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Article 32, II, III, Official Journal of 5 January 1994 in force on 1 July 1994)*

When the proper regulatory authority informs the insurance regulatory commission of the withdrawal of the licence of a firm operating in France in the framework of freedom of services, the insurance regulatory commission shall take appropriate measures to prohibit it from continuing its business and to safeguard the interests of the insured and beneficiaries of the contracts.

## CHAPTER II

### Provisions relating to coinsurance

Article L352-1

### Article L352-1

*(Act no. 89-1014 of 31 December 1989, Article 1, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-665 of 16 July 1992, Article 14, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Article 31, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any insurance firm whose registered office is located on the territory of a State party to the European Economic Space agreement non member of the European Communities and which complies with the law of the country where it is established shall be exempted from the obligations provided for in Articles L321-7 and L351-4 in order to participate, without being a leading underwriter, in covering a major risk as defined in Article L111-6 located in France as part of a coinsurance transactions carried out in the framework of freedom of services and at least one of whose participants is not established in the same member State as the leading underwriter.

## CHAPTER III

### Provisions relating to the freedom of services in life insurance and capitalisation

Articles L353-2 to  
L353-7

## SECTION I

### General provisions

Article L353-2

### Article L353-2

*(Act no. 92-665 of 16 July 1992, Article 15, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

This chapter shall not apply to:

1 transactions that consist of managing the investments of firms other than those referred to in Article L310-1 that provide benefits on survival to a stipulated age, death or cessation or reduction of activity,

2 transactions defined in Article 1 of chapter I of title IV of Book IV.

## SECTION II

### Conditions of exercise

Articles L353-4 to  
L353-6

### Article L353-4

*(Act no. 92-665 of 16 July 1992, Article 15, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, 12° Official Journal of 2 August 2003)*

I. - Any insurance firm may make undertakings in France within the framework of freedom of services when the policyholder took the initiative of requesting said undertakings from the insurance firm, subject to the sole condition that it first informs the insurance firms' committee thereof. A decree in Conseil d'Etat shall specify the documents to be submitted in support of said information.

The policyholder shall be deemed to have taken the initiative when at least one of the following two situations arises:

## INSURANCE CODE

1° The contract has been underwritten without the policyholder being canvassed in France on behalf of an insurance firm by an insurance intermediary or by a person authorised by the firm or without the policyholder being informed by means of a sales promotion sent to him personally; the contract has been underwritten either by both parties in the Member State where the firm is established or by the firm in said Member State and by the policyholder in France.

2° The policyholder contacted an insurance intermediary established in France to obtain information on the insurance contracts offered by insurance firms established in other member States or to underwrite a contract with one of said firms.

II. - Insurance firms shall benefit from the provisions of the first paragraph of this Article only if the policyholder, before underwriting the contract, has signed a statement whereby he acknowledges that he knows that the insurance firm in question is subject to the State inspection where it is established. Where applicable, it shall also sign a similar statement before taking knowledge of the information referred to under the last paragraph (2°) of I.

### Article L353-5

*(Act no. 92-665 of 16 July 1992, Article 15, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, IV, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2° Official Journal of 2 August 2003)*

Any insurance firm may make undertakings in France, which are not underwritten according to the terms and conditions defined under Article L353-4 in the framework of freedom of services, when it does not have an establishment in France that has been granted the accreditation provided for under Article L321-7 for the concerned branches.

However, such firm may operate in France within the framework of freedom of services only after it has been granted accreditation issued by the insurance firms' committee in accordance with the terms of Article L321-8.

### Article L353-6

*(Act no. 92-665 of 16 July 1992, Article 15, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any insurance firm that makes undertakings in France in accordance with the terms of Article L353-5 in the framework of freedom of services must submit any document that it may be requested to provide to the Minister in charge of the Economy and Finance in accordance with the same terms as for the firms authorised under Article L321-1.

## SECTION III

### Administrative penalties

Article L353-7

### Article L353-7

*(Act no. 92-665 of 16 July 1992, Article 15, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 30, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Insurance firms referred to in Articles L353-4 and L353-5 shall be subject to the administrative penalties provided for under Articles L351-7 to L351-9 as well as to disqualification from carrying on business provided for in Article L351-14.

## CHAPTER IV

### Portfolio transfers

Articles L354-1 to

L354-2

### Article L354-1

*(inserted by Act no. 94-5 of 4 January 1994, Article 30, I, Article 32, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, 12° Official Journal of 2 August 2003)*

French insurance firms and their branches referred to under 1° of Article L310-2 as well as French branches of insurance firms referred to under 3° of the same Article may be authorised, in accordance with the terms defined under the second, third, fourth and seventh paragraphs of Article L324-1, to transfer all or part of their portfolios of contracts executed in the framework of freedom of services within the meaning of Article L351-1 to one or more firms whose registered office(s) is or are located in a State party to the European Economic Space agreement or [to] their branches established in States parties to the European Economic Space agreement or to one or more insurance firms established and authorised in the State of the risk or of the undertaking party to the European Economic Space agreement. The insurance firms' committee shall approve the transfer only if it has been approved by the regulatory authorities of the State where transactions are to be carried out within the framework of freedom of services.

Moreover, when the assignee firm is established in a State party to the European Economic Space agreement other than the State where transactions are to be carried out within the framework of freedom of services, the insurance firms' committee shall approve the transfer only if it has been approved by the regulatory authorities of the State of establishment of the assignee firm. However, when the assignee firm is a branch established in a Member State of the European Communities of which the State of origin is also a member, the approval referred to under this paragraph shall be granted by the regulatory authorities of the State of origin of the assignee firm.

### Article L354-1-1

*(inserted by Act no. 94-5 of 4 January 1994, Article 30, I, Article 32, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

Firms and branches referred to in the first paragraph of Article L354-1 as well as the French branches of insurance firms referred to in paragraph 4 of Article L310-2 may be authorised in accordance with the terms of Article L354-1 to

## INSURANCE CODE

transfer all or part of their portfolios of contracts covering risks or undertakings located on the territory of a State member of the European Communities to one or more assignee firms operating within the framework of freedom of services within the meaning of Article L351-1 in the State of the risk or the undertaking.

### Article L354-2

*(inserted by Act no. 94-5 of 4 January 1994, Article 30, I, Article 32, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, 12° Official Journal of 2 August 2003)*

The lawfully approved transfer by the proper authorities of the concerned State of all or part of a portfolio of contracts executed within the framework of freedom of services within the meaning of Article L351-1 in France by a firm established in a State party to the European Economic Space agreement other than France to an assignee established in one of the States party to the European Economic Space agreement shall be binding on insured persons, policyholders, beneficiaries of the contracts and creditors insofar as the provisions of first sentence of the second paragraph of Article L324-1 have been complied with and the insurance firms' committee has not objected to the planned transfer.

The transfer shall be binding as from the date of the decision by the proper authorities of the concerned States authorising the transfer has been made public by a notice published in the Official Journal. However, the insured shall be entitled to terminate the contract within a period of one-month following the date of said publication.

The provisions of the first two paragraphs of this Article shall also apply to transfers of portfolios of contracts covering risks or undertakings located in France by firms established in a Member State of the European Communities, of which the State of origin is a Member State of the European Communities other than France, to one or more assignee firms operating within the framework of freedom to provide services within the meaning of Article L351-1 in the French Republic.

## TITLE VI

### Freedom of establishment and freedom of services within the EU

### Articles L361-1 to L364-1

#### CHAPTER I

##### Definitions

##### Article L361-1

### Article L361-1

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

In this title:

- a) the expression "member State" means a member State of the European Communities,
- b) the expression "Community insurance firm" means an insurance firm whose State of origin is a member State of the European Communities other than France.

#### CHAPTER II

##### Conditions of exercise

##### Articles L362-1 to L362-4

### Article L362-1

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2°, 7° Official Journal of 2 August 2003)*

Any community insurance firm may establish in France a branch that underwrites the transactions referred to under Article L310-1 in respect of which the regulatory authorities of its State of origin have approved it, if the latter have first forwarded the required information to the insurance firms' committee. An order by said minister shall define the provisions for application of this Article and in particular, the terms in which the insurance firms' committee shall inform the firm of receipt of said information and the date on which it may start its business.

### Article L362-2

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2° Official Journal of 2 August 2003)*

Any community insurance firm established in a Member State other than France may cover risks or make undertakings in France within the framework of freedom of services from said establishment in accordance with the accreditations granted by the regulatory authorities of the State of origin, if the latter have first forwarded the required information to the insurance firms' committee. An order shall define the provisions for application of this Article as stated in the previous Article.

### Article L362-3

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any community insurance firm that covers in France the risks of public liability ensuing from use of motor vehicles in the framework of freedom to provide service shall appoint a representative in France to handle claims by reason of said risks, apart from the carrier's public liability. A decree in Conseil d'Etat defines the assignments of the representative which preclude any insurance transaction on behalf of the firm that he represents with respect to claims handling.

### Article L362-4

## INSURANCE CODE

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

The provisions of titles II to V of this Book shall not apply to transactions carried out in accordance with the provisions of Articles L362-1 and L362-2.

As required, a decree in Conseil d'Etat specifies the obligations imposed on the firms referred to in Articles L362-1 and L362-2 by reasons of public interest.

### CHAPTER III

#### Control and penalties

Articles L363-1 to  
L363-4

#### **Article L363-1**

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

In order to exercise control over community insurance firms and notwithstanding the provisions of Article 1 a of Act no. 68-678 of 26 July 1968 relating to the communication of documents and economic, commercial, industrial, financial or technical information to individuals or legal entities, the regulatory authorities of the State of origin of the firms may require that community insurance firms and their branches established in France communicate all information that may be useful to exercise said control.

The regulatory authorities of the State of origin of the firms may directly or through the intermediary of persons they authorise for this purpose perform audits on the spot of branches of community insurance firms established in France, subject to the sole condition that they first inform the insurance regulatory commission thereof.

#### **Article L363-2**

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

Based on a reasoned request by the regulatory authority of the State of origin of the firms, the insurance regulatory commission shall restrict or prohibit the free disposal of all or part of those assets of community insurance firms located in France.

When the commission has been informed that the authorisation of a community insurance firm operating in France within the framework of freedom of services or freedom of establishment has been withdrawn or that it is in liquidation, it shall assist the regulatory authority of the State of origin and, upon its request, take the necessary measures to protect the interests of the insured in accordance with the terms of Article L323-1-1.

#### **Article L363-3**

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any community insurance firm that operates in France within the framework of freedom of establishment or freedom of services must be able at all times to communicate all documents and information proving that it complies with its obligations pursuant to this Code. It must communicate such documents and information to the insurance regulatory commission, upon its request. As required, an order specifies the provisions for application of this Article.

#### **Article L363-4**

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994)*

When a community insurance firm breaches legislative or regulatory provisions applicable to it, the insurance regulatory commission may implement the procedure defined in Article L351-7.

If the firm persists in violating the rules applicable to it, the insurance regulatory commission may take appropriate measures, if the circumstances so require, to prevent further violations: it may impose the penalties provided for in the second, third and fourth paragraphs as well as the eighth paragraph of this Article, in accordance with the terms of the ninth, tenth and eleventh paragraphs of Article L310-18. In accordance with the same terms, it may also suspend the general agent and prohibit the firm from entering into insurance contracts in France.

In the event of emergency, the measures provided for in the previous paragraph may be taken prior to implementation of the procedure defined in Article L351-7.

As required, a decree in Conseil d'Etat specifies the terms of application of this Article.

### CHAPTER IV

#### Portfolio transfers

Articles L192-1 to  
L364-1

#### **Article L192-1**

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

The time limit provided for in paragraph 1 of Article L114-1 shall be increased to five years in respect of life insurance.

#### **Article L192-2**

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

The suspension of the insurance contract provided for in Article L121-11 shall take effect as from midnight on the fifth day following that of the transfer.

#### **Article L192-3**

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

Notwithstanding the provisions of Article L122-4 and unless expressly otherwise provided, the insurer is bound to

## INSURANCE CODE

compensate, besides the damage caused by the action of fire, an explosion or lightning, that which is the inevitable consequence of the fire or that which is caused by its extinguishing, demolition and debris removal from the premises, the theft and disappearance of the insured property.

### Article L192-4

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

With regard to real property insurance, any act whatsoever that has the effect of terminating the cover or of decreasing the cover of the risk may be invoked against the mortgagee who notified his mortgage to the insurer only one month after the insurer advised him thereof or after he has had knowledge thereof by any other means.

The previous paragraph shall not apply when the insurance ends as a result of the judicial rehabilitation or liquidation of the insured or as a result of non payment of the premium.

The insurer who is discharged of its cover by reason of the insured's breach of his obligations, apart from the obligation in respect of payment of the premium, shall be bound with regard to the mortgagee, even if the mortgage has not been notified to it. The same shall apply when the insurer terminates the contract after the occurrence of the loss.

The insurer who pays the mortgagee in compliance with the provisions of the previous paragraph shall be subrogated in his rights. The subrogation shall not affect the rights of the other mortgagees registered on the same ranking or with a subsequent ranking with regard to which the insurer is still bound.

The insurer must immediately notify the mortgagee whose mortgage was notified to it that the insured is allowed a time limit to pay the premium and that at the end of such time limit the insurance shall be terminated on the ground of non payment of the premium.

The insurer may not refuse the premium offered by the mortgagee even if the insured objects thereto.

### Article L192-5

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

If the contract requires that the damaged building be reconstructed, the payment of the compensation shall be enforceable against the mortgagee only one month after the insurer has notified the mortgagee that the compensation shall be paid without any certainty of its being allocated to the reconstruction. Until the expiry of said time limit, the mortgagee may object to payment of the insurance compensation.

### Article L192-6

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

In the event of a change of the mortgagee's place of residence, the notice by registered letter with acknowledgement of receipt shall be validly served by the insurer to the mortgagee's last known place of residence.

### Article L192-7

*(inserted by Act no. 91-412 of 6 May 1991, Article 2, Official Journal of 7 May 1991)*

The provisions of Articles L192-3 to L192-5 and those of Articles 1127 and 1128 of the local Civil Code shall also apply to secured creditors.

### Article L364-1

*(inserted by Act no. 94-5 of 4 January 1994, Article 33, Official Journal of 5 January 1994 in force on 1 July 1994*

*(Act n°2003-706 of 1 August 2003, Article 29 II 2° Official Journal of 2 August 2003)*

The transfer of all or part of a portfolio of contracts entered into in France within the framework of freedom of establishment or freedom of services by a community insurance firm to an assignee established in a Member State of the European Communities whose State of origin is also a member of the European Communities or to an assignee authorised in accordance with the provisions of Article L321-7 and L321-9 shall be binding on the insured, policyholders, beneficiaries of the contracts and creditors insofar as the provisions of the first sentence of the second paragraph of Article L324-1 have been complied with and the insurance firms' committee has not objected to the planned transfer.

The transfer shall be binding as from the date of the decision by the proper authorities of the concerned States authorising the transfer has been made public by a notice published in the Official Journal. However, the insured shall be entitled to terminate the contract within a period of one-month following the date of said publication.

## BOOK IV

### Organisations and special insurance schemes

### Articles L411-1 to L451-4

#### TITLE I

#### General insurance organisations

#### Articles L411-1 to L413-6

#### CHAPTER I

#### National Insurance board

#### Articles L411-1 to L411-6

#### SECTION I

#### Organisation and attributions

#### Articles L411-1 to L411-6

## INSURANCE CODE

### **Article L411-1**

*(Act no. 89-1014 of 31 December 1989, Article 17, Official Journal of 3 January 1990 in force on 1 May 1990)*

*(Order no. 2001-350 of 19 April 2001, Article 6, XXV, Official Journal of 22 April 2001)*

*(Act no. 2001-420 of 15 May 2001, Article 13, Official Journal of 16 May 2001)*

*(Act n°2003-706 of 1 August 2003, Article 22 III 3°, 4° Official Journal of 2 August 2003)*

The competences of the Consultative Committee of the financial sector shall be fixed by Article L. 614-1 of the Monetary and Financial Code reproduced hereafter:

"Art. L. 614-1. - The Consultative Committee of the financial sector shall be entrusted to study the questions related to the relations between, on the one hand, credit institutions, investment companies and insurance firms and, on the other hand, their respective customers, and to put forward all suitable measures in this field, in particular in the form of opinion or of recommendations of a general nature.

The Minister in charge of the economy, the organizations representing the customers and the professional organizations from which its members come may refer a case to the committee. It may also refer a case to itself with its own initiative at the request of the majority of its members.

The committee is composed in majority, and an equal number, of representatives of credit institutions, investment companies, insurance firms, general agents and insurance brokers, on the one hand, and representatives of customers, on the other hand.

The composition of the committee, the conditions of designation of its members and its chairperson as well as its rules of organization and operation shall be fixed by decree."

### **Article L411-2**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 17, Official Journal of 3 January 1990 in force on 1 May 1990)*

*(Act n°2003-706 of 1 August 2003, Article 22 III 3°, Article 26 II, Official Journal of 2 August 2003)*

The competences of the Consultative Committee of the financial legislation and the regulation shall be fixed by Article L. 614-2 of the Monetary and Financial Code reproduced hereafter:

"Art. L. 614-2. - The Consultative Committee of the financial law and regulation shall be asked for an opinion by the Minister in charge of the Economy on any bill or order or any proposal concerning the European Community Regulation and directive before its examination by the Council of the European Communities, dealing with questions relating to the insurance sector, the banking sector and investment companies, except of texts relating to the Authority of Financial Markets or entering into the competences of the latter.

Drafts of decree or order, other than individual measures, intervening in the same fields may be adopted only after the opinion of the Consultative Committee of the financial legislation and the regulation. It may ignore an unfavourable opinion of the committee on these projects only after the Minister in charge of the Economy asked for a second deliberation of said committee.

The composition of the committee, the conditions of the designation of its members and its chairperson like its rules of organization and operation shall be fixed by decree."

### **Article L411-3**

*(Act no. 89-1014 of 31 December 1989 Article 17, Official Journal of 3 January 1990 in force on May 1 1990)*

*(Act no. 2003-706 of 1 August 2003, Article 22 III 3°, Article 27 II, Official Journal of 2 August 2003)*

The status of the employee members of the Consultative Committee shall be fixed by Article L. 614-3 of the Monetary and Financial Code reproduced hereafter:

"Art. L. 614-3. - The employee members of the Consultative Committee of the financial sector or the Consultative Committee of the financial law and regulation shall have the time necessary to ensure the preparation of meetings, and to go and take part in said meetings. Said time shall be assimilated to effective work for the determination of the rights to the services of Social Security. The employees concerned must inform their employer at the time of their designation and, for each meeting, as of reception of the convocation."

### **Article L411-4**

*(Act no. 89-1014 of 31 December 1989, Article 17, Official Journal of 3 January 1990 in force on 1 May 1990)*

*(Act no. 92-665 of 16 July 1992, Article 16, II, Official Journal of 17 July 1992 in force on 20 May 1993)*

*(Act no. 94-5 of 4 January 1994, Article 38, I, Official Journal of 5 January 1994 in force on 1 July 1994)*

The commission of insurance firms shall be consulted prior to decisions relating to the licensing of the insurance firms provided for in Articles L321-1, L321-7, L321-8, L321-9 and L325-1.

The Minister in charge of the Economy and Finance or his representative appointed for this purpose shall chair the commission of insurance firms.

### **Article L411-5**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 17, Official Journal of 3 January 1990 in force on 1 May 1990)*

The regulation commission shall issue an opinion, on behalf of the national insurance board, on draft decrees referred to the latter pursuant to Article L411-2. The Minister in charge of the Economy and Finance or his representative appointed for this purpose shall chair the regulation commission.

### **Article L411-6**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 17, Official Journal of 3 January 1990 in force on 1 May 1990)*

## INSURANCE CODE

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The consultative insurance commission shall be responsible for studying problems related to relations between the firms referred to in Article L310-1 and their customers and for proposing all relevant measures in this area, in particular, by way of opinions or general recommendations.

The consultative insurance commission may act on its own motion at the request of the majority of its members. It may be consulted by the Minister in charge of the Economy and Finance and by consumer organisations authorised at the national level.

At least two thirds of the consultative insurance commission shall be comprised of representatives of the insurance professions and representatives of the insured. Based on a decision by the majority of its members, it may appoint outside members for the requirements of its work.

One of the personalities referred to in the eighth paragraph of Article L411-1 shall chair the consultative insurance commission.

### CHAPTER II

#### National insurance school

Article L412-1

#### Article L412-1

*(Act no. 89-1014 of 31 December 1989, Article 50, Official Journal of 3 January 1990, in force on 1 July 1990)*

*(Act no. 2002-1575 of 30 December 2002 Finance for 2003, Article 123, Official Journal of 31 December 2002)*

I. Expenses of any nature occurring in the running of the National Insurance School are covered by the means of direct and indirect contributions to be made by insurance companies, professional organisations belonging to them as well as federations and national unions of companies, agents and insurance brokers. The National Conservatory of Arts and Industry shall receive these contributions on behalf of the National Insurance School.

II. The contributions shall be deductible from those sums owed as apprenticeship taxes or as continuing education taxes, in proportion to the respective share of first-degree course, continuing education and apprenticeship within the activities of the National Insurance School which these contributions finance.

III. This article shall be in force as of the enactment of a ministerial order relating to the extension of additional clause to the national collective agreement of insurance companies concerning the financing of the National Insurance School, or, in the absence of such additional clause, as of the first of January 2004.

### CHAPTER III

#### Insurance firms' committee

Articles L413-1 to

L413-6

#### Article L413-1

*(inserted by Act no. 2003-706 of 1 August 2003, Article 29 I, Official Journal of 2 August 2003)*

The Insurance firms' committee shall be entrusted to grant individual authorizations or exemptions provided for by law and regulations applicable to insurance firms and the firms referred to under Article L. 310-1-1, except those concerning the supervisory committee for insurance companies, mutual insurance companies and provident institutions.

#### Article L413-2

*(inserted by Act no. 2003-706 of 1 August 2003, Article 24 II, Article 29 I, Official Journal of 2 August 2003)*

The Competition board shall receive the opinion of the insurance supervisory committee where a case of concentration or a plan of concentration is referred to it, pursuant to Article L. 430-5 of the Commercial Code, concerning, directly or indirectly, a firm referred to under Article L. 310-1 or L. 310-1-1. The Competition board shall communicate, for this purpose, to the insurance supervisory committee any action relating to such operations. The committee shall send its opinion to the Competition board within one-month following the reception of said communication. The opinion of the committee shall be made public under the conditions fixed by Article L. 430-10 of the Commercial Code.

#### Article L413-3

*(inserted by Act no. 2003-706 of 1 August 2003, Article 29 I, Official Journal of 2 August 2003)*

The insurance supervisory committee shall be composed of a chairperson, named by decree of the Minister in charge of the Economy, the director of the Treasury, the chairperson of the supervisory committee for insurance companies, mutual insurance companies and provident institutions, the Secretary-General of said committee, and eight members named by decree of the Minister in charge of the Economy for a three year term, namely:

- 1° a member of Conseil d'Etat, named on proposal of the vice-president of the Conseil d'Etat;
- 2° a member of Cour de cassation, named on proposal of the first president of Cour de cassation;
- 3° two representatives of insurance firms;
- 4° a representative of firms referred to under Article L. 310-1-1;
- 5° a staff representative of insurance firms;
- 6° two personalities chosen because of their expertise in insurance.

The person referred to in 4° shall have a deliberative vote only those decisions interesting firms referred to under Article L. 310-1-1.

A representative of the Minister in charge of agriculture shall take part in the work of the committee with deliberative vote when the case of an institution or a case referred to under Article L. 322-27 is examined.

The chairperson of the competent guarantee fund in the event of failure of insurance firms shall take part in the work

## INSURANCE CODE

of the committee without deliberative vote for the decisions interesting the firms that are subjected to the obligation of adherence to the fund that they chair.

The director of the Treasury, the chairperson of the supervisory committee for insurance companies, mutual insurance companies and provident institutions, the Secretary-General of said committee and the chairpersons of the competent guarantee funds in the event of failure of insurance firms may be represented. Substitutes for the chairperson and other members may be named under the same conditions as the holders.

A decree in Conseil d'Etat shall specify the conditions for the application of this Article.

### Article L413-4

*(inserted by Act no. 2003-706 of 1 August 2003, Article 29 I, Official Journal of 2 August 2003)*

In the event of equal division of the votes, that of the chairperson shall be a casting vote.

In the event of urgency established by its chairperson, the committee may rule by way of a written consultation on a proposal for a decision, according to the terms and conditions laid down by decree.

The committee may delegate to its chairperson the power to make decisions or to grant individual authorizations or exemptions, except as regards accreditation, transfer of portfolio, take over, extension or transfer of participation in the firms subjected to the accreditation procedure by the committee.

The committee shall adopt its internal regulation, which shall be published in the Official Journal. This text shall lay down the procedures of investigation and examination of the files presented at the deliberation of the committee, and in particular, the conditions under which it may hear any interested person capable of clarifying its decision.

A decree in Conseil d'Etat shall specify the conditions for application of this Article, in particular the rules of majority and quorum, which govern the deliberations of the committee and the terms and conditions of written consultation provided for under the second paragraph.

### Article L413-5

*(inserted by Act no. 2003-706 of 1 August 2003, Article 29 I, Official Journal of 2 August 2003)*

The director of the Treasury, or its representative, may ask for the adjournment of any decision of the committee. In this case, the chairperson shall cause, in good time, a second deliberation.

### Article L413-6

*(inserted by Act no. 2003-706 of 1 August 2003, Article 29 I, Official Journal of 2 August 2003)*

The members of the committee as well as the persons who take part or took part in its activities shall be subject to professional secrecy under the penalties fixed by Article 226-13 of the Criminal Code. This secrecy is not opposable to the legal authority acting within the framework of a criminal procedure.

The employee members of the insurance supervisory committee shall have time necessary to ensure the preparation of meetings, to go and take part in said meetings. This time is assimilated to effective work for the determination of the rights to the services of Social Security. The employees concerned must inform their employer at the time of their designation and, for each meeting, as of the reception of the convocation.

## TITLE II

### Guarantee fund

**Articles L421-1 to  
L424-7**

#### CHAPTER I

##### Road and hunting accidents guarantee fund

Articles L421-1 to  
L421-17

#### SECTION I

Provisions specific to road accidents occurring in metropolitan France and in  
overseas départements

Articles L421-1 to  
L421-7

### Article L421-1

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 2003-706 of 1 August 2003, Article 81 a I, II, IV, Article 82 III, IV, V, Article 83 IV, Official Journal of 2 August 2003)*

*(Act no. 2003-1311 of 30 December 2003, Article 124, finances for 2004, Official Journal of 31 December 2003)*

The Guarantee fund of compulsory damage insurances shall be entrusted, when the person liable for the damage remains unknown or is not insured, except by the effect of a legal exemption from the obligation of insurance, or, in the situations not covered by the provisions of Section 6 of this Chapter, when its insurer is completely or partially insolvent, to compensate the victims for the damage resulting from infringements to their physical integrity resulting from an accident which has occurred in Metropolitan France and in the overseas Départements in which a land motor vehicle has involved in traffic, like its trailers or semi-trailers, other than the railroads and of the trams driving on their normal paths. The guarantee fund shall pay the compensation that may be covered under any other reason, allotted to the victims or their assigns, when the accident gives rise to right of reparation. The payments carried out in favour of the victims or their assigns and which may not give rise to a recourse action against the person liable of the damage shall not be regarded as a compensation for another reason.

The guarantee fund may also assume, under the conditions and limits fixed by a decree in Conseil d'Etat, the damage on the property resulting from an accident in which a vehicle defined under the preceding paragraph is involved,

## INSURANCE CODE

when the identified person liable for this damage is not insured, except by the effect of a legal exemption from the obligation of insurance, or when, the liable person being unknown, the driver of the damaged vehicle or any other person suffered an injury resulting from an infringement to his physical integrity.

The guarantee fund shall also be bound, when the person liable for the damage remains unknown or is not insured, to pay, under the conditions provided for under the first paragraph, the compensation allotted for the victims of damage resulting from infringements to their physical integrity or their assigns, when this damage, giving rise to compensation, was caused accidentally by persons driving on the ground in places open to public traffic.

The guarantee fund shall compensate also the damage resulting from an infringement to the physical integrity undergone by victims or their assigns, when this damage was caused accidentally by animals which do not have an owner or whose owner remains unknown or is not insured, in places open to public traffic and when they result from a traffic accident on the ground. The guarantee fund shall pay the compensation that may not be assumed by any other means.

It shall also compensate, under the conditions and limits fixed by decree taken in Conseil d'Etat, the damage caused to goods subsequent to the events referred to under the third and fourth paragraphs. However, when the person liable is unknown or that the animal is not identified, this damage shall be covered only if the driver of the damaged vehicle or any other person suffered a body injury.

The compensation must result either from an executory court order, or of a transaction having received the approval of the guarantee fund.

When the guarantee fund assumes, on behalf of the company in liquidation, the payment of the damage referred to under Article L. 211-1, it may not exercise any recourse against policyholders and underwriters of contracts for the collection of compensation which it pay pursuant to this Article.

The guarantee fund shall manage and finance, as from 2003, increases of revenues provided for in the first Article of Act no. 74-1118 of December 27, 1974 relating to the revalorization of certain annuities allotted to compensate injury caused by a land motor vehicle and in the first Article of Act no. 51-695 of 24 May 1951 relating to increase certain life annuities, according to certified proofs. The claims relating to increases of annuities referred to under this paragraph shall be expired within four years as from the first day of the year following that during which the rights were acquired. The fund may control through documents and on the spot the exactitude of the information provided by the organizations that grant the annuity.

The guarantee fund may finance, according to terms and conditions and within limits fixed by decree in Conseil d'Etat, actions aiming at reducing the number of traffic accidents and at preventing the uninsured automobile public liability.

The guarantee fund is the organization in charge of the missions referred to under Articles L. 424-1 with L. 424-7.

### **Article L421-2**

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 89-1014 of 31 December 1989, Article 48, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 91-716 of 26 July 1991, Article 1, X, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, II, V, Official Journal of 2 August 2003)*

The guarantee fund shall be given legal personality of private law. It must group together all insurance firms accredited in France and subjected to State supervision pursuant to Article L310-1 that shall cover the risks subjected to the underwriting of a compulsory insurance policy pursuant to law and regulations. It shall gather also all firms that offer guarantees for motor insurance and hunting.

### **Article L421-3**

*(transferred by decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, II Official Journal of 2 August 2003)*

The guarantee fund shall be subrogated to the rights of the creditor of the compensation against the person liable for the accident or his insurer. It shall also be entitled to interest calculated at the legal rate in civil matters and to costs of collection.

When the guarantee fund reaches a settlement with the victim, said settlement shall be binding on the party liable for the loss, except that the latter shall be entitled to bring a legal action to contest the amount of the sums claimed because of said settlement. Said dispute cannot cause the amount of compensations allotted to the victim or his assigns to be called into question.

### **Article L421-4**

*(transferred by decree no. 88-260 of 18 March 1988, Article 8, Official Journal of 20 March 1988)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, II Official Journal of 2 August 2003)*

The guarantee fund shall be funded by the contributions of insurance firms, insured motorists and persons liable for motoring accidents not covered by insurance. The various contributions shall be paid and collected under the terms and penalties imposed by the decree in Conseil d'Etat provided for under Article L421-6.

### **Article L421-5**

*(transferred by decree n° 86-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, II Official Journal of 2 August 2003)*

The guarantee fund may join as a party even before criminal courts and even for the first time in appeal proceedings in order, in particular, to contest the amount of the compensation claimed in all proceedings brought between victims of accidents or their assigns, on the one hand, the persons liable for the accidents or their insurers, on the other hand. It

## INSURANCE CODE

shall then join the proceedings in a principal capacity and it may avail of all legal remedies.

### Article L421-6

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 89-1014 of 31 December 1989, Article 50, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, II Official Journal of 2 August 2003)*

A decree in Conseil d'Etat shall define the terms for the application of Articles L421-1 to L421-5 and in particular the bases and legal methods of determining the compensations that may be owed by the guarantee fund, the persons not entitled to benefit from the fund, the respective or reciprocal rights and obligations of the guarantee fund, the insurer, the person liable for the accident, the victim or his assigns, the time limit allowed to exercise said rights or performance of said obligations, the functioning conditions of the guarantee, conditions in which the guarantee fund may take legal action, the conditions in which it may exceptionally be implicated, the measures of inspection that the Minister in charge of the Economy and Finance exercises over the entire management of the fund, the rates and bases of contributions provided for under Article L421-4.

### Article L421-7

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 94-5 of 4 January 1994, Article 40, III, Official Journal of 5 January 1994)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, II Official Journal of 2 August 2003)*

When the person liable for an accident is unable to prove that he has complied with the obligation to insure established pursuant to Article L211-1, the victim and the guarantee fund shall be entitled to take advantage of the protective measures provided for under Articles 48 to 57 of the New Civil Procedure Code.

However, said provisions shall not apply when the public liability insurance concerns vehicles that are normally parked on the territory of a State referred to under Article L211-4, with the exception of France and Monaco.

## SECTION II

Provisions specific to hunting accidents occurring in metropolitan France

Article L421-8

### Article L421-8

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 93-1444 of 31 December 1993, Article 20, II, Official Journal of 5 January 1994)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

The guarantee fund established pursuant to Article L421-1 shall compensate bodily injury caused by all hunting or destruction of vermin on the parts of the territory where the insurance established pursuant to Article L223-13 of the Rural Code is compulsory even if said hunting or destruction is not covered by the obligation to insure from the moment said acts were carried out by an unidentified or uninsured person or by a person whose insurer is entirely or partly insolvent.

Expenses incurred pursuant to the previous paragraph shall be covered by contributions from insurance firms, insured hunters and persons liable for accidental hunting injuries not covered by insurance as well as by surcharge of 50 per cent of fines, including those that a pardon has substituted for a prison sentence handed down for hunting without a permit or in a place, a time or by means of prohibited devices.

A decree in Conseil d'Etat shall define the terms of application of this Article.

## SECTION V

Financial scheme of the guarantee fund

Article L421-8-1

### Article L421-8-1

*(transferred by decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

The time limits provided for under Article 3 of Act no. 75-619 of 11 July 1975 relating to the legal rate of interest shall run against the guarantee fund only as from the day on which it receives evidence to justify its intervention.

## SECTION VI

Role of the guarantee fund in the event of withdrawal of licence of a motor

Articles L421-9 to

insurance firm

L421-9-6

### Article L421-9

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 89-1014 of 31 December 1989, Article 48, Official Journal of 3 January 1990 in force on July 1 1990)*

*(Act no. 2003-706 of 1 August 2003, Article 81 a I, III, VI, Official Journal of 2 August 2003)*

I - The guarantee fund of compulsory insurances of damage instituted by Article L. 421-1 is entrusted to protect insured persons, underwriters, members or beneficiaries of insurance contracts services whose underwriting is made compulsory by a law or regulation, against the consequences of the failure of insurance firms accredited in France and subjected to the supervision of the State under the terms of Article L. 310-1, except for those which are accredited for operations quoted under 1° and the last paragraph of the same Article and, on a purely exclusive basis, for the operations quoted under 2° of the aforesaid Article or for the activities of assistance mentioned under 3° of this Article.

Are covered by the guarantee fund only the loses guaranteed by the contract whose event causing liability intervenes at the latest at midday the fourth day following the publication in the Official Journal of the decision of

## INSURANCE CODE

withdrawal of the insurer's accreditation, and who give rise to declaration on behalf of the insured person or with a first claim on behalf of a third party victim less than five years after this date.

II - Are excluded from any compensation pursuant to this section, insurance contracts:

1° for which a policyholder, an underwriter, a member, beneficiaries of services or a third party acting for the account of one of these persons could profit from information on the situation of the failing company or from particular advantages;

2° relating to hulls of maritime, lake, river, air, space and railway vehicles; to transported goods; to legal protection; to assistance with persons in difficulty, in particular during movements; of public liability or financial guarantee required pursuant to international conventions on nuclear responsibility, on the trans-border movements of dangerous waste materials and on the responsibility for maritime, river and air carriers, and those underwritten pursuant to regulation (EC) no. 2027/97 of the Council of 9 October 1997 relating to the responsibility of air carrier in the event of accident;

3° covering or compensating for risks or undertakings located outside the European Community, or covering or compensating third party victims, nationals or residents of countries located outside the European Community;

4° underwritten by the following persons:

a) directors, leaders, partners personally responsible who hold, directly or indirectly, at least 5 % of the capital of the insurance firm, statutory auditors and the insured having similar capacities in other group of companies, directors of mutual insurance company;

b) third party acting on behalf of the policyholders, underwriters of contracts, members and beneficiaries of services, quoted under the first paragraph of I;

c) insurance firms governed by this code, provident institutions governed by the social security code or the Rural code as well as mutual insurance companies governed by the code of mutual insurance, except where they are contracts underwritten for the advantage of the their employees or their customers;

d) companies entering in the area of consolidation defined under Article L. 233-16 of the commercial Code by which the insurance firm is abide, except if they are contracts underwritten for the advantage of their employees or their customers;

e) credit institutions and persons referred to under Article L. 518-1 of the Monetary and Financial Code, except for the contracts underwritten for the account of a borrower, a customer or their employees;

5° ensuring legal entities and natural persons, underwriters, members or beneficiaries, with regard to their occupations; however, contracts underwritten for the advantage of an individual, customer or member outside the framework of its occupations or the advantage of the employees of legal entities or natural persons mentioned above are covered.

III - In the cases provided for in 1°, 4° and 5° of II, the persons, victims of a damage for which the policyholder shall be responsible and who are not with him in a contractual situation due to their occupation are compensated by the fund.

A decree in Conseil d'Etat shall determine the terms and conditions for the application of this Article.

### Article L421-9-1

*(inserted by Act no. 2003-706 of 1 August 2003, Article 81 a VII, Official Journal of 2 August 2003)*

I - When, at the time of the procedure provided for under Article L. 310-18, the supervisory committee for insurance companies, mutual insurance companies and provident institutions considers that one of the firms referred to under the first paragraph of I of Article L. 421-9, or offers on the market automobile public liability guarantees, is not able any more to face its undertakings towards the persons referred to in the same Article, it shall decide to resort to the guarantee fund of the compulsory insurances of damage.

Before taking its decision, the committee shall consult in writing the guarantee fund by indicating to him that it plans to resort to him. The fund shall have a fifteen days time limit to address its observations to the committee and the latter may receive its representative during this period. With the expiry of this time limit, or a shorter time limit fixed by mutual agreement between the guarantee fund and the chairperson of the committee, the committee shall rule referral of the fund and notify to him its decision to resort or not to him.

If it disputes the decision of the committee, the fund may, within fifteen days as from date of the decision, refer his case to the Minister in charge of the Economy. The latter may, in the interest of the insured person and the underwriters, members and beneficiaries of the contracts and within fifteen days, require from the committee a new deliberation.

The decision of the committee to resort to the guarantee fund shall immediately be notified to the concerned firm at the end of the procedure described above.

II - As of this notification, the supervisory committee for insurance companies, mutual insurance companies and provident institutions shall launch an invitation to tender for the transfer of the portfolio of contracts of this firm under the conditions provided for under Article L. 310-18. Said invitation to tender shall be sent to the guarantee fund.

III - The committee shall retain the offers that appear to him to best preserve the interest of policyholders, underwriters of contracts, members and beneficiaries of services.

The committee's decision that pronounces the transfer of the portfolio of contracts to the benefit of the firm(s) that it designated shall be published in the Official Journal. Said decision shall release the ceding firm of any undertaking towards policyholders, underwriters of contracts, members and beneficiaries of services, whose contracts were transferred under the terms of the provisions of this Article.

When the procedure of transfer of the portfolio did not succeed, the supervisory committee for insurance companies, mutual insurance companies and provident institutions inform about it the guarantee fund.

IV - The transfer of whole or part of the portfolio or the acknowledgement of the failure of the procedure of transfer shall lead to the withdrawal, by the supervisory committee for insurance companies, mutual insurance companies and

## INSURANCE CODE

provident institutions, of all administrative accreditations of the failing firm. The guarantee fund shall accomplish, until the appointment of the liquidator, the acts necessary to the management of part of the portfolio of contracts that were not transferred. The provisional manager, named if necessary by the supervisory committee for insurance companies, mutual insurance companies and provident institutions, may achieve these acts of management on behalf of the guarantee fund.

### **Article L421-9-2**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 81 a VII, Official Journal of 2 August 2003)*

In the event of transfer of portfolio, a portion of the rights of policyholders, underwriters of contracts, members and beneficiaries of services, possibly non covered by the assignee, shall be guaranteed by a payment of the guarantee fund to the assignee within the limits fixed by decree in Conseil d'Etat and in those provided for by the contracts taken out in a firm whose accreditation was withdrawn.

When the procedure of transfer of portfolio did not succeed, the rights of policyholders, underwriters of contracts, members and beneficiaries of services born before the cancellation provided for under Article L. 326-12 shall be guaranteed by payments, to their benefit, of the guarantee fund within the limits provided for by decree in Conseil d'Etat. These payments may not, in any event, exceed the terms of the contracts.

### **Article L421-9-3**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 81 a VII, Official Journal of 2 August 2003)*

The Minister in charge of the Economy or his representative as well as the chairperson of the supervisory committee for insurance companies, mutual insurance companies and provident institutions or his representative may, with their request, be heard by the fund.

The supervisory committee for insurance companies, mutual insurance companies and provident institutions shall hear the representative of the guarantee fund for any question concerning an insurance firm. The committee shall also hear the fund, with its request.

### **Article L421-9-4**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 81 a VII Official Journal of 2 August 2003)*

The guarantee fund shall be subrogated to the rights of the policyholders, underwriters of contracts, members and beneficiaries of services, up to the amount of the sums that it paid.

The guarantee fund shall be also subrogated, within the same limits, to the rights of the firm whose accreditation was withdrawn, up to the sums due under the terms of the performance of on-going reinsurance treaties. The payments of the sums due for this reason and within the same limits fixed by the re-insurers shall be carried out in the advantage of the guarantee fund. Notwithstanding any legal provision or any contractual clause, no indivisibility, cancellation or resolution of the reinsurance treaties may result only from the withdrawal of the ceding firm's accreditation, member of the guarantee fund.

The guarantee fund may take any action of responsibility against statutory leaders or non-statutory manager of the insurance firm whose failure has caused its intervention for purposes of obtaining the refunding of whole or part of the sums paid by him. The fund may also take action of responsibility against the people mentioned in 4° of II of Article L. 421-9, for the purposes of obtaining the refunding of whole or part of the sums paid by him. It shall inform the supervisory committee for insurance companies, mutual insurance companies and provident institutions about it.

In order to obtain the refunding of the compensation from third party victims for a damage for which a legal entity is responsible or an individual within the framework of its occupations whose insurer was subjected to the procedure provided for under Article L. 421-9-1, the guarantee fund shall take action against the person liable for the damage. When the guarantee fund assumes, on behalf of the company in liquidation, the payment of the damage mentioned under Article L. 211-1, the seventh paragraph of Article L. 421-1 shall apply.

A decree in Conseil d'Etat shall determine the terms and conditions for the application of this Article.

### **Article L421-9-5**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 81 VII Official Journal of 2 August 2003)*

The members of the board of directors of the guarantee fund like any person who, by its functions, has access to the documents and information held by the guarantee fund, shall be subjected to professional secrecy under the conditions and under the penalties provided for under Article 226-13 of the Criminal code. Said secrecy shall be opposable neither against the legal authority acting within the framework of a criminal procedure, neither against a civil jurisdiction ruling on an appeal formed against a decision of the guarantee fund, nor against the supervisory committee for insurance companies, mutual insurance companies and provident institutions.

### **Article L421-9-6**

*(inserted by Act no. 2003-706 of 1 August, 2003, Article 81 a VII, Official Journal of 2 August 2003)*

A decree in Conseil d'Etat shall specify:

1° the conditions and limits of compensation by policyholder, underwriter, member or beneficiary, terms and conditions and time limits of compensation as well as the rules relating to notification of customers. Moreover, the same decree shall fix a total multi-annual limit for the intervention of the fund for the missions defined under Article L. 421-9, other than those defined under Articles L. 421-1 and L. 421-8;

2° the time limits for the foreclosure of requests for payment presented by the ceding firms of portfolio or by policyholders, underwriters, members or beneficiaries;

3° the terms and conditions with respect to the determination of guarantee limits in the event of transfer of portfolio

## INSURANCE CODE

of the failing firm;

4° the list of obligatory sureties covered by the guarantee fund, as well as the conditions of compensation of the beneficiaries of suretyship contracts of guarantee, in particular the applicable excess and the percentage of compensation paid by the guarantee fund for the sums that the failing insurance firm should have paid in the event of execution of its undertaking.

This decree may be modified only after the opinion of the guarantee fund.

### SECTION VIII

Provisions specific to French overseas territories and to the collectivité  
territoriale of Mayotte

Articles L421-10 to  
L421-10-1

#### Article L421-10

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Order no. 92-1067 of 1 October 1992, Article 3, Official Journal of 3 October 1992)*

*(Act n°2001-616 of 11 July 2001, Article 75, Official Journal of 13 July 2001)*

*(Act n°2001-616 of 11 July 2001, Article 75, Official Journal of 13 July 2001)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, XI, Official Journal of 2 August 2003)*

The provisions of Articles L421-1 to L421-6 and L421-9 shall apply to New Caledonia, French Polynesia and Saint Pierre-et-Micquelon.

Fines imposed on any one who knowingly breached the obligation to insure established under local regulations, including fines that a pardon has substituted for a prison sentence, shall be increased by 50% when collected in favour of the guarantee fund.

The aforementioned provisions shall take effect in the territory of Wallis and Fatuna on the first day of the calendar quarter following the publication of the order enforcing the deliberation enacting an obligation to insure public liability in respect of motor traffic.

A decree in Conseil d'Etat shall define the provisions for the application of this Article.

#### Article L421-10-1

*(inserted by order no. 92-1067 of 1 October 1992, Article 3, Official Journal of 3 October 1992)*

*(Act n°2001-616 of 11 July 2001, Article 75, Official Journal of 13 July 2001)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

The provisions of Articles L421-1 to L421-7, L421-8-1, L421-9, L421-11 to L421-14 shall apply in the collectivité territoriale of Mayotte.

### SECTION IX

Special provisions applicable to car accidents occurring abroad

Articles L421-11 to  
L421-15

#### Article L421-11

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 94-5 of 4 January 1994, Article 40, IV, VI, Official Journal of 5 January 1994)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

The guarantee fund shall compensate the victims of accidents caused by vehicles that must be covered by compulsory public liability insurance and which are normally parked in metropolitan France or in Monaco when said accidents occur on the territory of a State referred to under Article L211-4, with the exception of France and Monaco.

The intervention of the guarantee fund shall be subject to the following conditions:

The person liable for the loss must not have the compulsory public liability insurance cover.

Victims shall be compensated on the terms provided for by the national law of the State on whose territory the accident occurred.

#### Article L421-12

*(Decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act no. 94-5 of 4 January 1994, Article 40, Official Journal of 5 January 1994)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

The guarantee fund shall also compensate victims when the accident caused by a vehicle referred to under Article L421-11 occurs during the journey directly between two territories where the treaty establishing the European Economic Community is applicable.

In this case, the intervention of the fund shall be subject to the conditions provided for under Article L421-11 as well as the following conditions:

- there must be no national insurance office for the territory crossed,
- the victims must be nationals of a State referred to under Article L211-4.

In this case, the victims shall be compensated in accordance with the terms provided for under the national law on compulsory insurance in force in the State where the vehicle that caused the accident is normally parked.

#### Article L421-13

*(transferred by decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

## INSURANCE CODE

When the guarantee fund intervenes pursuant to Articles L421-11 and L421-12, it shall be subrogated to the rights of the creditor of the compensation against the person liable for the accident.

### Article L421-14

*(transferred by decree no. 88-260 of 18 March 1988, Article 3, Official Journal of 20 March 1988)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

A decree in Conseil d'Etat shall define the terms of application of this section, in particular, the terms upon which the coincidence of conditions that give rise to the intervention of the guarantee fund is recorded, the arrangements for paying the compensation to victims through the intermediary of national insurance offices as well as the terms and conditions in which the guarantee fund shall exercise the right of subrogation provided for under Article L421-13.

A decree in Conseil d'Etat shall define the provisions for the adaptation of this section in overseas Départements.

### Article L421-15

*(inserted by Act no. 91-716 of 26 July 1991, Article 1, XI, Official Journal of 27 July 1991 in force on 20 November 1992)*

*(Act n°2003-706 of 1 August 2003, Article 81 a I, Official Journal of 2 August 2003)*

All insurance firms covering the risks of public liability ensuing from the use of motor vehicles in France shall join the relevant national insurance office in France.

## SECTION X

Special provisions with the technological catastrophes

Article L421-16

### Article L421-16

*(Act no. 2003-699 of 30 July 2003, Article 18, Official Journal of 31 July 2003)*

*(Act no. 2003-706 of 1 August 2003, Article 81 a I 1, Official Journal of 2 August 2003)*

The guarantee fund instituted by Article L. 421-1 shall be also entrusted to compensate the damage caused by a technological catastrophe within the meaning of Article L. 128-1.

Any person of which the principal dwelling, without being covered by a contract referred to under Article L. 128-2, suffered real damage caused by a technological catastrophe, shall be compensated for said damage by the guarantee fund under the conditions indicated under Articles L. 128-2 and L. 128-3, up to a limit.

A decree in Conseil d'Etat shall specify the conditions for the application of this Article.

## SECTION XI

Particular provisions applicable to the damage on property of mining origin

Article L421-17

### Article L421-17

*(Act no. 2003-699 of July 30 2003, Article 19, Official Journal of July 31 2003)*

*(Act no. 2003-706 of 1 August 2003, Article 81 a I 1, Official Journal of 2 August 2003)*

I - Any person who owns a building that has suffered a damage, which has occurred as from 1 September 1998, resulting from an actual or former mining activity, whereas it was occupied as a principal dwelling, shall be compensated for said damage by the guarantee fund. However, when the building was acquired by change of ownership and a clause exonerating the mining owner of its responsibility was validly inserted in the contract of change of ownership, only the damage, provided for under the second paragraph of II of Article 75-2 of the Mining code, suffered because of a mining disaster within the meaning of the aforesaid Article and established by the representative of the State, shall be compensated by the fund.

II - The compensation paid by the fund shall cover the total reparation of the damage provided for in I, up to a limit. When the importance of the damage suffered by the building makes it impossible to repair the structural damages, the total reparation must make it possible to the owner of the damaged building to recover as soon as possible a building of equivalent consistency and comfort. If this damage is covered by insurance policy, the compensation paid by the fund shall be added to the one due on this ground.

III - Any person victim of such damage shall establish with the guarantee fund a description of the damage that he underwent. The amount of the compensation paid by the fund shall be mentioned in the description. When the amount of the compensation is lower than an amount specified by decree in Conseil d'Etat, the victim is supposed to have suffered the damage mentioned in the description and the compensation paid by the guarantee fund are supposed to repair the aforementioned damage under the conditions of II, if an expertise were carried out by an expert chosen by the guarantee fund. These presumptions are simple. In any event, the amount of the compensation paid to the victim shall not be refunded.

IV - Except more favourable stipulations, the compensation of the fund must be allotted to the people, victims of such damage, within a three-month period as from the handover date of the description of the damage or the date of publication, when the publication is posterior, of the report of mining disaster by the representative of the State provided for under Article 75-2 of the Mining Code.

V - The guarantee fund shall be subrogated to the rights of the people compensated up to the amount of the sums that it paid to them.

## CHAPTER II

Guarantee fund of victims of terrorist attacks and other offences

Articles L422-1 to  
L422-5

### Article L422-1

## INSURANCE CODE

(Act no. 90-589 of 6 July 1990, Article 13, Article 14, Article 18, Official Journal of 11 July 1990 in force on 1 January 1991)

For application of Article L126-1, full compensation for losses sustained as a result of a personal injury shall be provided through the intermediary of the guarantee fund of victims of terrorist attacks and other offences.

Said fund, which is a legal entity, shall be funded by a drawdown on property insurance contracts in accordance with the terms defined by decree in Conseil d'Etat, which also defines the terms applicable to its establishment and its functioning rules.

It shall be subrogated in the rights of the victim against the person liable for the loss.

### Article L422-2

(Act no. 90-589 of 6 July 1990, Article 13, Article 18, Official Journal of 11 July 1990 in force on 1 January 1991)

The guarantee fund, within one month as from the request made to it, must make one or more provisional payments to the victim who sustained personal injury or, in the event of the victim's death, to his assigns, without prejudice to the right for said victims to refer a case to the judge for urgent applications.

The guarantee fund must make an offer of compensation to all victims within three months as from the date on which the victim provides it with evidence of its losses. Said provision shall also apply in the event of an increase of the loss.

Articles L211-15 to L211-18 shall apply to said offers of compensation. The victim may be entitled to damages in the event of offers made late or of clearly inadequate offers.

### Article L422-3

(Act no. 90-589 of 6 July 1990, Article 13, Article 18, Official Journal of 11 July 1990 in force on 1 January 1991)

In the event of dispute, if the events that resulted in the loss have given rise to criminal proceedings, the civil court shall not be obligated to stay proceedings until a final decision by the criminal court. Victims of losses shall be entitled to bring legal action against the guarantee fund within the time limit provided for in Article 2270-1 of the Civil Code.

### Article L422-4

(inserted by Act no. 90-589 of 6 July 1990, Article 13, Article 15, Article 18, Official Journal of 11 July 1990 in force on 1 January 1991)

Compensations awarded pursuant to Articles 706-3 to 706-14 of the Code of Penal Procedure by the commission established under Article 706-4 of said code shall be paid by the guarantee fund of victims of terrorist attacks and other offences.

### Article L422-5

(inserted by Act no. 92-665 of 16 July 1992, Article 36, Official Journal of 17 July 1992)

The guarantee fund may lodge an appeal against decisions handed down by the commission established under Article 706-4 of the Code of Criminal Procedure.

## CHAPTER III

Guarantee fund of insured against the default of life insurance companies

Articles L423-1 to  
L423-8

### Article L423-1

(inserted by Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)

Firms licensed to operate in France subject to State control pursuant to Article L310-1, apart from those authorised to carry out the transactions mentioned in paragraph 3 of the same Article, shall join a guarantee fund to protect the rights of their insured and policyholders, members and beneficiaries of their life insurance and capitalisation contracts covering bodily injury or provided for in Article L441-1.

Insurance contracts, capitalisation bonds or contracts and contracts referred to in Article L441-1 underwritten by the following persons shall be precluded from any compensation by the guarantee fund:

a) directors, corporate officers, partners with personal liability who directly or indirectly own at least 5% of the firm's capital, statutory auditors and insured having the same capacities in other companies of the group,

b) third party acting on behalf of the insured, policyholders of contracts, members and beneficiaries of services referred to in a above,

c) insurance firms governed by this Code, provident institutions governed by the French Social Security Code or the Rural Code as well as mutual insurance companies governed by the French Mutual Insurance Code, save for contracts underwritten in favour of their employees or their customers,

d) companies within the perimeter of consolidation defined under Article 357-1 of Act no. 66-537 of 24 July 1966 relating to business corporations, which is applicable to the insurance firm, save for contracts underwritten in favour of their employees or their customers,

e) credit institutions and persons referred to in Article 8 of Act no. 84-46 of 24 January 1984 relating to the business and supervision of credit institutions, save for contracts underwritten on behalf of a borrower, a customer or their employees

f) unit trusts

g) pension funds, save for contracts underwritten on behalf of employees or their members' pensions.

### Article L423-2

(inserted by Act no. 99-532 of 25 June 1999, Article 38, Official Journal of 29 June 1999)

## INSURANCE CODE

I.- When at the time of the procedure provided for in Article L310-18, the insurance regulatory commission considers that one of the firms referred to in Article L423-1 is no longer able to meet its undertakings to the persons referred to in the same Article, it shall decide to call on the guarantee fund after it has consulted the chairman of its management board in writing.

If he contests the commission's decision, the chairman of the management board may, within two weeks or a fortnight as from the decision, refer the matter to the Minister for Economy. The latter may then in the interest of the insured, policyholders, members and beneficiaries of the contracts and within two weeks or a fortnight request the commission to deliberate again after he has obtained the written opinion of an arbitration board whose structure is defined by decree in Conseil d'Etat.

The commission's decision to call on the guarantee fund shall be immediately notified to the firm in question. In the event of implementation of the procedure described in the previous paragraph, only the new deliberation of the commission shall be notified to the firm.

II.- As from said notice, the insurance regulatory commission shall launch tenders in order to transfer said firm's portfolio of contracts in accordance with the terms provided for in Article L310-18. Said tenders shall be notified to the guarantee fund.

III.- The commission shall accept the offer(s) that it considers best protects the interests of the insured, policyholders of the contracts, members and beneficiaries of benefits having regard, in particular, to the solvency of the applicant firms and the rates of reduction of undertakings that they propose. The commission's decision to transfer the portfolio of contracts to the firm(s) that it appointed and which mentions, where applicable, the rate of reduction for each type of contracts transferred shall be published in the Official Journal. Said decision shall release the assignor firm from any undertakings with regard to the insured, policyholders of the contracts, members and beneficiaries of benefits whose contracts have been transferred pursuant to the provisions of this Article. When the procedure to transfer the portfolio has not produced results, the insurance regulatory commission shall inform the guarantee fund of this act.

IV.- Separate accounts shall be kept of the transferred undertakings and assets. Any profits owed due to an underestimation of the assets or an overestimation of undertakings in the transfer balance sheet shall revert to the insured, policyholders of the contracts, members and beneficiaries of benefits whose contracts have been transferred.

V.- The transfer of all or part of the portfolio or the recorded failure of the transfer procedure shall entail withdrawal by the insurance regulatory commission of all of the defaulting firm's administrative licences. The guarantee fund shall carry out the acts necessary to manage the part of the portfolio of contracts that has not been transferred until the liquidator has been appointed. The provisional directors appointed, where applicable, by the insurance regulatory commission may carry out such acts of management on behalf of the guarantee fund.

### **Article L423-3**

*(inserted by Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)*

In the event the portfolio is transferred, any part of the rights of the insured, policyholders of the contracts, members and beneficiaries of benefits not covered by the assignee shall be guaranteed by a guarantee fund payment to the assignee within the limits provided by decree in Conseil d'Etat. When the procedure to transfer the portfolio has not produced results, the rights of the insured, beneficiaries of the contracts, members and beneficiaries of benefits shall be guaranteed by a guarantee fund payment within the limits provided by decree in Conseil d'Etat. The guarantee fund shall have a right of access to documentary evidence relating to the calculation of its contribution, the amount of which shall be drawn up by the insurance regulatory commission.

### **Article L423-4**

*(inserted by Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)*

The guarantee fund is a private legal entity. It shall be managed by a management board acting under the supervision of a supervisory board. The members of the management board and of the supervisory board must satisfy the conditions set forth in Article L322-2.

The supervisory board shall exercise permanent supervision over the management of the guarantee fund. It shall draw up the statutes and rules and regulations which shall be approved by order of the Minister in charge of the Economy. It shall appoint a chairman from amongst its members.

The supervisory board shall approve the accounts and appoint the statutory auditors. At the end of each financial year, a copy of the approved accounts shall be submitted to the Minister in charge of the Economy. The guarantee fund shall be subject to the control of the inspectorate general of finance.

The supervisory board shall be comprised of twelve members appointed by the member firms; each member shall represent one or more of said firms. The composition of the

supervisory board determined in the statutes of the guarantee fund must be representative of the various categories of insurance firms governed by this Code.

The decisions of the supervisory board shall be taken by a simple majority. Each of the members of the supervisory board shall have a number of votes commensurate with its total financial contribution to the guarantee fund and with that of the firms that appointed it as their representative. In the event of a tie in voting, the chairman shall have the casting vote.

The management board shall be comprised of three members appointed by the supervisory board which shall appoint a chairman from amongst them. The members of the management board may not simultaneously discharge duties within firms that are members of the guarantee fund or be paid by one of them. Its chairman may discharge his duties only after approval by the Minister for Economy.

The Minister for Economy or his representative as well as the chairman of the insurance regulatory commission or

## INSURANCE CODE

his representative may, upon their request, be heard by the supervisory board and management board.

The insurance regulatory commission shall hear the chairman of the guarantee fund in respect of any question that concerns an insurance firm in respect of which it plans to implement the provisions of this chapter.

The chairman of the management board shall also be heard, upon his request, by the insurance regulatory commission.

### Article L423-5

*(inserted by Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)*

The guarantee fund shall be subrogated in the rights of the insured, policyholders of the contracts, members and beneficiaries of benefits up to the amount of sums that it paid.

The guarantee fund shall also be subrogated within the same limits in the rights of the defaulting firm up to the sums owed by virtue of the performance of valid reinsurance treaties.

The guarantee fund may bring any action for damages against the de jure or de facto corporate officers of the insurance firm whose default entailed its intervention in order to obtain repayment of all or part of the sums that it paid. It shall inform the insurance regulatory commission thereof.

### Article L423-6

*(inserted by Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)*

Members of the management board and the supervisory board of the guarantee fund as well as any person who, by virtue of his duties, has access to documents and information in the possession of the guarantee fund shall be bound by professional secrecy in accordance with the terms and under the penalties provided for in Article 226-13 of the Penal Code. Said secrecy shall not be binding on the judicial authority acting in the scope of criminal proceedings or civil courts ruling on an appeal lodged against a decision by the guarantee fund, or the insurance regulatory commission.

### Article L423-7

*(inserted by Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)*

Member institutions of the guarantee fund shall provide the guarantee fund with the financial resources that it needs to carry out its assignments in accordance with the terms defined by decree in Conseil d'Etat. The guarantee fund may also issue non marketable, registered insurance certificates which the member firms underwrite when they join the fund.

When the losses sustained by the guarantee fund cannot be covered by contributions already called, the insurance certificates referred to in the previous paragraph may no longer be remunerated. The nominal of each of said certificates shall then be reduced in the proportion necessary to absorb the losses. Said insurance certificates shall not be repayable.

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

Lack of membership or absence of payment of the called contribution to the guarantee fund shall be liable to the penalties provided for under Article L310-18 and penalties for late payment paid directly to the guarantee fund in accordance with the terms defined by its rules and regulations.

### Article L423-8

*(Act no. 99-532 of 25 June 1999, Article 68, Official Journal of 29 June 1999)*

*(order no.2001-350 of 19 April 2001, Article 6, XXVI, Official Journal of 22 April 2001)*

A decree in Conseil d'Etat specifies:

- the terms and limits of compensation per insured, policyholder, member or beneficiary, the compensation procedures and time limits as well as the rules concerning information to be provided to customers,
- the methods of defining the rates of reduction in the event of the transfer of the defaulting firm's portfolio,
- the features of insurance certificates as well as the terms of their remuneration,
- the total amount of annual contributions owed by the member firms,
- the terms in which a part of said contributions cannot be transferred to the guarantee fund upon creation of the relevant guarantees,
- the methods of allocating said annual contributions based on the amount of technical reserves, weighted by contributions already paid as well as the indicators of the financial situation of each of the members and in particular their solvency, reflecting the objective risks that the fund incurs by reason of the member,
- the terms and conditions applicable to the appointment of members of the supervisory board as well as their term of office.

Said decree may be amended only after consulting the chairman of the guarantee fund's management board.

## CHAPTER IV

### Organization of compensation

Articles L424-1 to  
L424-7

### Article L424-1

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

A compensation institution shall compensate the injured people, who reside in France, have a right to compensation for any damage resulting from accidents which have occurred on the metropolitan territory from a Member State to the European Economic Space, other than the French State, and implicate a vehicle that has its usual parking lot and which is insured in one of these States.

## INSURANCE CODE

Without infringing the law legislation of third countries as regards public liability and private international law, the provisions of this Article apply also to injured people who reside in France and have a right to compensation for any damage resulting from accidents which have occurred in a third country whose national insurance office joined the system of the international chart of insurance, when the accidents in question are caused by the traffic of vehicles insured and parked in a usual way in a Member State of the European Union.

### **Article L424-2**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

The injured people may submit a request to the compensation institution:

a) if, within a three-month period as from the date on which the injured person presented at the insurance firm of the vehicle whose driving caused the accident or with its representative in charge of the settlement of the losses, a request for compensation, the insurance firm or its representative in charge of the settlement of the losses did not give a reasoned response to the items called upon in the request;

b) if the insurance firm did not designate a representative in charge of the settlement of losses on the metropolitan territory of the French Republic. In this case, the injured people may not submit a request to the compensation institution if they presented a request for compensation directly to the insurance firm of the vehicle whose driving has caused the accident and if they received a reasoned answer within a three-month period as from the presentation of the request;

c) if the identification of the vehicle of the liable person of the accident is not possible, or if, within a two-month period after the accident, it is impossible to identify the insurance firm which grants its guarantee.

In the cases provided for in (a) and (b), the injured people may not however submit a request to the compensation institution if they took action in justice directly against the insurance firm.

### **Article L424-3**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

The compensation institution shall intervene within a two-month period from the date on which the injured person presents a request for compensation to it. It shall cease its intervention if, within said two-month period, the insurance firm or its representative in charge of the settlement of the losses gives a reasoned response to the request.

The offer of the compensation institution shall be subsidiary. It shall pay the compensations, which may be assumed in any other ground, allotted to victims or assigns, when the accident gives rise to a right of reparation. The payments carried out on behalf of the profit of the victims or their assigns and which may not give rise to a recourse action against the person liable for the damage shall not be regarded as compensation on another ground.

### **Article L424-4**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

The compensation institution, which compensated the injured person, is subrogated to his rights against the compensation institution of the State where the premises of the insurance firm, which has issued the contract for the refunding of the paid sum by way of compensation, are located.

### **Article L424-5**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

When the compensation institution refunds the sums paid by its counterparts of the other Member States to the European Economic Space, it shall then be subrogated to the rights of the injured person and the institution who compensated him against the person who has caused the accident or insurance firm which provides him with guarantee or the guarantee fund provided for under Article L. 421-1.

### **Article L424-6**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

When it intervenes under the conditions provided for under Articles L. 424-1, L. 424-2 and L. 424-3, the compensation institution may receive all useful documents and information and take measures necessary to negotiate the settlement of the losses. The applicable law for the compensation of the injured person shall be the law in force on the territory of the State where the accident occurred.

### **Article L424-7**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 V, Official Journal of 2 August 2003)*

When it intervenes under the conditions provided for by (c) of Article L. 424-2, the compensation institution shall have a claim:

a) on the guarantee fund of the State where the accident took place in the case of a vehicle of a third country;

b) on the guarantee fund of the State where the vehicle has its usual parking lot if the insurance firm may not be identified;

c) on the guarantee fund of the State where the accident took place in the case of an unidentified vehicle.

The claim of the compensation institution shall include, in addition to the compensation and related expenses, management expenses according to the agreement concluded between the compensation institutions created or accredited by Member States.

## **TITLE III**

### **Special insurance institutions**

### **Articles L431-4 to L432-4**

INSURANCE CODE  
CHAPTER I

The central reinsurance fund

Articles L431-4 to  
L431-14

SECTION II

Transactions carried out with the guarantee of the State

Articles L431-4 to  
L431-10

Paragraph 2

Extraordinary and nuclear risks

Articles L431-4 to  
L431-7

**Article L431-4**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

*(Act no. 89-1014 of 31 December 1989, Article 48, Official Journal of 3 January 1990 in force on 1 July 1990)*

The central reinsurance fund, acting with the guarantee of the State, shall be empowered to underwrite transactions to insure or reinsure risks as a result of extraordinary events such as foreign or civil states of war, offences against public policy, civil commotion or industrial disputes when said risks arise from the use of any kind means of transportation or relate to property in transit or stocked.

**Article L431-5**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

The central reinsurance fund, acting with the guarantee of the State, shall grant operators of ships and nuclear plants the covers in respect of which intervention of the State is provided for pursuant to Act no. 65-956 of 12 November 1965 and Act no. 68-943 of 30 October 1968.

**Article L431-6**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

A decree in Conseil d'Etat defines the terms of application of Articles L431-4 and L431-5, in particular, the terms in which treaties or contracts shall be drawn up and the rates set for the transactions referred to in said Articles.

**Article L431-7**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

A separate account opened in the fund's records shall record all of the insurance and reinsurance transactions referred to in Articles L431-4 and L431-5.

Paragraph 3

Risks of natural disasters

Article L431-9

**Article L431-9**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

*(Act no. 90-509 of 25 June 1990, Article 2, Official Journal of 27 June 1990 in force on 1 August 1990)*

The central reinsurance fund shall be empowered to underwrite transactions to reinsure risks as a result of national disasters, with the guarantee of the State, in accordance with the terms defined by decree in Conseil d'Etat.

Paragraph 4

Risks of terrorist attacks

Article L431-10

**Article L431-10**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

The central reinsurance fund shall be empowered to underwrite transactions to reinsure risks as a result of bombing or terrorist attacks, with the guarantee of the State.

SECTION III

Management transactions

Articles L431-11 to  
L431-14

Paragraph 1

National guarantee fund for agricultural disasters

Article L431-11

**Article L431-11**

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

The central reinsurance fund shall be responsible for the accounting and financial management of the National guarantee fund for agricultural disasters referred to in Article L442-1 in a separate account from those which record the other transactions underwritten by said establishment.

The central reinsurance fund shall be reimbursed for costs incurred in managing the fund in accordance with the terms defined by decree in Conseil d'Etat.

Paragraph 2

## INSURANCE CODE

National guarantee fund for agricultural disasters in overseas départements Article L431-12

### Article L431-12

*(decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

The central reinsurance fund shall be responsible for the accounting and financial management of the National guarantee fund for agricultural disasters in overseas départements referred to in Article L442-2 in a separate account from those which record the other transactions underwritten by said establishment.

The central reinsurance fund shall be reimbursed for costs incurred in managing the fund in accordance with the terms defined by decree in Conseil d'Etat.

Paragraph 4

Compensation fund of construction risks insurance

Article L431-14

### Article L431-14

*(Decree no. 85-863 of 2 August 1985, Article 4, Official Journal of 15 August 1985)*

*(Act no. 85-1404 of 30 December 1985, Article 26, I, II, Official Journal of 31 December 1985)*

*(Act no. 89-936 of 29 December 1989, Article 42, Official Journal of 30 December 1989)*

*(Act no. 89-1014 of 31 December 1989, Article 47, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 2002-1575 of 30 December 2002, Finance 2003, Article 124 I, Official Journal of 31 December 2002)*

*(Act n°2003-1312 of 30 December 2003, Article 84, Finances Corrections for 2003, Official Journal of 31 December 2003, in force on 1 January 2005)*

A compensation fund of construction risks insurance has been established in order to contribute, within the framework of agreements that may be entered into for said purpose with the insurance firms, to the compensation of damage affecting buildings the sites of which were opened prior to a date set by decree in Conseil d'Etat and from which date the relevant premiums shall no longer be collected.

The fund may enter agreements with insurance firms in order to set off the financial effects of the increase in construction costs on their ten-year insurance cover.

The fund shall make a financial contribution to actions to prevent disorders and to promote construction quality.

The central reinsurance fund shall be responsible for managing the fund.

A decree in Conseil d'Etat shall define the terms of application of this article.

N.B. act 2003-1312 30-12-2003 Finances corrections for 2003, Article 84 II: The provisions of I shall apply to premiums or contributions and, in the event of payment by instalment, to fractions of premiums or contributions dues beginning from 1st January 2005.

## CHAPTER II

French insurance company for foreign trade known as "Coface"

Articles L432-1 to  
L432-4

### SECTION I

General provisions

Articles L432-1 to  
L432-4

### Article L432-1

The Government shall be authorised, by decree in Conseil d'Etat issued after consulting the national credit board, to take all measures to improve credit and insurance credit terms necessary for the expansion of France's foreign trade. In particular, for this purpose, it may cause the establishment of new institutions specialised in export or import credit and propose the amendment of the statutes or reorganisation of existing institutions and any administrative institutions or institutions subsidised by the State whose objects are export or import credit insurance to Parliament.

### Article L432-2

*(Amending Finance Act no. 97-1239 of 29 December 1997, Article 37, I, Official Journal of 30 December 1997)*

The guarantee of the State may be granted in whole or in part:

1 to the French insurance company for foreign trade for its transactions to insure commercial, political, monetary risks, disasters and certain extraordinary risks as well as for transactions to manage related rights and obligations.

2 to exporters for transactions provided for in Article 53 of Act no. 48-1516 of 26 September 1948, determining the valuation of ways and means of the general budget for the 1948 financial year and relating to various financial provisions.

The guarantee of the State may also be granted to exporters to cover, in accordance with the terms defined in contracts that the Minister in charge of the Economy and Finance enters into with them, a part of the losses that may result from expenses incurred to canvass certain foreign markets, advertise and build up stocks with a view of developing exports of said markets.

### Article L432-3

*(Amending Finance Act no. 97-1239 of 29 December 1997, Article 37, II, Official Journal of 30 December 1997)*

The guarantee of the State shall be granted after consulting the foreign trade guarantees and credit commission, established by Article 15 of Act no. 49-874 of 5 July 1949, apart from that relating to management transactions referred to in paragraph 1 of Article L432-2 in respect of which it is granted by order of the Minister for Economy.

## INSURANCE CODE

### Article L432-4

(Amending Finance Act no. 97-1239 of 29 December 1997, Article 37, III, Official Journal of 30 December 1997)

The French insurance company for foreign trade shall draw up separate accounting records for transactions that it carries out with the guarantee of the State pursuant to Article L432-2 of this Code. An agreement between the State and the French insurance company for foreign trade shall specify the terms and conditions in which said records shall be kept and the terms in which they shall be audited and certified by one or more statutory auditors.

Subject to the rights of holders of receivables arising from transactions carried out with the guarantee of the State, no creditor of the French insurance company for foreign trade other than the State may take advantage of any right to the property and rights ensuing from the records drawn up pursuant to the previous paragraph even on the basis of Act no. 85-98 of 25 January 1985 relating to the judicial rehabilitation and liquidation of firms, Act no. 84-148 of 1 March 1984 relating to the prevention and friendly settlement of difficulties affecting firms or Articles L310-25 and L326-2 to L327-6 of this Code.

## TITLE IV

### Special insurance schemes

**Articles L441-1 to  
L442-6**

#### CHAPTER I

Provisions relating to certain group benefits and insurance transactions

Articles L441-1 to  
L441-10

#### SECTION I

General provisions

Articles L441-1 to  
L441-7

### Article L441-1

(Act no. 94-5 of 4 January 1994, Article 29, I, Official Journal of 5 January 1994 in force on 1 July 1994)

Life insurance firms shall be authorised to directly or indirectly, inter alia, by the collection of premiums or contributions, by the formation of capital payable on survival to a stipulated age only, by the formation and service of pension or annuities, in any transaction to acquire or enjoy rights on survival to a stipulated age only in which a relationship is established between the revaluation of premiums and those of the rights on survival to a stipulated age only previously earned and the assets and rights of which shall be isolated from those of the other insured and subject to the terms provided for in this chapter.

### Article L441-4

(Act no. 94-5 of 4 January 1994, Article 29, III, Official Journal of 5 January 1994 in force on 1 July 1994)

Any contracts or agreements in violation of the provisions of this chapter and the decrees in Conseil d'Etat entered into pursuant to Articles L441-7 and L441-10 shall be null and void ipso jure.

### Article L441-5

No compensation may be claimed from the State by reason of the intervention of order no. 59-75 of 7 January 1959 relating to certain collective provident transactions and insurance transactions codified in this chapter.

### Article L441-6

(Act no. 92-1336 of 16 December 1992, Article 322, Article 329, Official Journal of 23 December 1992 in force on 1 March 1994)

Any person who, even in an intermediary capacity, proposes contracts or agreements in violation of the provisions of this chapter or cause such contracts or agreements to be underwritten shall be punished by a fine of €3,750 and a six month prison sentence or one of said two penalties only.

### Article L441-7

(Act no. 94-5 of 4 January 1994, Article 29, IV, Official Journal of 5 January 1994 in force on 1 July 1994)

A decree in Conseil d'Etat determines the technical rules and terms of application of this chapter.

#### SECTION II

Technical and accounting rules

Article L441-8

### Article L441-8

(Act no. 94-5 of 4 January 1994, Article 29, V, Official Journal of 5 January 1994 in force on 1 July 1994)

When an insurance firm intends underwriting transactions governed by Article L441-1, it must keep entirely separate accounts for said transactions.

The assets corresponding to said transactions shall be allocated to pay benefits, whether settled or not. They shall be encumbered for this purpose by:

a) a legal mortgage on real property which ranks as at the date of its registration,

b) a lien on movables and a lien on immovables that shall take precedence over the liens respectively provided for in the first and second paragraphs of Article L327-2.

#### SECTION IV

**Article L441-10**

*(Act no. 94-5 of 4 January 1994, Article 29, VI, Official Journal of 5 January 1994 in force on 1 July 1994)*

Any existing agreements that underwrite or provide for transactions governed by Article L441-1 shall be brought into compliance with the provisions of this chapter within the time limit imposed by decree in Conseil d'Etat. Where applicable, said decree defines the terms applicable to the adaptation of earlier contracts and agreements.

## CHAPTER II

Other special insurance schemes

Articles L442-1 to  
L442-6

## SECTION I

Scheme for the compensation of agricultural disasters

Articles L442-1 to  
L442-2**Article L442-1**

As it ensues from Article 1 of Act no. 64-706 of 10 July 1964, the National guarantee fund for agricultural disasters shall compensate the material damage caused to farms by disasters such as they are defined by said Act. Said fund shall also further the development of insurance against agricultural risks.

**Article L442-2**

As it ensues from Article 1 of Act no. 74-1170 of 31 December 1974, the guarantee fund for agricultural disasters in overseas départements shall compensate material damage caused to farms by disasters as they are defined under said Act. Said fund shall play a role in the development of insurance against agricultural risks.

## SECTION II

Compulsory health, disability and maternity insurance scheme for farmers and non wage earning members of their families (French acronym AMEXA) Article L442-3

**Article L442-3**

As it ensues from Article 1106-9 of the Rural Code, persons subject to the compulsory health, disability and maternity insurance scheme for farmers and non wage earning members of their families may be insured by the firms referred to in Article L310-1 of this Code when they act in accordance with the relevant terms of the Rural Code.

## SECTION III

Insurance of farmers against private life accidents, accidents at work and occupational diseases Articles L442-4 to  
L442-5

**Article L442-4**

As it ensues from Article 1234-8 of the Rural Code, persons subject to the compulsory insurance scheme of farmers against private life, accidents at work and occupational diseases may be insured by the firms referred to in Article L310-1 of this Code when they act in accordance with the relevant terms of the Rural Code.

**Article L442-5**

As it ensues from Article 1234-20 of the Rural Code, persons entitled to underwrite additional insurance against private life accidents, accidents at work and occupational diseases may do so with the firms referred to in Article L310-1 of this Code when they act in accordance with the relevant terms of the Rural Code.

## SECTION IV

Compulsory health, disability and maternity insurance scheme of the non wage earning professionals in the non agricultural professions Article L442-6

**Article L442-6**

As it ensues from Article 14 of Act no. 66-509 of 12 July 1966, as amended, the firms referred to in Article L310-1 may be empowered to collect contributions and service benefits on behalf of the regional mutual health and maternity insurance funds of non wage earning workers of the non agricultural professions.

## TITLE V

Information centre

Articles L451-1 to  
L451-4**Article L451-1**

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 VI, Official Journal of 2 August 2003)*

An information centre shall be entrusted to inform the people residing in a Member State who are party to the European Economic Space Agreement, when said people are injured in a traffic accident:

- a) occurred on the territory of one of these States, except for their State of residence, or in a non-Member State, whose national office joined the international insurance card system;
- b) and implicating a vehicle having its usual parking lot on the territory of the French Republic and insured in a firm

## INSURANCE CODE

referred under Article L. 451-2.

When these people or their representatives make the request, the centre shall communicate to them, under conditions fixed by decree in Conseil d'Etat, the following particulars:

1° the denomination and the address of the insurance firm covering the public liability referred to under Article L. 211-1 on the date of the accident;

2° the number of insurance contract;

3° the number of the international insurance card or the border insurance contract, if the vehicle is covered by one of these documents;

4° the name and the address of the representative of the company in their home country;

5° for the vehicles of a State that benefits from the exemption provided for under Article L. 211-1, the contact information of the authorities in charge of compensation.

If the injured person proves that it has a legitimate interest there, the information centre shall communicate the name and addresses of the owner to him or the usual driver or the declared holder of the vehicle involved in the accident.

### Article L451-2

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 VI, Official Journal of 2 August 2003)*

Any insurance firm covering, on the territory of the French Republic, the risks of public liability resulting from the use of land motor vehicles, other than the responsibility for the carrier, shall join the information centre referred to under Article L. 451-1.

Any insurance firm, which does not conform to this obligation, shall be regarded as no longer functioning in accordance with the law in force. It shall incur, according to the case, the sanctions provided for under Articles L. 310-18 or L. 351-7 and L. 351-8.

In order to allow the information centre to answer to the requests of information provided for under Articles L. 451-1 and L. 451-3 during a seven-year period after the accident, the insurance firms referred to under Article L. 451-1 should have the obligation to communicate to him, if the accident occurred during validity period of the contract:

1° the number of the contract of public liability insurance resulting from the use of land motor vehicles that have their usual parking lot on the territory of the French Republic;

2° the number of international insurance card or the border insurance contract, if the vehicle is covered by one of these documents;

3° if the injured person has a legitimate interest there, the name and the address of the owner or that of the usual driver or that of the declared holder of the vehicle.

The insurance firms shall be held to preserve these data, as well as the corresponding serial numbers, during a seven-year period after the expiry of the insurance contract. This obligation shall rest on a new insurance firm in the event of transfer of portfolio.

The institutions who register vehicles benefiting from the exemption from the obligation of insurance provided for under Article L. 211-1 shall be held to preserve the name and address of the managing department of these vehicles during a seven-year period after the end of their registration.

In order to allow the information centre to answer to the requests of the injured people in a traffic accident implicating a vehicle that profits from the exemption provided for under Article L. 211-1, the State shall answer to the requests of identification formulated by the information centre and communicate to him the contract information of the authorities in charge of compensation.

### Article L451-3

*(inserted by Act no. 2003-706 of 1 August 2003, Article 83 VI, Official Journal of 2 August 2003)*

In the event of a traffic accident involving a vehicle that has its usual parking lot on the territory of the French Republic, the information centre shall provide information, provided for in 1° to 5° of Article L. 451-1, to insurance firms of the injured people, to the guarantee fund referred to under Article L. 421-1, to compensation institution referred to under Article L. 424-1 and to the national insurance office referred to under Article L. 421-15.

### Article L451-4

*(inserted by Act no. 2003-706 of August 1 2003 Article 83 VI, Official Journal of 2 August 2003)*

In order to answer the injured person who proves a legitimate interest to obtain from the information centre the name and address of the owner or that of the usual driver or that of the declared holder of the vehicle involved in the accident, the information centre may question the national filing for registrations instituted by Article L. 330-1 of the Traffic Regulations Code, when the vehicle is not insured.

## BOOK V

### General agents, brokers and other intermediaries of insurance and capitalisation

**Articles L511-1 to L530-3**

#### TITLE I

#### Presentation of transactions

**Articles L511-1 to L514**

#### CHAPTER I

**Article L511-1**

A decree in Conseil d'Etat outlines the presentation of a transaction underwritten by the firms referred to in Article L310-1 and determines the persons empowered to make such presentation.

When such presentation is made by a person thus empowered, the employer or principal shall be legally liable in accordance with the terms of Article 1384 of the Civil Code for damage caused by the fault, carelessness or negligence of its employees or agents acting in said capacity, who, for application of this Article, shall be deemed to be employees, notwithstanding any agreement to the contrary.

**Article L511-2**

*(Act no. 89-1014 of 31 December 1989, Article 41, Official Journal of 3 January 1990 in force on 1 July 1990)*

Persons convicted of one of the offences referred to in paragraphs 1, 2 and 3 of Article L322-2 or persons concerned by one of the measures provided for in paragraphs 4 and 5 of the same Article may not carry on the occupation of general agent or insurance or reinsurance broker.

The convictions and measures referred to in the previous paragraph shall entail a prohibition on presentation of insurance or reinsurance transactions by agents and employees of firms, general agents, brokers and brokerage firms.

The courts may also impose said prohibitions on any person convicted of violation of insurance law or regulations.

**Article L511-3**

*(Act no. 89-1014 of 31 December 1989, Article 56, Official Journal of 3 January 1990 in force on 1 July 1990)*

The provisions of this chapter shall apply in French overseas territories and in the collectivité territoriale of Mayotte.

Nota bene: Article 75 of Act 2001-616 of 11 July 2001: In all laws and regulations in force in Mayotte, reference to the "collectivité territoriale of Mayotte" shall be replaced by reference to "Mayotte" and reference to the "collectivité territoriale" shall be replaced by reference to the "collectivité départementale".

## CHAPTER IV

## Control of terms applicable to presentation

Articles L514-1 to L514

**Article L514**

*(inserted by Act N° 99-532 of 21 June 1999 art. 43 II Official Journal of 29 January 1999)*

The underwriting associations, that benefit from derogation to the rules of presentation of insurance transactions but that carry out presentation of insurance products, are liable to declare to the Insurance Supervisory Commission their activity and the type of products they present. Likewise, they shall inform the latter about any modification in the nature of their activity as well as the cessation of their activity.

## SECTION IV

## Miscellaneous provisions and penalties

Articles L514-1 to  
L514-4**Article L514-1**

*(Act no. 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March 1994)*

Violation of the provisions of Article L511-2 shall be punished by a two year prison sentence and a fine of €6,000 or one of said two penalties only.

**Article L514-2**

*(Act no. 81-5 of 7 January 1981, Article 36, IV, Official Journal of 8 January 1981)*

*(Act no. 92-1336 of 16 December 1992, Article 322, Article 329, Official Journal of 23 December 1992 in force on 1 March 1994)*

*(Act no. 94-5 of 4 January 1994, Article 38, II, Official Journal of 5 January 1994 in force on 1 July 1994)*

The act of presenting in view of underwriting or cause the underwriting of contracts on behalf of a firm subject State control pursuant to Article L310-1 and not empowered to underwrite the relevant transactions in France shall be punishable by a fine of €3,000 and in the event of a repetition offence, a fine of €15,000 and a six month prison sentence.

The fine provided for in this Article shall be imposed for each of the contracts proposed or underwritten; the total of the fines incurred may not exceed €6,000 and €30,000 in the event of a repeat offence.

**Article L514-4**

*(Act no. 89-1014 of 31 December 1989, Article 43, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March 1994)*

Violation of the provisions of Article L530-1 and L530-2 shall be punished by a one year prison sentence and a fine of €9,000 or one of said two penalties only.

## TITLE II

## Provisions specific to general insurance agents

Articles L520-1 to  
L520-2

## SOLE CHAPTER

**Article L520-1**

The open-ended contract entered into between insurance firms and their general agents may always be terminated by decision of one of the contracting parties.

Nevertheless, the termination of the contract by the will of one of the contracting parties only may give rise to damages, which shall be set in accordance with Article 1780 of the Civil Code.

The parties may not waive in advance any right to claim damages pursuant to the above provisions.

**Article L520-2**

*(Act no. 90-1260 of 31 December 1990, Article 5, Official Journal of 5 January 1991)*

The status of general insurance agents and riders thereto shall be approved by decree, after it has been negotiated and drawn up by the concerned professional organisations.

**TITLE III****Provisions specific to brokers and insurance brokerage companies****Articles L530-1 to  
L530-3****SOLE CHAPTER****Articles L530-1 to  
L530-3****Article L530-1**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 42, Official Journal of 3 January 1990 in force on 1 July 1990)*

All insurance brokers or brokerage companies to which funds are entrusted, even occasionally, with a view to being paid to the firms referred to in Article L310-1 or to the insured must at all times prove that they have a special financial guarantee to guarantee repayment of said funds to the insured.

Said guarantee may ensue only from a surety bond entered into by a credit institution authorised for this purpose or an insurance firm governed by the Insurance Code.

The obligation provided for in this Article shall not apply to payments in respect of which an insurance firm has granted a broker a written authorisation expressly collect premiums and subsidiarily to settle losses.

**Article L530-2**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 42, Official Journal of 3 January 1990 in force on 1 July 1990)*

All insurance brokers or brokerage companies must be able at all times to prove the existence of an insurance contract covering the pecuniary consequences of their professional public liability.

**Article L530-2-1**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 42, Official Journal of 3 January 1990 in force on 1 July 1990)*

Persons who are not insured but who made payments for contracts not governed by the provisions of Article L351-4 to a broker or a brokerage company on the list referred to in Article L530-2-2 and which are covered by an apparent undertaking by one of the firms referred to in Article L310-1 shall be guaranteed by said firm when the public liability insurance of the broker or brokerage firm that received said payments cannot be brought into play.

The insurer that granted its guarantee pursuant to the provisions of the previous paragraph shall be subrogated in the insured's rights and legal actions pursuant to the provisions of Article L530-1.

**Article L530-2-2**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 42, Official Journal of 3 January 1990 in force on 1 July 1990)*

*(Act no. 99-532 of 25 June 1999, Article 46, Official Journal of 29 June 1999)*

The Minister for Economy shall ensure compliance with the requirements provided for in Articles L511-1 (first paragraph), L511-2, L530-1 and L530-2. The list of insurance brokers and brokerage companies established in France shall be kept by the concerned insurance professionals in accordance with the terms defined by decree in Conseil d'Etat.

Said list shall be published each year in the Official Journal of the French Republic.

**Article L530-3**

*(inserted by Act no. 89-1014 of 31 December 1989, Article 42, Official Journal of 3 January 1990 in force on 1 July 1990)*

A decree in Conseil d'Etat defines the terms of application of this chapter as well as the additional measures required to guarantee the insured's protection.