IFD/IFR "class 1" IFs
Q&As
ON THE CONSEQUENCES OF THIS STATUS VIS-À-VIS THIRD PARTIES
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Background information provided by AMAFI

Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms (the "IFD") and its associated regulation, Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms (the "IFR"), were published on 4 December 2019 in the Official Journal of the European Union.

These laws are the culmination of work initiated in 2016 by the European Commission ("EC") and the European Banking Authority ("EBA") with the aim of establishing a prudential regime in the European Union ("EU") adapted and proportionate to the activities carried out by investment firms ("IFs"). Four categories of IFs have been defined:

- Class 1 IFs, which are IFs deemed systemically important (total assets exceeding €30 billion either individually or on a consolidated basis), which must apply for credit institution ("CI") authorisation and which are supervised under the European single supervisory mechanism ("SSM").

- Class 1 minus IFs (total assets between €15 billion and €30 billion) which are subject to CRD/CRR rules despite retaining IF status.

- Class 3 IFs, or "small non-interconnected IFs", which based on criteria such as total assets, revenue and volume of business are subject to lighter requirements and an amount of regulatory capital equal to the higher of their capital requirement and one quarter of their fixed overheads.

- Class 2 IFs, which do not fall into any of the above three categories and whose own funds requirement takes into account metrics associated with the activities they carry out (K-factors), in addition to regulatory capital and one quarter of fixed overheads.

The Regulation came into force on 26 June 2021, by which time the transposition of the IFD by EU Member States was to be completed. Ordinance no. 2021-796 of 23 June 2021, as well as various decrees adopted in July 2021, transposed the IFD into French law.

- Ordinance no. 2021-796 transposing Directive (EU) 2019/2034 on the prudential supervision of investment firms;
- the Order of 20 July 2021 amending the Order of 3 November 2014 on capital buffers of banking service providers and IFs other than asset management companies;
- the Order of 20 July 2021 amending the Order of 4 December 2017 on authorisations, changes in status, withdrawal of authorisation and deregistration of investment firms and similar institutions;
- the Order of 20 July 2021 amending the Order of 5 September 2007 on activities other than investment services and related services that may be performed by IFs other than asset management companies;
- the Order of 20 July 2021 amending the Order of 19 December 2014 on the disclosure of information about encumbered assets;
- the Order of 20 July 2021 amending the Order of 19 December 2014 on systemic measurement indicators disclosure obligations;
- the Order of 20 July 2021 amending the Order Of 23 December 2013 on the application of Article 493(3) of Regulation (EU) No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms;
- the Order of 28 July 2021 amending the Order of 3 November 2014 on internal control of undertakings in the banking, payment services and investment services sector subject to the supervision of the *Autorité de contrôle prudentiel et de resolution*;
- the Order of 28 July 2021 amending the Order of 3 November 2014 on the prudential supervision and risk assessment process for banking service providers and investment firms other than asset management companies;
- the Order of 28 July 2021 amending the Order of 3 November 2014 on prudential supervision on a consolidated basis;
- the Order of 28 July 2021 amending the Order of 6 September 2017 on the segregation of investment firms' client funds;
- the Order of 28 July 2021 amending Regulation no. 86-21 of 24 November 1986 on non-banking activities;
- the Order of 28 July 2021 amending Regulation no. 98-05 of 7 December 1998 on credit transactions of investment firms;
- the Order of 28 July 2021 repealing Regulation no. 97-04 of 21 February 1997 on management standards applicable to investment firms other than asset management companies, the Order of 20 February 2007 on capital requirements applicable to credit institutions and investment firms, Regulation no. 93-05 of 21 December 1993 on the control of major risks and Regulation no. 90-02 of 23 February 1990 on capital requirements.

In France, for class 1 investment firms, the regulations have adopted a specific credit and investment institution ("CII") status. Therefore, in accordance with European law, they are treated as credit institutions, but are not authorised to receive repayable funds from the public and are not permitted to carry out credit transactions (except to perform the service ancillary to investment services provided for in Article L. 321-2(2) of the French Monetary and Financial Code (*Code Monétaire et Financier*).

This Q&A document describes the consequences of CII status vis-à-vis third parties (counterparty clients, supervisory authorities).

DISCLAIMER
for the attention of users of this document

Users of this document should note that the sole purpose hereof is to provide AMAFI members with background information on the consequences of ECI status vis-à-vis third parties (counterparty clients, supervisory authorities), as identified by the Association.

Accordingly, the information in this memorandum should in all cases be used with caution and will in no event cause the AMAFI to incur liability.

1. What activities or services may be provided by CIIs?

CIIs may provide the same services or activities as IFs (the investment services and activities and ancillary services listed in Annex 1, Sections A and B, of Directive 2014/65/EU - "MiFID II"). However, they are not permitted to receive repayable funds from the public and cannot carry out credit transactions. Moreover, they may not offer other services such as payment services, digital asset services or providing electronic money. If a CII wishes to offer such services or other banking services, it must apply for a new licence.

2. Who supervises CIIs?

Due to the fact they are deemed systemically important (because they meet specific ECB criteria in terms of total assets, economic importance or specific activities), CIIs are supervised by the European Central Bank (ECB), in collaboration with the ACPR, under the Single Supervisory Mechanism ("SSM"). The supervisory role of the AMF remains unchanged.

3. What prudential regulations apply to CIIs?

CIIs are subject to capital requirement regulations (CRD/CRR rules on capital adequacy, liquidity and remuneration requirements). They are also subject to the recovery and resolution rules laid down by Directive 2014/59/EU (the "BRRD").

During the period from the entry into force of the IFD and IFR and the formal date of authorisation as a CII, IFs continue to be supervised by the ACPR and are subject to the CRD V and CRR II, in accordance with Article 58 of the IFR.

4. Does the change in status affect prudential calculations for CII counterparties?

No, the change in status has no consequences.

5. Does the change in status require the renegotiation of existing contracts?

No, the change in status does not require renegotiating existing contracts.

6. What segregation rules apply to CIIs?

CIIs continue to be subject to the segregations rules applicable to IFs in accordance with the Order of 6 September 2017 on the segregation of investment firms' client funds.

7. What activities other than investment services and related services are CIIs entitled to perform?

CIIs are entitled to perform the same other activities that IFs can perform under the Order of 5 September 2007.

8. What credit transactions can be performed by CIIs?

CIIs may carry out the same credit transactions as IFs, in accordance with Regulation no. 98-05 of 7 December 1998.
However, CIIs are not allowed to provide traditional banking services and, therefore, cannot receive deposits from the public or grant loans.

9. With which resolution fund are CIs affiliated?

CIIs are affiliated with the Single Resolution Fund ("SRF").

10. With which guarantee funds are CIIs affiliated?

As credit institutions, CIIs are required to contribute to the Deposit Guarantee and Resolution Fund ("DGRF") under the deposit guarantee scheme. However, this contribution is limited to the portion covering the Fund's fixed costs because CIIs are not permitted to provide traditional banking services and, therefore, cannot receive deposits from the public or grant loans.

CIIs that provide custody services will continue to be affiliated with the securities guarantee mechanism.

11. Are CIIs governed by Act no. 2013-672 of 26 July 2013 on the separation and regulation of banking activities?

No, CIIs are not subject to the act on the separation and regulation of banking activities, in accordance with the French law that transposed the IFD and IFR (Order no. 2021-796 of 23 June 2021).

12. Can CIIs engage in intermediary banking and payment services activities?

Yes, if the CII requests permission to do so in its authorisation application.