

# **AFD ARTICLES OF ASSOCIATION**

**According to LEGIFRANCE after publication of Article 153 of Finance Act No. 2021-1900 of 30 December 2021 for 2022**

## **MONETARY AND FINANCIAL CODE (Code Monétaire et Financier)**

**(Legislative part)**

**Book V: Service providers.**

**Title 1: Banking service providers.**

**Chapter V: Financing companies**

**Section 4: Agence française de développement**

### **Article L515-13**

I.- The Agence française de développement performs an ongoing public interest mission, within the meaning of Article L. 511-104. Its duties are to carry out financial transactions of any type with a view to:

1. Contributing to the implementation of the State's development assistance foreign policy, in particular by financing:

a) As a priority, access to essential services in the least developed countries and in particular in the priority countries of French development policy, particularly through donations and concessional loans;

b) Global public goods, economic convergence and the fight against climate change in developing countries;

2. Contributing to the development of the local authorities referred to in Article 72-3 of the Constitution.

The Agence française de développement reports on each of these activities.

II.- The Agence française de développement is a public industrial and commercial establishment placed under the supervision of the State and contributing to France's external actions, within the meaning of Article 1 of French Law No. 2010-873 of 27 July 2010 on State external actions.

The board of directors of the Agency includes among its members two deputies and two senators, and their alternates, appointed in order to ensure a pluralist representation for each assembly.

The Ministers responsible for Development, the Economy and Overseas Territories provide the Director General of the Agency with a mission letter after his appointment and upon renewal of his mandate, as well as an annual letter of objectives.

III. - For its financial operations, the Agence française de développement may use a subsidiary approved as a banking service provider in which it holds, directly or indirectly, the majority of the share capital. A portion of the share capital of this subsidiary must be held by persons governed by private law who carry out investment or international financing activities in the geographical areas in which this subsidiary operates, without these persons having the capacity to control or block or exerting a decisive influence on the subsidiary. The portion of the share capital thus held must not give these shareholders a controlling interest within the meaning of Article L. 233-3 of the French Commercial Code.

**MONETARY AND FINANCIAL CODE (Code Monétaire et Financier)**  
**(Regulatory part)**  
**Book V: Service providers.**  
**Title 1: Banking service providers.**  
**Chapter V: Financing companies**  
**Section 3: Agence française de développement**

**Article R515-5**

The Agence française de développement, hereinafter the “Agency”, performs an ongoing public interest mission, within the meaning of Article L. 511-104. It may carry out banking transactions in relation to this mission, in accordance with the conditions laid down in this section.

**Article R515-6**

The Agency is a public industrial and commercial State institution, whose duties and organisation are laid down by this section.

Its duties are to carry out financial transactions of any type with a view to:

- a) Contributing to the implementation of the State’s development assistance foreign policy;
- b) Contributing to the development of the overseas *départements* and territories, as well as of New Caledonia.

For this purpose, it shall finance development operations, respecting the environment. It may perform other activities and services related to its duties. In particular, the Agency shall directly or indirectly provide technical expertise services to the recipients of its assistance.

The Agency is subject to the provisions of this code for those of its activities within the scope thereof.

**Article R515-7**

The Minister for Cooperation shall preside a strategic orientation board comprised of the State’s representatives to the board of governors. He may invite the chair of the board of governors and the Agency’s chief executive officer to attend its meetings.

The strategic orientation board shall coordinate the State’s preparation of the objectives and resources contract between the Agency and the State and shall oversee the performance thereof. It shall prepare the guidelines the State sets for the Agency in accordance with decisions adopted by the Interministerial Committee for International Cooperation and Development, before they are presented to the board of governors.

## **Subsection 1: Operations.**

### **Article R515-8**

The Agency's assistance may be provided in the form of loans, advances, equity investments, guarantees, gifts or any other form of financial assistance. This assistance may be provided to States, international organisations, legal entities governed by public or private law, in particular non-governmental organisations involved in development actions, or individuals.

#### **Paragraph 1: Financial assistance provided by the Agency on its own behalf.**

### **Article R515-9**

The Agency's financial assistance abroad shall be provided in States in the priority solidarity area determined by the Interministerial Committee for International Cooperation and Development, pursuant to Article 3 of Decree No. 98-66 of 4 February 1998 creating that committee.

In addition, it may be provided pursuant to:

- a) Upon authorisation by joint decision of the Foreign Affairs Minister, the Minister for the Economy and the Minister for Overseas Territories, in the States acceding to the regional cooperation agreements mentioned in Articles L. 3441-2 to L. 3441-6, L. 3551-15 to L. 3551-21, and L. 4433-4-1 to L. 4433-4-6 of the French General Local Authorities Code, Articles 28, 29 and 33 of Organic Law No. 99-209 relating to New Caledonia and Articles 17, 38 and 39 of Organic Law No. 2004-192 of 27 February 2004 on the status of autonomy of French Polynesia;
- b) authorisation granted by a joint decision of the Foreign Affairs Minister and the Minister for the Economy, in other States.

### **Article R515-10**

The Agency shall also perform its duties in the overseas départements and territories and in New Caledonia.

### **Article R515-11**

In accordance with a regulation it adopts, the Agency shall distribute the annual credit the State grants it to finance projects proposed by non-governmental organisations. It shall examine and assess such projects.

#### **Paragraph 2: Operations on behalf of the State.**

### **Article R515-12**

The Agency shall manage operations financed from the State's budget on behalf of the State and at the State's risk. The terms of these operations shall be set out in specific agreements signed in the name of the State by the relevant minister(s).

### **Paragraph 3: Other operations.**

#### **Article R515-13**

The Agency may represent French or foreign financing companies and credit institutions, as well as the European Union, other States or international institutions or organisations pursuant to agreements entered into therewith.

It may also manage operations financed by the European Union, other States or international institutions or organisations pursuant to agreements entered into therewith.

By agreement, the Agency may appoint the entities referred to in the preceding paragraph to manage operations it has decided and financed.

In the name and on behalf of other overseas local authorities or groupings thereof, and pursuant to mandate agreements, the Agency may manage and pay for operations decided and financed by such local authorities or groupings.

In the name and on behalf of other local authorities or groupings thereof, the Agency may under the same conditions also manage and pay for operations within the scope of decentralised co-operation programmes decided and financed by such local authorities or groupings.

### **Subsection 2: Central organisation.**

#### **Article R515-14**

The Agency's main office shall be in Paris.

The Agency may open representative offices in the overseas départements and territories, New Caledonia and abroad.

#### **Article R515-15**

As at 1 January 2017, the Agency's endowment shall be two billion eight hundred and seven million nine hundred and ninety-eight thousand eight hundred and fifty-six euros.

This endowment may be increased by capitalising reserves pursuant to a decision of the board of governors approved by the Minister for the Economy.

It may also be increased by an allocation of public funds in accordance with the statutes or regulations in force.

### **Article R515-16**

The Agency shall be managed and administered by a chief executive officer appointed for three years by decree.

The chief executive officer is empowered to represent and bind the Agency. He shall hire members of staff and set the conditions of their employment. He is empowered to grant all delegations of authority necessary for the functioning of the Agency.

He shall perform the duties delegated to him by the board of governors.

### **Article R515-17**

I.- In addition to its chair, the board of governors shall comprise seventeen members, who shall be appointed as follows:

1. Five members representing the State, including:
  - a) Two members appointed by decree pursuant to a report of the Minister for the Economy;
  - b) Two members appointed by decree pursuant to a report of the Minister for Co-operation;
  - c) One member appointed by decree pursuant to a report of the Minister for Overseas Territories;
  - d) (Repealed);
2. Four members appointed on the basis of their knowledge of economic and financial issues, who shall be appointed by decree pursuant to a report of the Minister for the Economy, the Minister for Co-operation and the Minister for Overseas Territories;
3. One member appointed on the basis of his knowledge appointed on the basis of his knowledge of ecology and sustainable development, who shall be appointed pursuant to a report of the Minister for Ecology and Sustainable Development;
4. One member appointed on the basis of his knowledge of ecology and sustainable development, who shall be appointed pursuant to a report of the Minister for Ecology and Sustainable Development;
5. The two deputies and the two senators provided for in Article L. 515-13;
6. Two members representing the employees, who shall be elected in accordance with a regulation adopted by the chief executive officer.

In the event of absence or inability to act, each board of governors member shall be replaced by an alternate appointed under the same conditions as the principal member.

II. – The chair of the board of governors shall be appointed by decree pursuant to a report of the Minister for the Economy, the Minister for Co-operation, the Minister for Overseas

Territories and the Minister for Immigration. The age limit for holding the position of chair of the board of governors shall be 70.

He shall have the casting vote in the event of a tie vote.

In the event of absence or inability to act, the chair shall be replaced by the oldest of the six members representing the State.

III. – The term of office of board of governors members shall be three years.

However, the parliamentarians' term of office on the board of governors shall automatically expire when the elected term of office during which they were appointed expires.

If the seat of a board of governors member who represents the employees becomes vacant, his alternate shall hold that position for the remaining duration of the original term of office.

IV. – The position of board of governors members is not remunerated.

However, the chair of the board of governors shall be entitled to a duties allowance, the amount of which shall be determined by a joint order of the Ministers for the Economy, Co-operation and Overseas Territories.

#### **Article R515-18**

The Agency's board of governors shall deliberate on:

1. The institution's strategic orientations implementing the objectives the State sets for the Agency;
2. Approval of the objectives and resources contract concluded with the State;
3. The agreements referred to in Article R. 515-12;
4. The financial assistance referred to in Articles R. 515-9, R. 515--10 and R. 515-11, as well as the regulation required by the latter article;
5. The agreements entered into pursuant to the second, third, fourth and fifth paragraphs of Article R. 515-13;
6. The annual amount of loans to be taken out by the Agency;
7. The forecast statement of operating income and expenses;
8. The general terms and conditions of the assistance;
9. The annual financial statements and management report prepared by the Director General;
10. Purchases and sales of buildings;
11. Creating or closing branches or representation offices;

12. Transactions involving the Agency's interests and arbitration clauses;

13. The appointment of the statutory auditors.

The board of governors shall be informed of the ratings, analyses and quality assessments concerning the Agency and its operations.

### **Article R515-19**

I.- The board of governors shall hold an ordinary meeting at least four times per year, pursuant to a notice of meeting given by its chair. It shall examine all matters listed on its agenda by the chair or by the board voting by a simple majority.

In addition, it shall meet at the request of at least one-third of its principal members.

II.- The board of governors shall adopt its internal rules of procedure, which inter alia shall prescribe the procedures pursuant to which the chair may consult its members, remotely or in writing, with respect to a matter requiring an emergency decision. Such procedures shall specify, at the least, a minimum consultation period, quorum rules, and the right of all board members and the Government's commissioner to oppose the use of this consultation method.

III.- The board of governors may delegate some of its powers listed in subsections 3, 4, 5 and 12 of Article R. 515-18, to the extent that it decides, to the following three special committees:

1. The special committee for operations in the overseas départements and territories and in New Caledonia;

2. The special committee for operations abroad;

3. The special committee that provides support for the initiatives of non-governmental organisations.

The special committee for operations in the overseas départements and territories and in New Caledonia shall comprise three representatives of the State, two of whom shall be appointed by an order of the Minister for Overseas Territories and one of whom shall be appointed by an order of the Minister for the Economy.

The special committee for operations abroad shall comprise five representatives of the State, two of whom shall be appointed by an order of the Foreign Affairs Minister, two of whom shall be appointed by an order of the Minister for the Economy and one of whom shall be appointed by an order of the Minister for Immigration.

The special committee that provides support for the initiatives of non-governmental organisations shall comprise four representatives of the State, two of whom shall be appointed by an order of the Foreign Affairs Minister, one of whom shall be appointed by an order of the Minister for the Economy and one of whom shall be appointed by an order of the Minister for Immigration.

In addition, each of these special committees shall comprise:

1. Two qualified personalities appointed by the board of governors, one of whom shall be a board member;
2. One of the employee representatives on the board of governors, who shall be chosen by such representatives.

The special committee for operations in the overseas *départements* and territories and in New Caledonia and the special committee for operations abroad shall be presided by the chair of the board of governors. The special committee that provides support for the initiatives of non-governmental organisations shall be presided by the chair of the board of governors or a member of the board of governors he appoints from among the representatives of the State.

For the members of the special committees, other than the chair and the members of the board of governors, an alternate shall be appointed in the same manner as the principal member.

The duration of the terms of office of the members of the special committees and the conditions under which they may be replaced shall be the same as for the members of the board of governors.

The special committees may submit for a decision of the board of governors any matter within its remit. In such case, they shall forward to the board their opinion on the matter submitted.

IV.- The board of governors may also delegate some of its powers to the chief executive officer, who shall report to the board at each meeting on the decisions he adopts pursuant to such delegation. The delegation of powers to the chief executive officer shall not include the powers delegated to the special committees, and shall not concern the matters referred to in subsections 1, 2, 6, 7, 9 and 13 of Article R. 515-18.

V.- The board of governors shall appoint an audit committee comprised of three to five members who are qualified in the field of financial analysis and risk assessment, at least one of whom shall be a board member. This audit committee shall provide its opinion to the board of directors whenever necessary, and at least once a year, on the Agency's financial statements, the effectiveness of its internal control and the management of its risks.

### **Subsection 3: Local organisation**

#### **Article R515-20**

The Agency may open representative offices in the countries in which it conducts operations.

The actions of these representative offices shall be carried out within the framework of the coordination and management role performed, pursuant to Article 3 of Decree No. 79-433 of 1 June 1979 on the powers of ambassadors and the organisation of the State's services abroad, by the chief of the diplomatic mission accredited in the State where such offices are established.

The head of the local representative office shall be appointed by the Agency's chief executive officer, after obtaining the opinion of the chief of the diplomatic mission accredited in the

State in which it has its main office. The chief of mission shall submit to the chief executive officer an annual opinion on the manner in which the head of the representative office performs his duties.

The chief of the diplomatic mission shall be informed of the programming of the Agency's activities and the operations it carries out within the area of the representative office's remit specified in the preceding paragraphs. He may submit to the Agency's chief executive officer opinions, firstly, on the consistency of such programming with the French co-operation policies in the area and, secondly, on such operations at the identification, preparation and assessment stages.

At the request of the chief executive officer submitted to the Foreign Affairs Minister, the Agency's local representative offices may form part of diplomatic missions.

The relevant minister or the chief of the diplomatic mission shall co-sign gift agreements entered into by the Agency with the recipients of such gifts, as well as sovereign loan agreements.

#### **Article R515-21**

The head of the Agency's representative office in the overseas *départements* and territories and in New Caledonia shall report to the State's representative with territorial jurisdiction

#### **Subsection 4: Miscellaneous provisions.**

#### **Article R515-22**

The Agency may borrow in the short, medium- and long-term, in France and abroad, from financial institutions or by issuing warrants, notes, transferable securities or any other debt security. It may carry out any financial transaction necessary for its activities.

#### **Article R515-23**

The Agency's operations shall be accounted for in accordance with the rules applicable to commercial matters, in compliance with the rules of this code applicable to it.

#### **Article R515-24**

Vis-à-vis the Agency, a Government commissioner appointed by the Minister for the Economy shall perform the duties defined in Article L. 615-1 and Articles D. 615-1 to D. 615-8 of this code.

*NOTE:*

*Law No. 2006-387 of 31 March 2006, Article 26 (VII) (2): Article II of Article L511-32 is re-codified as Article L615-1.*

### **Article R515-25**

The Agency's accounts shall be audited by two statutory auditors appointed in accordance with the provisions of Articles L. 511-38, D. 511-8, D. 511-9 and D. 612-53 to R. 612-60.

The statutory auditors shall be subject to the obligations laid down by Article L. 511-38.