

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Bank of Spain Circular amending the Accounting Circular (Circular 2/2020, published in the *Official State Journal* on June 16th, 2020)

Its main purpose is to adapt the Accounting Circular for the changes in international regulations with regard to banks' reporting requirements.

The changes in the Accounting Circular imply the following:

- The institutions' public financial statements can be disseminated by both the sector associations, including the Spanish Association of Savings and Retail Banks (CECA), as well as by the Bank of Spain.
- The accounting and reporting criteria have been adapted for the latest changes in IFRS, *e.g.*, the modification of the definition of 'business' in order to simplify application of the business combinations standard. The new definition helps reporters to determine whether or not the acquisition of a group of assets constitutes a business combination. If the assets acquired meet the definition of a business, the acquiror must recognise goodwill or a gain on a bargain purchase.
- Financial statement requirements have been adapted to reflect the changes made to several European regulations with respect to the gathering of the common financial information which the supervised banks have to send to the ECB via the national competent authorities. Those changes refer to the disclosures about doubtful and

restructured exposures, foreclosed collateral, operating and administrative expenses, fee income and expenses, and leases.

Formatting changes have been made to some of the confidential individual financial statements so that their numbering coincides with that set down in Commission Implementing Regulation (EU) No. 680/2014.

- In light of Recommendation ESRB 2016/14, certain statements have been modified to include information about borrower loan-to-income ratios.
- Some of the banks' reporting requirements have been simplified following the amendments made to Commission Implementing Regulation (EU) No. 680/2014.
- New disclosure requirements have been introduced in order to verify compliance with national standards and to gather statistical information, such as the additional information in relation to the new lease standard, IFRS 16.
- The changes introduce certain necessary clarifications and corrections identified since the Accounting Circular took effect.
- The required technical adjustments have been made to certain EMU statements following the United Kingdom's exit from the European Union on February 1st 2020.

The Circular took effect the day after its publication. However, the changes related to:

(i) the treatment of remaining investments in a subsidiary, joint venture or associate which ceases to qualify as such; and, (ii) the definition of a 'business' can be applied with effect from January 1st, 2020. In addition, the changes related to loan classification of purchased or originated credit-impaired exposures as a function of expected credit risk must be applied from June 30th, 2020.

The first compliant financial statements to be submitted to the Bank of Spain are those corresponding to the first half of 2020, with certain exceptions for some statements, which will be submitted for the first time in keeping with the new templates as of December 31st, 2020.

Bank of Spain Circular amending the Accounting Circular (Circular 3/2020, published in the *Official State Journal* on June 16th, 2020)

The changes are concentrated in Annex 9 of the Accounting Circular and introduce the concept that restructured, refinanced and refinancing loans do not necessarily need to be classified as standard exposures under special monitoring if they do not qualify for classification as doubtful exposures. Such exposures can continue to be classified as performing so long as the reporting institution can substantiate the fact that it has not identified a significant increase in credit risk since the initial recognition of the loan in question.

The institutions have until June 30th, 2020 at the latest to adapt their methodologies, procedures and accounting practices for application of these modifications. However, the institutions can choose to apply the changes from March 31st, 2020.

The changes contemplated in the Circular will be applied prospectively to all restructured and refinanced transactions, including those arranged prior to the date of first-time application and new transactions performed subsequent to that date (in the context of COVID-19 or in the wake of the health emergency). Prospective application means that the institutions will not have to: (i) revise

the classification of their loans or their credit risk coverage in their financial statements with reporting dates prior to June 30th, 2020 (or, if applied earlier, March 31st, 2020); and, (ii) resend accounting information corresponding to those dates or redo the comparative information for 2019.

The Circular also sets out the regime for its first-time application in the banks' public and confidential financial statements so as to be consistent with its first-time application in their annual financial statements.

The Circular took effect the day after its publication.

Royal Decree-law passing complementary measures in the areas of agriculture, science, economy, employment, Social Security and taxation in order to mitigate the effects of COVID-19 (Royal Decree-law 19/2020, published in the *Official State Journal* on May 27th, 2020)

Below is a summary of the main measures taken in the financial arena.

1. Sectoral moratoria

The new legislation introduces regulations governing conventional loan deferral agreements covered by a framework agreement and backed by the associations representing the financial sector (sectoral moratoria or non-legislative moratoria). The regulations have the status of organisational and conduct standards.

- The Bank of Spain must be notified of any such framework sector agreements so that it can register and publish them on its website. The regime stipulates daily reporting to the Bank of Spain equivalent to the regime stipulated for the legislative moratoria. Such reports must include information about the number of applications for payment suspension presented by borrowers, the number of suspensions awarded and denied, the number of beneficiaries,

and the corresponding NACE codes, among other things.

- Such sectoral moratoria can cover all manner of loans, credit arrangements and finance leases. The parties can agree to settle the amounts deferred by: (i) recalibrating the instalments without modifying the maturity date; or, (ii) extending the term of the loan in question by a number of months equivalent to the duration of the deferral. The parties may similarly agree to extend the term of any payment protection or loan repayment insurance purchased.
- Under no circumstances may such moratoria modify the agreed rate of interest; imply additional charges or fees unless the loan is an interest-free loan; be marketed as part of any manner of bundled package; or, imply the introduction of any additional guarantees.
- When a legislative and a sectoral moratoria is awarded simultaneously or successively, the effects of the latter are suspended until the legislative one terminates.
- The simplified information to be provided to borrowers before entering into such an arrangement must enable an understanding of the legal and financial consequences of deferring the loan in question. The information must be provided free of charge using any durable medium.
- Execution of such sectoral moratoria will be exempt from some of the provisions contained in the Law regulating mortgage loan agreements and the Consumer Credit Contracts Law.
- Registration of sectoral moratoria in the corresponding registry will have full effects *vis-à-vis* any registered intermediate creditors even if the latter have not provided their express consent to the deferral.

- Under certain circumstances, credit institutions will be permitted to unilaterally place on public record agreements that imply the deferral of the principal or principal and interest on a secured loan or a finance lease. This equates the procedure with that contemplated for legislative moratoria.
- Notary and registration charges have similarly been aligned with those contemplated for the legislative moratoria. Also, notaries must provide borrowers with an uncertified copy of the corresponding deeds free of charge.
- The moratoria arranged under the scope of these sectoral framework agreements are exempt from stamp duty.
- The legislation sets out transitional arrangements for moratoria arranged prior to effectiveness of this new piece of legislation. The information provision requirement shall be deemed met through the provision of the Standard European Consumer Credit Information or the European Standardised Information Sheet or through the provision of the simplified information before placing the agreement on public record, offering a period of 10 days for withdrawing from the moratoria.

2. Legislative moratoria

- Royal Decree-law 11/2020 has been modified to include finance lease agreements within the scope of the legislative moratoria for unsecured credit agreements in a similar manner to that regulated for sectoral moratoria.
- Royal Decree-law 15/2020 has been modified to add that the notary must provide the borrower with an uncertified copy of the deed unilaterally placing the legislative moratoria of a secured loan on public record free of charge.
- The provision in Royal Decree-law 8/2020 referring to the impossibility of

placing mortgage legislative moratoria on public record during the state of emergency until the freedom of movement has been fully reinstated has been repealed.

amended to allow the current President of the FROB, Spain's resolution authority, to remain in his position until his replacement can be named.

The Royal Decree-law took effect the day after its publication.

3. Reserve fund

Royal Decree 877/2015 has been amended to add a provision addressing the suspension of the obligation to contribute to the reserve fund as a result of the economic effects of the COVID-19 pandemic and the recommendation made by the ECB to limit the distribution of dividends from 2019 and 2020 profits. As a result, banking foundations with controlling interests in banks will not be obliged to make contributions to the reserve fund in 2020.

The suspension of the requirement will not be offset by the contribution next year. Accordingly, the outstanding contributions will be evenly spread out over time, effectively being deferred to 2021-2024.

4. Business measures

Royal Decree-law 8/2020 has been amended to limit the suspension of the obligation to authorise the issuance of annual financial statements, whether ordinary or short-form, separate or consolidated, and, when legally required, the accompanying management report and other documents prescribed under prevailing company law. Companies now have three months from June 1st, 2020 (rather than from the end of the state of emergency, as had been previously established) to issue all of the above documentation.

In addition, the period for holding the general meeting to approve the prior-year financial statements has been reduced from three to two months from the new deadline for issuing the annual financial statements.

5. Fund for Orderly Bank Restructuring (FROB)

Spanish Law 11/2015 (June 18th, 2015), on the recovery and resolution of credit institutions and investment service providers has been