

Recent key developments in the area of Spanish financial regulation

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Bank of Spain Circular amending accounting circular (Circular 6/2012, published in the State Official Gazette (BOE) on October 2nd, 2012)

Bank of Spain Circular 6/2012, September 28th, 2012, was published in the BOE on October 2nd, 2012 and amends Circular 4/2004, December 2nd, 2004, on reporting standards for public and confidential financial information and standard financial statements. The Circular came into effect on October 3rd.

Its aim is to adapt the Accounting circular to the provisions of Royal Decree-law 18/2012, May 11th, 2012, on the write-down and sale of real-estate assets held by the financial sector, in relation to the increased coverage requirements established in the RD-I for lending relating to land and buildings or property developments corresponding to the business in Spain of credit institutions, and which were classified as normal risk on December 31st, 2011.

Circular 6/2012 also covers the inclusion (in line with the rules on the information that credit institutions are to disclose in their individual and consolidated annual accounts) of certain information regarding refinancing operations, refinanced and restructured operations, and the concentration of risks in both sectors and geographical areas. It also completes the transparency requirements associated with exposures to the construction and property development sector, with information regarding assets awarded or received in payment

of debts that are transferred to asset management companies.

Annex IX introduces modifications concerning risk policies institutions are required to put in place, adding to the policy of debt renegotiation, the policies of refinancing, restructuring and operation renewal. It incorporates the criteria applicable to refinancing and restructuring of operations (policies, decisions, contribution of new guarantees and the internal information system), and introduces modifications regarding the classification of clients by insolvency risk and its hedging. To this end the following definitions will apply:

- **Refinancing operation:** Operation used in situations of financial stress by the borrower to cancel operations held by the borrower or other group companies, or whereby these operations are brought fully up to date with payment to facilitate debt payment by holders of cancelled or refinanced operations who are unable to meet their conditions.
- **Refinanced operation:** Operation that is brought wholly or partly up to date on payment by means of a refinancing operation by the institution or another entity in its economic group.
- **Restructured operation:** An operation in which there is a debt write-down or assets are received to reduce the debt, or the financial conditions are modified.

- **Roll-over operation:** Operation to replace another granted previously by the same institution, without the borrower necessarily being in financial difficulties.
- **Strengthening credit institutions' solvency.** As of January 1st, 2013, credit institutions and consolidated groups of credit institutions taking reimbursable funds from the public must have core capital of at least 9% of their total risk-weighted exposures.
- **Renegotiated operation:** Operation in which the financial conditions are modified, without the borrower necessarily being in financial difficulties.

A new section has been added to Annex IV reproducing section 1 of article 1 and the annex of Royal Decree-law 18/2012 in relation to additional coverage for credit risk. Various statements are also modified, and the changes necessary to support the new information needed for supervisory purposes and that which credit institutions are required to disclose in their annual accounts are made to the Special accounting record of mortgage operations in Annex X. These changes are to be incorporated no later than December 31st, 2012.

Royal Decree amending certain Royal Decrees concerning the powers of the European Supervisory Authorities (Royal Decree 1336/2012, published in the BOE on October 5th, 2012)

On October 5th, the Royal Decree amending certain Royal Decrees concerning the powers of the European Supervisory Authorities was published. This Royal Decree completes the process of transposing European regulations to national legislation that began with Royal Decree-law 10/2012.

Royal Decree 1336/2012 completes the implementation of Directive 2010/78/EU, November 24th, 2010, in order to incorporate the obligation of collaboration, communication and notification by the competent authorities, the Bank of Spain and the CNMV, with the relevant European supervisory authorities. This details the adaptation of the national supervision arrangements envisaged in Royal Decree-law 10/2012 to the obligations under European Union Law established by the European supervisory framework.

As a result the following legislation has been amended:

- **Royal Decree 84/1993 implementing the Credit Unions Act** referring to the need to notify the inscription and discontinuation of Credit Unions in the Special Register and informing the EBA of this fact.
- **Royal Decree 1245/1995 on the creation of banks**, cross-border business, and other issues concerning the legal framework governing credit institutions, amended in the same terms as the previous Royal Decree.
- **Royal Decree 1310/2005 partially implementing the Securities Market Act**, concerning the listing of securities on official secondary markets, public offers of sale or subscription and the brochure required for these purposes. The modifications concern the notification of approval and registration of the brochure, and the cross-border effectiveness of brochures approved in Spain or in other EU member states.
- **Royal Decree 1332/2005, implementing the Financial Conglomerates Supervision Act**, which adds an internal control mechanism to help prepare and develop the bail-out and resolution mechanisms and plans, if necessary.

- **Royal Decree 1362/2007 implementing the Securities Market Act** in relation to the transparency requirements concerning information on issuers whose securities are listed on an official secondary market or another EU regulated market. It adds that the CNMV is obliged to notify the ESMA of the granting of exemptions to the obligations to provide regular information on issuers whose registered office is in a non-EU country.
- **Royal Decree 216/2008 on financial institutions' equity capital.** The modifications primarily concern the procedure for the declaration of branches as significant, the obligations to inform the Bank of Spain, and the rules of operation of colleges of supervisors of credit institutions. It also modifies some of the CNMV's competencies in relation to coordination with other supervisory authorities.
- **Royal Decree 217/2008 on the legal framework applicable to investment services companies** and other institutions providing investment services, partially modifying the Regulations of the Collective Investment Institutions Act. The modification consists of the CNMV notifying the ESMA of any authorisations of investment services companies in Spain, and any difficulty a Spanish investment services company may have in establishing itself in a non-EU Member State or in conducting its business there.

Law on the write-down and sale of property assets held by the financial sector (Law 8/2012, published in the BOE on October 31st)

This repeals Royal Decree-law 18/2012, May 11th, 2012, on the write-down and sale of property assets held by the financial sector (mentioned in SEFO n^o. 1, May 2012) and incorporates the same requirements as established in the aforementioned Royal Decree-law.

Law amending the fiscal and budgetary legislation and adapting financial legislation to intensify measures to prevent and combat fraud (Law 7/2012, published in the BOE on October 30th, 2012)

This Law contains a series of measures aimed at preventing and combating tax fraud. The law includes novel measures designed to have a direct impact on niches of fraud detected as being the source of significant loss of public revenue, combined with other measures aiming to fine-tune the rules ensuring tax credit in order to update them and clarify their correct interpretation to improve legal certainty in the tax system and avoid unnecessary litigation.

It is worth highlighting the measures incorporated in the regulations with a clear vocation in the fight against fraud, which include the possibility of taking precautionary measures linked to alleged cases of offences against the public treasury, and the investigation of the associated assets, limitations on payments in cash, and the putting into place of new obligations to report assets and rights abroad.

The Securities Market Act has also been modified to avoid the potential for tax fraud in transfers of ownership of securities where the intermediation of a company is used as a means of transferring ownership of real-estate.