

Recent key developments in the area of Spanish financial regulation

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Law on the restructuring and resolution of credit institutions (Law 9/2012, published in the official gazette (BOE) on November 15th, 2012)

Law 9/2012, November 14th, 2012, on the restructuring and resolution of credit institutions, was published on November 15th, and came into force on the day of its publication.

This Law is the outcome of parliamentary debate of Royal Decree-Law 24/2012, August 31st, 2012, on the restructuring and resolution of credit institutions (discussed in issue 3 of this publication). The Royal Decree-Law's main objective was to regulate the processes of early intervention, restructuring and resolution of credit institutions, and to set out the legal framework for the Fund for Orderly Bank Restructuring (FROB), together with the general rules for its operations, in order to protect the stability of the financial system in a way that minimises the use of public resources.

The Law introduces the following new features with respect to the Royal Decree-Law:

- **Changes in the legal framework applicable to the savings banks:** Savings banks will be obliged to transform themselves into a special-character foundation, losing their authorisation to act as credit institutions, when:
 - They lose control of the credit institution, pursuant to Article 42 of the Commercial Code;
 - They hold less than 25% of the voting rights in the credit institution; or
 - The institution's restructuring or resolution plans lay down that this restructuring or resolution is a trigger for the separation of its financial and charitable and social activities.
- The transformation is to take place within **five months** of the occurrence of the event triggering the dissolution and a transitional regime for the transformation is established.
- **Content of the action plan.** The obligation to inform the FROB in advance of when the action plan is modified has been removed when the latter has been appointed provisional administrator of the institution.
 - **Conditions for restructuring.** When determining whether an entity is in any of the situations envisaged as a prelude to its restructuring, the situation of the group to which it belongs, if any, will also be taken into account.
 - **Monitoring of the restructuring plan and information to the FROB.** The FROB shall no longer be able to exercise the powers relating to early intervention measures.
 - **Replacement of the board of directors as a resolution measure.** The requirement that the FROB not have a shareholding that gives it control over the board of directors in order for the Bank of Spain to resolve to replace the

institution's board pursuant to Law 26/1988, July 29th, 1988, on Discipline and Intervention of Credit Institutions, has been lifted.

It has also been established that the Bank of Spain may **choose not to replace the institution's** board of directors under certain exceptional circumstances, and in particular, when the FROB is in a position to control the institution's board of directors by virtue of the voting rights it holds.

- **Bridge bank.** The bridge bank is included as the institution to which, together with its shareholders, the profit obtained from its sale corresponds.
- **Financial support instruments.** The beneficiaries of the FROB's financial support include both the institutions receiving that financial support and those institutions controlled by the latter.
- **Asset management company.** These are to be companies created with the purpose of managing certain categories of impaired assets or assets that would jeopardise the institution's viability if they remained on its balance sheet.
- **Asset Management Company for Assets Arising from Bank Restructuring (SAREB).** This has the sole purpose of the holding, management, acquisition and disposal, whether directly or indirectly, of assets transferred to it by credit institutions and those it may acquire in the future.
- **Powers of the FROB.** The FROB has been given the authority to decide on the exclusion of preferential subscription rights when convertible bonds are issued.
- **Increase in the maximum amount of guarantees** by 55 billion euros for the granting of guarantees on bonds and securities by

the SAREB. This guarantee will cover the principal of the issue and ordinary interest.

- **Changes in taxation.** Article 108.2 of the Securities Market Law 24/1988, July 28th, 1988, will not be applicable to operations resulting from the intervention of the FROB.

Royal Decree-Law on urgent measures to enhance the protection of mortgage debtors (Royal Decree-Law 27/2012, published in the official gazette on November 16th, 2012)

Royal Decree-Law on urgent measures to enhance the protection of mortgage debtors was published on November 16th, 2012, and came into force on the day of its publication.

The main measures it envisages are:

- **Suspension of evictions of particularly vulnerable groups from their habitual residence.**
 - 1) For a period of **two years** from the entry into force of this Royal Decree-Law, **persons** in any of the situations of **special vulnerability** to which the circumstances envisaged below apply may not be evicted from their habitual residence as a result of judicial or extrajudicial mortgage foreclosure proceedings.
 - 2) The situations of special vulnerability are:
 - a) Large family, pursuant to current legislation.
 - b) One-parent family with two dependent children.
 - c) Any family with a child aged under three.

- d) Households in which one of the members has a disability of more than 33%, is in a situation of dependence or suffers from an illness causing accredited permanent incapacity.
 - e) Households in which the mortgage borrower is unemployed and has exhausted his or her unemployment benefits.
 - f) Households in which one or more people living in the same home, and are related to the mortgage holder or his or her spouse by a blood relationship of up to the third degree of kinship or affinity, are disabled, dependent, or seriously ill such as prevents them from working.
 - g) Households in which there is a victim of gender violence, where the home subject to eviction is their normal residence.
- 3) The following **economic circumstances** must also apply:
- a) That the combined income of all the members of the household does not exceed the limit of three times the public revenue index (IPREM) (this changes over time).
 - b) That in the four years prior to the time of the application the household has suffered a significant alteration in its economic circumstances (in terms of effort in access to housing).
 - c) That the mortgage payments are more than 50% of the household's combined net income.
 - d) That the loan is a mortgage on the debtor's only residential property and was granted for the purpose of its acquisition.

- **Social housing fund.** The government will be responsible for setting up a social housing fund, jointly with the financial sector, comprising housing held by credit institutions, in order to facilitate access to rented property to persons who have been evicted from their habitual residence as a result of default on mortgage payments and who fall within the sphere of application defined in this Royal Decree-Law.

Royal Decree establishing the legal framework for asset management companies (Royal Decree 1559/2012, published in the official gazette on November 16th, 2012)

Royal Decree 1559/2012, November 15th, 2012, establishing the legal framework for asset management companies, was published on November 16th, 2012. The purpose of this Royal Decree, which came into force the day after its publication, is to implement the provisions of Law 9/2012 regarding the framework for the organisation and functioning of asset management companies, the powers of the FROB and the Bank of Spain in relation to them and the SAREB, and to their segregated assets. The main features are:

- **Asset management companies (SGAs):** Implements the provisions of Law 9/2012 on SGAs. The purpose of these companies will be:
 - To help restore the financial system to health by acquiring assets such that, as of their transfer of ownership, there is an effective transfer of the risks associated with them.
 - To minimise public financial support.
 - To meet the debts and obligations undertaken in the course of their operations.

- To minimise the potential market distortions that their activities may cause.
 - To dispose of the assets they receive in a way that optimises their value within the timeframe for which they have been established.
- The **FROB may oblige** credit institutions to transfer certain categories of assets on their balance sheet to an SGA or to take the steps necessary to transfer assets on the balance of any institution over which the credit institution exercises control pursuant to Article 42 of the Commercial Code, in the case of particularly impaired assets or assets that would jeopardise the institution's viability if they remained on its balance sheet.

- **Asset Management Company for Assets Arising from Bank Restructuring (SAREB):** The SAREB will be established by the FROB as a joint-stock company with duration of not more than 15 years. No more than 50% of its capital may be from public funds. The SAREB's corporate purpose is the holding and management, acquisition and disposal, whether directly or indirectly, of assets transferred to it by credit institutions.

The price at which assets are transferred will be decided by the Bank of Spain. The value at which assets are transferred to the SAREB may not exceed 90 billion euros.

- **Segregated assets:** The SAREB may constitute segregated assets, which shall not have a separate legal identity, pursuant to Law 9/2012, and shall be termed bank asset funds (FAB).

The **FABs' assets** will comprise the assets transferred by an SGA, cash, sight deposits and term deposits in credit institutions, and fixed income securities traded on official secondary markets. The liabilities will comprise those liabilities transferred by an SGA, securities of any type that are issued, loans or credit of any kind, contributions

from institutional investors, and liabilities generated by the FAB's normal activity.

The main points regarding the legal framework applicable to the FABs' management companies are:

- ✓ The constitution, administration and representation of the FAB will be entrusted to an asset securitisation fund management company.
- ✓ The management of the FAB will be confidential and may only be performed by this category of management company, although it may delegate its tasks without prejudice to its responsibility.
- ✓ The callable capital will be that envisaged for asset securitisation fund management companies.
- ✓ The management company's remuneration will be calculated using procedures that accord with each FAB's investment and risk management policy, avoiding the emergence of incentives towards management contrary to the objectives established in these policies.
- ✓ The separation of compliance, risk control and internal audit units will be envisaged and internal regulations on conduct passed.

Bank of Spain Circular on minimum "capital principal" requirements (Circular 7/2012, published in the official gazette (BOE) on December 11th, 2012)

Bank of Spain Circular 7/2012, November 30th, 2012, addressed to credit institutions, was published on December 11th, 2012. This circular sets the current minimum capital requirements and came into force on January 1st, 2013. Its purpose is to implement the powers entrusted to the Bank of Spain to enforce the minimum capital requirements envisaged in Royal Decree-Law 2/2011, pursuant to the amendments made in the aforementioned Law.

- **Institutions subject to the requirement:** Consolidated groups of credit institutions and credit institutions not belonging to a consolidated group of credit institutions which take reimbursable deposits from the public, excluding the branches in Spain of credit institutions authorised in other countries.

Consolidated groups of credit institutions will have a “reporting institution” that will assume all the obligations arising from relations with the Bank of Spain.

- **Capital requirements:** Institutions must have a “capital principal” (concept similar to core capital) equal to 9% of their total risk-weighted exposures.
- **Elements of “capital principal”:** Institutions subject to this requirement will count the elements established by Law 9/2012 as “capital principal”:

- **Share capital** (excluding redeemable and non-voting shares), insofar as they have lower priority than all other types of credit in the case of bankruptcy and liquidation, savings banks’ initial capital and equity units, equity units of the savings bank association (CECA), and contributions to the capital of cooperative banks.

The following will be excluded from the calculation: (i) treasury stock in the form of any of the above instruments, and (ii) those that have been the object of any operation or commitment jeopardising their effectiveness at covering losses in the institution or group.

- **Issue premiums paid** on any of the instruments listed above.
- **Effective and express reserves**, including the participation fund and reserve fund for savings banks and CECA equity. Certain valuation adjustments (capital gains) for exchange rate differences and positive valuation for hedges of net investments in

foreign business, and the balance on the account recording certain equity-based compensation will also be classified as reserves.

- **Shares representing minority interests** in the form of ordinary shares in companies in the consolidated group, insofar as they are actually paid up, excluding the part attributed to them in revaluation reserves and in the valuation adjustments included in the equity of the consolidated group.
- **Eligible instruments subscribed by the FROB**, which are also eligible as core capital under capital requirement rules.
- **Instruments convertible into common shares**, savings bank shares or contributions to the capital of credit unions qualified by the Bank of Spain as eligible as core capital.

- **Deductions from “capital principal”:** The items established in Law 9/2012 will be deducted from “capital principal”.
- **Regular information to be submitted to the Bank of Spain:** Institutions subject to this requirement shall submit a new statement of “capital principal” and compliance with the new capital requirements on a quarterly basis.

Bank of Spain Circular on databases of assets transferable to companies referred to in Chapter II of Law 8/2012 on the reorganisation and sale of the financial sector’s real estate assets (Circular 8/2012, published in the official gazette on December 27th, 2012)

This circular aims to put into effect the powers entrusted to the Bank of Spain regarding the determination of the requirements that must be fulfilled by the databases of assets transferable to the companies concerned, pursuant to Law 8/2012.

The databases on the assets to be provided should distinguish between property and financing data. When the nature of the assets is such that it is not possible to adapt the information on the assets to the content of the annex to the Circular, after consulting the Bank of Spain, institutions may design the necessary databases taking as their reference the structures referred to.