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)

Vol. 2, N.º 2 (March 2013)

SEFO - Spanish Economic and Financial Outlook

Royal Decree-Law on measures to support entrepreneurs, stimulate growth and create employment (Royal Decree-Law 4/2013, published in the State Official Gazette (BOE) on February 23rd, 2013)

This Royal Decree-Law establishes different sets of measures:

Measures aimed at reducing youth unemployment and improving job stability: these include setting a lower initial rate of social security contributions for young people under 30 years old. The main changes relating to taxation are:

- A new tax scale (15% on the first 300,000 euros of taxable earnings and 20% on any amount over that threshold) has been put in place for newly created entities (established as of January 1st, 2013) conducting economic activities.

- Income tax exemption on lump-sum payments of unemployment benefits: The current generally applicable limit of 15,500 euros has been eliminated.

- A new reduction of 20% on net earnings from economic activities subject to direct assessment, which will be applicable to taxpayers starting an economic activity as of January 1st, 2013 and applicable to net earnings of up to 100,000 euros a year.

Measures to stimulate lending to businesses, which include the following legislative changes:

- **Regulations on the organisation and supervision of private insurance:** These regulations have been amended to allow insurance undertakings the possibility of investing in securities traded on the alternative stock market (MAB), and to make these investments eligible to meet requirements for technical provisions.

- **Regulations on pension funds and plans.** Along the same lines as in the case of insurance undertakings, these regulations have been amended to allow pension funds the possibility of investing in securities traded on the alternative stock market and in venture capital undertakings, subject to an upper limit of 3% of the fund's assets being invested in any one entity.

- **Securities Market Law**, with a view to facilitating Spanish firms' access to non-bank finance, the ceiling on issues established in the Capital Corporations Law (whereby total issues may not exceed paid-in capital stock

plus reserves) for investments in multilateral trading systems (in line with practice in regulated markets) has been eliminated.

Measures to finance payments of suppliers of local entities and regional governments: A new phase of the mechanism implemented last year has been put into place, its purpose and scope have been broadened, and some specific features have been added for this new phase. In particular, it has been expanded to include local groups of councils and local entities in the Basque Country and Navarre. Accordingly, the following legislation has been amended:

- **Royal Decree-Law 7/2012**, of March 9th, 2012, creating the fund to finance supplier payments, now establishes that the ICO will be in charge of managing operations involving this fund.

- **Royal Decree-Law 21/2012,** of July 13th, 2012, on liquidity measures for general government and measures in the financial domain, establishes that fulfilment of obligations deriving from debt to multilateral financial institutions, and those envisaged in adjustment plans, may not be affected by the possible retention of resources of the financing system for the autonomous regions.

Measures to combat late payment, Law 3/2004, of December 29th, 2004, establishing measures to combat late payment for commercial transactions, has been amended as follows:

- Payment times have been simplified.

- A forecast of payment schedules has been included, together with the definition of how interest will be calculated in the event that an installment is not paid on the agreed date.

- The legal interest rate the debtor is liable to pay in the event of late payment has been changed, such that it is now equal to the interest rate applied by the European Central Bank in its most recent main refinancing operation, plus eight percentage points.

- As compensation for collection costs, the debtor shall be obliged to pay the creditor a fixed sum of 40 euros, without the need for prior request. This is in addition to any amount claimed to cover the costs incurred in obtaining collection of the sum due. The limit on this compensation has also been eliminated.

- Contract clauses that waive compensation for collection costs are deemed abusive, and therefore null and void.

Draft bill on savings banks and banking foundations (pending parliamentary approval)

On January 21st, open hearings began on the draft bill for a law on savings banks and banking foundations.

The changes affecting **savings banks** relate primarily to their sphere of action, which is restricted to an autonomous region or up to ten contiguous provinces, and their main business, which centres on attracting deposits and granting loans. The rules on activities incompatible with the post of director have been expanded (specifically, executive officers of political parties, trade unions and professional associations may not be appointed as directors).

Savings banks' **governing bodies** are defined as being the general assembly, the board of directors, and the steering committee.

- **Assembly**: with a membership of between 30 and 150, who must meet certain requirements (good reputation and professional standing, not subject to any incompatibility, etc.).

Representatives of government may not account for more than 25% of members.

- **Board of Directors**: with a membership of between 13 and 17, most of whom must be independent.

- **Steering committee**: at least half of its members must be independent.

- **Other committees**: an investment committee, appointments and compensations committee, and social work committee are envisaged.

Banking foundations are defined as being foundations with a direct or indirect shareholding of at least 10% of the share capital or voting rights of a credit institution, or which have voting power enabling them to appoint or dismiss a member of its governing body. The main function of foundations of this kind will be to manage their charitable/philanthropic work and their holding in the credit institution. Their company name must include the words *fundación bancaria* (banking foundation) and they may use the names of the savings banks from which they derive.

Banking foundations will be governed by the legal framework established in this law, together with the general legislation on foundations.

Savings banks must **convert into banking foundations** when any of the following situations arise:

- In the event that a savings bank exceeds any of the following parameters, at the consolidated group level:

    - total consolidated assets of more than **10 billion euros**, or

    - market share in its autonomous region, in terms of deposits, of more than **35%.**

  In these cases, the savings bank will be obliged to transfer its financial activity to a credit institution, convert to a banking foundation, approve new articles of association, and appoint trustees, within **five months** of the time when the conditions triggering the obligation to convert arise.

- Unless the institution returns to its prior state, if five months elapse without this conversion being carried out, the **institution will be wound up** and removed from the register of credit institutions.

The **governing bodies** of banking foundations will be the board of trustees (the highest governing body), the director, and any other body or office envisaged in the articles of association, in accordance with the general legislation on foundations.

Banking foundations will have the following obligations, depending on their percentage shareholding in the credit institution:

- If one institution (or a number of foundations acting as a consortium) holds more than 30% of the shares in a credit institution, or exercises control over it as defined in article 42 of the Commercial Code, these foundations must comply with certain additional requirements:

    - Preparation of a **management protocol for the financial interest**, setting out the basic criteria of this strategic shareholding, describing the relationships between the trustees and the institution's governing bodies, establishing the operational criteria for the relationship between them, and defining how to prevent possible conflicts of interest. This plan must be made public, and will be subject to the prior approval of the Bank of Spain, which will define its minimum content.

- Annual preparation of a **financial plan** describing how the credit institution's possible capital needs are to be met, and the foundation's criteria and strategy for its investments in the financial institution.

- If the shareholding of the foundation (or foundations) in the credit institution **exceeds 50% or represents a controlling interest,** as defined in the Commercial Code, the financial plan must also include:

- An **investment diversification and risk management plan;**

- Setting aside of a **reserve fund**, to be invested in high credit quality, highly liquid financial assets, to meet the credit institution's possible equity capital needs (the financial plan will consequently include a timetable of minimum provisions);

- Other measures guaranteeing sound and prudential management of the credit institution.

Supervisory authority over banking foundations whose main business extends over more than one autonomous region will rest with the Ministry of Economic Affairs and Competitiveness.

The Bank of Spain will have responsibility for ensuring compliance with the legislation on foundations' holdings in the capital of credit institutions. To this end it may undertake inspections and require credit institutions to submit any information it deems necessary.

It also clarifies other points, such as:

- In the event that a savings bank holds **more than 50% of a credit institution's shares** or exercises control over the institution, as per article 42 of the Commercial Code, and it converts into a banking foundation, it may not subscribe new shares in the credit institution if this means increasing its percentage holding.

- Agreements on the distribution of **dividends** by credit institutions controlled by banking foundations will be subject to an enhanced quorum, as laid down in article 194 of the Capital Companies Law, and must be adopted by a majority of at least three quarters of the capital present or represented at the shareholders' meeting. The articles of Association may establish that a larger majority is required.

- **Early action, restructuring and resolution plans** may include the obligation not to increase the shareholding in the credit institution, or to reduce it to positions that do not grant control.

- The ***Montes de Piedad*** (charitable pawnbrokers) may be considered to form part of the foundation's social work, and may therefore be included in the savings banks, banking foundations, or credit institutions they control.

- Savings banks operating indirectly will have a period of **one year in which to convert into a banking foundation**. If their conversion into a special foundation is already underway, they will have the remainder of the five-month period available in which to complete the process.

- **Adaptation of savings banks:** if the requirements (size/market share) are not satisfied, they will have **one year in which to comply or convert into a banking foundation.**

- **The following laws are expressly repealed:**

  a) **Law 31/1985,** of August 2nd, 1985, on Regulation of the Basic Standards for the Governing Bodies of Savings Banks (LORCA);

b) **Royal Decree-Law** 11/2010, of July 9th, 2010, on governing bodies and other aspects of the legal framework for Savings Banks;

c) Certain articles **concerning non-voting equity units (cuotas participativas) in Law 13/1985**, of May 25th, 1985, on investment ratios, equity capital and reporting obligations of financial intermediaries, which had previously been amended by Royal Decree-Law 11/2010;

d) The framework for SIPs[1].

Draft Royal Decree modifying the requirements for good reputation, experience and good governance in credit institutions (pending parliamentary approval)

On January 21st, the public hearing began for the draft Royal Decree modifying the requirements for good reputation, experience and good governance in credit institutions. The bill amends several rules (affecting banks, credit unions, credit finance institutions, payment services and electronic money institutions) in order to incorporate into Spanish legislation the EBA guidelines regarding the suitability of the members of the Board of Directors and other staff with key functions in the institution.

In the case of credit institutions the **following requirements** are laid down:

1) To be of **good business and professional standing, and have appropriate knowledge and experience** for the exercise of their functions. This requirement is applicable to all **the members of the board of directors,** and the board of the parent company, if any, and general managers or similar officers, and persons responsible for control functions or who hold key positions for the day-to-day running of the business of the institution or its parent.

   When assessing business and professional standing, the following should be considered:

   a) Individuals' track records in relation to regulatory and supervisory authorities; the reasons for any dismissals from previous posts; their history of creditworthiness and fulfilment of obligations; the results of their performance of their responsibilities; whether they have been declared bankrupt.

   b) Any criminal convictions or penalties imposed for having committed administrative offences.

   c) The existence of significant and well-founded investigations, in relation to either criminal or administrative matters.

2) When **assessing the requirements for appropriate knowledge and experience**, both knowledge acquired in academia and professional experience performing similar functions in other institutions should be taken into account, with particular attention being paid to the nature and complexity of the positions held, the competencies and decision-making powers and responsibilities assumed, the number of people the individual was in charge of, the technical knowledge they have acquired regarding the financial sector, and the risks that need to be managed.

   However, it is established that the assessment of the members of the board of directors must be made considering the board as a whole.

[1] SIP = *Sistema Institucional de Protección* (Institutional Protection Scheme).

3) **Good governance of the institution**. This requirement is applicable solely to members of the board of directors. When assessing this quality, the following will be considered:

   a) the existence of possible **conflicts of interest** leading to undue influence of third parties, as a result of:

      i. positions held in the past or present with the same institution or other organisations;

      ii. any personal, professional or economic relationship with members of the institution's board of directors, or that of its parent or subsidiaries;

      iii. any personal, professional or economic relationship with shareholders controlling the institution, its parent or subsidiaries.

   b) the ability to devote **sufficient time and effort** to carrying out the corresponding functions.

The **assessment of suitability** will be carried out:

a) **By the institution concerned,** when it applies to the Bank of Spain for authorisation to conduct banking business, when making new appointments, and whenever circumstances arise that make it advisable to assess suitability.

b) **By the Bank of Spain**, when authorising the creation of a bank, when it is notified of new appointments, or whenever it considers it necessary to assess whether the members of the board are suitable for their posts.