

# 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)

## Royal Decree-Law on the protection of the holders of certain savings and investment products and other financial measures (Royal Decree-Law 6/2013, published in the BOE on March 23<sup>rd</sup>, 2013)

The main objectives of Royal Decree-Law 6/2013 are: i) to establish the monitoring committee for hybrid capital instruments and subordinated debt; and ii) to endow the Deposit Guarantee Fund with legal capacity to buy unquoted shares resulting from the conversion of hybrid capital instruments and subordinated debt. The RDL's additional and final provisions also introduce amendments to a series of financial regulations.

### ■ Measures concerning hybrid capital instruments and subordinated debt

- Creation of a **hybrid capital instruments and subordinated debt monitoring committee**. The Committee's main functions are:
  - a) Analysis of the factors motivating complaints and submission to Congress of a quarterly report on them.
  - b) Making proposals to the competent authorities in order to improve the level

of protection offered to purchasers of products of this kind.

- c) Determining the criteria to be followed by institutions controlled by the Fund for Orderly Restructuring of the Banking Sector (FROB) to offer customers arbitration on disputes that arise.

- **Amendment of Royal Decree-Law 21/2012 of July 13<sup>th</sup>, 2012 on liquidity measures for the General Government and in the financial sector.** The Credit Institution Deposit Guarantee Fund (FGDEC in its Spanish initials) may commit its assets to provide guarantees that may be required in relation to the provision of financial assistance. The measures concerned include the possibility of the subscription or purchase by the FGDEC, at a price not exceeding their market value (based on an independent expert report) of:

- a) Shares or subordinated debt instruments issued by the SAREB.
- b) Ordinary shares not admitted to trading on a regulated market issued by any of the institutions in which the FROB has a majority shareholding.

The **annual contribution** by FGDEC member institutions levied on deposits held on December 31<sup>st</sup>, 2012, **will be increased, on an exceptional one-off basis, by 3 per additional thousand**. This increment will be collected in two instalments:

- a) A first instalment equal to two fifths of the total increment, which is to be paid within 20 days after December 31<sup>st</sup>, 2013. Deductions based on size and other criteria are envisaged.
- b) The second instalment, equal to the remaining three fifths, is to be paid as of January 1<sup>st</sup>, 2014, in accordance with the timetable of payments laid down by the management committee, within a maximum of seven years.

■ **Other measures:**

- Measures **applying SEPA regulations** (Regulation (EU) 260/2012).
- Law 44/2002 of November 22<sup>nd</sup>, 2002, on financial system reform measures has been amended to allow the **Bank of Spain to set different reporting thresholds for the Bank of Spain's Risk Information Centre (CIRBE) depending on the purpose of the information (supervision or recording)**.
- The consolidated text of the **Private Insurance Law** has been amended to allow Spanish insurance undertakings to use underwriting agencies to contract insurance.
- **Law 9/2012 of November 14<sup>th</sup>, 2012, on restructuring and resolution of credit institutions** has been amended to include certain conditions in the asset transfer arrangements:

- ✓ Loans may not be classified as **subordinated** in the context of the debtor's possible bankruptcy proceedings, even if the SAREB is a shareholder in the debtor company.
- ✓ The SAREB may be the beneficiary of **hipotecas de máximo** (i.e. mortgages securing multiple debts or obligations up to a maximum amount).
- ✓ **Contractual netting and financial collateral arrangements** will be applicable to the SAREB.

**Ministerial Order, setting out the content and structure of the annual corporate governance report, the annual compensation report, and other information mechanisms for public limited companies, savings banks and other entities issuing securities admitted to trading on official securities markets (Ministerial Order ECC/461/2013, published in the BOE on March 23<sup>rd</sup>, 2013)**

The annual corporate governance report (IAGC in its Spanish initials) is to include information on the measures taken to promote the inclusion of women on the board of directors. The terms executive, proprietary and independent director are also defined. The Order also sets out the structure and content of the Annual Compensation Report.

The Order has thirteen articles, grouped into four chapters:

1. The first includes the **general provisions**, introducing the principle of **transparency**, which translates into the requirement that the information given in the annual corporate governance report must be clear, complete and accurate.

2. The **second chapter** concerns the **IAGC** for public limited companies, savings banks and other entities issuing securities admitted to trading on official markets. This is to include information on the measures taken to promote the inclusion of **women on the board of directors**.

The Order also defines what is meant by the terms executive, proprietary and independent director.

3. Chapter III covers the **annual report on the compensation paid to the directors of public limited companies and savings banks**, which, like the corporate governance report, will be considered a **significant event and must be sent to the National Securities Market Commission (CNMV)**.

4. Chapter IV contains a provision concerning the means of information used by **public limited companies and savings banks**, stating what relevant information should be posted on their **websites**.

**Savings banks that do not issues securities** are to publish annual **corporate governance and compensation reports** conforming to the content and structure laid down for them in the Order. In the case of **savings banks that operate through a bank**, to which they have spun off the entirety of their financial business, the provisions will be applicable to the institutions through which this banking business is carried out. If the latter are not public limited companies, the content and structure will be adjusted according to the corresponding corrective measures as non-issuing institutions, taking into account the provisions of the Order.

Until the CNMV issues the new circulars with the **new models of IAGC**, those in Circulars 1/2004, 4/2007 and 2/2005 will remain in force.

## **Royal Decree incorporating the EBA's criteria of November 22<sup>nd</sup>, 2012, on the evaluation and suitability of members of the governing bodies and principal officers in the regulations on credit institutions (Royal Decree 256/2013, published in the BOE on April 13<sup>th</sup>, 2013)**

The Royal Decree adapts financial regulation on the subject by introducing substantive amendments in three areas: good repute and professional standing, experience and governance.

### **I. Amendment of Royal Decree 1245/1995, on the creation of banks, cross-border activity and other points regarding the legal framework governing credit institutions**

- The following **requirements** must be met for the suitability assessment:

1. **All the members of the board of directors**, and of the board of the parent institution, if any, the **general manager or similar**, and the **officers in charge of internal control functions and other key posts for the daily running of the institution's business**, and that of its parent, must be of **good repute and professional standing and have appropriate knowledge and experience to perform their duties**.

- 1.1 When **assessing business and professional repute**, the following should be considered:

- a) (i) Their **track record** in relation to the regulatory and supervisory authorities;
- (ii) the **reasons** for any dismissals from previous posts or offices;
- (iii) their **history** of personal solvency and if they have fulfilled their obligations;

(iv) their **professional conduct** if they have held positions of responsibility in credit institutions subject to a process of restructuring or resolution, (v) if they have been **disqualified** under bankruptcy law, and persons declared bankrupt under insolvency proceedings prior to the entry into force of the law whose disqualification period has not elapsed.

- b) **Sentences for crimes or offences** and penalties for administrative offences, taking a series of circumstances into account.
- c) The existence of significant and well founded **investigations**, in relation to either criminal or administrative matters.

1.1 To **assess the knowledge and experience requirements**, the knowledge acquired in an academic setting and professional experience in the exercise of similar functions in other undertakings.

The board of directors must have members who **collectively** have sufficient professional experience in the governance of credit institutions to ensure the effective capacity of the board of directors to make independent decisions in benefit of the institution.

2. A robust **internal governance of the institution**, a requirement applicable solely to members of the **board of directors**. This will be assessed based on the following:

- a) the existence of possible **conflicts of interest** leading to undue influence of third parties.
- b) the ability to devote **sufficient time and effort** to carry out the corresponding functions.

- Banks must have, under conditions proportional to the nature, scale and complexity of their activities, **appropriate internal units and procedures to perform continuous selection and evaluation** of the members of the board of directors, general managers and similar, who are responsible for the functions of internal control and other key posts in the daily running of the entity.
- The entity is to **notify the Bank of Spain** of all appointments of new members to the board of directors and general managers and similar posts **within not more than fifteen working days** from the time of their appointment.

When an individual is affected by circumstances that may affect the assessment of their good repute and professional standing, they must inform the institution. For its part, the credit institution must inform the Bank of Spain within **fifteen working days** of any situation that may affect their suitability for the exercise of the post.

- The **assessment of suitability** will be performed:
  - a) **By the institution** whenever new appointments are made or circumstances arise making it advisable to reassess an individual's suitability. If the suitability assessment is **negative**, the institution must abstain from appointing the individual, or if the circumstance arises subsequent to his or her appointment, it must take the necessary measures to correct the shortcomings identified and, if necessary, suspend or dismiss the individual concerned.
  - 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 suited to their functions.

- In the event of **failure to comply with the suitability requirements**, the Bank of Spain may:

- a) Exceptionally, revoke the authorisation on account of the unsuitability of a shareholder.
- b) Require the suspension or dismissal of the director or general manager or similar, or the rectification of the shortcomings identified in the event of a lack of good repute, knowledge or experience or the capacity to exercise good governance.

- The Bank of Spain will create and manage a register of directors and general managers of parent institutions, on which the directors, general managers and holders of similar posts must be listed.

## II. Other amendments

The Royal Decree also amends, in identical terms to those set out above, the regulations applicable to **credit unions** (Regulation implementing Law 13/1989 of May 26<sup>th</sup>, 1989, on Credit Unions, enacted by Royal Decree 84/1993, of January 22<sup>nd</sup>, 1993) and **finance companies** (Royal Decree 692/1996, April 26<sup>th</sup>, 1996, on the legal framework for finance companies), among others.

## III. Adaptation period

The following periods have been set for adaptation to the new regulations:

- a) **Three months** from the entry into force of the Royal Decree for the establishment of appropriate **internal units and procedures** for the continuous assessment and selection of individuals subject to the requirements of the Royal Decree.
- b) **Six months** from the entry into force of the Royal Decree for the **substitution**

of individuals who do not meet the requirements.

## IV. Implementing authority

The Bank of Spain may specify, in particular:

- a) The **information** institutions are to submit.
- b) The **weighting** applicable to the various assessment criteria to determine whether the good repute and professional standing and good governance requirements have been met.
- c) The **adaptation** of the knowledge and experience criteria to the area in which each type of institution conducts its business.