

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 on the Central Credit Register and amending the Accounting Circular (Circular BdE 1/2013, published in the BOE on May 31st)

The purpose of the Circular is to enhance the information to be reported to the Central Credit Register (CCR). The main changes in the way the CCR operates that have been introduced are the following:

- It has been made **obligatory to report exposures on a transaction-by-transaction basis**, in euros, with no general minimum reporting threshold. All the parties intervening in each transaction must also be identified, stating the nature of their intervention, their exposure, and all related parties.
- **A more detailed breakdown of the main type of product** than is reported at present is requested to allow better identification of the characteristics and risks of the various transactions. Also new **product types** are included on the list of those for which transactions are to be reported.
- **More information and details are now required regarding collateral.** Particularly detailed information is required in the case of **mortgage loans**.
- As well as their **outstanding exposure on transactions at the end of each month**, credit institutions are required to submit

monthly reports **explaining why loan exposures have been reduced** and the amount of the reduction.

- **Restructured, refinanced, renegotiated, subrogated and segregated** transactions are to be identified and linked to the details of any transaction previously reported to the CCR from which they originate.
- **Connection between linked operations in different institutions:** Transactions secured by other CCR reporting entities are to be linked to transactions reported by the guarantor. Additionally, the beneficiary of the guarantee is to provide the guarantor with the details of the guaranteed transactions through the CCR.
- For each transaction in which institutions continue to assume exposures, the **accounting and own resources information** is to be submitted.
- The **Sareb** (Company for the Management of Assets proceeding from Restructuring of the Banking System) has been included as a **reporting entity**.
- In the case of the transfer of loans to third parties in which management is retained, the transferring entity is to continue reporting transferred exposures as previously, but must also identify the assignee and the exposure assumed.

- The Credit Institution Deposit Guarantee Fund will not report the guarantees it gives to other entities as a result of asset protection schemes included in restructuring plans or actions, or other measures to support credit institutions adopted in accordance with the regulations governing its operation.

- **Reguarantee companies** are not required to report to the CCR any transaction in which they refinance financial guarantees given and bonds and non-financial guarantees, warranties and indemnities provided.

- **Use and transfer of the CCR data by reporting entities:** The CCR will provide reporting entities with the following information:

- a) **Consolidated monthly information** on the system as a whole corresponding to all the counterparties with whom the reporting entity has a cumulative risk of 9,000 euros or more.

- b) **On request**, the Bank of Spain will provide information on any counterparty not reported by the applicant reporting entity that has applied for a risk transaction or who is listed as an obligor or guarantor in the bills of exchange or letters of credit which the entity has been asked to acquire or trade.

- c) It will forward any corrected data **as soon as supplementary statements** are received with amendments or cancellations of previously reported data.

- **Amendment of the accounting Circular**

New financial statements have been introduced with the aim of obtaining: (i) transaction-by-transaction data on derivative instruments, equity instruments, and assets received in foreclosures or in settlement of debts, and (ii) supplementary data on debt securities reported to the CCR.

A new confidential financial statement has been instituted, with data on the cost of financing acquired in the month in relation to business in Spain, and other information on the **housing reposessed or received in settlement of debts resulting from home purchase lending transactions**.

Other existing **financial statements have been modified**, with the purpose of requesting the information necessary to compile balance of payments statistics.

- **Entry into force:** In general, the Circular will come into effect on December 31st. However, some of the changes to CCR financial statements and the accounting Circular will be phased in later.

Law on measures to strengthen protection for mortgage borrowers, debt restructuring and rented social housing (Law 1/2013, published in the BOE on May 15th)

This law stems from Royal Decree-Law 27/2012 of November 15th (BOE of November 16th), on urgent measures to strengthen the protection of mortgage debtors, to which other measures were added during its parliamentary debate. It introduces some substantial reforms to Spain's mortgage market, amending various pieces of legislation:

I. Royal Decree-Law 27/2012 of November 15th, on urgent measures to strengthen the protection of mortgage debtors

- **Scope.** The requirements for the application of the two-year moratorium on evictions have been made more flexible. In particular, although the level of household income is still set three times the public revenue index, this can be expanded to four or five times in

certain cases of social vulnerability, and the scope of the Social Housing Fund extended in cases not covered by the legislation.

II. Amendment of the Mortgage Law, consolidated text according to Decree of February 1946

- **Limitation on default interest.** For new contracts, default interest is limited to three times the legal interest rate, and may only accrue on the outstanding principal.
- **Extrajudicial sale.** Regulations governing extrajudicial sale have been introduced in order to make it a real alternative to foreclosure proceedings. It must be agreed in the conveyance and may only apply in the event of default on capital repayments or payment of guaranteed interest.

III. Amendment of Law 2/1981 of March 25th, regulating the mortgage market

- **Independence of valuers.** Credit institutions are prohibited from purchasing or holding significant interests in valuation companies.
- **Requirements applicable to loans.** The requirements that loans and mortgage lending must meet in order to be realisable include the stipulation that their maximum repayment period not exceed thirty years. This measure does not have retroactive effect.
- **Expansion of security.** The possibility that the credit institution may demand an increase to the mortgage when its value drops more than 20% below the initial valuation has been eliminated.
- **Reverse mortgage.** Persons recognised as having a level of disability of 33% or more are entitled to apply for a reverse mortgage.

IV. Amendments to Law 1/2000, January 7th, on Civil proceedings

- **Unfair terms.** As a consequence of the ruling of the **Court of Justice of the European Union on March 14th, 2013** on the preliminary issue raised by Barcelona Mercantile Court no. 3 regarding the interpretation of Directive 93/13/EEC of the Council of April 5th, 1993, a series of **amendments have been made to foreclosures proceedings:**
 - **Writ of execution.** If the court believes there to be signs that any contract term is unfair, it will hear the parties and resolve as it sees fit.
 - **Grounds for general opposition.** The existence of unfair terms in the deed of conveyance has been introduced as a general ground for opposition. In this case, the court order will determine the consequences of the unfair terms, ordering a stay on foreclosure or for it to proceed without application of the unfair terms.
 - **Foreclosure of mortgaged property.** If grounds for opposition are upheld, the court will order a stay of execution when the grounds for foreclosure rest on the unfair contract terms. Otherwise, foreclosure may proceed, but without application of the unfair terms of contract.
- **Start of proceedings.** The claim for payment from the debtor will be upheld in the case of non-payment of a number of monthly instalments such that the debtor has breached his obligations for a period equivalent to three months, providing that the price at which the mortgaged property is valued by the parties in the conveyance in which the mortgage terms are set out, and which serves as the basis for the auction, is not less than 75% of the surveyor's valuation.

- **Speeding up auction proceedings**
Incentives have been put in place to encourage bidders to take part in auctions.

- **Repossession of properties.** In the case of auctions for which there are no bidders, the value of the repossessed properties for the creditor will be **70% of their theoretical auction starting price**. If the amount the debtor owes is less than this percentage of the value, the value of the repossessed property will be 60% in the case of a main residence, or 50% or the amount owed for all items in any other case.

- **Imputation of payments.** If the foreclosure is insufficient to cover the whole amount demanded in the writ of execution, plus interest and instalments accruing during foreclosure proceedings, this sum will be imputed in the following order: normal interest, principal, default interest, and costs.

- **Write-off mechanisms in the case of remaining debt** in the event that, after foreclosure, debt remains due to the financial institution, **two write-off mechanisms** are envisaged:

- If the debtor pays 65% of the remaining debt over a period of five years or 80% over ten years, he/she will be released from the remainder.
- If the financial institution sells the property in the ten years following foreclosure, 50% of the capital gains realised will be allocated to reduce the remaining debt.

V. Amendment of Royal Decree-Law 6/2012 March 9th, on urgent measures to protect mortgage debtors without resources

- **Broadening of the scope.** This Royal Decree-Law is now extended to cover

mortgage guarantors with respect to their main residence, for the purposes of uniformity with the moratorium on evictions.

- For the collective covered by the Royal Decree-Law, the **default interest** may not exceed the normal interest plus 2% on the outstanding debt.

- **Guarantors and mortgagors other than the debtor.** These parties may demand that the financial institution exhaust the main debtor's assets before claiming the guaranteed debt from them.

- **Codes of good practice.** A number of specific aspects of their content have been amended in favour of mortgage debtors.

VI. Amendment of the consolidated text of the Pension Schemes and Funds Law, approved by Legislative Royal Decree 1/2002 of November 29th

- **Availability of pension plans.** For a period of two years after the entry into force of this law, members of pension plans may apply to realise their vested rights in the event of proceedings to evict them from their main residence, provided certain requirements are met.

VII. Amendment of the consolidated text of the Private Insurance Law, approved by Legislative Royal Decree 6/2004 of October 29th

- **Policy holder information requirements.** In the case of life insurance in which the policy holder does not assume the risk of the investment, he/she will be informed of the expected return on the investment, taking account of all the costs.

VIII. Other measures

- **Marketing of complex loans.** It will be necessary to obtain from the borrower a

handwritten statement in the deed to the effect that he/she has been warned of the risks inherent to the contract when it includes an interest rate collar, is associated with the contracting of interest-rate risk hedging instruments or is granted in one or more foreign currencies.

- **Subsidised housing.** In the case of loans granted for the purchase of subsidised housing, dation in payment of the property shall not require the authorisation of the administration nor entail the obligation to repay the economic aid already received.

Circular of the National Securities Market Commission on the document with basic information for investors and the prospectus of collective investment undertakings (Circular CNMV 2/2013 published in the BOE on May 24th)

The Circular adapts Directive 2009/65/EC (Undertakings for Collective Investment in Transferable Securities, UCITS) to Spanish legislation, with the aim of unifying the various marketing documents for collective investment institutions (CIIs) and of providing investors with a single document (**Key Investor Document (KID)**) which enables them to compare similar products, while avoiding asymmetries in the information provided and unifying the different necessary documents.

National Securities Market Commission (CNMV) Circular implementing certain obligations to provide information to investment services clients, in relation to the assessment of the suitability and advisability of financial instruments (Circular CNMV 3/2013, published in the BOE on June 19th)

This Circular aims to implement the new

requirements of the Securities Market Law regarding the assessment of the suitability of the products and services offered to or acquired by investors. Specifically, it lays down the requirement to document compliance with the obligation to give information regarding the recommendations and evaluation carried out, such that institutions keep a signed copy of the documentation provided to clients. It also defines the terms in which the warnings given in each case and signed by the client are to be drafted, and the specific text the client is to write with their signature.

As regards the **suitability assessment**, institutions are to provide their clients with a description of how the recommendation made matches the investor's characteristics and objectives in writing or any other durable form. This description must refer to the three components of the suitability assessment, i.e. the product's suitability given the client's level of knowledge and experience, financial situation and investment goals, and the main risks the investor may face.

Also as regards the **advisability assessment**, institutions must give the client a copy of the document with the assessment performed and authorise the CNMV to establish the terms in which the client is to state in a handwritten note that he/she has been warned by the institution that the product he/she is about to purchase is not advisable for him/her or that it has not been possible to assess its advisability.

The CNMV is also authorised to establish the terms in which **the register of clients and unsuitable products** is to be kept following a negative assessment.