

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)

Law on measures to support entrepreneurs, stimulate growth and create employment (Law 11/2013, published in the State Official Gazette (BOE) on July 27th)

This Law, which results from Royal Decree-Law 4/2013, enacts the following measures:

- **Measures to promote corporate finance: The Regulation on the Organisation and Supervision of Private Insurance** has been amended to allow insurance undertakings to invest in securities traded on the alternative stock market (MAB), and for these investments to be considered eligible to meet requirements for technical provisions.

Similarly, the **Regulation on Pension Funds and Plans** has been amended to allow pension funds to invest in securities traded on the MAB and in venture capital undertakings, with an upper limit of 3% of the fund's assets invested in each entity.

The limitation on investment in multilateral trading facilities imposed by Article 405 of the **Share Capital Companies Law**, such that the total amount issued by companies may not exceed their paid-up share-capital plus reserves, has been lifted. To ensure retail investors are adequately protected, this

relaxation of the rules will only apply to issues aimed at institutional investors.

- **Measures to combat late payment:** Law 3/2004, establishing measures to combat late payment of commercial operations, has been reformed to adapt it to European Union requirements.

The **legal interest rate the debtor** is liable to pay in the event of late payment has also been changed, such that it is now the interest rate applied by the European Central Bank plus eight percentage points.

The law establishes a rebuttable presumption that conditions excluding compensation for the cost of collection, which are contrary to the law, are **unfair contract terms**.

CNMV Circulars establishing standard formats for the annual compensation report and annual corporate governance report (Circular 4/2013 and 5/2013, published in the BOE on June 24th)

The Circulars set out the content and structure of the annual corporate governance report, the annual remuneration report, and other information to be published by public limited companies, savings banks and other entities issuing securities admitted to trading on official securities markets,

with different templates for each type of reporting entity.

Both Circulars came into force on the day after their publication and will be applicable to reports submitted as of **January 1st, 2014, in the case of governance reports**, and to reports to be submitted for approval to general assemblies or shareholders' meetings held as of **January 1st, 2014, in the case of remuneration reports**.

➤ **Annual remuneration report for public limited companies and the members of the board of directors and oversight committee of savings banks issuing securities admitted to trading on organised securities markets (CNMV Circular 4/2013)**

Two templates have been established, one for public limited companies and the other for savings banks issuing securities admitted to trading on official securities markets. The structure of the report in these cases is as follows:

- **The entity's remuneration policy for the current year.** This section includes information on: (i) general principles and the general terms of the remuneration policy; (ii) main changes in the remuneration policy since that applied the previous financial year, and any changes made during the year affecting the conditions for the exercise of previously granted options; (iii) criteria used to determine the entity's remuneration policy; and, (iv) the relative importance of variable remuneration components and fixed remuneration, and the criteria applied to determine the various components of board members' remuneration packages (remuneration mix).
- **Planned remuneration policy for future years.** A general forecast is to be given of the planned remuneration policy for

future years, describing the following aspects of the policy: fixed components, allowances and variable remuneration, relationship between remuneration and performance, benefit systems, contractual conditions for executive directors, and a forecast of the most significant changes in the remuneration policy with respect to previous years.

- **Overall summary of how the remuneration policy was applied during the year.** Main characteristics of the structure of the remuneration policy and its items during the past year, including the details of the individual remunerations accruing to each of the board members, and a summary of the decisions taken by the board for their application.
- **Details of remuneration paid to each board member.**
- **Other relevant information.**

➤ **Annual corporate governance report (CNMV Circular 5/2013)**

Three report templates have been established: one for **public limited companies**, another for **entities issuing securities** traded on an official market (**other than savings banks**), and a third for **savings banks that issue securities** traded on an official market (however, savings banks not issuing non-voting equity units traded on official securities markets are not obliged to complete certain sections).

All the reports referred to in these circulars must be sent to the CNMV in standard electronic document format for their publication as a **relevant event**. The CNMV is therefore to make the relevant electronic templates available to entities.

Bank of Spain Circular on the reporting of transactions and balances in marketable securities (Circular 3/2013, published in the BOE on August 2nd)

Circular 3/2013 aims to cover the new security-by-security information requirements envisaged in ECB Regulation (EU) 1011/2102, October 17th, 2012, regarding statistics on securities portfolios that are to be submitted by resident depository institutions about their resident clients' holdings of securities issued by other resident entities.

The following institutions are **obliged to report**:

1. Credit institutions and branches in Spain of credit institutions on official Bank of Spain registers acting as depositaries or settlement agencies in regulated securities markets, and the Bank of Spain.
2. Resident financial institutions on official CNMV registers acting as depositaries or settlement agencies in regulated securities markets.
3. Financial institutions on official CNMV registers acting as investment fund management companies, in relation to shares in Spanish investment funds.

The following security-by-security **information** on marketable securities is to be sent (itemised by security class and individual security, identified by ISIN code), on a **monthly** basis, within ten working days of the end of each month:

- a) The entities listed under points 1 and 2 above are to report:
 - Transactions conducted and balances held for clients, including those corresponding to investment funds.
 - In the case of marketable securities issued by resident entities and held

on behalf of resident clients, only the balance need be given.

- Foreign investment fund marketing entities domiciled in Spain that are on the CNMV's official registers are to report information (transactions and balances) on their clients' investment fund shares.
- Transaction totals and the balances in the entity's securities accounts (proprietary and third party), corresponding to securities issued by resident entities that are deposited in accounts at the entity opened in non-resident depository entities, central non-resident securities depositaries or international clearing or settlement systems.

- b) Spanish investment fund management companies will report transactions involving shares in these funds and their balances.

Moreover, the entities mentioned in points 1 and 2 of the first rule will report the information included below **between the Circular's entry into force and the time of the report corresponding to December 31st, 2014**:

- Transactions performed and balances held on their own account.
- Transactions performed and balances of securities issued by non-resident entities, held on behalf of entities other than those mentioned above, which send information about their own transactions and balances directly to the Bank of Spain.
- Transaction totals and balances of the entity's security accounts, corresponding to securities issued by non-resident entities.

The Circular will **come into effect on January 1st, 2014**, and will **repeal Bank of Spain Circular 2/2001**, of July 18th, 2001, on the reporting of foreign transactions and asset and liability balances in marketable securities.