

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 to support entrepreneurs and their internationalisation (Law 14/2013, published in the official gazette (BOE) on September 28th)

The Law revises the recent legislation concerning entrepreneurs to expand its scope, and add various fiscal and social security measures. It also envisages an out-of-court negotiation mechanism for business owners' debts and defines the transitional arrangements for the elimination of certain reference indices.

The Law includes a variety of measures, in particular:

- Revision of the **recent legislation concerning entrepreneurs**, expanding its scope by enabling entrepreneurs to enjoy limited liability, such that they can avoid their business debts affecting their home, provided that the latter is not worth more than 300,000 euros. The Law also provides for a new type of company, the ***Sociedad Limitada de Formación Sucesiva*** (limited liability capital growth company) requiring no minimum share capital, although it is subject to stricter provisioning requirements and limitations on dividend payments.
- **Out-of-court mechanism for negotiating business owners' debts.** Certain aspects of Spain's Bankruptcy Law have been amended,

particularly as regards the pre-bankruptcy stage. The aim is to facilitate out-of-court agreements between certain debtors and their creditors through an “**out-of-court payment agreement**” system, in which the newly created ***mediador concursal*** (insolvency mediator) plays a central role. The Law seeks to define the regulations giving natural persons a second chance or “**fresh start**” when their debts cannot be met with their existing property and assets, such that their debts are completely written off during the bankruptcy process. The scope of this fresh start is limited, however, as it is only open to certain types of debtors, it excludes public law debt, and only applies if claims against the estate and privileged claims have been met, and when an out-of-court payment agreement has first been sought (otherwise, at least 25% of ordinary credit must have been paid off).

- Amendment of **formal refinancing agreements**, to include a more flexible way of calculating when a majority of the holders of liabilities have signed up to an agreement, whereby the percentage of the liabilities held by financial institutions that is needed for a refinancing agreement signed by the creditors to be endorsed by the court is reduced from 67% to 55%.
- **Internationalisation bonds.** The framework regulating “*cédulas de internacionalización*”

(internationalisation covered bonds), introduced by Royal Decree-Law 20/2012, of July 13th, 2012, has been amended to clarify what assets can be used as collateral and to create a new instrument referred to as “*bonos de internacionalización*” (internationalisation bonds). **Regulatory implementation** of certain aspects of these new securities is envisaged, including the **rules applicable to the purchase of own securities** and the way in which loans, credits and replacement assets used to back internationalisation bonds and covered bonds are to be recognised in the accounting records. Thus, on October 9th, the draft Royal Decree implementing certain aspects of Law 14/2013 on internationalisation bonds and covered bonds (see previous summary) was opened up to public consultation.

- **Transitional arrangements during the elimination of certain mortgage loan reference indices** as a consequence of Transparency Order (Order EHA/2899/2011, of October 28th, 2011, on transparency and customer protection for banking customers). The indices concerned are: IRPH¹ banks, IRPH savings banks, and CECA lending rate. The Order provides that **in the absence of a replacement index or if this replacement index itself disappears**, the future rate will be the **IRPH Institutions rate plus a spread equal to the average difference between IRPH Institutions and the original rate since the start of the transaction** (as of the time of the substitution). All references to the obsolete indices will be substituted as of the next applicable rate revision.

Pursuant to the Law, this index replacement represents an **automatic novation** of contract, without implying any alteration of the mortgage or change in its ranking. It also states that the parties shall not be **legally entitled to challenge this modification**.

- **Capital requirements for SMEs.** For the purpose of calculating credit institutions' own funds and core capital, the risk-weighted exposures on lending to SMEs, pursuant to Article 6 of Law 13/1985 on investment ratios, own funds and reporting requirements for financial intermediaries, will be multiplied by a **correction factor of 0.7619**, which will be applied as envisaged in article 501.2 of **Regulation (EU) N° 575/2013 of the European Parliament and of the Council of June 26th, 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) N° 648/2012.**
- **Electronic powers of attorney.** Powers of attorney may be granted and revoked in an electronic document provided that it is digitally signed. This document may be sent directly to the relevant Register by electronic means.

Law establishing certain measures regarding environmental taxation and adopting other tax and financial measures (Law 16/2013, published in the BOE on October 30th)

The most significant change in the financial area affects Law 35/2003, of November 4th, 2003, on Collective Investment Institutions, as regards the commercialisation in the internal market through global accounts of investment funds constituted in Spain, so as to implement a similar system to that in neighbouring countries and thereby bolster the sector's competitiveness.

This amendment means **replacing the system of the single register of investment fund unit-holders kept by the managing institution** with a system in which, when the commercialisation of the fund is agreed with a financial intermediary established in Spain through a global account, **this intermediary may keep the register of**

¹ IRPH – reference index for mortgage loans.

those unit-holders that are its customers. Given that the managing institution will no longer hold full information about fund unit-holders, as some of them or their holdings will be recorded on the commercialising institution's registers, it will be the latter which will have the financial and fiscal responsibilities vis-à-vis the unit-holders on its registers. This change also makes it necessary to amend the Personal income tax, Corporate income tax, and Non-residents' income tax laws.

Bank of Spain Circular amending own-funds circular (Circular 4/2013, published in the State Official Gazette (BOE) on October 12th, 2013)

Bank of Spain Circular 4/2013 amending Bank of Spain Circular 3/2008, of May 22nd, 2008, on the determination and supervision of minimum own funds, broadens the definition of SMEs to align it with that applicable at the European level as set out in Commission Recommendation 2003/361/EC, of May 6th, 2003, concerning the definition of micro, small and medium-sized enterprises. This amendment implies that more credit institutions exposures may be classified as belonging to retail exposures, a category which enjoys more favourable treatment when calculating risk-weighted exposures.

Draft Bank of Spain Circular amending the Bank of Spain Circular on minimum capital requirements as regards the conversion conditions for eligible convertible instruments

This draft circular aims to **repeal one of the conversion thresholds for instruments convertible into equity which are eligible for consideration as core capital**, pursuant to rule five of **Circular 7/2012**. Specifically, this concerns the threshold for the ordinary capital ratio (core tier 1) less than 7%, calculated according to the definition used in EBA Recommendation 2011/1.

This repeal is the result of the EBA's decision to replace the temporary buffers envisaged in the Recommendation by a new capital conservation mechanism in the form of a floor, introduced by EBA Recommendation 2013/3, of July 22nd, 2013, replacing that from 2011.

Additionally, the draft Circular amends the twelfth rule (solvency ratio and applicable calculation methods) of Bank of Spain **Circular 3/2008** on determination and control over minimum own funds, for the purposes of adding a fourteenth additional provision to Law 14/2013, of September 27th, 2013, to support entrepreneurs and their internationalisation, which **anticipates the factor reducing own funds requirements for exposures to SMEs** in article 501 of EU Regulation 575/2013.

Draft Royal Decree implementing certain aspects of Law 14/2013, September 27th, 2013, to support entrepreneurs and their internationalisation, concerning internationalisation bonds and covered bonds

The draft Royal Decree implements the content of Law 14/2013 referred to above. The regulation of internationalisation bonds and covered bonds set out in this Royal Decree is modelled on that of the Mortgage market law (Law 2/1981) and its Regulation (Royal Decree 716/2009), taking mortgage bonds and covered bonds as its reference. As a result, payment of internationalisation covered bonds, as well as being guaranteed by the issuer's universal liability, is covered by all the loans and credits associated with the financing of contracts for the export of goods and services or the internationalisation of companies complying with the requirements established in Art. 34 of Law 14/2013. For their part, internationalisation bonds will be guaranteed, without prejudice to the issuer's universal liability, by all the loans and credits associated with the financing of contracts for the export of goods and

services or the internationalisation of companies complying with certain requirements and which are encumbered by public deed.

Consequently, adapting to these legislative changes made it necessary to restart the processing of the circular.

Draft Circular to credit institutions and approved appraisal companies and departments modifying Circular 7/2010, of November 30th, 2010, to credit institutions on the development of certain aspects of the mortgage market; Circular 3/1998, of January 27th, to approved appraisal companies and departments, on the information to be furnished to the Bank of Spain; and Circular 4/2004, of December 22nd, 2004, to credit institutions, on Circular 4/2004 on Public and Confidential Financial Reporting Standards and Financial Statement Formats for credit institutions

The circular's primary objective is to establish additional rules and mechanisms to promote independence of the appraisal business and to include a number of technical improvements. The draft aims to incorporate the content of Circular 4/2004, December 22nd, 2004, to complete the implementation of certain recommendations of the European Systemic Risk Board in relation to loans in foreign currency, and to set the manner and frequency of the valuations of the various different real-estate assets used as collateral for loan transactions.

A similar draft circular was tabled in 2012, but was halted when the draft law that led to Law 1/2013, of May 14th, 2013, on measures to strengthen the protection of mortgagors, debt restructuring, and rented social housing, was debated in parliament. The passing of the aforementioned Law entailed the modification of certain precepts of Law 2/1981, March 5th, 1981, Regulating the Mortgage Market, which affected the content of the preceding draft circular.