

# 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 approving the Regulation of the Law to prevent money laundering and terrorist financing (Royal Decree 304/2014, published in the BOE on May 6<sup>th</sup>, 2014)

This Royal Decree develops and gives detail to the risk-based approach already set out in the Law to prevent money laundering and terrorist financing. Bearing in mind the limited resources available to entities subject to AML/TF regulations, the new legislation requires them to adopt measures to enhance the efficiency and the effectiveness with which these resources are used by focusing on situations, products and customers with higher levels of risk.

It also responds to the FATF Recommendations of February 2012, which have not yet been incorporated in an EU Directive, but for which Spain has decided to bring forward implementation. Additionally, this new regulation also seeks to make the model of prevention more efficient by incorporating a risk-focused approach applicable to both the public and private sectors.

The main new features this Royal Decree introduces are:

- **Due diligence:** the regulation finally includes certain rules already being applied by certain credit institutions. Specifically:
  - It establishes the point in time at which each of the parties must be **formally identified**.
- It defines what is understood to constitute valid **documentary evidence**.
- In the case of the identification of the **beneficial owner**, it will be mandatory to take measures appropriate to the risk in order to verify the party's identity prior to entering into business dealings, executing electronic transactions involving sums of more than 1,000 euros or occasional transactions involving more than 15,000 euros. Additional documentation or information from reliable independent sources must be obtained when either the risk represented by the customer, beneficial owner, business relationship or the transaction is above average.

Additionally, regulated entities are given permission to access the **General Council of Notaries database of beneficial owners** in order to comply with the obligation to identify and confirm the identity of the beneficial owner.
- In relation to the **purpose and type of business relationship**, the obligation to check the declared activity when the customer or business relationship represents an above-average risk has been added.
- When the level of risk allows, regulated entities may apply **simplified due diligence measures** in relation to certain customers and in relation to certain products or transactions.
- **Enhanced due diligence measures are defined**, and the new features include the

option of requiring that payments or deposits be made into an account in the customer's name, held at a credit institution in the EU or equivalent country.

■ **Reporting obligations:** The regulated entities that must have an **automated alert generating and prioritising model are defined.**

■ **Control measures:**

- Small regulated entities are exempt from the **obligation to have written procedures.** Another new feature is that these procedures must be **approved by entities' governing bodies.**
- The regulation lists the factors that need to be analysed in the **risk assessment,** and highlights the need to **review them periodically.**
- Entities covered by the regulation with an annual turnover of more than 50 million euros or whose general annual balance sheet exceeds 43 million euros, are to have a **technical unit responsible for information analysis.**
- The regulation creates the obligation to terminate the **agency agreement** with any agent not complying with AML/TF obligations and requires there to be procedures in place to verify agents' good repute.
- Considerable importance is attached to the need for **training,** obliging entities to approve an annual training plan on AML/TF issues.
- The suitability criteria laid down in the applicable sector regulations are to be applied during the hiring of employees, executives and agents.

■ **Other provisions:**

- Action is to be taken when the **means of payment** are suspected or proven to be related to AML/TF activities following reporting of the transaction.
- In the case of international financial sanctions and counter-measures, the power to authorise funds transfers subject to counter-measures lies with the General Secretariat for the Treasury and Financial Policy. Authorisation must be applied for by the financial institution sending or receiving the funds.
- In relation to the **financial ownership filings,** it is provided that credit institutions are to report the opening or closing of current accounts, savings accounts, securities accounts or term deposits to the SEPBLAC<sup>1</sup> regardless of the commercial description of the account and changes in the parties' details registered in the immediately previous calendar month.
- The **National Tax Administration Agency may require and obtain information held or managed** by entities covered by this regulation arising out of their due diligence obligations under the AML/TF Law.

## Draft Royal Decree implementing the Law on the organisation, supervision and solvency of credit institutions

The **main features** of this Royal Decree are:

1. **Measures concerning authorisation, registration and activity:**

- This establishes the **requirements** to be met in order to **conduct banking business.** These include: (i) incorporation as a joint-stock company; (ii) having a fully paid-up share capital of at least 18 million euros in the form

<sup>1</sup> Commission on Prevention of Money Laundering and other Monetary Infractions.

of registered shares; (iii) that shareholders with significant stakes meet suitability criteria; and (iv) having a board of directors comprising persons of recognised good repute and professional standing, with the necessary knowledge and experience to perform their duties, and are willing and able to exercise good governance.

- It sets out the regulations for **cross-border activity** concerning the opening of branches and the freedom to provide services in other EU Member States and in non-EU States, and for the provision of services in Spain by credit institutions from other EU Member States and non-EU States. It also lays down the rules applicable to the opening of representative offices in Spanish entities, whose authorisation depends on the Bank of Spain.
- It regulates the relationship between credit institutions and their **agents and the delegation of the provision of services**.

## 2. Significant shareholdings:

- It maintains the treatment given to significant shareholdings in the previous regulations (Royal Decree 1245/1995).
- The **Bank of Spain will assess proposed acquisitions** of significant shareholdings based on a series of criteria. These include the good repute and professional standing of the potential acquirer or compliance with the suitability requirements applicable to members of the board of directors and general managers and similar who will be running the entity's business.

## 3. Corporate governance measures and remuneration:

- It incorporates the **suitability requirements** applicable to the members of the administrative and management body already envisaged in national and EU legislation.

■ In the following cases, authorisation by the Bank of Spain is not required in order to **obtain credits, sureties and guarantees**:

- Those covered under collective labour agreements between the entity and its employees.
- Those under contracts with standardised terms that do not exceed 200,000 euros.
- The board of directors is given responsibility for ensuring that the **corporate governance and remuneration policy information on the entity's website** is kept up to date and authorises the Bank of Spain to specify the terms of the configuration of the website.
- The Bank of Spain is also authorised to make the necessary checks to ensure that the appointments committee has **practices in place to promote gender diversity**.

## 4. Solvency of credit institutions

- As regards requirements for organisation, risk management and internal control, it lays down that entities must have an **internal audit function** and a **regulatory compliance function** independent from other areas, units or functions.
- The board of directors must have unimpeded access to information on the entity's risk status.
- Entities are to have **policies and procedures to control credit, counterparty, residual, and concentration risk, risks deriving from securitisation transactions, reputational risk, market risk, risks arising out of activities separate from the trading book, operational risk, liquidity risk, and risk of excessive leverage**.
- **Capital buffers**. The **powers given to the Bank of Spain** include: (i) setting the percentages of countercyclical buffers; (ii) identifying global systemically important financial institutions;

(iii) identifying other systemically important financial institutions; and (iv) rules on systemically important financial institutions' buffers against systemic risks.

## 5. Supervisory measures

■ The Bank of Spain will **review the systems, strategies, procedures and mechanisms** that institutions apply to comply with the solvency standards, and **assess the risks**.

■ **Internal methods.** The Bank of Spain will ensure that institutions do not depend solely or mechanically on external credit ratings when assessing the solvency of an entity or financial instrument. To this end it may publish technical guides. Moreover:

- Entities authorised to apply internal models will **notify the Bank of Spain of the results of applying these internal models to their exposures** included on **reference portfolios** drawn up by the EBA, and where applicable, on the **specific portfolios** prepared by the Bank of Spain, in order to **identify possible divergences** in the risk-weighted exposures or the capital requirements so as to **take corrective measures**.

- The **Bank of Spain will regularly review** (at least once every three years) institutions' **compliance** with the requirements of models whose use to calculate capital requirements is subject to prior authorisation.

## 6. Other points

■ **It establishes the percentage** of members of the board of trustees of **banking foundations** that must have specific knowledge and experience of financial matters.

■ It repeals the following laws:

- **Royal Decree 1245/1995**, July 14<sup>th</sup>, 1995, on the creation of banks, cross-border activity

and other points regarding the legal framework governing credit institutions.

- **Royal Decree 216/2008**, February 15<sup>th</sup>, 2008, on financial institutions' capital requirements, except the provisions concerning investment firms.

## Draft law amending the Share Capital Companies Law to improve corporate governance

This draft law **incorporating the proposed regulatory changes put forward by the experts' committee on corporate governance in December 2013** aims to improve corporate governance practices among Spain's companies, avoid abuses by administrative and management bodies, and, in short, to give more control over business to the general shareholders' meeting.

The changes affect listed companies in particular, although there are also important changes affecting all types of companies. These relate mainly to three areas: the powers of the general meeting of shareholders, the administration of the company, and remuneration of board members.

## Draft Bank of Spain Circular on the SAREB's criteria for estimating the value of its assets

This draft circular implements the authority granted to the Bank of Spain under Law 9/2012, November 14<sup>th</sup>, 2012, on the restructuring and resolution of credit institutions whereby the Management Company for Assets Arising from the Banking Sector Reorganisation (SAREB) is to comply with its general obligations to prepare annual accounts.

The draft Circular establishes that after initial recognition of its assets, the SAREB must **justify its methods of estimating value corrections**, and that its methodology is to be approved and

reviewed by its board of directors. Moreover, it must keep an **itemised inventory of its financial and real estate assets** stating a **fair value for each** asset item, such that the sum of the fair values of all the assets acquired is equal to the transfer value of the assets transferred both as a whole and with an individual price for each transferring institution.

In order for the SAREB's balance sheet to state realisable prices, the draft stipulates that **the need to make value corrections to "asset units" will be assessed when there is evidence that their value**, taking both the accrued interest and cumulative impairment into account, **is less than the estimated value of the "asset unit" as a whole**, in accordance with the methodology developed by the SAREB, charging the impairment to the profit and loss account in the period in which it arises.

In terms of the **timetable**, the Bank of Spain requires that at least 30% of the total property and financial assets must be appraised before December 31<sup>st</sup>, 2014, 60% before December 31<sup>st</sup>, 2015, and the remainder before December 31<sup>st</sup>, 2016.

