

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 urgent measures on bankruptcy (Royal Decree-Law 11/2014, published in the official gazette (BOE) on September 6th, 2014)

The aim is to facilitate agreements enabling businesses that are in bankruptcy proceedings to survive. This legal instrument complements the measures already implemented for the pre-bankruptcy phase by Royal Decree-Law 4/2014 of March 7th, 2014.

Royal Decree-Law 11/2014 amends various precepts of Law 22/2003 of July 9th, 2003, on Bankruptcy, as regards the following points:

As regards the **creditors' agreement**, the following points stand out:

- Analogous provisions related to the valuation of guarantees to which special preference is given are introduced.
- Increasing the quorum at the creditors' meeting, assigning voting rights to creditors acquiring their credit claims subsequent to the declaration of bankruptcy (always excluding those with special ties to the debtor).
- Agreements on capital increases required in the case of capitalisation will be adopted with the same majorities as provided for in the additional provision.

- Transfer of assets in lieu of payment has been facilitated, with certain precautionary measures to avoid fraud.
- The main new features of the legislation include changes in voting and majorities in the agreement, together with greater capacity to pull in dissenting creditors under certain circumstances.
- A mechanism is established to allow the measures in this Royal Decree-Law to be applied, once only, to agreements adopted under the previous legislation, provided that an enhanced majority (greater than that required to approve the agreement) is obtained and it is approved by the court.

As regards **winding-up**:

- The subrogation of the acquirer to contracts and administrative permits held by the assignor is introduced, and the mechanisms for exemption from liability for previous liabilities are arbitrated.
- Additional provisions are introduced regarding the transfer of assets in lieu of payment, such that the court may decide to withhold 10% of the assets to meet future challenges, so as to speed up the winding-up process.
- The sale of production units with assets given in guarantee is allowed, where creditor consent is eliminated, if the acquirer occupies the debtor's

place or receives the value of the guarantee and, otherwise, majorities binding dissenters are envisaged.

- The necessary legislative amendments to comply with the ruling of the Court of Justice of the European Union of July 17th, 2014, have been introduced. This entails amendments to the Code of Civil Procedure, such that the mortgage borrower may appeal against the writ overturning his opposition to foreclosure, if it is based on the existence of an unfair contractual clause that constitutes the grounds for foreclosure or the sum demanded.

Other noteworthy points:

- Clarification that the measures deriving from the precontractual phase will be considered clean-up measures for the purposes of Royal Decree-Law 5/2005 of March 11th, 2005, it being expressly envisaged that the same effects shall apply to these measures as are established in Royal Decree-Law 5/2005 for the commencement of bankruptcy proceedings.
- The creation of an online portal to facilitate the sale of companies or production units in liquidation is envisaged.
- A monitoring committee on refinancing and debt overhang reduction practices is set up, with the task of verifying compliance with the measures adopted by this Royal Decree-Law.

Draft law regulating venture capital firms and closed-ended collective investment undertakings

The draft law transposes Directive 2011/61/EU of the European Parliament and of the Council of June 8th, 2011, on Alternative Investment Fund Managers.

Firstly, the financial rules on venture capital (VC) firms are loosened, allowing them to use a wide

range of financial instruments, such as equity loans, thus giving greater flexibility to the calculation of timeframes for compliance with the mandatory investment ratio and allowing funds to distribute periodic earnings.

The concept of an **SME-VC firm** is established, consistent with Regulation (EU) 345/2013, of April 17th, 2013, allowing these entities to invest 70% of their assets in minority shareholdings in SMEs, participating in their management and playing an advisory role. The regulation aims to promote the venture capital sector geared to the early stages of business development, which has seen less growth, and offer this type of firm an alternative to bank financing.

Also, by imperative of Directive 2011/61/EU, **the scope of application of the Law is expanded**, subjecting to the regulations all collective investment undertakings of the closed-ended type with a predefined investment policy and distribution of earnings to investors. Consequently, entities that may have been operating in Spain as a firm governed by commercial law investing in unlisted shares, but which did not comply with the rules on investment and diversification of venture capital, come under its scope.

It is noteworthy that **the system of administrative intervention of the CNMV in VC firms or closed-ended collective investment undertakings is almost entirely eliminated**. Under European Union rules, the authorisation for management companies is retained, while investment companies and funds whose management has been delegated to a management company will merely be registered. Moreover, in line with the goal of reducing the administrative burden, the rules for linked operations between venture capital firms and their partners have been relaxed.

Lastly, a new objective liability regime has been established for depositaries affecting all investment vehicles (VC firms, closed-ended Collective Investment Undertakings (CIUs), and

Collective Investment Institutions (CIIs), whether harmonised or not). This is due to the legislator's bringing forward application to all Undertakings for Collective Investment in Transferable Securities (UCITS) depositaries of the objective liability regime envisaged for depositaries of VC firms and closed-ended CIUs through an amendment of the Law on collective investment institutions.

Under this new regime, in the case of a loss of the financial instruments held in custody, the depositary must return without undue delay a financial instrument of identical characteristics or the corresponding sum.

Consequently, once all the necessary legislative formalities for its approval have been completed, there will be a new objective liability regime for depositaries applicable to all deposited assets:

- For open-ended collective investment institutions, whether harmonised (UCITS) or not (alternative investments), regulated in the law on collective investment institutions.
- For closed-ended investment undertakings (VC firms and collective investment undertakings of the closed-ended type) regulated under the new Law regulating venture capital firms and collective investment undertakings of the closed-ended type.

Draft Bank of Spain Circular amending Circulars 4/2004, 1/2010 and 1/2013

The draft aims to incorporate the **new statistical and supervisory information requirements** to comply with the Bank of Spain's obligations to provide information to the European Central Bank, and adapt the content of confidential and public financial information and the data reported to the central credit register to the data preparation criteria, terminology, definitions and formats of the statements known as **FINREP**. These statements are obligatory for consolidated financial supervisory information applying International

Financial Reporting Standards adopted by the EU or assimilated national accounting standards.

The **main points** of the draft are as follows:

- **Circular 4/2004**. The amendments affect the rules on (i) other individual and consolidated public information; (ii) elements of the annual accounts; (iii) recognition and valuation criteria; (iv) business combinations and consolidation; (v) content of financial statements; (vi) confidential statements; (vii) internal accounting implementation and management control; and (viii) presentation of statements and other information to the Bank of Spain.
- The rules on confidential statements by finance companies, consolidated confidential statements of sector information, have also been repealed, and a third additional provision has been added updating the terminology.
- In the case of the annexes to Circular 4/2004, Annexes I (Individual public statements of credit institutions), II (Public statements of foreign credit institutions, headquartered in a member state of the European Economic Area), III (Consolidated public statements), VII (Confidential statements regarding the statistical requirements of the Economic and Monetary Union) and VIII (Sectorisation) are replaced by the annexes of the draft Circular, Annex VI (Consolidated confidential statements of sectoral information) is eliminated, and Annexes IV (Individual confidential statements), IX (Risk analysis and coverage) and X (Special records of mortgage activity) are amended.
- **In Circular 1/2010**, the amendments refer, among other things, to the statements in the annex which are replaced by the "Interest rate statistics" annex in the draft Circular.
- **In Circular 1/2013**, on the central credit register, the changes include amendments to Annex I (Personal data and code application), Annex 2 (instructions on preparing the data modules)

and Annex 3 (Information on risks that will be furnished to reporting entities).

The Circular **will come into force** according to the following schedule:

- The amendments made to Circular 4/2004, on **May 31st, 2015**, except the following provisions, which will enter into force prior to that date:
 - (i) Confidential statements regarding the statistical requirements of the Economic and Monetary Union; (ii) amendments made to Annexes VII, VIII.3. IX and X; and (iii) elimination of statements T.17, T.18, C.2, C.4, C.8, C.11, C.12, C.13, C.15, C.16, C.19 and C.20, on **December 31st, 2014**.
 - Elimination of statements C.1, C.3, C.6, C.7, C.14, C.17 and C.18, on **March 31st, 2015**.
- The modifications will be introduced in Circular 1/2010 and 1/2013 on **December 31st, 2014**.