

# Recent key developments in the area of Spanish financial regulation

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## Royal Decree-Law on the second-chance mechanism, reduction of financial burden, and other social measures (Royal Decree-Law 1/2015, published in the BOE on February 28<sup>th</sup>, 2015)

The second-chance mechanism aims to allow individuals who have lost everything after having sold off all their assets to repay their creditors to be released from the majority of their remaining debts, while at the same time making it possible to quantify the debtor's asset recovery, such that the benefit can be revoked for reasons of fairness to creditors.

The second-chance mechanism basically comprises the following measures:

### I. Urgent measures to reduce the financial burden:

#### 1. Amendment of Law 22/2003 of July 9<sup>th</sup>, 2003, on bankruptcy

■ In cases of **bankruptcy ending in liquidation or insufficient assets**, where the debtor is a natural person, the outstanding debt will be cancelled provided the debtor has acted in good faith (the requirements to be met to demonstrate the debtor's good faith are defined).

● Creditors' rights against the debtor's joint and several obligors and guarantors are unaffected, and the latter may not invoke the benefit of cancellation of the outstanding liabilities available to the bankrupt.

● Moreover, if the bankrupt is married and his or her property is owned jointly with his or her spouse, and the joint estate has not been liquidated, the benefit of cancellation of the outstanding liabilities will also apply to the bankrupt's spouse.

● Nevertheless, for a five-year period after the benefit of cancellation of outstanding liabilities is granted, any creditor in the bankruptcy proceedings may apply for it to be revoked.

■ The cases in which **proceedings to reach an out-of-court payments agreement** may be begun have been modified: such proceedings may be begun by any debtor who is a natural person finding himself or herself insolvent, provided the initial estimate of his or her liabilities **does not exceed five million euros**.

■ The application for the **appointment of a bankruptcy mediator in proceedings to reach an out-of-court payments agreement** must be made using standard forms, accompanied by an inventory of assets and expected regular

income, and the list of creditors. The content of the application will be determined by an Order issued by the Ministry of Justice. In the case of both legal and natural persons, the bankruptcy mediator may be a Chamber of Commerce or the Official Chamber of Commerce, Industry, Services and Navigation of Spain.

- The **out-of-court payments proposal**, may consist of: (i) a grace period of up to ten years; (ii) write-offs; (iii) transfer of assets to the creditors as partial or total repayment of loans; (iv) conversion of debt into shares or other equity in the debtor company; and (v) conversion of debt into equity loans with a maturity of no more than ten years.
- In order for the **out-of-court payments agreement to be considered accepted** it needs to be adopted by various majorities, calculated according to the volume of the liabilities. Out-of-court payments agreements accepted by these majorities may not be revoked under bankruptcy law.
- **Subsequent arrangements with creditors** will be governed by the rules for summary proceedings, with specific requirements for formalisation, documentation accompanying the application, and the appointment of the insolvency mediator as the receiver in bankruptcy.
- The Ministry of Economic Affairs and Competitiveness will set up a free application on its website allowing confidential access where any interested parties may determine their **solvency status** with regard to the application of urgent financial burden reduction measures.

## 2. Amendment of Royal Decree-Law 6/2012 of March 9<sup>th</sup>, 2012, on urgent measures to protect mortgage debtors without resources

- **Broader definition of the exclusion threshold.** The main changes are:

- The public multipurpose income indicator (IPREM) is now defined as having 14 rather than 12 payments.
  - Inclusion of debtors aged over 60.
  - The way in which the maximum price of mortgaged property covered by the Code of Good Practice is determined has been changed, such that it now depends on the house price index published by the Ministry of Development. Properties whose purchase price does not exceed the result of multiplying the property's floor area by the price per square metre according to the index, with an **upper limit of 250,000 euros**, may benefit from **dation in payment**.
  - The measures the financial institution must offer the debtor in the restructuring include the permanent non-application of clauses limiting the drop in interest rates (floor clauses).
  - Adherence to the Code will be considered automatic if the institution had signed up to an earlier version of it, unless it expressly communicates its wish not to adhere to it within one month.
- ### 3. Amendment of Law 1/2013 of May 14<sup>th</sup>, 2013, on measures to strengthen the protection of mortgage borrowers, debt restructuring, and rented social housing.

The **moratorium on evictions** of persons belonging to vulnerable groups from their primary residence as defined in Law 1/2013 has been extended from **two to four years**.

## II. Other social and tax-law measures

### 1. Personal income tax:

- Expansion of the application of deductions for large families or those including disabled persons.

- Exemption of nominal earnings deriving from debt write-offs and dation in payment established in an agreement with creditors, out-of-court payments agreement, or as a consequence of debt relief.

## 2. Corporate income tax:

- An exclusion has been established for institutions whose total earnings in the tax period do not exceed 50,000 euros, provided that the total amount of earnings corresponding to non-exempted earnings do not exceed 2,000 euros a year, and that all non-exempted earnings are subject to withholdings, provided that they are not subject to Law 49/2002 of December 23<sup>rd</sup>, 2002, or political parties.

## 3. Court fees:

- Natural persons are deemed exempt in all courts.

### **Bank of Spain Circular, addressed to payment service providers, on information regarding discount rates and interchange fees charged (Circular 1/2015, published in the BOE on March 30<sup>th</sup>, 2015)**

Royal Decree-Law 8/2014 had regulated the ceiling on the interchange fees chargeable on payment transactions as of September 1<sup>st</sup>, 2014, using debit or credit cards at point-of-sale terminals in Spain. Subsequently, Law 18/2014 was passed on October 15<sup>th</sup>, 2014 (amended by Law 22/2014), specifying that the limitation on fees will be applicable when payment service providers (both payer and recipient) are established in Spain. The Law also states:

- Payment service providers' obligation to inform the Bank of Spain of the discount rate and interchange fees effectively applied to payment transactions using debit or credit cards at point-of-sale terminals in Spain;

- That the manner and the content and frequency of reports is to be determined by the Bank of Spain; and
- Publication on the Bank of Spain's and the payment service provider's website.

Circular 1/2015 aims to comply with the Bank of Spain's requirements as regards determining the content and other aspects of the **reporting and publication obligations** for the data referred to above.

As regards the **publication of discount rates and interchange fees**, the Bank of Spain is required to publish on its website in aggregate form all the information received quarterly from institutions, except that on discount rates charged on three-party card payment systems.

Reports must be sent to the Bank of Spain no later than the 15<sup>th</sup> of the second month after the calendar quarter to which the data refer. Exceptionally, reports referring to the third and fourth calendar quarters of 2014 and first calendar quarter of 2015 may be sent on the **last working day of May 2015**.

### **Law to promote business financing (Law 5/2015, published in the BOE on April 28<sup>th</sup>, 2015)**

The law contains a series of measures to enhance access and flexibility of bank finance for SMEs and stimulate a recovery in bank credit. It also incorporates measures to promote the development of alternative means of financing.

The main issues regulated by the Law are:

- **Improvements in bank financing of SMEs:** Credit institutions are **required to give notice** of at least three months when they intend not to extend credit to an SME or reduce it by 35% or more. After giving notice, the credit institution will provide the SME, free of charge, with a document called "SME financial information,"

drawn up based on the credit information obtained during its relationship with the client.

Regardless of whether or not financing flows may be reduced or terminated, SMEs will be entitled to request this “SME financial information” document at any time unconditionally. The Bank of Spain will be responsible for specifying the content and format of this document, and for providing a standard template. The Bank of Spain will also oversee compliance with the obligations set out in this Law.

**The functioning of mutual guarantee societies is to be enhanced** through the capitalisation vis-à-vis the creditor of the Compañía Española de Reafianzamiento’s re-guarantee, in the case of default by the mutual guarantee society on first demand. Additionally, to enhance mutual guarantee societies’ management, professionalism and good governance, the requirements of good repute, knowledge and experience applicable to directors of credit institutions will extend to them.

■ **Legal framework for finance companies (FCs):** The new legal framework applicable to finance companies as a result of their loss of the status of credit institutions under Law 10/2014 (deriving from CRR and CRD IV) is defined. This lays down that firms other than credit institutions engaged professionally in the following activities may establish themselves as finance companies: (i) granting loans and credit; (ii) factoring; (iii) finance leasing; (iv) granting guarantees; and (v) granting reverse mortgages.

The aim is to provide FCs with a legal framework so as to maintain and promote their activity, which is geared towards corporate and consumer finance through alternative channels to traditional banks.

■ **Legal framework for asset securitisation:** The framework has been improved with three goals: firstly, unifying the regulatory dispersion on the subject to ensure consistency; secondly, to bring Spain’s legal framework closer to that of comparable countries; and, finally, offering

maximum legal security and legal support to customary operations in the securitisation area, strengthening requirements in terms of transparency and investor protection.

■ **Improvements in capital market access and functioning:** Firms’ access to capital markets has been improved. Firstly, the Securities Market Law has been amended to encourage the transition of firms from a multilateral trading facility to an official secondary market. Secondly, the rules on bond issues have been improved by introducing various measures in mercantile regulation to facilitate direct access to debt markets by Spanish firms by eliminating issue limits.

■ **Legal framework for crowdfunding platforms:** Peer-to-peer business financing platforms or “crowdfunding” platforms have been regulated in Spain for the first time. The aim is to regulate the conditions under which this system operates, in which investors and projects seeking funding are put in direct contact with one another via electronic platforms. The objective is to promote this new tool for direct financing of business projects in their early stages of development, while protecting investors. To this end, these platforms are required to be transparent and to provide investors with adequate information. Investor limits have therefore been set on investments per project (3,000 euros) and crowdfunding platforms as a whole (10,000 euros a year).

■ **Strengthening the CNMV’s supervisory capacity:** The powers of the National Securities Market Commission (CNMV) have been modified by a reform to the Securities Market Law to enhance its functional independence and strengthen its supervisory powers. The goal is to ensure market transparency, proper price formation, and investor protection.