

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 regulating fees for the withdrawal of cash from automated teller machines (Royal Decree-Law 11/2015, published in the official gazette (BOE) on October 3rd, 2015).

Royal Decree-Law 11/2015, amending the Payment Services Law, establishes a new fee-charging model for cash withdrawals from automated teller machines (ATMs) to avoid duplication of charges upon users. The law came into force on the date of its publication, although certain provisions were postponed until January 1st.

The Royal Decree-Law (RDL) states that ATM operators may not charge customers of other institutions authorised in Spain or customers of branches of foreign credit institutions operating in Spain any fee whatsoever, without prejudice to the fee that may be charged by the card or payment instrument issuing institution.

Moreover, prior to the debit cash withdrawal, the ATM operator must inform the customer of the fees due to be charged by the card or payment instrument issuer, and the possibility that this fee will be passed on to the ATM operator, in whole or in part. In the case of cash withdrawals on credit, the customer will be informed of the maximum additional amount the issuer may charge.

The fee the issuer is to pay the ATM operator may be set by an agreement between the two parties, or in the absence of such an agreement, will be a flat rate throughout Spain.

The issuer may not charge its customers a sum exceeding the fee charged by the ATM operator in the case of debit cash withdrawals from third-party ATMs. The issuer may charge the customer an additional amount in the case of a credit cash withdrawal.

ATM operators or card or payment instrument issuers must inform the Bank of Spain of the fees they charge for cash withdrawals. The Bank of Spain is therefore authorised to determine the reporting format, content and periodicity.

The RDL also provides that:

- Non-compliance with the provisions of this RDL shall be considered a serious infringement.
- The National Markets and Competition Commission will send a report to the Ministry of Economic Affairs and Competitiveness on institutions' agreements and decisions regarding cash withdrawal fees. The first report will be sent in the first half of 2016.

Royal Decree implementing the savings banks and banking foundations Law, regulating the reserve fund certain banking foundations are to constitute (Royal Decree 877/2015, published in the BOE on October 3rd, 2015).

The **main features** of Royal Decree 877/2015 are as follows:

I. Banking foundations

This Royal Decree (RD) will be applicable to all banking foundations with a direct or indirect shareholding of 50% or more in a credit institution or a shareholding giving them control over the credit institution under the terms of Article 42 of the Commercial Code, requiring them to **constitute a reserve fund**, unless they have stated their intention to be covered by Article 44.3.b¹ of Law 26/2013.

The Bank of Spain shall determine the circumstances and ways in which the banking foundation is to make use of its reserve fund to meet the **solvency needs of the investee institution**.

The **main features** are summarised below.

■ The RD determines the **minimum target amount** of the reserve fund, calculated as a percentage of total risk-weighted assets of the consolidated group or sub-group whose parent company is the investee credit institution. The percentage will be set depending on the ratio of total CRR capital held by the consolidated group or sub-group whose parent company is the investee credit institution:

- 1.75% if the total capital ratio is less than 10%;

- 1.5% if it is between 10% and 11%;
- 1.25% if it is between 11% and 12%;
- 1% if it is between 12% and 13%;
- 0.75% if it is greater than or equal to 13%.

Adjustments will be made to this **calculation of the minimum target amount** depending on various circumstances:

- It will be reduced by **0.5%** if the investee credit institution is a listed company, provided that more than 25% of its shares are owned by third parties outside the group to which the institution belongs.
- It will be increased by **1%** if the sum of the instruments eligible as own funds the foundation holds in other financial institutions, excluding its shareholding in the investee credit institution, exceeds 40% of the foundation's net worth.
- Depending on the direct shareholding in the credit institution, or indirect shareholding through an intermediary company, it may be reduced or increased:
 - ✓ By **-0.5%** if the shareholding in the credit institution is less than 50%;
 - ✓ By **0%** if it is between 50% and 60%;
 - ✓ By **0.5%** if it is between 60% and 70%;
 - ✓ By **1%** if it is greater than or equal to 70%.

The target amount of the reserve fund may not be less than **0.6% of the risk-weighted assets (RWA)**, unless the Bank of Spain sets a lower percentage based on the individual characteristics of the banking foundation.

¹ Inclusion of a divestment programme in their diversification plan that sets out in detail the measures the foundation is due to implement to reduce its shareholding in the credit institution within a maximum period of five years.

- As regards the way in which the reserve fund is constituted, it must be invested in **high credit quality, high liquidity financial instruments**. The fund may be set up within the banking foundation or through a **holding entity**, when the **following requirements** are met:
 - a) It is 100% directly owned by the banking foundation. If several banking foundations have shareholdings in a credit institution and constitute a single holding entity, 100% of the direct shareholding in it must be distributed between the banking foundations in proportion to each one's shareholding in the credit institution.
 - b) The holding entity owns assets of sufficient liquidity and credit quality that are freely available to it immediately and without any limitations whatsoever.
 - c) It is not within the perimeter of consolidation of the credit institution in which the banking foundation has a direct or indirect shareholding.
- The assets making up the reserve fund may only be allotted to the investee credit institution to meet its solvency needs. In this case, those assets that need to be sold or swapped prior to their transfer to the investee credit institution shall be recognised in the reserve fund with a **haircut of up to 33%** (to be determined by the Bank of Spain depending on the liquidity of these assets and the estimated loss in value that may take place at the time of their sale or swap).
- The fund's target volume must be reached within a **maximum period of five years** from the entry into force of the Bank of Spain Circular implementing this Royal Decree.
- For the **submission of the financial plan** or to update a submitted or approved plan, banking foundations will have up to **three months** after the entry into force of the Bank of Spain

Circular developing this Royal Decree. This plan must include a **timetable of allocations**, which are to be linear over time.

II. Other amendments

The amendments to the Royal Decree implementing the Account Auditing Law include the inclusion of **banking foundations as public-interest entities** and the waiver for collective investment institutions and pension funds from the obligation to have an **Audit Committee**.

Finally, the **liquidity ratio for collective investment institutions of a financial nature** has been made more flexible, and the **cash control function** contained in the Regulation implementing the Law on collective investment institutions has been amended.

Royal Decree on clearing, settlement and registration of securities represented in book-entry form, on the legal framework and transparency requirements of central securities depositories and central counterparties, and on transparency requirements upon issuers of securities traded on an official secondary market (Royal Decree 878/2015, published in the BOE on October 3rd, 2015)

Royal Decree 878/2015 aims to adapt the Spanish securities clearing, settlement and registration system to the new European context and enable Spain's future membership in the Target 2-Securities system. It therefore aims to modernise share trading to make it more efficient and to lower transaction costs. This Royal Decree completes the transposition of the transparency and prospectus Directives. It is due to come into force on February 3rd, 2016, except for certain articles and provisions which will come into effect earlier.

As regards the representation of **marketable securities in the form of book-entries**, it clarifies the structure and functioning of the Spanish securities book-entry system, which is structured as a **two-tier system**. The first tier is held on a central register managed by the central securities depository (CSD), and the second tier comprises the retail registers managed by entities participating in the depository.

The main changes affecting **securities clearing and settlement** are:

- The **central counterparty (CCP)** and **central securities depository (CSD)** are introduced:
 - The main task of the CCP is to accept and register transactions and the novation of accepted transactions.
 - Market participants will have the option of being a clearing member and/or participant of the CCP. This means that participants need to adopt urgent decisions regarding the nature of their participation in CCPs.
- **“Register references”** through which securities trades were previously effected have been eliminated and replaced by a system based on securities balances, and the fixed-income securities registration system. This greatly simplifies and streamlines transaction settlement.
- The Spanish **transaction settlement** system has been adapted to the European CSD system, which comes into force in early 2016. Application of this standard will enable Spain’s future integration in pan-European post-trade infrastructure, such as the Target 2-Securities system.
- The information system for supervision of securities clearing, settlement and registration, termed the **post-trading interface**, will be managed by the CSD and will have all the information provided by all the participants in the post-trading process.

- The amendments to this Royal Decree do not apply to fixed-income securities traded on an official secondary market, to multilateral trading facilities, or public debt traded on the book-entry public debt market. This is due to the fact that securities of this type are already cleared using the balance system.

Bank of Spain Circular implementing the accounting specificities of the Management Company for Assets Arising from the Banking Sector Reorganisation (Sareb) (Circular 5/2015, published in the BOE on October 2nd, 2015).

This Circular derives from the authorisation given to the Bank of Spain by Law 9/2012 of November 14th, 2012, on Credit Institution Restructuring and Resolution, whereby the Sareb is required to comply with general obligations to prepare annual accounts under the Share Capital Companies Law.

According to the Circular, the Sareb will:

- Evaluate the need to make **value adjustments for impairment** to each of its asset units/types.
- **Develop the relevant criteria** for the methodology for estimating value adjustments for impairment.
- Have valued at least 50% of the assets acquired that remain on its balance as at December 31st, 2015, according to the above criteria, these assets being sufficiently representative of the different types and locations, and the totality of the assets on the balance sheet on December 31st, 2016.

The General Accounting Plan will be applicable to all points not covered by this Circular.