

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)

Bank of Spain Circular on information about cash withdrawal fees from ATMs (Circular 3/2016, published in the BOE on March 29th, 2016)

This Circular uses the regulatory powers conferred by Royal Decree-Law 11/2015 of October 2nd regulating cash withdrawal fees from ATMs, amending Law 16/2009 of November 13th, 2009, on payment services. The Circular entered into force the day after its publication in the State Official Gazette (BOE), *i.e.* on March 30th, 2016.

The Circular **determines the form, content and frequency with which entities are required to submit information** on the fees that ATM operators collect from card and other payment instrument issuers for cash withdrawals:

The Circular is applicable to the following entities:

- **Operators¹ of ATMs** (cash dispensers) allowing customers of other entities to withdraw cash.
- **Card and other payment instrument issuing institutions**, *i.e.* payment service providers registered in Spain and authorised

to issue cards or other payment instruments in Spain and branches in Spain of credit institutions authorised in an EU Member State or third country.

The above entities are to send **online information** to the Bank of Spain **on the fees they charge** issuing institutions for cash withdrawals (distinguishing whether agreements have been signed or not), and the **fees payable to ATM operators**, as applicable, using the forms defined in Annexes 1 and 2 of the Circular, at the following intervals.

- Within the first 10 working days of January of each year. This report is to include the information for the period to December 31st of the previous year.
- Within 10 working days of the first working day after which a new agreement comes into force, or an existing agreement is amended or terminated or the established fee is revised unilaterally.
- Within 20 working days of an entity's becoming subject to the regulation.

The following **obligations to provide information to the Bank of Spain** are also established:

¹ These include: credit institutions, payment institutions, electronic money institutions, finance companies authorised to operate as hybrid payment institutions or hybrid electronic money institutions, and branches in Spain of any of the foregoing authorised in an EU Member State or third country.

- Within **10 working days** of the Circular's entry into force, ATM operators and card and other payment instruments issuers in Spain must give notice of this fact.
- Within **20 working days** of the Circular's entry into force, entities included within its scope of application are to send forms with the information referring to the last calendar day of the month immediately preceding its entry into force.

In both cases, the financial instruments affected will be listed and the cases in which a complex structure is deemed to exist will be specified.

Draft CNMV Circular on warnings concerning financial instruments

On April 14th, the Draft Circular on warnings concerning financial instruments was published on the CNMV (National Securities Market Commission) website. The Circular's aim is to strengthen investor protection in the precontractual phase of the purchase of financial instruments considered particularly complex. The Circular will come into effect three months after its publication in the BOE.

The **scope** of the draft Circular includes: investment firms; credit institutions; foreign branches in Spain of investment firms, of collective investment institutions' management companies and of credit institutions; EU investment firms and credit institutions operating under the freedom to provide services through agents; and non-EU investment firms, collective investment institutions management companies and credit institutions that provide services in Spain without branches.

The draft Circular defines (i) the warnings issued by entities and the handwritten statements to be obtained from customers in relation to financial instruments that, **in view of their complexity, are not generally appropriate** for non-professional investors; and (ii) the warnings in relation to **the estimation of the fair value** of certain financial instruments.