

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 establishing the accounting regime that banking foundations must apply and amending the Accounting Circular and the Circular on the Central Credit Register (Circular 7/2016, published in the Official State Gazette (BOE) of December 3rd)

The objective of the Circular is to regulate the regime of the individual and consolidated financial statements of the banking foundations governed by Law 26/2013, and of the confidential financial statements that they must submit to the Bank of Spain.

■ General regime of banking foundations' financial statements

- **Individual financial statements:** banking foundations will apply Royal Decree 1491/2011¹, with the specific items provided for in this Circular. On a supplementary basis, they will apply the National Chart of Accounts (Royal Decree 1514/2007) and its industry adaptations, as well as the resolutions of the Spanish Accounting and Audit Institute (ICAC).

The structure of the individual financial statements must be adapted to the standard model regulated by Royal Decree 1491/2011. In the preparation of their individual financial statements they must not use the abridged and simplified models regulated by said Royal Decree.

- **Consolidated financial statements:** banking foundations that have holdings in companies, including credit institutions, in which they hold a position of control in the terms provided for in Article 42 of the Commercial Code, must prepare these financial statements.

There will be no standardization of valuation methods prior to incorporation in the foundation's financial statements for the purposes of preparation of the consolidated financial statements of banking foundations. However, in the event that, at year-end, one of the group companies had issued securities listed on a regulated market of any European Union Member State, International Financial Reporting Standards will be applied.

In any event, the structure of the consolidated financial statements of banking foundations must be adapted to the Accounting Circular.

¹ Royal Decree 1491/2011, of October 24th, approving the rules for adapting the Spanish National Chart of Accounts for non-profit entities and the action plan model for non-profit entities.

■ Reserve fund

Banking foundations that have to set up a reserve fund must identify in their **internal accounting**:

- ✓ the detail of the own funds items composing the reserve fund; and
- ✓ the detail of the items composing the assets in which said fund is materialised.

The above-mentioned assets will be recognised for accounting purposes in the corresponding balance sheet items.

■ Notes to the financial statements

Banking foundations which are subject to Law 26/2013 must include the following in the notes to their consolidated and individual financial statements:

- ✓ As regards the **management protocol**, they must disclose whether it has been approved by the Bank of Spain and, if so, the date of approval. Also, they must include an explicit reference to the section of the foundations' website on which it is published.

Additionally, the notes to the financial statements must indicate the essential elements of the content of the management protocol.

- ✓ As regards the **financial plan**, they must disclose whether it has been approved by the Bank of Spain and, if so, the date of approval. Also, they must indicate whether they are obliged to present a reinforced financial plan.

In the case of **foundations acting together**, the information on the management protocol and the financial plan prepared jointly must be included in the notes to the financial statements of each foundation.

■ Submission to the Bank of Spain:

- The banking foundations obliged to present a reinforced financial plan must submit the following **confidential individual financial statements** on an annual basis: confidential individual balance sheet, confidential individual income statement, breakdown by counterparty of investments in financial assets and breakdown by the National Classification of Economic Activities (CNAE according to its Spanish acronym) codes of investments in financial assets.

The other banking foundations must only submit to the Bank of Spain the confidential individual balance sheet and the confidential individual income statement.

Such statements must be presented by means of electronic transmission no later than March 31st of each year and they must relate to December 31st of the previous year.

- As regards **public financial statements**, all the banking foundations will submit to the Bank of Spain individual financial statements and, as the case may be, consolidated financial statements, with their corresponding audit reports, within the ten working days following their approval by the board of trustees.

■ Amendment of the Accounting Circular

The new developments planned for Circular 4/2004 are based on the latest changes in the definitions and formats for the preparation of supervisory financial information reporting in the European Union (known as "FINREP") and for simplifying credit institutions' reporting requirements.

Amendments are made in **Annex IX** on the treatment of reclassifications to bring them more into line with the implementing technical standards planned by the EBA. The most noteworthy changes are as follows:

- In order to exit the **standard risk under special monitoring category** in the case of restructuring or refinancing transactions, an alternative criterion is added to the payment of all the amounts past due or that would have been derecognized, which assumes that the holder's payment capacity has been demonstrated by means of other objective criteria.
- During the **test period** of refinancing, refinanced or restructured transactions, reclassification to the category of doubtful exposures for reasons other than customer arrears in the event of further refinancing or if there are amounts past due by more than 30 days will only take place in the case of the transactions which had been classified in the doubtful exposures category prior to the start of the test period.
- As regards **reclassification from doubtful exposures (for reasons other than customer arrears) to the category of standard risk under special monitoring**, a specific alternative criterion is added to allow such reclassification in the event that other objective criteria have been verified demonstrating the holder's payment capacity.

■ Amendment of the Circular on the Central Credit Register

Circular 1/2013 is amended to update the rules applicable to the situation of holders of risk, to improve information on the situation of restructured and refinanced transactions, and to define the concepts of guarantors and insurers and surety companies, as well as the treatment of collection rights on regulated tariffs.

■ Entry into force

The Circular entered into force the day after its publication in the Official State Gazette (BOE) with the following exceptions:

- ✓ the new format of the "Information on loans arranged, acquired or classified in the month (business in Spain)" statement of the Accounting Circular that will enter into force on December 31st, 2016. The first statement may be submitted until the same date on which the statement corresponding to March 31st, 2017, is submitted; and
- ✓ the amendments to Annexes 2 and 3 of the Circular on the Central Credit Register (CIRBE), that will enter into force on January 1st, 2017.

Royal Decree-Law on urgent measures on financial matters (Royal Decree-Law 4/2016, published in the Official State Gazette (BOE) of December 3rd)

The Royal Decree-Law regulates certain matters relating to the Single Resolution Fund, to the specific accounting regime of the Asset Management Company for Assets Arising from Bank Restructuring (SAREB) and to the divestment period of the Fund for the Orderly Restructuring of the Banking Sector (FROB) of the institutions in which it participates.

The Royal Decree-Law grants the Ministry of Economy, Industry and Competitiveness the **authorisation to sign the loan facility agreement**² with the Single Resolution Board and grants the General Secretariat of the Treasury and Financial Policy the authorisation to perform the transactions deriving from this agreement.

The Royal Decree-Law also **amends Law 9/2012**, of November 14th, on credit institution restructuring and resolution, specifying the recognition regime of the valuation adjustments of assets, net of their tax effect, with a charge to an equity item.

² On December 8th, 2015, ECOFIN agreed that the Member States participating in the Banking Union should make a loan facility available to the Single Resolution Board to ensure sufficient funding of the Single Resolution Fund.

Lastly, it **amends Law 11/2015**, of June 18th, on the recovery and resolution of credit institutions and investment firms, to extend the period of divestment by the FROB of the ordinary shares or capital contributions acquired in the framework of restructuring and resolution processes from five to seven years. This period may subsequently be extended by agreement of the Spanish Cabinet when the Ministry of Economy, Industry and Competitiveness deems it necessary to best achieve resolution objectives.