Recent key developments in the area of Spanish financial regulation

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Bank of Spain Circular amending the Circular on banking service transparency and responsible lending (Circular 5/2017, published in the *Official State Journal* on January 3rd, 2017)

Bank of Spain Circular 5/2017 stems from the need to adapt existing legislation for recent changes that require the *ad hoc* and largely superficial amendment of Annex 8 of Circular 5/2012, whose wording had become obsolete in respect to the following two aspects:

- Circular 5/2012 continued to refer to the European Banking Federation as the manager of Euribor, even though its name was changed to the European Money Markets Institute (EMMI) in June 2014. The purpose of this change is to highlight the operational independence of the EMMI with respect to the European Banking Federation.

- The above-mentioned Circular failed to refer to Euribor as a "critical benchmark", despite this rate having gained this status in Commission Implementing Regulation (EU) 2016/1368 of August 11th, 2016. That Regulation established a list of critical benchmarks used in financial markets, specifically including the Euro Interbank Offered Rate (Euribor®) on that list.

As a result, this Circular, which took effect the day after its publication, updates the contents of Annex 8 in relation to the definitions of Euribor and Mibor in order to introduce these changes.

Royal Decree amending the regulation on the articulation of pension commitments by companies for employees and beneficiaries and the regulation governing pension plans and funds (Spanish Royal Decree 62/2018, published in the *Official State Journal* on February 10th, 2018)

Royal Decree 62/2018 (February 9th, 2018), which amends the Regulation on the articulation of pension commitments by companies for employees and beneficiaries enacted by means of Royal Decree 1588/1999 (October 15th, 1999) and the Regulation on pension plans and funds enacted by Royal Decree 304/2004 (February 20th, 2004), took effect the day after its publication except with respect to the remuneration of pension fund managers and depositories, these aspects being due to take effect two months after its publication.

Royal Decree 62/2018 stems from the amendment of the consolidated text of the Pension Plans and Funds Regulation Act, enacted by Legislative Royal Decree 1/2002 (of November 29th, 2002), by virtue of Law 26/2014 [1]. The above-mentioned amendment introduced: (i) the possibility that pension plan unit holders could gain early access to vested investments in respect of contributions made at least 10 years earlier; and, (ii) the duty on the part of the source management company to inform the destination entity about the procedures for switching vested entitlements between plans.

To this end, the Regulation on the articulation of pension commitments by companies for

employees and beneficiaries enacted by means of Royal Decree 1588/1999 (October 15th, 1999) was amended to introduce changes with respect to: the information to which insured employees, beneficiaries already receiving their benefits with a charge against the insurance contract, and those insured under a company pension plan are entitled in the event that they wish to gain early access to economic entitlements corresponding to the premiums paid at least 10 years earlier.

Elsewhere, the amendment of the Pension Plans and Funds Regulation, enacted by Royal Decree 304/2004 (February 20th, 2004), refers to the following aspects, among others:

- Introduction of a new liquidity event for pension plans and similar schemes. As a result, the unit holders of individual and group pension plans may gain early access, in full or in part, to the vested rights corresponding to contributions made at least 10 years earlier.

- These vested rights may be monetised by means of one or several successive payments, subject to the terms or limitations that may be stipulated in the company pension plans. Monetisation of these entitlements shall be compatible with making contributions to pension plans for potential contingencies.

- Criteria have been added to the pension plan specifications for the calculation of the daily value applicable to: contributions; plan switches; benefits payments; and liquidity events under exceptional circumstances and the early monetisation option.

- Changes have been made in the area of pension fund investments in order to reflect prevailing regulations. These include the requirements to be met by the properties and the shares or unit holdings in closed-end collective investment schemes in order to qualify as apt investments for pension funds.

- In terms of management fees, the single maximum threshold (1.5% per annum of the value of the balance in the account to which they are to be charged) is replaced by a range of fee ceilings depending on the funds' investment policies. Specifically, in the case of a fixed-income pension fund [2], the maximum fee has been set at 0.85% per annum; for a mixed fixed-income fund [3], the ceiling has been set at 1.3% per annum; and for all other pension funds [4], it has been set at 1.5%.

- Meanwhile, the maximum custodial fee receivable by the custodian firm as total remuneration for performance of its duties has been reduced from 0.25% to 0.20% of the balance in the accounts to which it is to be charged.

- There is a term of six months from entry into effect of Royal Decree 62/2018 for adapting the pension plan specifications, newsletters and other documents with key information for individual plan holders and the pension plan operating rules for the contents of this new piece of legislation.

Bank of Spain Circular on the method for calculating contributions to the Deposit Guarantee Scheme (Circular 1/2018, published in the *Official State Journal* on February 9th, 2018)

Bank of Spain Circular 1/2018 amending: Circular 5/2016 (May 27th, 2016) on the method for calculating contributions to the Deposit Guarantee Scheme for Credit Institutions such that they are commensurate to their risk profiles; and Circular 8/2015 (December 18th, 2015) addressed to institutions and branches participating in the Deposit Guarantee Scheme for Credit Institutions, on information for determining the calculation basis of the contributions, took effect the day after its publication.

The changes introduced by means of Circular 1/2018 were prompted by the measures set down in final provision one of Royal Decree-Law 11/2017 (June 23rd, 2017) on urgent financial measures, which empowers the Bank of Spain to develop the methods necessary so

that the annual contributions made by the credit institutions to the Deposit Guarantee Scheme (DGS) are commensurate to their risk profiles, adding a new consideration: participation by a credit institution in one of the Institutional Protection Schemes (IPSs) contemplated in prevailing legislation (whether in one of the 'reinforced' or 'fully-mutualised' IPSs regulated in Spanish Law 10/2014 [5] or one of those contemplated in the CRR).

It is understood that the constitution of an IPS reinforces the liquidity and capital adequacy of the credit institutions comprising it, thus modifying their risk profile. To this end, the amendments to Circular 5/2016 are designed to introduce this new factor to the calculation method so that the contributions made to the DGS by its members are commensurate to their risk profiles. The following aspects stand out:

- Calibration of the contribution to the DGS as a function of a credit institution's membership in one of the IPSs contemplated in the CRR (article 113.7) that has set up an *ex ante* fund that guarantees that the IPS has funds directly available to it for ensuring its liquidity and solvency to avoid bankruptcy where necessary.

- Specifically, the amendments add the risk indicator described as "Participation by the entity in one of the IPSs contemplated in article 113.7 of the CRR" to the category "business model and management model" with a risk weight of 8%. As a result, the risk weights assigned to the remaining indicators have been adjusted, with some of them reduced.

- Credit institutions that, at December 31st of the year immediately preceding that corresponding to the contribution to the DGS, belong to one of the IPSs contemplated in Spanish Law 10/2014 shall be subject as a whole to the risk weight determined for the main entity and other members on a consolidated basis, such that the risk indicator level is determined at the consolidated level.

- Exceptions are contemplated when a member credit institution has been exonerated from the liquidity and prudential requirements on an individual basis in keeping with the CRR or from having to meet a minimum level of own funds and eligible liabilities in keeping with Spanish Law 11/2015.

- When the information regarding an indicator is not available or when none of the credit institutions contributing to the DGS belong to one of the above IPSs, the risk weight corresponding to that indicator shall be distributed evenly across the risk weights for the other indicators corresponding to the same risk category.

- The corresponding amendments have been introduced to Annexes 1 and 2 of Circular 5/2016. It is worth noting the addition of phases 7 and 8 in the calculation method to reflect: (i) the treatment of the contributions by credit institutions belonging to one of the IPSs contemplated in the CRR that has set up an *ex ante* fund (reducing the amount of the annual contribution to the DGS by an amount equal to that contributed to the *ex ante* fund of that IPS the prior year, subject to a ceiling of 60%); and, (ii) the distribution of the contributions by the credit institution belonging to the DGS.

Elsewhere, the amendments made to Circular 8/2015 attempt to compile information about the *ex ante* funds set up by IPSs. To this end, credit institutions that form part of one of the IPSs contemplated in the CRR that has set up an *ex ante* fund to guarantee that the IPS has funds directly available to it, must send the Bank of Spain the fund information stipulated in Annex 1 bis of the said Circular on a quarterly basis, unless one of its members has been designated as the party required to submit that information. It further stipulates the deadlines for submitting this information for the purposes of calculating contributions to the DGS in 2018 and in 2019.

Lastly, Circular 1/2018 stipulates that these modifications shall be used for the first time in calculating the contributions to the DGS determined in respect of 2018.

Notes

[1] Law 26/2014 (of November 27th, 2014), amending Law 35/2006 (of November 28th, 2006) on Personal Income Tax, the consolidated text of the Non-Resident Income Tax Act, enacted by Legislative-Royal Decree 5/2004 (of March 5th, 2004) and other tax legislation.

[2] No exposure to equities.

[3] Less than 30% of total exposure in equities.

[4] Overall exposure to equities of 30% or higher.

[5] Law 10/2014 (June 26th, 2014) on the structuring, supervision and capital adequacy of credit institutions.