

# Recent key developments in the area of Spanish financial regulation

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## **Law amending the Law on the mutual recognition of criminal rulings in the European Union in order to regulate the European Investigation Order (Law 3/2018, published in the official state journal on June 12<sup>th</sup>, 2018)**

The new law transposes Directive 2014/41/EU, of April 3<sup>rd</sup>, 2014, regarding the European Investigation Order in criminal matters, which is based on a single instrument for gathering evidence in criminal matters with a cross-border dimension in the European Union, into Spanish law.

It has the effect of amending the title in the Law on the mutual recognition of criminal rulings in the European Union concerning the European Investigation Order, which in turn itemises the characteristics of such orders, the authorities with the power to issue and execute them, the general conditions for issuing and transmitting orders and their specific investigative measures and the general conditions for recognising and executing orders and their specific investigative measures.

At the bank level, the European Investigation Order comes into play when a competent Spanish authority requests information or executes an order to obtain information about the bank or financial accounts and bank or financial transactions of a person involved in criminal proceedings.

This same new law also amends Spain's Civil Procedural Act: (i) in relation to the attachment of accounts opened at credit institutions; and, (ii) in order to adapt it for Regulation (EU) No. 655/2014, of May 15<sup>th</sup>, 2014, establishing a European Account Preservation Order procedure to facilitate

cross-border debt recovery in civil and commercial matters.

## **Draft Bank of Spain Circular amending the Accounting Circular and the Risk Information Register Circular**

On June 22<sup>nd</sup>, the Bank of Spain published a draft circular amending Circular 4/2017, of November 27<sup>th</sup>, 2017, on public and confidential financial information rules and formats (hereinafter, the Accounting Circular) and Circular 1/2013, of May 24<sup>th</sup>, 2013, on the Risk Information Register, with the aim of adapting the accounting regime applicable to the Spanish banks to accommodate the changes implied by adoption of IFRS 16 *Leases*. The consultation period runs until July 13<sup>th</sup>.

Broadly, the changes introduced by the draft circular are the following:

- Amendments to the Accounting Circular:
  - The accounting standard on leases is amended to adapt it for the criteria set down in IFRS 16, which imply changes: (i) to the banks' individual and consolidated balance sheet templates; (ii) in the rule regarding the preparation of the public statement of profit and loss; and, (iii) in the disclosures required in the financial statement notes, as well as smaller amendments to ensure that the Accounting Circular remains consistent as a whole.

Under the new lease accounting model prescribed by IFRS 16 for the lessee, leases are no longer classified as either

operating or finance leases; rather, all lease arrangements are recognised on reporters' balance sheets.

The exceptions are lease agreements with an initial term of 12 months or less and leases of low value, which may continue to be treated in the same manner as operating leases had been accounted for, *i.e.*, recognising an expense in profit or loss on a straight-line basis, unless another systematic basis is more representative of the time pattern of the user's benefit.

Lease accounting by lessors does not change significantly; lessors will continue to distinguish between operating and finance leases.

The changes contemplated in sale and leaseback transactions are simply those needed to align their recognition for accounting purposes with the new treatment stipulated for lessees.

- It clarifies the scope of application with respect to confidential reporting information.
- The frequency with which the individual public balance sheet has to be submitted has been changed from monthly to quarterly.
- Changes are introduced to Annexes 1, 4 and 9 ("Credit risk analysis, allowances and provisions"). With respect to the latter, the new legislation modifies the wording as required to stipulate that the transactions included in a special debt sustainability agreement and which do not yet have to be reclassified as non-performing be identified as refinancing, refinanced or restructured transactions.
- The new law amends the individual and consolidated public statement of profit or loss templates to better align them with the equivalent FINREP statement. It also introduces changes to the public statements regarding assets foreclosed or received in payment of debt to tighten up the scope.

- As for the individual confidential statements, the new legislation simplifies certain balance sheet and statement of profit or loss requirements and reduces the frequency with which related-party disclosures have to be provided. In terms of the consolidated confidential information, the new legislation similarly introduces changes in the frequency of submission, while one of the statements is replaced by a new individual confidential statement.

- Amendments to the Risk Information Register Circular: Small changes to introduce clarifications and improvements identified in the course of its application.

This new Circular, as with IFRS 16, takes effect from January 1<sup>st</sup>, 2019, with the exception of certain statement changes unrelated to the new lease accounting framework, which take effect from December 31<sup>st</sup>, 2018.