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Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms. (Official State Gazette of 19 June 2015) (Corrigendum published in the Official State Gazette of 4 September 2015).

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## **2 PREAMBLE**

### **2.1 I**

The increasing complexity of the financial system, due to the size of its institutions, the greater sophistication of the products with which they operate and the high level of interconnectedness, requires the authorities to be equipped with strengthened mechanisms and powers in order to deal with potential difficulties that credit institutions or investment firms might encounter, thereby observing the fundamental principle underlying this law, of avoiding any impact on the taxpayer.

During the recent financial crisis, the majority of developed countries were confronted, to a greater or lesser extent, by the enormous challenge that the orderly resolution of a credit institution without putting public funds at risk entails. This highlighted the need to enshrine in legislation specific powers that enable public authorities to resolve an institution decisively and swiftly, based on the principle that, while their rights should be respected, it is the shareholders and creditors, not taxpayers, who should bear the losses involved.

This new branch of financial regulation has gradually been shaped by the experience gained in recent years from the resolution of institutions and from the coordinating activity carried out by international fora responsible for financial policy, which has given rise to a set of principles that ultimately underpin the provisions of this Law. Due to their importance, these principles should be identified first of all.

One of the law's basic principles is that traditional judicial insolvency proceedings are not, in many cases, useful for restructuring or closing failing financial institutions. Given their size, the complexity and uniqueness of their sources of financing, which include legally guaranteed deposits, and their interconnectedness with other institutions, the ordinary winding up of financial institutions tends to cause irreparable damage to a country's financial system and economy. Therefore, it is necessary to establish a special and simultaneously strict and flexible procedure that enables the public authorities to avail themselves of extraordinary powers vis-à-vis the institution in difficulty and its shareholders and creditors. A procedure, in short, that makes close, ongoing monitoring of the entity to be resolved by the resolution authority possible and that is solely focused on the task of resolving the institution efficiently.

The preceding paragraph distinguishes between winding up and resolution. The winding up of a financial institution refers to the finalisation of its activities in the context of an ordinary court proceeding. This proceeding will be appropriate mainly in the case of institutions that, because of their reduced size and complexity, can be wound up in this way without any detrimental effect on the public interest. The resolution of a financial institution, on the other hand, is a unique administrative process to address the failure of credit institutions and investment firms, when an insolvency proceeding is not appropriate on general interest and financial stability grounds.

Consequently, the regime established in this Law constitutes a special, complete administrative procedure that ensures that intervention in an institution takes place as swiftly

as possible in order to facilitate the continuity of its basic functions, while at the same time minimising the impact of its failure on the economic system and on public funds.

The second principle underpinning this law is the necessary separation of supervisory and resolution functions in order to eliminate potential conflicts of interest involving the supervisor should it also simultaneously exercise resolution powers. Supervisors' traditional mandate consists of ensuring compliance with the law governing institutions' activity and, in particular, with solvency law, with the ultimate aim of protecting financial stability. To this traditional mandate another has been added, which is intended to ensure that if an institution becomes incapable of continuing to operate by its own means, despite traditional supervision and regulation, its closure will take place with minimum adverse impact on the financial system as a whole and, in particular, without any impact whatsoever on public finances. Now is the time to create a new public function the aim of which is to ensure that financial institutions can, de facto, be wound up without having a knock-on economic impact of such a magnitude as to damage the economy as a whole. It is not, therefore, simply a novel supervisory approach, but rather a new area of public intervention that will, independently, require that institutions carry on their activities in such a way that their resolution is practicable and respectful of the general interest, in the event that traditional supervision is insufficient.

At this stage it should be noted that supervision is above all concerned with the continuity of the institution, whereas resolution is concerned with the winding up of those parts of the institution that are failing. The difference in focus of the tasks to be performed calls for the two functions to be performed simultaneously, with supervisors and those in charge of resolution collaborating but acting independently. In order to comply with these principles while not interfering with uncompleted restructuring and resolution processes, this Law establishes a model that distinguishes between the resolution functions in the preventive phase, which are entrusted to the Banco de España and to the National Securities Market Commission and will be discharged by internal bodies with operational independence, and in the executive phase, which are assigned to the FROB (the Spanish executive resolution authority). Without prejudice to the foregoing, once the processes currently underway have been completed, this institutional model will be assessed in order to achieve greater efficiency, by taking into account the experience of the Single Resolution Mechanism and of the resolution authorities of the euro area Member States and the evolution of the financial situation.

This Law's third underlying principle, which is also the result of sharing experiences with other developed countries, is the advisability of providing for both a preventive phase and an early intervention phase within the resolution process. It is a case, on the one hand, of making ongoing reflection on their resolvability part of institutions' day-to-day activities, i.e. that aside from any operational difficulty, their managers strive to ensure that should the institution need to be resolved at a given point in time, its structure or way of operating would enable such resolution to take place without financial stability, the economy and, in particular, deposits and public funds being put at risk. On the other, it highlights the need to enable supervisors and resolution authorities to intervene promptly, while the institution remains solvent and viable. During this early phase both public intervention and adjustments made by the institution itself will normally be much more effective than in a considerably more deteriorated environment. Thorough preventive planning and early intervention will necessarily result in institutions being resolved in a predictable and orderly manner, which will have a reduced impact on financial markets.

On the basis of these criteria the Law includes a truly broad and decisive set of preventive measures, such as the recovery and resolution plans, the early intervention measures and the resolvability analysis. It is even possible for the resolution authority to order perfectly solvent institutions to adopt structural or organisational modifications, changes to their lines of business or other changes, where necessary in order to ensure that they can be resolved in an orderly manner and not at the taxpayers' expense were they to become non-viable.

The Law's fourth and final principle addresses the need for any resolution arrangements to be credibly based on a cost burden that does not exceed the limits of the financial industry itself. In other words, public and taxpayer funds cannot be affected during the resolution of an institution. Instead, it should be the shareholders and creditors, or if necessary the industry, who bear the losses. It is therefore essential to define the funds that will be used to finance the costs of a resolution process, which on occasion are enormous. This Law, in line with the laws of other developed countries, designs the internal mechanisms for losses to be absorbed by the shareholders and creditors of the institution under resolution and, alternatively, the creation of a resolution fund financed by the financial industry itself.

Special mention should be made of the bail-in tool, which establishes the arrangements for the absorption of losses by the institution's shareholders and creditors. Its ultimate aim is to internalise the cost of the resolution within the financial institution, so that, with the utmost legal certainty, its creditors are aware of the impact that the institution's failure would have on them. In short, it aims to solve the old problem of implicit public guarantees that protect the creditors of those institutions that, because of their significance to the financial system, would not under any circumstance be liquidated. This is achieved through the use of a means that is both an end in itself and one of the guiding principles of this Law: the special protection of bank deposits. In the event of a bail-in, when a credit institution is resolved, bank deposits would be the last claims to be affected and would also be significantly protected by the Deposit Guarantee Scheme, so that the immense majority of depositors would be unaffected. A National Resolution Fund will also be created, which in the near future will become part of a fund at European level and will be financed ex ante through contributions made by credit institutions. This fund may supplement the effect of the bail-in and the other resolution tools provided for in this law and, if necessary, may be used to adjust or supplement the absorption of losses by shareholders and creditors.

The existence of these tools provides an answer to the question of how the resolution of a credit institution should be paid for and establishes a procedure for appropriately allocating costs; it also places the emphasis on the financing being borne first by the institution in question and subsequently by the other institutions, on the understanding that they also benefit from the orderly resolution of another institution; and, ultimately, by minimising the moral hazard involved when institutions assume they would be bailed out by taxpayers, it lends credibility to the principle that the costs of the resolution of an institution may not be borne by the public budget.

## **2.2 II**

Only by mentioning two other important circumstances in addition to the aforementioned principles can the structure and contents of this Law be fully understood. First, its fundamentally European nature, since this Law transposes into Spanish legislation European Union law on the resolution of credit institutions and investment firms. And, second, the continuity that this law represents with respect to Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions, which it partially repeals.

Firstly, the Law transposes into Spanish legislation Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and

resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, which is, in turn, one of the laws that contributed to the creation of the Single Resolution Mechanism under Regulation (EU) No 806/2014 of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, which is one of the pillars of the Banking Union.

The European Union has particularly felt the effects of the financial crisis as a result of the greater integration of its financial markets and the sovereign debt crisis within the monetary union. This complex situation led the Member States to make a determined push for further integration of financial legislation, and to the Member States of the euro area to explore in greater detail the Banking Union idea, to ensure a genuine internal banking market subject to identical rules and supervised by the same authorities.

The scope of this push towards further integration, unprecedented since the creation of the euro, has not been limited to traditional prudential supervision, but has also been expanded with the same determination to include the resolution of financial institutions. In this connection, in the same way as decisive progress was made to align capital adequacy legislation (using as reference the Basel III Accords) in the area of supervision and the Single Supervisory Mechanism was created, under the auspices of the European Central Bank, in the area of institution resolution, the aforementioned directive brings the rules governing this area fully into line with one another, and paves the way for the creation of a European Single Resolution Mechanism that, for the euro area Member States, will constitute the sole authority in this area.

This Law, therefore, transposes into Spanish legislation Directive 2014/59/EU of 15 May 2014 and Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes and introduces those provisions that enable the Spanish system of resolution and the European system, which must be fully operational from 2016, to be properly organised and coordinated. The Law thus regulates the collaboration between the European resolution authorities in the event that an institution operating in various European Union Member States is resolved and the representation of the Spanish resolution authorities in the Single Resolution Mechanism.

Secondly, it is important to underscore that this Law is clearly linked to a prior law that was in force in Spain. In effect, this Law supersedes Law 9/2012 of 14 November 2012, which, when drafted, took into account the preparatory work that existed at the time for the current Directive 2014/59/EU of 15 May 2014. It is underpinned by identical principles, replicates to a significant extent its structure and provisions and should, therefore, be understood as an instrument that, while consolidating the prior law, also supplements it with those areas of European Union law that had not yet been transposed into the Spanish legal system. One of the intentions of that law on resolution, whose preamble stated that “this law will be adapted to the new legislation once progress has been made on the work performed in the international forums and, particularly, when the European Union agrees on the final wording of the directive on the bail out and resolution of credit institutions” has thus been accomplished.

Law 9/2012 of 14 November has proven to be robust since its approval in the context of the programme of assistance to Spain for the recapitalisation of the financial sector, and was the legal framework used to carry out the largest financial restructuring in Spain’s history;

its provisions have been applied effectively by the resolution authority and gradually consolidated by case law as a result of the inevitable litigation surrounding these types of processes.

Therefore, the legislature has opted for this law to give as much continuity as possible to both the content and structure of Law 9/2012 of 14 November, only supplementing it as necessary for the proper transposition of Directive 2014/59/EU of 15 May 2014. The newest aspects of this text can be grouped into three areas. Firstly, it strengthens the preventive phase of resolutions, since all institutions, not just failing institutions, should have recovery and resolution plans. Secondly, the scope of loss absorption, which in the prior law, only extended to subordinated debt, through hybrid management tools, will include, under the new law, all types of creditor. To this end, the law outlines a new regime which affords the utmost protection to depositors. Lastly, a specific resolution fund is created that will be financed by private-sector contributions.

In short, where this Law differs from Law 9/2012 of 14 November, it does so in order to ensure greater loss-absorption by the institution's shareholders and creditors and to grant greater protection to depositors and public funds.

The only reason this Law repeals rather than amends the prior law is the legislature's recent efforts to make financial legislation more systematic and clearer.

### **2.3 III**

The structure of the chapters of this law replicates in the main, for the aforementioned reasons, that of Law 9/2012 of 14 November 2012, which was successfully applied in recent years and catered to the needs of the banking sector during the financial crisis.

Chapter I contains the general provisions and specifies the purpose, scope and definitions of the Law's main concepts. The main change with respect to the prior legislation and in line with the directive that it transposes is the inclusion in the scope of not only credit institutions but also investment firms.

This means that the references to the competent supervisor must be deemed to refer to the Banco de España, in the event of resolution of credit institutions, and to the National Securities Market Commission, in the event of resolution of investment firms. The foregoing is without prejudice to the competent supervisor or the resolution authority sometimes being the European institutions, organisations and agencies set up as single supervisory and resolution authorities.

Chapter I also makes a distinction between the resolution functions in the preventive and executive phases, with the former being those entrusted to the Banco de España and the National Securities Market Commission and discharged by the independent bodies that they may determine, and the latter functions being entrusted to the FROB.

Chapter II regulates the early intervention procedure, deemed to be the procedure that will be applied to an institution when it cannot comply with the solvency legislation but compliance can be restored through its own means. Recovery plans are one of the main early intervention tools and must be drawn up by all institutions. Where under the prior law the plans were only required to be drawn up by those institutions experiencing difficulties, it is now an obligation applicable to all institutions, as a result of its eminently preventive nature.

Chapter III contains the definition and process for drawing up the resolution plans, which will contain the measures that the FROB, in principle, will apply in the event the institution is ultimately failing and the winding up thereof is not appropriate. Public financial support is excluded altogether from these plans.

Chapter III also details the capacity of the preventive resolution authority to point out the existence of impediments to the resolution and, if necessary, the power to impose on institutions measures to eliminate them.

Chapter IV regulates the resolution process, which is deemed to be the procedure applied to an institution when it is failing or likely to fail and it is necessary to avoid the institution being wound up on the grounds of the public interest and financial stability. This chapter's articles determine how a resolution process is initiated, for which it will be necessary for the FROB or the competent supervisory authority to determine that an institution is failing. Subsequently, the FROB will analyse whether or not the other circumstances that are required in order for a resolution process to be initiated exist.

From that moment, the FROB will activate, as it best deems fit, but taking into consideration the resolution plans, the various resolution tools included in Chapter V. With the exception of the bail-in tool, to which, due to its specific features, the following chapter is dedicated in its entirety, the other tools were already included in Law 9/2012 of 14 November. This Law, however, supplements the regulation and brings it fully into line with European Union law.

The resolution tools are, firstly, the transfer of the institution or a portion thereof to a private entity in order to protect the essential services. Secondly, the creation of a bridge institution to which the salvageable portion of the institution under resolution is transferred. And, thirdly, the creation of an asset management company to which the impaired assets of the institution under resolution are transferred.

Chapter V also includes certain provisions on the use of the National Resolution Fund in the context of the application of the resolution tools, without prejudice to the general regulations governing this fund laid down in Chapter VII.

Chapter VI is dedicated to the bail-in tool, which is a significant development in terms of resolution tools. The bail-in tool's ultimate aim is, as stated above, to minimise the impact of resolution on taxpayers by ensuring that costs are appropriately borne by shareholders and creditors.

The new feature of this tool, as laid down in the Law, is the ability to impose losses on all classes of creditor, not just up to the subordinated creditor level, as stipulated in Law 9/2012 of 14 November. In the terms laid down by this Law, the Resolution Fund can be used to supplement or replace the absorption of losses by creditors.

The need to impose losses on shareholders and creditors is compatible with the aforementioned special protection afforded to deposits. Under this Law, guaranteed deposits of less than €100,000 continue to enjoy the direct guarantee of the Deposit Guarantee Scheme and will also receive preferential treatment in the creditor hierarchy. Furthermore, the deposits of natural persons or SMEs will receive preferential treatment as creditors, which will only be exceeded by that afforded to deposits of less than €100,000.

Chapter VII introduces slight changes to the composition of the FROB, since it increases the number of members of its Governing Committee and creates the figure of Chairman, the Governing Committee's top representative, who is responsible for the day-to-day leadership and management thereof, with a non-renewable term of office of five years and established grounds for removal. A member of the National Securities Market Commission is also included due to expansion of the scope of this law.

Another of the important changes, resulting from the transposition of the Directive, is the creation of a National Resolution Fund, the aim of which is to finance the resolution measures implemented by the FROB, which will manage and administer the Fund. The Fund will be financed by contributions from credit institutions and investment firms and its

available financial means shall amount to at least 1% of the guaranteed deposits of all institutions.

From 1 January 2016, when the European Single Resolution Board is fully operational and the National Resolution Fund is merged with the other National Funds of the euro area Member States into the European Single Resolution Fund, Spanish credit institutions will make their contributions to this European Fund, and the National Resolution Fund will be exclusively for investment firms.

Lastly, Chapters VIII and IX include, respectively, the specific procedural and sanctioning regimes. The former governs the specific features of the appeals against decisions issued by the FROB and of the decisions adopted in early intervention and resolution processes. Chapter IX concludes the Law by regulating a sanctioning regime specific to institutions and their directors or managers, in the event that they fail to comply with the obligations laid down in this Law.

The final part of this Law, which includes the additional provisions, contains the regime applicable to deposits in the event a credit institution becomes insolvent. Under this regime maximum preferential treatment in the creditor hierarchy is granted to the deposits guaranteed by the Deposit Guarantee Scheme for Credit Institutions, and a general preference is afforded to the deposits of SMEs and natural persons. This is an eminently important change to Spanish regulation of insolvency, which aims to consolidate the level of maximum protection of bank deposits. Also in relation to the insolvency regime for institutions, reference is made to the various levels of subordination that may exist within the group of claims that because of a contractual clause are designated as subordinated by insolvency law, which is limited to the standard practice of the Spanish legal system and consistent with solvency law of distinguishing various degrees of subordination within the same type of claim, provided that this is not detrimental to other creditors.

The final provisions include an amendment to the legal regime governing the Deposit Guarantee Scheme, resulting from the transposition of Directive 2014/49/EU of 16 April 2014, which standardises the functioning of these schemes at European level. Since the Directive establishes that the functions of deposit guarantee schemes must be limited to protecting deposits or financing early intervention or resolution measures, the Deposit Guarantee Scheme has been divided into two self-contained compartments: the deposit guarantee compartment, whose funds will be used for the tasks assigned by the Directive, and the securities guarantee compartment, which assumes the other functions previously assigned to the Deposit Guarantee Scheme. Also, a minimum target level that the funds of the deposit guarantee compartment must reach, of 0.8% (which can be reduced to 0.5% with the authorisation of the European Commission) of the guaranteed deposits, is established.

### **3 CHAPTER I GENERAL PROVISIONS**

#### **3.1 Article 1. Purpose and scope.**

**1** The purpose of this Law is to regulate the early intervention and resolution processes for credit institutions and investment firms established in Spain and to lay down the legal regime for the 'FROB' as the executive resolution authority and its general operating framework, in order to safeguard the stability of the financial system while minimising the use of public funds.

**2** This Law shall apply to the following entities:

**a** Credit institutions and investment firms established in Spain.

**b** Financial institutions established in Spain, other than insurance and reinsurance undertakings, when the financial institution is a subsidiary of a credit institution or investment firm, or of an institution referred to in subparagraph (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

It shall also apply to financial institutions established in Spain, other than insurance and reinsurance undertakings, when the financial institution is a subsidiary of a company referred to in subparagraph (c) that is established in any European Union country or in subparagraph (d).

**c** Financial holding companies, mixed financial holding companies and mixed-activity holding companies established in Spain.

**d** Parent financial holding companies and parent mixed financial holding companies in other European Union Member States that are supervised on a consolidated basis by any of the competent supervisors envisaged in Article 2(1)(b).

**e** Branches in Spain of institutions that are established outside the European Union, in accordance with the specific conditions laid down in this Law.

**3** The investment firms referred to in Article 1(2) shall be those which are authorised to provide any of the investment services stipulated in Article 125(1)(c) and (f) of Securities Markets and Investment Services Law 6/2023 of 17 March 2023

### **3.2 Article 2. Definitions.**

**1** For the purposes of this Law, the following definitions shall apply:

**a** Institution: the institutions provided for in Article 1(2)(a), except where expressly otherwise provided.

**b** Competent supervisor: the Banco de España and the European Central Bank, within the Single Supervisory Mechanism, as the authorities responsible for the supervision of credit institutions; and the National Securities Market Commission (CNMV), as the authority responsible for the supervision of investment firms.

**c** Preventive resolution authority: the Banco de España, with respect to credit institutions, and the National Securities Market Commission, with respect to investment firms, in both cases through their respective operationally independent bodies, as the authorities responsible for the preventive phase of resolution.

**d** Executive resolution authority: the FROB, as the authority responsible for the executive phase of resolution.

**e** Competent resolution authorities: the competent preventive resolution authority and competent executive resolution authority.

**f** Early intervention: the procedure applicable to an institution, in accordance with the provisions of Chapter II, when the institution infringes or there are objective elements on the basis of which the institution is reasonably expected to infringe solvency, regulatory and disciplinary rules, but is in a position to return to compliance through its own means.

**g** Preventive phase of resolution: the set of procedures and measures to safeguard the resolvability and facilitate the possible resolution of an institution, as laid down in Chapter III.

**h** Resolution: orderly recovery or winding up of an institution carried out in accordance with this Law when, under the provisions of Chapter IV, the institution is failing or likely to fail in the near future, there is no reasonable prospect that measures from the private sector would



remedy the situation, and, for reasons of public interest and financial stability, it is necessary to avoid winding-up proceedings.

**i** Executive phase of resolution: the set of procedures and measures to manage the resolution of an institution, as laid down in Chapters IV to VI.

**j** Extraordinary public financial support: aid provided for in Article 107(1) of the Treaty on the Functioning of the European Union and any other public financial support at supra-national level in order to preserve or restore the viability, liquidity or solvency of an institution which, if provided for at national level, would constitute State aid.

**k** Financial holding company: a financial holding company as defined in Article 4(1)(20) of Regulation (EU) No 575/2013 of 26 June 2013.

**l** Mixed financial holding company: a mixed financial holding company as defined in Article 2(7) of Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector laws.

**m** Mixed-activity holding company: a mixed-activity holding company as defined in Article 4(1)(22) of Regulation (EU) No 575/2013 of 26 June 2013.

**n** Group: a parent institution, a parent financial holding company or a parent mixed financial holding company, and its subsidiaries.

**ñ** Financial conglomerate: a financial conglomerate as defined in Article 2(1) of Law 5/2005 of 22 April 2005.

**o** Institutional protection scheme: an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013 of 26 June 2013.

**p** Subsidiary: a subsidiary as defined in Article 4.1.16 of Regulation (EU) No 575/2013 of 26 June 2013. For the purposes of applying group resolution plans, powers to reduce or remove impediments to resolvability (individual or group treatment), the minimum requirement for own funds and eligible liabilities, write-downs or conversions of capital instruments or eligible liabilities and group resolutions involving subsidiaries or otherwise to the resolution groups referred to in number 2 of point v) of this paragraph, the definition includes, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with the provisions regarding the minimum requirement for own funds and eligible liabilities for resolution entities.

**q** Material subsidiary: a material subsidiary as defined in Article 4(1)(135) of Regulation (EU) No 575/2013.

**r** Bail-inable liabilities: liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in Article 1(2)(b), (c) or (d) and that are not excluded from the scope of the bail-in tool pursuant to Article 42.

**s** Eligible liabilities: bail-inable liabilities that fulfil, as applicable, the conditions of Article 44 bis on eligible liabilities for resolution entities, as implemented in regulations and as provided for in the regulations in relation to eligible liabilities for entities that are not resolution entities, and Tier 2 instruments that meet the conditions of Article 72a(1)(b) of Regulation (EU) No 575/2013.

**t** Subordinated eligible instruments: instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than paragraphs (3) to (5) of Article 72b of that Regulation.

**u** Resolution entity:

- 1** a legal person established in the Union, in respect of which, in accordance with Article 14, the resolution plan provides for resolution action; or

**2** an institution that is not part of a group that is subject to consolidated supervision pursuant to Articles 57, 58 and 62 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, in respect of which the resolution plan drawn up pursuant to Article 13 of this Law provides for resolution action.

**v** Resolution group:

**1** a resolution entity and its subsidiaries that are not: (i) resolution entities themselves; (ii) subsidiaries of other resolution entities; or (iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries; or

**2** credit institutions permanently affiliated to a central body and the central body itself when at least one of those credit institutions or the central body is a resolution entity, and their respective subsidiaries.

**w** Global systemically important institution (or G-SII): a G-SII as defined in Article 4(1)(133) of Regulation (EU) No 575/2013.

**x** Combined buffer requirement: the combined buffer requirements defined in Article 43 of Law 10/2014 of 26 June 2014.

**y** Covered bond: a covered bond as defined in Article 3(1) of Directive (EU) 2019/2162 of the European Parliament and of the Council or, with regard to an instrument that was issued before 8 July 2022, a bond as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council.

**z** Common Equity Tier 1 capital: Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation (EU) No 575/2013.

**2** For the purposes of this Law and its implementing provisions, the definitions contained in Article 3 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 shall also apply.

### **3.3 Article 3. Resolution objectives.**

The process of resolution of institutions shall pursue the following objectives, which are of equal significance and shall be balanced as appropriate to the circumstances of each case:

**a** To ensure the continuity of those activities, services and operations, the discontinuance of which is likely to disrupt the provision of services that are essential to the real economy or disrupt financial stability, and, in particular, systemically important financial services and payment, clearing and settlement systems, bearing in mind the size, market share, external and internal interconnectedness, complexity and cross-border dimension of an institution or its group.

**b** To avoid adverse effects on the stability of the financial system, by preventing contagion of the difficulties of one institution to the system as a whole and by maintaining market discipline.

**c** To ensure the most efficient use of public resources, minimising the extraordinary public financial support which it may be necessary to grant.

**d** To protect depositors whose funds are covered by the Deposit Guarantee Scheme for Credit Institutions and investors covered by the Investment Guarantee Scheme.

**e** To protect the repayable funds and other assets of institutions' customers.

Achievement of the above objectives shall, in any event, seek to minimise the cost of resolution and avoid destruction of value, except where necessary to achieve the resolution objectives.

#### **3.4 Article 4. Resolution principles.**

**1** Resolution processes shall be based, to the extent necessary to ensure compliance with the objectives detailed in the previous article, on the following principles:

**a** The shareholders and members of the institution shall bear first losses.

**b** Creditors of the institution shall, where applicable, bear losses arising from resolution after the shareholders or members, and in accordance with the order of priority stipulated in insolvency law, subject to the qualifications laid down in this Law.

**c** Creditors of the same class shall be treated in the same way except where this Law provides otherwise.

**d** No shareholder or creditor shall bear greater losses than those which they would have borne if the institution had been wound up under insolvency proceedings.

**e** The directors and general managers or similar officers of the institution shall be replaced, unless, in exceptional circumstances, their retention is considered to be strictly necessary for the achievement of the resolution objectives.

**f** The directors and general managers or similar officers of the institution shall provide all necessary assistance for the achievement of the resolution objectives. For the purposes of the provisions of this Law, officers similar to general managers shall be deemed to be those persons who meet the conditions provided for in Article 6(6) of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

**g** In application of the provisions of insolvency, commercial and criminal law, the directors of institutions and any other legal or natural persons shall be liable for losses caused in proportion to their responsibility and the seriousness of such losses.

**h** Covered deposits shall be fully protected.

**i** The resolution measures adopted shall be accompanied by the related guarantees and safeguards envisaged under this Law and its implementing regulations.

**2** For the purposes of applying the principles mentioned in the previous paragraph, and of determining the appropriate allocation of the resolution costs referred to in Chapter VI, the FROB shall not be considered to be included among the shareholders, members or creditors referred to in such paragraph.

**3** The competent supervisor and competent resolution authorities, in applying the tools or demanding compliance with the obligations and requirements envisaged in the Law, shall bear in mind the specific circumstances of each institution arising, inter alia, from its structure, nature and business profile, under the terms laid down in regulations.

In particular, simplified obligations or waivers from the preparatory measures stipulated in Chapters II and III may be established in regulations, provided that:

**a** The competent supervisor and competent preventive resolution authority are vested with powers to impose full compliance with this Law at any time, and

**b** The powers of the competent supervisor and competent resolution authorities to take an early intervention or resolution measure are under no circumstance limited.

#### **3.5 Article 5. Valuation.**

**1** The objective of the valuation shall be to determine the value of the assets and liabilities of the institution, so that the competent supervisor or competent resolution authority may assess whether the conditions for resolution, for adopting any resolution measures and, in particular, for applying the resolution tools are met, and so that any losses that may arise from the application of the tools to be used can be recognised.

**2** Prior to the adoption of any resolution measure and, in particular, for the purpose of determining whether the conditions for resolution and for applying the tools envisaged in this Law are met, the value of the assets and liabilities of the institution shall be determined on the basis of valuation reports commissioned from one or several experts designated by the FROB. The experts shall be independent from both any public authority, including the resolution authority, and the institution subject to valuation.

**3** The valuation shall be subject to such procedure and carried out in accordance with such purposes, requirements and conditions as are laid down in regulations.

Furthermore, a provisional valuation procedure shall be established in regulations for emergency situations, which shall provide for the performance in any case of a complete and definitive valuation at a later date and a valuation procedure to determine the losses that would have been borne by the shareholders and creditors had the institution been wound up under insolvency proceedings. The provisional valuation shall be based on the report issued by the competent supervisor, if applicable.

**4** For the purposes of tax law, market value shall be deemed to be the amount resulting from application of the valuation referred to in this article.

## **4 CHAPTER II EARLY INTERVENTION**

### **5 Section 1. Early intervention planning**

#### **5.1 Article 6. Recovery plan.**

**1** On a preventive basis, all institutions shall draw up and update recovery plans that set out measures to be taken by those institutions for the restoration of their financial position following a significant deterioration. The plan and its updates shall be approved by the institution's management body, for subsequent review by the competent supervisor.

**2** The recovery plan shall include a series of quantitative and qualitative indicators that will be taken into account as a reference for undertaking the actions envisaged. Recovery plans should not assume access to public financial support.

**3** The competent supervisor shall review the plan and the updates thereto taking into account the plan's potential for maintaining or restoring quickly and effectively the institution's viability.

Where the competent supervisor deems that there are deficiencies in the plan or impediments to its implementation, it may direct the institution to make specific changes to the plan. In the event it is not possible to remedy those deficiencies or impediments, it may direct the institution to take any measures it considers to be necessary and proportionate, taking into account the effect of the measures on the institution's activity.

In particular, the competent supervisor may, without prejudice to any other measure that it could apply as part of its supervisory function, direct the institution to adopt measures to:

- a** reduce the risk profile of the institution, including liquidity risk;
- b** enable timely recapitalisation measures;
- c** review the institution's strategy and structure;
- d** make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions; or
- e** make changes to the governance structure of the institution.

**4** The competent supervisor shall send the recovery plan to the competent resolution authorities, which may submit proposed changes where the plan may adversely impact the resolvability of the institution.

- 5** The recovery plans shall be updated at least annually, and:
- a** after any change to the legal or organisational structure of the institution or to its financial position that could have a material effect on or require a change to the plan; or
  - b** where the competent supervisor deems it appropriate.
- 6** The institutions that are part of a consolidated group or that belong to an institutional protection scheme referred to in Fifth Additional Provision to Law 10/2014 of 26 June 2014 will not be required to submit separate recovery plans, except in the circumstances that might be established in regulations.
- The parents of groups shall draw up and update a group recovery plan setting out the measures to be applied by the parent and each subsidiary.
- 7** The content and procedures applicable to the individual or group recovery plans shall be laid down in regulations.
- 8** The recovery plan shall be deemed to be a corporate governance procedure for the purposes of Article 29 of Law 10/2014 of 26 June 2014.

## **6 Section 2. Intra-group financial support**

### **6.1 Article 7. Intra-group financial support agreements.**

- 1** Parent institutions and their subsidiaries covered by consolidated supervision may enter into agreements to provide each other with financial support, should one of them meet the conditions for early intervention set out in the following article. These agreements must be authorised by the competent supervisor.
- Furthermore, these agreements must be approved by the shareholders of every institution that proposes to enter into the agreement.
- These agreements may only be concluded if, at the time the authorisation is requested, none of the parties meets the conditions for early intervention.
- 2** The competent supervisor must send the authorised intra-group agreements to the competent resolution authorities.
- 3** Financial support agreements shall only be effective for the parties thereto and no third party shall be entitled to demand their performance. Neither these agreements, nor the rights or measures thereunder, may be assigned or transferred to third parties, except in cases of universal succession.
- 4** The power to grant financial support is vested in the institution's management body. This decision shall be reasoned, shall indicate the objective of the proposed financial support and shall substantiate fulfilment of the established conditions. Furthermore, the decision to accept the financial support in accordance with the agreement shall be taken by the management body of the institution receiving financial support.
- 5** The competent supervisor may prohibit or restrict the terms of the financial support granted in accordance with the provisions of paragraph 4 if it justifiably assesses that the conditions for financial support have not been met.
- 6** Neither the provisions of this article nor of any regulations implementing it shall be applicable to intra-group financial operations, including centralised funding arrangements, provided that none of the parties to those operations meets the conditions for early intervention.
- 7** The management body of each institution that is party to the agreement shall report each year to the shareholders on the performance of the agreement, and on any decision taken pursuant to the agreement.

Also, institutions shall make public whether or not they have entered into an intra-group financial support agreement and, if necessary, shall make public a description of the general terms of any such agreement and the names of the group entities that are party to it and update that information at least annually.

**8** The provisions of this article, and, in particular, the following elements of the intra-group financial support agreements will be implemented in regulations:

- a** their validity conditions;
- b** their contents and, in particular, the principles underlying the agreements' terms and conditions;
- c** the procedure for authorisation by the competent supervisor and, in particular, its right to oppose the agreements;
- d** the conditions for implementation thereof and the corresponding procedure; and
- e** the obligations to disclose and report to the general meeting.

## **7 Section 3. Early intervention**

### **7.1 Article 8. Conditions for early intervention.**

**1** Where an institution or a parent of a consolidated group of institutions infringes or there are objective elements to support a reasonable determination that the institution will in the near future infringe the solvency, regulatory and disciplinary rules, but is in a position to return to compliance through its own means, the competent supervisor shall declare an early intervention situation as initiated and may adopt all or certain of the measures laid down in this chapter.

In the case of investment firms, the infringement referred to in the preceding paragraph shall also include the infringement of the provisions of Articles 3 to 7, 14 to 17, 24, 25 and 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 or in Title II of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

**2** Assessment of the likelihood of infringement of the requirements laid down in paragraph 1 may be based, inter alia, on a rapidly deteriorating financial condition or liquidity situation, a rapidly increasing level of leverage, non-performing loans or concentration of exposures. Other objective indicators to be used to determine the presence of the conditions contemplated in the aforementioned paragraph may be specified in regulations.

**3** The measures envisaged in this chapter will be compatible with those provided for in the legislation in force on the regulation and discipline of credit institutions and with Title VIII of Law 24/1988 of 28 July 1988, for investment firms. Notwithstanding the foregoing, the authorisation granted to an institution shall not be withdrawn when an early intervention process has been initiated in the terms provided for in Article 9, unless the institution fails to adopt during that phase the measures required by the supervisor or the withdrawal is a penalty.

**4** When an institution is no longer in the circumstances described in Article 8(1), the competent supervisor shall declare that the early intervention situation has ended.

### **7.2 Article 9. Early intervention measures.**

**1** When an institution, or a consolidated group or sub-group of institutions, is in any of the circumstances described in Article 8(1), it shall immediately notify the competent supervisor.

**2** Without prejudice to the provisions of the preceding paragraph, when the competent supervisor becomes aware that an institution or consolidated group or sub-group of institutions is in any of the circumstances described in Article 8(1), it may adopt the following measures:

**a** require the management body of the institution to implement one or more of the measures set out in its recovery plan within a set timeframe or to update the plan and implement one or more of measures from the updated plan when the circumstances that led to the early intervention are different from the assumptions set out therein.

**b** require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation.

**c** require the management body of the institution to convene, or if the management body fails to comply with that requirement convene directly, a general meeting or assembly of the institution and, in both cases, set the agenda and propose the adoption of certain resolutions.

**d** require one or more members of the management body, general managers and other similar officers to be removed or replaced if those persons are found unfit to perform their duties pursuant to the suitability requirements.

**e** appoint a delegate of the competent supervisor to the institution who shall be entitled to attend meetings of the management body and its committees, with the right to speak but not vote, and who shall have the same powers to access information as those conferred upon the management body and committee members by law and the articles of association.

**f** require the management body of the institution to draw up a plan to negotiate the restructuring of its debt with some or all of its creditors according to the recovery plan, where applicable.

**g** require changes to the institution's or the consolidated group's or subgroup's business strategy.

**h** require changes to the legal or operational structures of the institution or of the consolidated group or subgroup.

**i** acquire, including through on-site inspections and provide to the competent resolution authorities, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution or the consolidated group or subgroup and for valuation of the assets and liabilities of the institution or of the consolidated group or subgroup in accordance with Article 5.

**j** If the aforementioned measures are not sufficient, order the appointment one or more administrators, or the temporary replacement of the institution's management body or one or more of its members, pursuant to the provisions of the following Article.

**3** When adopting any of the measures set out in points (a) to (h) of Article 9(2), the competent supervisor must set a deadline for implementation by the institution and for assessment of the effectiveness of the adopted measure(s).

### **7.3 Article 10. Appointment of temporary administrators to work with or replace management body members as an early intervention measure.**

**1** The competent supervisor may appoint temporary administrators to the institution to work with or replace its management body or one or more of the members of such body, pursuant to the procedure laid down in Chapter V of Title III of Law 10/2014 of 26 June 2014 and to the specific requirements provided for in this chapter.

**2** The appointment of temporary administrators to the institution pursuant to this article shall be valid for a year. This period may exceptionally be renewed for equal periods while

the conditions for appointing temporary administrators continue to be met. This circumstance must be appropriately substantiated in the resolution renewing the measure.

#### **7.4 Article 11. Monitoring of the early intervention measures and reporting to the resolution authorities.**

**1** With the frequency set by the competent supervisor, and at least every quarter, the institution shall send a report on the degree of compliance with the measures adopted pursuant to Article 9. The competent supervisor shall forward the report to the resolution authorities.

**2** In order for the resolution authorities to exercise the powers envisaged in this Law, the supervisor shall notify them:

**a** when an institution, or a consolidated group or sub-group of institutions, is in any of the circumstances described in Article 8(1).

**b** as the case may be, of the approval of the action programme referred to in Article 9(2)(b).

**c** of the other measures required by the competent supervisor pursuant to the provisions of Article 9.

**d** of the end of the early intervention situation pursuant to Article 8(4).

**3** During the early intervention phase, the competent resolution authorities may ask the competent supervisor for all such information related to the institution or consolidated group or subgroup as is required to prepare for a possible resolution.

The FROB may also during this early intervention phase carry out the actions necessary to prepare the valuation of the institution's assets and liabilities for the purposes of the provisions of Article 5 and direct the institution to contact possible buyers in order to prepare for its resolution, without prejudice to the conditions established in Article 19 and the provisions governing confidentiality laid down in Article 59.

#### **7.5 Article 12. Coordination of early intervention measures at European Union groups of institutions.**

**1** The procedure for the competent supervisor to impose any of the measures laid down in Article 9 on the parent or on a Spanish subsidiary of a consolidated group of institutions established in the European Union will be specified in regulations.

**2** The manner in which the competent supervisor will participate in the procedures for the adoption by another European Union authority of any of the measures laid down in Article 9 in relation to the parent of a Spanish institution or to a subsidiary of a Spanish group will also be established in regulations.

## **8 CHAPTER III PREVENTIVE PHASE OF RESOLUTION**

### **9 Section 1. Resolution planning**

#### **9.1 Article 13. Resolution plans.**

**1** On a preventive basis, the preventive resolution authority, further to a report from the FROB and from the competent supervisor and after consulting the resolution authorities of the jurisdictions in which significant branches are located, shall draw up and approve a resolution plan for each institution that is not part of a group subject to supervision on a consolidated basis. The plan shall contain the resolution actions to be applied by the FROB if the institution meets the conditions laid down in Article 19, without prejudice to the fact that, in light of the circumstances, the FROB may also apply other measures.



When, pursuant to Article 17, there are impediments to resolvability, the obligation to draw up the resolution plan shall be suspended until the appropriate measures to remove such impediments have been adopted.

**2** The procedure for drawing up the resolution plans and their specific content shall be laid down in regulations. For these purposes, institutions shall be obliged to cooperate in the preparation and update of the plans, and the preventive resolution authority may require the institution to provide the information necessary to prepare, approve and update the resolution plans.

In any event, the resolution plan shall never assume:

**a** The existence of any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 53.

**b** The existence of any public support in the form of central bank emergency liquidity assistance.

**c** The existence of any public support in the form of central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

**3** Resolution plans shall be updated in accordance with the procedure laid down in paragraph 2 at least annually and in the following cases:

**a** whenever a change in the legal or organisational structure of the institution or its financial position could have a material effect on the effectiveness of the plan or necessitates changes thereto; or

**b** following the application of resolution action or the write-down or conversion of capital instruments and eligible liabilities pursuant to the provisions of Article 38, or

**c** whenever the preventive resolution authority, at its own initiative or at that of the FROB, deems it appropriate

**Article 14.** *Group resolution plans.*

**1** The competent group-level preventive resolution authority, acting in conjunction with the resolution authorities of subsidiaries in resolution colleges and after consulting the pertinent competent supervisors, the FROB and the resolution authorities of the jurisdictions in which significant branches are located, with respect to issues affecting such branches, shall approve and keep updated the resolution plans of groups that are supervised on a consolidated basis by one of the competent supervisors provided for in Article 2(1)(b).

The adoption of the resolution plan shall take the form of a joint decision of the preventive resolution authority and the resolution authorities of the group's subsidiaries. Where a group comprises more than one resolution group, the resolution action for the resolution entities of each resolution group shall be included in the group resolution plan adopted under a joint decision per the provisions of this subparagraph.

When, pursuant to Article 17, there are impediments to the resolvability of an institution, the obligation to draw up the group resolution plan shall be suspended until the appropriate measures to remove such impediments have been adopted.

**2** For the purposes of paragraph 1, the preventive resolution authority, together with the FROB, shall assist the resolution college and contribute to the preparation and approval of the plan in accordance with the procedure laid down in the foregoing article.

**3** The procedure for the preparation and the specific content of the group resolution plans and the information that may be requested from institutions and that shall be provided by the preventive resolution authority to other resolution authorities, the competent supervisors and the European Banking Authority for the purpose of their preparation and update shall be determined in regulations. In any event, group resolution plans shall identify measures to be taken with respect to:

- a the parent undertaking.
- b the subsidiaries that are part of the group with registered office in the European Union.
- c financial holding companies, mixed financial holding companies and mixed-activity holding companies with registered office in the European Union.
- d the subsidiaries that are part of the group with registered office outside the European Union, within the framework set out in Chapter VII on cross-border resolution.
- e parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies.

In accordance with the measures referred to in the first subparagraph, the resolution plan shall identify for each group the resolution entities and the resolution groups.

**4** Notwithstanding the provisions of the previous paragraph, institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions or constituting a significant share in the Spanish financial system shall also be the subject of individual resolution plans in accordance with the previous article.

**5** The competent preventive resolution authority, when acting as the resolution authority of a subsidiary authorised in Spain whose parent is located in another European Union Member State that is not supervised on a consolidated basis by any of the competent supervisors provided for in Article 2(1)(b), shall cooperate with the group-level resolution authority in the preparation, update and approval of the group resolution plan under the terms stipulated in regulations.

## **10 Section 2. Assessment of resolvability**

### **10.1 Article 15. Assessment of resolvability for institutions.**

**1** In drawing up the resolution plan, the preventive resolution authority, following a report from the competent supervisor and the FROB and after consulting the resolution authorities of the jurisdictions in which significant branches are located, shall determine that the institution is resolvable if, in the event that the conditions for resolution are met, it can be wound up under insolvency proceedings or resolved by applying the various resolution tools and powers provided for in this Law, such that:

**a** There is no significant adverse effect on the financial system of Spain, or other European Union Member States or of the European Union as a whole.

**b** The continuity of the critical functions carried out by the institution is ensured.

**2** For the purposes of the provisions of paragraph 1, the preventive resolution authority shall make the corresponding assessment and, in the event that the institution meets the conditions for resolution, assess whether the resolution can be carried out without public support as provided for in Article 13(2). The result of this assessment shall be submitted to the FROB.

**3** In addition, the competent supervisor and the FROB may request that the competent preventive resolution authority carry out the assessment provided for in paragraph 1 provided that it considers that there may be substantive impediments to the resolution of an institution.

**4** If the competent preventive resolution authority concludes that an institution does not meet the conditions for resolution, it shall immediately notify the European Banking Authority.

5 The rules governing the resolvability assessment provided for in this section shall be laid down in regulations.

#### **10.2 Article 16. Assessment of resolvability for groups.**

1 The competent preventive resolution authority, when it is the group-level resolution authority, shall determine, having regard to the assessment referred to in the following paragraph, that the group is resolvable if, in the event that the conditions for resolution are met, the entities of that group can be wound up or resolved in accordance with the provisions of Article 15(1).

2 In drawing up the group resolution plan, the preventive resolution authority, following a report from the competent supervisor and the FROB, together with the resolution authorities of subsidiaries and after consulting the competent supervisors of such subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located, shall assess the extent to which a group is resolvable without the use of public support as provided for in Article 13(2).

Where a group comprises more than one resolution group, the competent preventive resolution authority shall assess the resolvability of the group as a whole, as well as the resolvability of each resolution group pursuant to the provisions of this Article, under the decision-making process laid down in Article 14.

3 If the competent preventive resolution authority concludes that a group does not meet the conditions for resolution, it shall notify the European Banking Authority without undue delay.<sup>2</sup>

#### **10.3 Article 16 bis. Power to prohibit certain distributions.**

1 Where an entity is in a situation where it meets the combined buffer requirement when considered in addition to each of the requirements referred to in Article 48 bis(a),(b) and (c) of Law 10/2014 of 26 June 2014, but it fails to meet such combined buffer requirement when considered in addition to the minimum requirement for own funds and eligible liabilities calculated in accordance with Article 44(2)(a), the preventive resolution authority shall have the power to prohibit the entity from distributing more than the maximum distributable amount related to the minimum requirement for own funds and eligible liabilities, through any of the following actions:

**a** Making a distribution in connection with Common Equity Tier 1 or payments on Additional Tier 1 instruments; or

**b** Creating an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement;

Where an entity is in the situation referred to in this paragraph, it shall immediately notify the preventive resolution authority thereof.

2 In the situation referred to in paragraph 1, the preventive resolution authority of the entity, after consulting the competent supervisor, shall without unnecessary delay assess whether to exercise the power referred to in paragraph 1, taking into account all of the following elements:

**a** The reason, duration and magnitude of the failure and its impact on resolvability;

**b** The development of the entity's financial situation and the likelihood of it fulfilling, in the near future, the condition referred to in Article 19(1)(a);

**c** The prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 within a reasonable timeframe;

**d** Where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, or in

Article 44 bis of this Law, its implementing legislation or the eligibility criteria set out in regulations for entities that are not resolution entities, if that inability is idiosyncratic or is due to market-wide disturbance

**e** Whether the exercise of the power referred to in paragraph 1 is the most adequate and proportionate means of addressing the situation of the entity, taking into account its potential impact on both the financing conditions and resolvability of the entity concerned. The preventive resolution authority shall repeat its assessment of whether to exercise the power referred to in paragraph 1 at least every month for as long as the entity continues to be in the situation referred to in paragraph 1.

**3** If the preventive resolution authority finds that the entity is still in the situation referred to in paragraph 1 nine months after such situation has been notified by the entity, the preventive resolution authority, after consulting the competent supervisor, shall exercise the power referred to in paragraph 1, except where the competent supervisor finds that at least two of the following conditions are fulfilled:

**a** The failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based financial market stress across several segments of financial markets;

**b** The disturbance referred to in point (a) not only results in the increased price volatility of the own funds instruments and eligible liabilities instruments of the entity or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the entity from issuing own funds instruments and eligible liabilities instruments on those markets;

**c** The market closure referred to in point (b) is observed not only for the concerned entity, but also for several other entities;

**d** The disturbance referred to in point (a) prevents the concerned entity from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure; or

**e** An exercise of the power referred to in paragraph 1 leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

**4** Where the exception referred to in paragraph 3 applies, the preventive resolution authority shall notify the competent supervisor of its decision and shall explain its assessment in writing.

Every month, the preventive resolution authority shall repeat its assessment of whether the exception referred to in the preceding paragraph applies.

**5** The method for calculating the maximum distributable amount in respect of the minimum requirement for own funds and eligible liabilities shall be determined in regulations.

#### **10.4 Article 17. Impediments to the resolvability of entities**

**1** The competent preventive resolution authority, after considering the assessment made by virtue of Article 15, shall notify the competent supervisor, the entity and the resolution authorities of the jurisdiction in which significant branches are located of substantive impediments to resolvability of the entity. The results of this review shall be submitted to the FROB.

**2** Within four months of the date of receipt of the notification, the entity shall propose to the competent preventive resolution authority appropriate measures to reduce or remove the substantive impediments identified.

The entity shall, within two weeks of the date of receipt of a notification made in accordance with the preceding paragraph, propose to the preventive resolution authority possible measures and the timeline for their implementation to ensure that the entity complies with both the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

**a** The entity meets the combined buffer requirement when considered in addition to each of the requirements referred to in Article 48 bis(a), (b) and (c) of Law 10/2014 of 26 June 2014, but it does not meet the above combined buffer requirement when considered in addition to the requirements referred to in Article 44 ter and its implementing regulations and the requirements for own funds and eligible liabilities for the resolution entities of G-SIIs and the Union material subsidiaries of non-EU G-SIIs, calculated in accordance with Article 44(2)(a); or

**b** The entity does not meet the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements referred to in Article 44 ter and its implementing regulations and the requirements for own funds and eligible liabilities for the resolution entities of G-SIIs and the Union material subsidiaries of non-EU G-SIIs.

The timeline for the implementation of measures proposed under the second subparagraph of this paragraph shall take into account the reasons for the substantive impediment.

The competent preventive resolution authority shall notify the competent supervisor and the FROB of the measures proposed under the preceding subparagraphs without delay, for their report.

**2 bis.** In the event that, following a report from the competent supervisor and the FROB, the competent preventive resolution authority does not consider such measures to be sufficient to reduce or remove the impediments identified, it must make a reasoned request to the institution to take alternative measures to reduce or remove the impediments, and notify in writing those measures to the entity. Such measures may consist of:

**a** Requiring the entity to revise any intragroup financing arrangements or draw up agreements to cover the provision of its critical functions.

**b** Limiting the individual and aggregate exposures of the entity.

**c** Imposing additional information requirements relevant for resolution purposes.

**d** Requiring the entity to divest specific assets.

**e** Requiring the entity to limit or cease specific activities.

**f** Restricting or preventing the development of specific business lines or sale of specific products.

**g** Requiring changes to the legal or operational structure of the entity or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of resolution tools.

**h** Requiring an entity or a parent undertaking to set up a parent financial holding company in Spain or a parent undertaking in the European Union.

**i** Requiring an entity to submit a plan to restore compliance with the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement and with the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013.

**j** Requiring an entity to issue eligible liabilities to meet the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities.

**k** Requiring an entity to take other steps to meet the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities. In particular, the preventive resolution authority may require the entity to renegotiate any

eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, in order to ensure that any decision of the FROB to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.

**l** For the purpose of ensuring ongoing compliance with the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities, requiring an entity to change the maturity profile of:

- 1** own funds instruments, after having obtained the agreement of the competent supervisor, and
- 2** The eligible liabilities referred to in Article 44 bis for resolution entities and as provided for in the regulations with respect to eligible liabilities for entities that are not resolution entities;

**m** Where an entity is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the entity, if necessary in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and the exercise of the powers of resolution having an adverse effect on the non-financial part of the group.

**3** Within one month of the date of receipt of the notification of the alternative measures imposed by the competent preventive resolution authority by virtue of paragraph 2, the entity shall submit a plan for the implementation of such measures.

**4** For the purposes of the provisions of this article, the competent resolution authorities shall consider, inter alia, the threat to financial stability of the impediments identified and the potential effect of the alternative measures proposed on the business of the entity, its stability and its ability to contribute to the economy, on the internal market for financial services, on the financial stability in other European Union Member States and the European Union as a whole. To conduct such an assessment, they must request the opinion of the Spanish macroprudential authority on such aspects.

In addition, in identifying alternative measures to those proposed by the entity to remove the impediments to resolvability, the competent resolution authorities shall demonstrate how the measures proposed by the entities would not be able to remove such impediments and how the alternative measures are proportionate in removing them.

#### **10.5 Article 18. Impediments to the resolvability of groups.**

**1** The preventive resolution authority, when it is the group-level resolution authority, having regard to the assessment provided for in Article 16, shall endeavour to reach a joint decision with the other competent resolution authorities on the appropriate measures to address the impediments to resolvability, in relation to all of the resolution entities and any of their subsidiaries that are entities referred to in Article 1(2) and that form part of the group.

For these purposes, the preventive resolution authority, in cooperation with the competent consolidating supervisor, the FROB and the European Banking Authority, shall send a report to the parent undertaking, to the resolution authorities of the subsidiaries and to the resolution authorities of the jurisdictions in which significant branches are located. This report shall analyse the substantive impediments to the effective application of the resolution tools and the exercise of resolution powers in relation to the group, and also in relation to resolution groups where a group is composed of more than one resolution group. The report shall also consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the view of the group-level resolution authority, are necessary or appropriate to remove those impediments.

Where an impediment to the resolvability of the group is due to a situation of a group entity referred to in the second subparagraph of Article 17(2), the preventive resolution authority

shall notify its assessment of that impediment to the Union parent undertaking after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions

**2** Within four months of the date of receipt of the report, the parent undertaking of the group may submit observations and propose to the preventive resolution authority alternative measures to remove the identified impediments to its resolvability. The preventive resolution authority shall communicate such measures, without delay, to the consolidating supervisor, the FROB, the EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

Where the impediments identified in the report are due to a situation of a group entity referred to in the second subparagraph of Article 17(2), the Union parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with the second subparagraph of the preceding paragraph, propose to the group-level preventive resolution authority possible measures and the timeline for their implementation to ensure that the group complies with:

**a** The minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable,

**b** The combined buffer requirement and the minimum requirement for own funds and eligible liabilities for resolution entities and entities that are not resolution entities expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013.

The above timeline shall take into account the reasons for the substantive impediment. The preventive resolution authority, after consulting the competent supervisor and the FROB, shall assess whether those measures effectively reduce or remove the substantive impediment.

**3** The preventive resolution authority and the resolution authorities of the subsidiaries, after consulting the FROB, the competent supervisors and the resolution authorities of the jurisdictions in which significant branches are located, shall endeavour to reach a joint decision within the resolution college regarding the impediments to resolvability, the assessment of the measures proposed by the parent undertaking and the measures that shall be required in order to remove such impediments, taking into account the potential impact of the measures in the European Union Member States where the group operates.

**4** The preventive resolution authority, when acting as the resolution authority of a subsidiary authorised in Spain whose parent is located in another European Union Member State that is not supervised on a consolidated basis by any of the competent supervisors provided for in Article 2(1)(b), shall endeavour, in cooperation with the FROB, to reach a joint decision with the other competent resolution authorities on the appropriate measures to address the impediments to resolvability under the terms laid down in regulations.

## **11 CHAPTER IV. RESOLUTION**

### **11.1 Article 19. Conditions for resolution.**

**1** A credit institution should be resolved where the following circumstances concur:

**a** the institution is failing or likely to fail in the near future.

**b** there is no reasonable prospect that private-sector measures (such as, inter alia, the measures applied by institutional protection systems), supervisory action (such as, inter alia, early intervention measures) or the write-down or conversion of relevant capital instruments and eligible liabilities pursuant to Section 2 of Chapter VI will prevent the failure of the institution within a reasonable timeframe.

**c** for reasons of public interest, it is necessary or advisable to place the institution under resolution in order to achieve one or more of the objectives mentioned in Article 3, since the winding-up and liquidation of the institution under insolvency proceedings would not reasonably allow these objectives to be attained to the same extent.

**2** The financial institutions referred to in Article 1(2)(b) shall be resolved where the conditions for resolution are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.

**3** The entities referred to in Article 1(2)(c) or (d) shall be resolved where that entity meets the conditions set out in paragraph 1.

**4** Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, the resolution plan shall provide that the intermediate financial holding company is identified as a resolution entity and all resolution actions for the purposes of group resolution shall be taken in relation to the intermediate financial holding company. The FROB shall not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.

**5** Pursuant to the provisions of paragraph 4 above and notwithstanding the fact that an entity referred to in Article 1(2)(c) or (d) does not meet the conditions for resolution, the FROB may take resolution action with regard to an entity where all of the following conditions are fulfilled:

**a** the entity is a resolution entity;

**b** one or more of the subsidiaries of the entity that are institutions, but not resolution entities, comply with the conditions laid down in Article 19(1);

**c** the assets and liabilities of the subsidiaries referred to in point (b) are such that the failure of those subsidiaries threatens the resolution group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.

**6** The FROB may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions established in paragraph 1 of this article.

### **11.2 Article 19 bis. Insolvency proceedings in respect of institutions and entities that are not subject to resolution action.**

Where it is determined that an institution or entity referred to in Article 1(2)(b), (c) or (d) meets the conditions envisaged in Article 19(1)(a) and (b), but that a resolution action would not be in the public interest in accordance with Article 19(1)(c), such entity or institution shall be wound up in an orderly manner in accordance with the procedure provided for in Title VIII of Book One of the consolidated text of the Insolvency Law, approved by Royal Legislative Decree 1/2020 of 5 May 2020.

### **11.3 Article 20. Concept of failing institution.**

**1** An institution shall be deemed to be failing for the purposes of the provisions of Article 19(1)(a) if any of the following circumstances prevail:

**a** the institution significantly infringes, or is likely to significantly infringe in the near future, solvency or other requirements for continuing authorisation.



- b** the assets of the institution are or will, in the near future, likely be less than its liabilities.
- c** the institution is unable, or it is reasonably foreseeable that in the near future it will be unable, to meet its obligations as they fall due.
- d** the institution requires extraordinary public financial support.

**2** Notwithstanding the provisions of point (d) of paragraph 1, the institution shall not be considered to be failing if the extraordinary public financial support is granted to avoid or remedy a serious disturbance in the economy and preserve financial stability, provided that such assistance takes one of the following forms:

- a** a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions.
- b** a State guarantee of newly issued liabilities.
- c** an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in point (a), (b) or (c) of paragraph 1 nor the circumstances referred to in Article 38(2) are present at the time the public support is granted.

The support referred to in this paragraph shall be confined to solvent institutions and shall be conditional on approval under State aid legislation. The support shall be of a precautionary and temporary nature and shall be proportionate to avoid or remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur.

The support under point (c) shall be limited to the injections necessary to address capital shortfall established in stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, European Banking Authority or national authorities, where applicable, authorised by the competent supervisor.

**3** The criteria laid down in this article and the conditions under which a group will be resolved shall be implemented in regulations.

#### **11.4 Article 21. Initiating the resolution process.**

**1** The competent supervisor, after consulting the competent preventive resolution authority and the FROB, shall determine whether the institution is failing or likely to fail in the near future, pursuant to the provisions of Article 19(1)(a). Once the assessment is complete, it shall be notified to the FROB and the competent preventive resolution authority by the competent supervisor without delay.

Notwithstanding the foregoing, the FROB may urge the competent supervisor to perform this assessment if, based on the information and analysis provided by the competent supervisor, it considers there are grounds to do so. The competent supervisor must respond within three days with the reasons for its decision.

**2** The FROB, in close cooperation with the competent supervisor, shall perform an assessment of the condition referred to in Article 19(1)(b). Also, the competent supervisor shall inform the FROB in this connection, where it considers the condition referred to in that point to be met.

**3** After performing the aforementioned actions, the FROB shall check whether the other circumstances referred to in Article 19 exist and, if so, it shall order the immediate initiation of the resolution procedure, notifying the Minister of Economic Affairs and Competitiveness, the competent supervisor and the competent preventive resolution authority of its decision and the reasons therefor.

**4** Where the management body of an institution considers that it is failing it shall immediately notify the competent supervisor, which in turn shall notify the FROB and the preventive resolution authority without delay.

**11.5 Article 22. Replacement of the management body and the general managers or similar officers as a resolution measure.**

**1** Following initiation of the resolution process pursuant to the provisions of the preceding article, the FROB shall order and make public the replacement of the institution's management body and of the general managers or similar officers and the appointment as the institution's administrator of the individual(s) or legal person(s) that, on its behalf and under its control, will discharge the attendant functions and powers, with the scope, limitations and requirements, if any, that are specified in regulations. They shall be deemed to have been assigned all such powers as may lie with the general meeting or assembly of the institution by law or by virtue of the articles of association as are required to exercise the powers laid down in this Law in relation to the resolution tools envisaged herein. In the event of a conflict, the exercise of these resolution powers shall override any other duty or obligation under the institution's articles of association or under the governing legislation. The FROB may opt not to replace the institution's management body or the general managers or other similar officers in those exceptional cases in which, in light of the institution's shareholding structure or the composition of its management body at the time the resolution process is initiated, their retention is strictly necessary to ensure the resolution process proceeds properly and, in particular, in those in which the FROB is in a position to control the institution's management body by virtue of its voting rights.

**2** The FROB shall approve the scope of action of the special manager, including the periodic information the latter has to prepare on the acts performed in the conduct of his or her duties.

**3** The decision on the appointment of the special manager shall be enforceable as soon as it is issued, shall be immediately published in the Official State Gazette and recorded in the corresponding public registers. Once it is published in the Official State Gazette, the decision shall be effective vis-à-vis third parties.

**4** The replacement shall not last more than one year. The FROB may exceptionally extend this period if it considers it necessary in order to complete the resolution process.

**11.6 Article 23. Contents of decisions on the initiation of resolution processes.**

Decisions on whether or not a resolution process is initiated must include at least the following content:

**a** The grounds for the decision, with a reference to whether or not the institution meets the conditions for resolution laid down in Article 19.

**b** The measures, if any, that the FROB intends to take, be they the resolution measures provided for in this Law or other applicable measures pursuant to insolvency legislation.

**c** The grounds, if any, for applying for the initiation of normal insolvency proceedings.

**11.7 Article 24. Notification and publication requirements.**

**1** The FROB shall notify without delay the institution under resolution, the authorities referred to in Article 69 and the authorities determined in regulations of the full text of the decision on the initiation of a resolution process and the full text of the decision on the adoption of resolution measures, indicating the date on which the measures adopted will become effective.

**2** The FROB shall also publish the act by which the resolution measures are taken or a summary of the effects of those measures, and in particular those on retail customers and, if applicable, the terms and period of the suspension or restriction referred to in Articles 70 to 70 quater, inclusive.**3.** The notification and publication requirements referred to in this Article shall be established in regulations.

## **12 CHAPTER V. RESOLUTION TOOLS**

### **13 Section 1. Resolution tools**

#### **13.1 Article 25. Definition of resolution tools and general rules.**

**1** The resolution tools are:

- a** the sale of business tool.
- b** the bridge institution tool.
- c** the asset separation tool.
- d** the bail-in tool.

**2** The FROB may apply the resolution tools individually or in any combination, except for the asset separation tool, which may only be applied together with another resolution tool.

**3** The purchaser, bridge institution, asset management vehicle and the institution under resolution may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investment guarantee schemes and deposit guarantee schemes of the institution under resolution, provided it meets the membership and regulatory criteria for participation in such systems.

Notwithstanding the foregoing, access shall not be denied on the ground that the purchaser or the bridge institution do not possess a rating from a credit rating agency, or that the rating is not commensurate to the rating levels required to be granted access to the systems referred to in the preceding paragraph.

Where the purchaser or the bridge institution do not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the first paragraph are exercised for such a period of time as may be specified by the FROB, not exceeding 24 months, renewable on application by the purchaser or the bridge institution.

**4** The FROB, and any financing arrangement established pursuant to Article 53, may recover any reasonable expenses incurred from the use of the tools or the exercise of the resolution powers laid down in this Law, in one or more of the following ways:

- a** as a deduction from any consideration paid by a recipient to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership.
- b** from the institution under resolution, as a preferred creditor.
- c** from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor.

**5** Any consideration paid by the purchaser shall benefit:

- a** the owners of the shares or other instruments of ownership, where the sale of business or the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the institution under resolution.
- b** the institution under resolution, where the sale of business or the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the purchaser.
- c** the institution under resolution, in the case of the asset management vehicle. Consideration may be paid in the form of debt issued by the company.

**6** Where the resolution tools referred to in points (a) and (b) of paragraph 1 are used to transfer some of the institution's assets and liabilities, the residual part of the institution shall be wound up under insolvency proceedings within a reasonable timeframe, having regard to the need for the residual part of the institution to collaborate to ensure that services

continue to be provided by the recipient and that the resolution objectives and principles are optimally met and complied with.

**7** The shares or other instruments of ownership, assets and liabilities to be transferred using the resolution tools referred to in paragraph 1 shall be transferred without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements under company or securities legislation other than those expressly laid down in this Law.

**8** Without prejudice to the rules on safeguards laid down in this Law, when one of the resolution tools referred to in this article is used, the shareholders and creditors of the institution under resolution and other third parties whose assets or liabilities have not been transferred shall not have any rights over or in relation to the assets and liabilities transferred.

**9** The transactions effecting the resolution measures and, in particular, the measures arising from the use of the tools listed in this article, cannot be terminated under the provisions of Article 71 of Spanish Insolvency Law 22/2003 of 9 July 2003.

### **13.2 Article 26. Sale of business tool.**

**1** The FROB may transfer to a purchaser that is not a bridge institution:

**a** shares or contributions to share capital, or, generally, equity or similar instruments of the institution or securities convertible into them, whosoever the holders.

**b** all or any assets or liabilities of the institution.

**2** The legal constraints or obligations referred to in Article 34(1) shall not be applicable either to persons or institutions which, in implementation of the terms set out in the related resolution plan, have acquired shares, contributions or instruments.

**3** The FROB may apply this resolution tool more than once and in favour of one or more purchasers. Following an application of this tool, the FROB may, with the consent of the purchaser, transfer the shares or other instruments of ownership, assets and liabilities transferred to the purchaser back to the institution under resolution or, in the case of the shares or other instruments of ownership, back to the original owners, who shall be obliged to take them back.

**4** To select the purchaser or purchasers, the FROB shall launch a competitive procedure with the following characteristics:

**a** it shall be transparent, having regard to the circumstances of each specific case and the need to safeguard the stability of the financial system.

**b** it shall not favour or discriminate between potential purchasers.

**c** the necessary measures shall be adopted so that it is free from any conflict of interest.

**d** it shall take account of the need to effect a rapid resolution action.

**e** it shall aim at maximising the sale price.

The transfer shall be made on commercial terms, having regard to the circumstances and in accordance with State aid legislation.

Any public disclosure relating to the marketing of the institution under resolution required under Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, may be delayed in accordance with the terms laid down in paragraphs (4) and (5) of that article.

**5** When, under the terms envisaged in Article 68, the launch of the procedure referred to in the previous paragraph might undermine one or more of the objectives listed in Article 3, and, in particular, when there are firm grounds for considering that there is a material threat to the stability of the financial system arising from or aggravated by the institution's situation

or it is noted that the launch of this procedure may undermine the effectiveness of the resolution tool, the selection of the purchaser or purchasers may be made without having to meet the procedural requirements indicated in the previous paragraph.

**6** Where the transfer of the shares or other instruments of ownership resulting from the use of the sale of business tool gives rise to the acquisition of, or increase in, a holding in an institution and the consequent application of the legislation on qualifying holdings, the competent supervisor shall assess the acquisition or increase within 5 business days.

**7** Where the sale of business tool has been used without completing the assessment referred to in the preceding paragraph, the following provisions shall apply:

**a** the transfer of shares or other legal instruments of ownership shall have immediate legal effect.

**b** during the assessment period and during any divestment period provided by point (f), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the FROB, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such rights.

**c** during the assessment period and during any divestment period provided by point (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings envisaged in Law 10/2014 of 26 June 2014 or in Law 24/1988 of 28 July 1988 shall not apply.

**d** promptly upon completion of the assessment by the competent supervisor, the competent supervisor shall notify the FROB and the acquirer in writing of whether it approves or opposes the transfer.

**e** if the competent supervisor approves the transfer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the FROB and the purchaser of such an approval notice.

**f** if the competent authority opposes such a transfer, then:

**1** the FROB shall retain the voting rights attached to such shares or other instruments of ownership.

**2** the FROB may require the purchaser to divest such shares or other instruments of ownership within a divestment period determined by the FROB having taken into account prevailing market conditions.

**3** if the acquirer does not complete such a divestment within the divestment period established by the FROB, then the competent supervisor, with the consent of the FROB, may impose on the purchaser penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated in Law 10/2014 of 26 June 2014 or in Law 24/1988 of 28 July 1988.

**8** For the purposes of exercising the rights to provide financial services or to establish itself in another Member State in accordance with Law 10/2014 of 26 June 2014 and Law 24/1988 of 28 July 1988, the purchaser shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets and liabilities transferred.

### **13.3 Article 27. Bridge institution tool.**

**1** The FROB may transfer to a bridge institution:

**a** all or part of the shares or contributions to share capital, or, generally, of the equity or similar instruments of the institution or securities convertible into them, whosoever the holders.

**b** all or any assets or liabilities of an institution under resolution.

**2** A bridge institution is a public limited company that may be wholly or partially owned by the FROB or another public authority or financing arrangement, whose object is to carry on in full or in part the activities of an institution under resolution and to manage the shares or other instruments of ownership or some or all of its assets and liabilities.

The FROB shall exert control over this resolution tool or its use under the terms laid down in regulations.

**3** The transfer to a bridge institution shall be made for and on behalf of the institution's shareholders, but without having to obtain their consent or that of third parties other than the bridge institution, and without having to comply with the procedural requirements in respect of structural changes to companies or under securities market legislation.

**4** The total value of the liabilities transferred to the bridge institution may not exceed the value of the rights and assets transferred from the institution under resolution or from any other source.

**5** The FROB may apply this tool more than once and in favour of one or more bridge institutions, and it may transfer assets and liabilities from a bridge institution to the institution under resolution or to a third party.

**6** The FROB may order that the shares or other instruments of ownership, or the assets and liabilities, be transferred from a bridge institution back to the institution under resolution in the following circumstances:

**a** this possibility is stated expressly in the instrument by which the transfer was made.

**b** the shares or other instruments of ownership, assets or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of shares or other instruments of ownership, assets or liabilities specified in the instrument by which the transfer was made.

**7** For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Law 10/2014 of 26 June 2014 and Law 24/1988 of 28 July 1988, the bridge institution shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets and liabilities transferred. For other purposes, the FROB shall be required to request that the competent supervisor recognise such continuity.

**8** The bridge institution shall have the appropriate authorisation to carry on the business or services acquired in accordance with the provisions of Law 10/2014 of 26 June 2014 and Law 24/1988 of 28 July 1988, as appropriate, and shall be subject to the supervision of the European Central Bank, the Banco de España or the Spanish National Securities Market Commission. The operation of the bridge institution shall be in accordance with the State aid framework and the resolution authority may specify restrictions on its operations.

Notwithstanding the foregoing and where necessary to meet the resolution objectives, at the beginning of its operation and strictly during the time necessary, the bridge institution may be established and authorised without needing to comply with the requirements for access to the relevant activity. To that end, the FROB shall submit a request in that sense to the competent supervisor. If the competent supervisor decides to grant such an authorisation, it shall indicate the period for which the bridge institution is waived from complying with those requirements.

**9** The objectives of the bridge institution shall not imply any duty or responsibility to the shareholders or creditors of the institution under resolution, and the management body shall have no liability to such shareholders or creditors for acts or omissions in the discharge of

their duties unless the act or omission implies gross misconduct or a serious infringement that directly affects rights of the shareholders and creditors.

**10** The bridge institution shall be operated with a view to maintaining access to the critical functions and selling the institution, or its assets and liabilities, when conditions are appropriate and, in any event, within the period and in accordance with the assumptions established in regulations.

**11** The bridge institution or its assets or liabilities shall be marketed openly, transparently and on commercial terms, without unduly favouring or discriminating between potential purchasers, having regard to the circumstances and in accordance with the legislation on State aid.

**12** Where the operations of a bridge institution are terminated, the bridge institution shall be wound up under insolvency proceedings. Any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the institution.

**13** Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution, the winding up shall refer to the assets and liabilities transferred from each of the institutions under resolution, to which end they will previously be separated from the bridge institution.

#### **13.4 Article 28. Asset management vehicle.**

**1** In the terms laid down in this Law, the FROB may, by administrative act, oblige an institution under resolution or a bridge institution to transfer to one or more asset management vehicles certain categories of assets held on the institution's balance sheet. Measures necessary to transfer assets held on the balance sheet of any institution that the institution controls within the meaning of Article 42 of the Commercial Code may also be taken by the FROB, in the case of highly impaired assets or assets whose continued presence on such balance sheets could affect the viability of the institution or the resolution objectives, in order to remove those assets from the balance sheets and allow them to be managed separately.

The FROB may only exercise such powers if:

**c** the market for the assets of the institution under resolution or the bridge institution is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on financial markets;

**d** such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or

**e** such a transfer is necessary to maximise liquidation proceeds.

**2** The criteria for defining the categories of assets that may be transferred shall be determined in accordance, inter alia, with the business to which they relate, the length of time they have been on the balance sheet and their accounting classification. Using these criteria, the FROB shall determine which assets of each institution are to be transferred.

**3** Each asset management vehicle shall be a public limited company that may be wholly or partially owned by the FROB or another public authority or financing arrangement, created for the purpose of receiving some or all of the assets or liabilities of one or more institutions under resolution or of a bridge institution.

The FROB shall exert control over this resolution tool or its use under the terms laid down in regulations.

**4** Performance of the actions to attain the objectives of the asset management vehicle shall not imply any type of duty or responsibility to the shareholders and creditors of the institution under resolution, and the management body shall have no liability to such shareholders or

creditors for acts or omissions in the discharge of their duties unless the act or omission implies serious misconduct or a serious infringement that directly affects rights of the shareholders and creditors.

**5** The asset management vehicle shall be subject to corporate governance obligations that ensure that its functions are discharged in accordance with the objectives and principles laid down in Articles 3 and 4, in the terms provided for in regulations.

**6** The company may issue bonds and securities recognising or creating debt and shall not be subject to the limit established in Article 405 of the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010.

**7** For the purposes of the provisions governing the asset management vehicle, the term “assets” shall be understood to also include the liabilities that need to be transferred.

**8** The provisions of this article shall be implemented in regulations.

### **13.5 Article 29. Asset transfer regime.**

**1** The provisions of articles of association or contractual clauses restricting the transferability of holdings shall not be enforceable against the transfers of assets to one or more asset management vehicles, and no liability or compensation claims of any kind may be filed for breach of such provisions or clauses.

**2** Before the transfer is made, institutions shall make the corresponding valuation adjustments to the assets to be transferred, in accordance with the criteria defined in regulations. Likewise, before the transfer is made, the FROB shall determine the value of the assets to be transferred to the asset management vehicle in accordance with the principles established in Article 5 and, as the case may be, the State aid legislative framework.

For the purposes of the provisions of the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, the aforementioned valuation shall supersede that conducted by an independent expert.

**3** Before the assets are transferred to the management company, the FROB may demand that they be grouped together into a company or that operations of any kind be performed in respect of the assets in order to facilitate the transfer.

**4** The asset transfer will be subject to the following special conditions:

**a** The transfer may not, under any circumstances, be rescinded under the asset clawback actions provided for in insolvency law.

**b** In the case of any disputed debt claims transferred, the provisions of Article 1535 of the Civil Code shall not apply.

**c** The acquiring company shall not be obliged to launch a takeover bid in accordance with securities market legislation.

**d** The asset transfer will not constitute a succession or extension of liability for tax or social security costs, save as envisaged in Article 44 of the consolidated text of the Workers' Statute Law, approved by Royal Legislative Decree 1/1995 of 24 March 1995.

**e** The asset management vehicle will not be responsible, in the event of transfer, for any tax liabilities accrued prior to the transfer deriving from the ownership, use or management of the assets by the transferor.

**f** In the case of credit claims transferred to the asset management vehicle, the institution will not be responsible for the creditworthiness of the corresponding debtor, and if the transfer is made via a spin-off or a carve-out, the provisions of Article 80 of Law 3/2009 of 3 April 2009 on structural changes to commercial companies shall not apply.

**5** The FROB may transfer the assets of the institution under resolution to one or more asset management vehicles more than once and order that the assets be transferred from one or



more asset management companies back to the institution under resolution, which must accept such transfer back, in one of the following circumstances:

**a** the possibility of transferring the rights, assets or liabilities back is stated expressly in the instrument by which the transfer was made.

**b** the rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of, rights, assets or liabilities specified in the instrument by which the transfer was made.

The transfer back may be made within any period established in the instrument by which the transfer was made, complying with any other conditions established therein, and in accordance with the valuation conducted in accordance with Article 5 for the original transfer.

### **13.6 Article 30. Supervisory regime for asset management vehicles.**

**1** The FROB shall be responsible for supervising:

**a** fulfilment of the exclusive purpose of the asset management vehicle, to detect any departures from that purpose that might jeopardise achievement of the overall objectives set for the company by law.

**b** fulfilment of the specific conditions established for the assets and, where appropriate, liabilities to be transferred to the asset management vehicle.

**c** observance of the rules on transparency and on the formation and composition of the governing and control bodies of the asset management vehicle envisaged in the corresponding governing legislation, and likewise the rules on the commercial and professional integrity of the members of its management body.

**2** For the purposes of the supervisory functions assigned in paragraph 1, the FROB may:

**a** conduct any inspections and make any verifications it deems appropriate in the framework of the functions envisaged in paragraph 1; and

**b** request from the asset management vehicle any information it may need to perform its functions, including any independent expert reports it may deem necessary.

Access to the information and data requested by the competent supervisor is provided for under Article 11(2)(a) of Organic Personal Data Protection Law 15/1999 of 13 December 1999.

## **14 Section 2. Recapitalisation operations**

### **14.1 Article 31. Recapitalisation operations using funds from the National Resolution Fund.**

**1** If, in accordance with Article 50(1)(b), the use of the resolution tools involves the use by the FROB of funds from the National Resolution Fund to recapitalise an institution, this will be carried out pursuant to the provisions laid down in this Section, without prejudice to the other applicable rules laid down in this Law.

**2** The FROB will acquire and dispose of the assets or liabilities on the basis of the value of the institution pursuant to the provisions of Article 5 and in accordance with European Union competition and State aid legislation.

**3** The instruments acquired by the FROB shall be eligible, following fulfilment of the applicable requirements, as Common Equity Tier 1 capital, Additional Tier 1 capital or Tier 2 capital, in accordance with the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

**4** When the FROB conducts recapitalisation actions pursuant to Articles 20(2)(c) and 51, the provisions of this Section shall apply.

5 For the purposes of Insolvency Law 22/2003 of 9 July 2003, the claims of the FROB shall be considered general preferred claims.

#### **14.2 Article 32. Ordinary shares or contributions to share capital.**

1 Before the FROB acquires ordinary shares or makes contributions to share capital, the institution under resolution shall take the necessary steps to ensure that such acquisition or contribution represents a holding in its share capital that is consistent with the value of the institution resulting from the valuation process.

2 The legal regime of the FROB shall not extend to the institutions in which it has holdings in accordance with the provisions of this Article, which shall be governed by the applicable private law.

3 By subscribing or acquiring these instruments the FROB shall, in all cases, obtain the corresponding voting rights and representation on the management body of the issuing institution, directly and with no need for any other steps or resolutions, save notification to the Mercantile Register of the corresponding voting rights. The FROB shall appoint the individual(s) to act as its representative(s) and shall hold on the management body the number of votes corresponding to its holding in the institution as a percentage of the total number of votes, rounded off to the nearest whole number.

4 To ensure the most efficient use of public funds, and complying to that effect both with Spanish and European Union competition and State aid legislation, the FROB must divest the instruments to which this Section refers through a competitive process.

The FROB may adopt any of the measures referred to in Article 53(2) of this Law to support the competitive divestment process.

The FROB may participate, together with any other of the members or shareholders of the institution, in any processes for sale of securities, on the same terms as agreed by the latter.

5 The divestment shall be made following a report from the National Audit Office on observance of the procedural rules applicable. Moreover, any divestment of qualifying holdings by credit institutions controlled by the FROB, in accordance with the corresponding resolution plans, through direct or indirect holdings, and even if the institutions are subject to private law, shall be subject to a report by the Ministry of Finance and Public Administration to ensure that it complies with the principles of transparency and competition. The definition of the concept of qualifying holdings shall lie with the FROB's governing committee.

#### **14.3 Article 33. Instruments convertible into ordinary shares or contributions to share capital.**

1 When resolving to issue such instruments, the issuing institution must approve the resolutions required for a capital increase or subscription of contributions to share capital in the necessary amount.

2 Unless the FROB sets different divestment conditions, the institution must purchase or write down the instruments subscribed or acquired by the FROB, through the National Resolution Fund, as soon as practicable in the terms provided for and in any event within the periods compatible with State aid legislation.

#### **14.4 Article 34. Special regime for subscription or acquisition by the FROB of recapitalisation instruments.**

1 When the FROB subscribes or acquires any of the recapitalisation instruments referred to in this Section, it shall not be subject to:

a the limits established in the articles of association on the right to attend general meetings or assemblies or on voting rights.

b the limits on acquisitions of contributions to share capital of credit co-operatives.

- c the obligation to launch a takeover bid in accordance with securities market legislation.
- 2** When the FROB subscribes or acquires contributions to share capital of a credit co-operative, the quorum and the majorities needed for resolutions to be adopted at assemblies shall be calculated, and the voting rights allocated, according to the percentage of the share capital of the co-operative that the contributions represent.
- 3** If it is resolved to disapply shareholders' pre-emption rights, it will not be necessary to obtain the statutory auditor's report required in the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010. Likewise, if the instruments referred to in Article 33 are issued, it will not be necessary to obtain the auditor's report on the bases and forms of conversion required in the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010.

## **15 CHAPTER VI. WRITE-DOWN AND CONVERSION OF CAPITAL INSTRUMENTS AND BAIL-IN**

### **16 Section 1. General provisions**

#### **16.1 Article 35. Write-down and conversion of capital instruments and bail-in.**

- 1** The FROB shall write down or convert the capital instruments of an institution or apply the bail-in tool, resolving to write down any of its liabilities or convert them to shares or other capital instruments of the institution or one of its investees, under the terms laid down in this Law. The acts adopted by the FROB in application of the provisions of this Chapter shall have the nature of administrative acts.
- 2** The FROB shall write down or convert capital instruments and eligible liabilities prior to or simultaneously with adoption of the resolution action that results in the bail-in of creditors, under the terms envisaged in this Law.

#### **16.2 Article 36. Amount of the bail-in.**

- 1** Before resolving to write down or convert capital instruments or to apply the bail-in tool, the FROB shall carry out a valuation of the institution's assets and liabilities in accordance with Article 5, which shall be the basis for calculating the amount of the recapitalisation of the affected institution.
- 2** For the purposes of the previous paragraph, the FROB shall calculate, taking into account the valuation made pursuant to paragraph 1, the aggregate sum of:
- a** the amount by which bail-inable liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and
  - b** the amount by which bail-inable liabilities must be converted into shares or other capital instruments in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution or the bridge institution.
- 3** The calculation provided for in paragraph 2 shall establish the amount by which bail-inable liabilities must be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution or where applicable the bridge institution, and to sustain sufficient market confidence therein, and enable the institution concerned to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised.
- 4** The calculation made shall also take into account, where appropriate, the capital contribution made by the National Resolution Fund and, where the FROB intends to use the

tool for the transfer of assets or liabilities provided for in Article 29, a prudent estimate of the capital needs of the asset management vehicle as appropriate.

**5** If, after the bail-in, the level of write-down based on the preliminary valuation provided for in Article 38 is found to exceed requirements under the definitive valuation, a mechanism shall be established to compensate creditors and then shareholders to the extent necessary.

### **16.3 Article 37. Effects of the write-down and conversion of capital instruments and bail-in.**

**1** Where the FROB exercises the powers regulated in this chapter, the reduction of the principal or outstanding amount due, or the conversion or cancellation of the liabilities, shall be immediately enforceable.

**2** Where the principal amount of a relevant capital instrument is written down, the following shall take effect:

**a** The reduction of that principal amount shall be permanent, without prejudice to any compensation mechanism that may be applied in accordance with the provisions of Article 36(5).

**b** No liability to the holder of the affected liability shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of a judgment deciding an appeal challenging the exercise of the power to write down or convert the capital instruments or the bail-in power, all the foregoing without prejudice to the application to such holder of the provisions of Article 39(3).

**c** No compensation shall be paid to any holder of the affected liabilities other than in accordance with Article 39(3).

**3** The FROB shall have the power to complete or require the completion of the formalities to give effect to the exercise of such powers.

**4** Where the FROB reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability, that liability and any obligations or rights arising in relation to it that are not accrued at the time of the reduction shall be treated as discharged for all purposes, and shall not be provable in any subsequent winding-up of the institution under resolution or of any successor entity.

**5** Where the FROB only reduces in part the principal amount of, or outstanding amount payable in respect of, an eligible liability, that liability and the relevant instrument or agreement that created the liability shall only be discharged to the extent of the amount reduced and subject to any modification of the terms thereof that the FROB might make by means of the power conferred on it.

**6** Where the write-down or the conversion of capital instruments or the application of the bail-in tool results in the acquisition of or increase in a qualifying holding in an institution, the assessment required under Law 10/2014 of 26 June 2014 and Law 24/1988 of 28 July 1988 shall be carried out within five business days.

## **17 Section 2. Write-down and conversion of relevant capital instruments and eligible liabilities**

### **17.1 Article 38. Write-down and conversion of relevant capital instruments and eligible liabilities.**

**1** The FROB, after consulting the competent supervisor, may write down or convert the relevant capital instruments and eligible liabilities of an institution:

**a** Independently of any resolution action, including bail-in.

**b** In combination with any resolution action, where the circumstances specified in Article 19 are met.

Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or at the level of other parent undertakings that are not resolution entities, so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

After the exercise of the power to write down or convert relevant capital instruments or eligible liabilities independently of resolution action, the valuation of the difference in treatment provided for in Article 5(3) and related implementing regulations shall be carried out.

**1 bis.** The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions for entities that are not resolution entities determined by law, except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of Regulation (EU) No 575/2013. When that power is exercised by the FROB, the write down or conversion shall be done in accordance with the principle referred to in Article 4(1)(d).

**1 ter.** Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 39(1) at the level of such an entity shall count towards the thresholds laid down in Article 50(7)(a) or Article 50(3)(a) that apply to the entity concerned.

**2** The FROB, after consulting the competent supervisor, shall write down and convert without delay capital instruments and the eligible liabilities referred to in paragraph 1 bis, when one or more of the following circumstances apply:

**a** The institution meets the conditions for resolution specified in Article 19.

**b** Unless that power is exercised, the institution will no longer be viable. In the case of Spanish subsidiaries that are part of a consolidated group, the existence of this circumstance shall be jointly determined with the appropriate authority of the Member State of the consolidating supervisor in accordance with the procedure determined in regulations.

**c** The institution requires extraordinary public financial support, except in the form provided for in Article 20(2)(c).

**d** In the case of capital instruments issued by a Spanish subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the FROB, on its own initiative or on that of the competent supervisor or preventive resolution authority, having complied with the notification and consultation requirements laid down in this Law, make a joint determination that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable.

**e** In the case of capital instruments issued by a parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the FROB, on its own initiative or on that of the competent supervisor or competent preventive resolution authority, makes a determination that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable.

**3** For the purposes of the provisions of this article, an institution shall be deemed to be no longer viable if any of the circumstances provided for in Article 20 apply and, also, the condition envisaged in Article 19(1)(b) is met.

In the case of groups of institutions, the provisions in Article 20 shall be understood to be met where the group infringes or there are objective elements that make it probable that the group will, in the near future, infringe its solvency requirements at consolidated level in a way that would justify action by the competent supervisor, including because the group has incurred losses that will deplete all or a significant amount of its own funds.

**4** Capital instruments issued by a subsidiary shall not be written down or converted to a greater extent or on worse terms, in the circumstances envisaged in paragraph 2(d), than equally ranked capital instruments issued by the parent undertaking.

**5** The competent supervisory and resolution authorities, at individual or consolidated level, shall cooperate and make the appropriate notifications when determining that the circumstances and conditions stipulated in this article are met.

**6** Before the write-down and conversion of capital instruments and the eligible liabilities referred to in paragraph 1 bis, the appropriate valuation shall be carried out, under the terms provided for in Article 5 and related implementing regulations, which shall serve as a baseline for applying the write-down and conversion rates.

**17.2 Article 39. Rules governing the write-down or conversion of relevant capital instruments and eligible liabilities.**

**1** The FROB shall exercise the power to write-down or convert relevant capital instruments and eligible liabilities under the terms laid down in this Law and related implementing regulations, in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results:

**a** Common Equity Tier 1 items shall be reduced first in proportion to the losses and to the extent of their capacity and the FROB shall take one or both of the actions specified in Article 47(1).

**b** If the above amount is not sufficient for the recapitalisation, the principal amount of Additional Tier 1 instruments shall be written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower.

**c** If the above amounts are not sufficient for the recapitalisation, the principal amount of Tier 2 instruments shall be written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower.

**d** If the above amounts are not sufficient for the recapitalisation, the principal amount of the eligible liabilities referred to in Article 38(1 bis) shall be written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower.

The FROB shall not convert into Common Equity Tier 1 instruments or write down one class of capital instruments and of the eligible liabilities referred to in Article 38(1 bis) while another class that is subordinated has not fully been converted into Common Equity Tier 1 instruments or written down.

**2** Where the principal amount of the capital instruments or the eligible liabilities referred to in Article 38(1 bis) is written down or converted:

**a** The reduction of that principal amount shall be permanent, without prejudice to the mechanism to compensate creditors provided for in Article 36(5).

**b** No liability to the holders of the capital instruments and of the eligible liabilities as referred to in Article 38(1 bis) shall remain under or in connection with that amount of the instrument, which has been written down, except for any obligations already accrued, and any liability that may arise as a result of an appeal challenging the legality of the exercise of the write-down power.

**c** No compensation shall be paid to any holder of the capital instruments or the aforementioned eligible liabilities, without prejudice to the provisions of paragraph 3.

**3** In order to effect a conversion of the capital instruments and the eligible liabilities referred to in Article 38(1 bis), under paragraph 1(b), (c) and (d) of this article, the FROB, pursuant to the conditions stipulated in regulations, may require affected institutions to issue Common Equity Tier 1 instruments to the holders of Additional Tier 1 and Tier 2 instruments and of such eligible liabilities. For these purposes, the FROB may require these institutions to maintain at all times the necessary prior authorisation for the issue.

## **18 Section 3. Bail-in**

### **18.1 Article 40. *Bail-in.***

**1** Under the terms provided for in this Law, the FROB may exercise the powers that are necessary and, in particular, those envisaged in Article 35 and in Section 2 of Chapter VII, in order to recapitalise the institution under resolution, in compliance with the resolution objectives and in accordance with the principles laid down in Articles 3 and 4.

**2** Bail-in measures may be adopted in order to:

**a** Recapitalise the institution in a way that enables it to comply with the conditions to continue to carry out its activities, sustaining market confidence.

**b** Convert to equity or reduce the principal amount of claims or debt instruments that are transferred when applying the resolution tools to set up a bridge institution, sell a business or separate assets.

**3** The bail-in tool shall be applied to the institution pursuant to the provisions of paragraph 2(a) where there is a reasonable prospect that the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan envisaged in Article 49 will, in addition to achieving relevant resolution objectives, restore the institution to financial soundness and long-term viability.

Otherwise, the bail-in tool shall be applied to the institution pursuant to paragraph 2(b), together with the resolution tools provided for in Article 25.

**4** The bail-in shall be carried out respecting the legal form of the affected institution, unless the FROB considers it necessary to change such legal form.

## **19 Section 4. Bail-inable liabilities.**

### **19.1 Article 41. *Bail-inable liabilities.***

**1** All liabilities that are not expressly excluded or have not been excluded further to a decision by the FROB, in accordance with the provisions of this Law, may be subject to write-down or conversion into capital for application of the bail-in tool to the affected institution. The eligibility criteria for the liabilities shall be stipulated in regulations, taking into consideration, in particular, the maturity of the instrument, its nature, its priority level, any guarantees it may have, and provided that the instrument is issued and fully paid up.

**2** The preventive resolution authority, following a report from the FROB, may limit the extent to which other institutions hold bail-inable liabilities applied to an institution, except

where the two institutions are part of the same group, and without prejudice to the applicable large exposure rules.

## **19.2 Article 42. Liabilities mandatorily excluded from bail-in.**

**1** The following liabilities are excluded from bail-in:

**a** Covered deposits, up to the coverage level provided for in the legislation on the Deposit Guarantee Scheme.

**b** Secured liabilities including covered bonds, in particular, mortgage bonds, public-sector covered bonds and internationalisation covered bonds, and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured by the assets in the covered bond cover pool.

**c** Any liability that arises by virtue of the holding by the affected institution of client assets or client money including client assets or client money held on behalf of collective investment institutions, venture capital entities or closed-end collective investment institutions when such a client is protected under insolvency law.

**d** Any liability that arises by virtue of a fiduciary relationship between the affected institution or entity, as fiduciary, and another person, as beneficiary, when such a beneficiary is protected under insolvency law.

**e** Liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days.

**f** Liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Law 41/1999 of 12 November 1999 on payment and securities settlement systems or to their participants and arising from the participation in such a system, or to central counterparties authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by the European Securities and Markets Authority pursuant to Article 25 of that Regulation.

**g** A liability to any one of the following:

**1** An employee, in relation to accrued salary, pension benefits or other fixed remuneration. This exclusion shall not apply in the case of the variable component of remuneration that is not regulated by a collective bargaining agreement.

**2** A commercial or trade creditor arising from the provision to the affected institution of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises.

**3** Tax and social security authorities.

**4** Deposit guarantee schemes arising from contributions due in accordance with Royal Decree-Law 16/2011 of 14 October 2011 creating the Deposit Guarantee Scheme for Credit Institutions, and regulations implementing it.

**h** Liabilities to institutions or entities that are part of the same resolution group without being themselves resolution entities, regardless of their maturities. However, those liabilities shall not be excluded when they rank below ordinary unsecured liabilities in the applicable order of priority under insolvency law. In cases where that exception applies, the preventive resolution authority of the relevant subsidiary that is not a resolution entity shall assess whether the amount of items complying with the minimum requirement for own funds and eligible liabilities for that subsidiary is sufficient to support the implementation of the preferred resolution strategy as provided for in the applicable resolution plan.



**2** Collateral for a covered bond cover pool shall remain unaffected, segregated and with enough funding. This rule and the exclusion envisaged in paragraph 1(b) shall not affect the portion of the covered bond that exceeds the value of the assets securing it.

**19.3 Article 43. Liabilities that may be excluded from the bail-in further to a decision by the FROB.**

**1** In exceptional circumstances, and subject to prior notification to the European Commission, the FROB, under the terms and with the conditions provided for in this Law and in accordance with the procedure determined in regulations, may exclude or partially exclude certain eligible liabilities or classes of bail-inable liabilities from the bail-in in any of the following circumstances:

**a** It is not possible to write down or convert that liability within a reasonable time.

**b** The exclusion is strictly necessary and is proportionate to:

**1** Ensure the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions, or

**2** Avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium-sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the European Union.

**c** When the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

**1 bis.** Resolution authorities shall carefully assess whether liabilities to institutions or entities that are part of the same resolution group without being themselves resolution entities and that are not excluded from the application of the write down and conversion powers under Article 42(1)(h) should be excluded or partially excluded under points (a) to (c) of the previous paragraph to ensure the effective implementation of the resolution strategy.

**2** When exercising the discretions under paragraph 1, the FROB shall give due consideration to:

**a** The principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference.

**b** The level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded.

**c** The need to maintain adequate resources for resolution financing.

**3** Where the FROB decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities under this article, the level of write down or conversion applied to other bail-inable liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other bail-inable liabilities complies with the principle in Article 4(1)(d).

**4** Where the losses that would have been borne by the liabilities that have been excluded further to a decision by the FROB in accordance with this article have not been passed on fully to other creditors, the National Resolution Fund may make a contribution to the institution under resolution under the terms and conditions laid down in Section 6.

#### **19.4 Article 44. Determination of the minimum requirement for own funds and eligible liabilities.**

**1** The preventive resolution authority, following a report from the FROB and the competent supervisor, shall set the minimum requirement for own funds and eligible liabilities for each institution in accordance with this Section and related implementing regulations.

The criteria for setting the minimum requirement for own funds and eligible liabilities for each entity, including the method for calculating it, the liabilities that may be included to meet the requirement and the deadlines and transition periods for compliance, shall be laid down in regulations.

Institutions and entities must meet, at all times, the requirements for own funds and eligible liabilities where required.

**2** This requirement shall be calculated as the amount of own funds and eligible liabilities and expressed as a percentage of:

**a** the total risk exposure amount of the entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and

**b** the total exposure measure of the entity, calculated in accordance with Articles 429 and 429a of Regulation (EU) No 575/2013, governing the calculation of the leverage ratio.

**3** In accordance with Article 65(4) of Regulation (EU) 2019/2033, references to Article 92 of Regulation (EU) No 575/2013 in this Law as regards the own funds requirements on an individual basis of investment firms which are not investment firms as defined in Article 1(2) or 1(5) of Regulation (EU) 2019/2033 shall be construed as follows:

**a** references to point (c) of Article 92(1) of Regulation (EU) No 575/2013 as regards the total capital ratio requirement in this Law shall refer to Article 11(1) of Regulation (EU) 2019/2033;

**b** references to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this Law shall refer to the applicable requirement in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12.5.

In accordance with Article 65 of Directive (EU) 2019/2034, references to Article 104a of Directive 2013/36/EU in this Law as regards additional own funds requirements of investment firms which are not investment firms as defined in Article 1(2) or 1(5) of Regulation (EU) 2019/2033 shall be construed as referring to Article 40 of Directive (EU) 2019/2034.

#### **19.5 Article 45. Removal of impediments to bail-in.**

**1** The preventive resolution authority may, following a report from the FROB and the competent supervisor, and as a result of the analysis of the preparation and maintenance of the resolution plan, require institutions to maintain at all times a sufficient amount of authorised share capital or of other Common Equity Tier 1 instruments, so that, in the event that the bail-in powers must be exercised in relation to that institution or any of its subsidiaries, the institution can issue sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership could be carried out effectively.

**2** In any event, if the resolution plan provides for the possible application of the bail-in tool, the authorised share capital or other Common Equity Tier 1 instrument must be sufficient to cover the sum of the amounts referred to in Article 36(2).

If the maximum amount of authorised capital provided for in Article 297(b) of the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, is insufficient, this limit may be exceeded when required by the preventive resolution authority in the exercise of the powers provided for in paragraph 1. In the exercise of these powers, it may also require that the maximum timeframe set in the

aforementioned article be exceeded. The requirement that contributions must be monetary shall not apply.

**19.6 Article 46. Contractual recognition of bail-in.**

**1** Institutions shall include in the contracts that they conclude a contractual term recognising that the liabilities created with such contracts are subject to the exercise of the write-down and conversion powers of the FROB and whereby the creditor or party to the contract creating the liability is bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of such powers, provided that such liability complies with all of the following conditions:

- a** It is not excluded under Article 42.
- b** It is not a deposit as referred to in paragraph 1(b) of the fourteenth additional provision.
- c** It is governed by the law of a third country.
- d** It is issued or entered into after the entry into force of the provisions on the write-down of capital instruments and bail-in contained in this Chapter.

The competent preventive resolution authority may require the entity to submit a legal report on the enforceability and effectiveness of the clauses provided for in this paragraph.

The preventive resolution authority may decide that the obligation in the first subparagraph shall not apply to entities in respect of which the minimum requirement for own funds and eligible liabilities under Article 44(1) equals the loss-absorption amount under Article 44 ter(3)(a), provided that the liabilities that meet the conditions set out in that subparagraph and which do not include the contractual term required therein are not counted towards that requirement.

**2** The obligation provided for in the previous paragraph shall not apply where the preventive resolution authority determines, following a report by the FROB, that the liabilities or instruments referred to therein can be subject to write down and conversion powers by the FROB pursuant to the law of the State in question or to an agreement or treaty concluded with that State.

**3** Where an entity determines that it is legally or otherwise impracticable to include in the contractual provisions governing a relevant liability the term provided for in paragraph 1, such entity shall notify this, including the designation of the class of the liability and the justification of that determination, to the resolution authority. The institution or entity shall provide the preventive resolution authority with all information that the preventive resolution authority requests, within a reasonable timeframe following the receipt of the notification, in order for the preventive resolution authority to assess the effect of such notification on the resolvability of that institution or entity.

The obligation to include in the contractual provisions of a liability the term provided for in paragraph 1 shall be automatically suspended from the moment of receipt by the resolution authority of the notification.

In the event that the preventive resolution authority concludes that it is not legally or otherwise impracticable to include in the contractual provisions the term provided for in paragraph 1, taking into account the need to ensure the resolvability of the institution or entity, it shall require the inclusion of such contractual term. This requirement shall be made within a reasonable timeframe after the notification pursuant to the first subparagraph of this paragraph. The preventive resolution authority may, in addition, require the entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

For the purposes of the preceding subparagraph, a reasonable timeframe shall mean the period determined by the European Banking Authority in the regulatory technical standards adopted pursuant to Article 55(6) of Directive 2014/59/EU of 15 May 2014.

**4** The entity cannot consider it impracticable to include in the contractual provisions of the term provided for in paragraph 1, in the case of Additional Tier 1 instruments, Tier 2 instruments or marketable debt instruments, where those instruments are unsecured liabilities.

Moreover, the liabilities referred to in the first subparagraph of the previous paragraph shall be senior in the order of priority of claims to the non-preferred ordinary claims resulting from debt instruments set out in paragraph 2 of the fourteenth additional provision.

**5** The preventive resolution authority shall assess, in the context of the assessment of the resolvability of an institution or entity, in accordance with Articles 15 and 16, or at any other time, whether, within a class of liabilities which includes eligible liabilities, the amount of liabilities that, in accordance with the first subparagraph of paragraph 3 of this article, do not include the contractual term referred to in paragraph 1, together with the liabilities which are excluded from the application of bail-in powers in accordance with Article 42 or which are likely to be excluded in accordance with Article 43, amounts to more than 10% of that class.

In that event, the preventive resolution authority shall immediately assess the impact on the resolvability of that entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in Article 4(1)(d) when applying write-down and conversion powers to eligible liabilities.

Where it is concluded that this represents an impediment to resolvability, the preventive resolution authority shall initiate the procedure provided in Articles 17 or 18, as appropriate, to remove that impediment to resolvability.

**6** Liabilities for which the institution or entity fails to include in the contractual provisions the term required by paragraph 1 of this article or for which, in accordance with paragraph 3, that requirement does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities.

**7** Non-compliance by the institution with the obligation laid down in paragraph 1 shall not prevent the exercise of the write-down and conversion power in relation to a specific liability.

**8** The preventive resolution authority shall specify, where it deems it necessary, the categories of liabilities for which an entity may reach the determination that it is legally or otherwise impracticable to include the contractual term referred to in paragraph 1

## **20 Section 5. Implementation of bail-in tools**

### **20.1 Article 47. Treatment of shareholders.**

**1** The FROB, in the exercise of its powers to apply the bail-in tool, having regard to the result of the valuation of the institution, and once the amount of such recapitalisation has been set pursuant to this Law, shall take one or both of the following actions:

**a** Cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors.

**b** Provided that, in accordance with the valuation carried out under Article 5, the institution under resolution has a positive value, dilute existing shareholders and holders of other instruments of ownership through the conversion into shares or other instruments of ownership of:

**1** capital instruments issued by the institution, or

**2** bail-inable liabilities issued by the institution.

The conversion shall be conducted in a way that severely dilutes existing holdings of shares or other instruments of ownership.

**2** The measures indicated in paragraph 1 shall also be taken in respect of holders of shares or other instruments of ownership that were issued or conferred in the following circumstances:

**a** Pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the FROB that the conditions for resolution were met.

**b** Pursuant to the conversion of capital instruments to Common Equity Tier 1 instruments in accordance with this Law.

**3** The FROB shall decide on the specific actions to take, having regard to:

**a** The valuation carried out in accordance with Article 5.

**b** The amount by which it is considered that Common Equity Tier 1 capital must be written down and capital instruments must be written down or converted.

**c** The valuation of the assets and liabilities provided for in Article 36.

**4** Where the application of the bail-in tool or the conversion of capital instruments result in the acquisition of or increase in a holding in an institution, such that the legislation on qualifying holdings is applicable, the competent supervisor shall assess the acquisition or increase in a timely manner that does not delay, impede or prevent the measures being applied by the FROB.

If the bail-in tool or conversion of capital instruments is applied without performing the valuation referred to in the preceding paragraph, the rules provided for in Article 26(7) shall apply.

#### **20.2 Article 48. Sequence and special rules of the bail-in.**

**1** The FROB shall apply the bail-in tool to absorb losses and cover the amount of the bail-in determined in accordance with the provisions of this Law, writing down or reducing the amount of shares, capital instruments or bail-inable liabilities, using the following sequence:

**a** Common Equity Tier 1 items in proportion to the losses and to the extent of their capacity.

**b** The principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity.

**c** The principal amount of Tier 2 instruments to the extent required and to the extent of their capacity.

**d** The principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the order of priority of claims provided for in the consolidated text of the Insolvency Law, approved by Royal Legislative Decree 1/2020 of 5 May 2020.

**e** The principal amount of, or outstanding amount payable in respect of, the bail-inable liabilities in accordance with the order of priority of claims provided for in applicable insolvency law.

**2** When applying the write-down or conversion powers, the FROB shall allocate the losses equally between shares or other instruments of ownership and bail-inable liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and bail-inable liabilities to the same extent pro rata to their value except where the power envisaged in Article 43(3) is exercised. The foregoing shall not prevent liabilities which have been excluded in accordance with the provisions of this Law from receiving more favourable treatment than bail-inable liabilities of the same rank in the insolvency proceedings.

**3** The FROB shall not convert into equity or write down one class of liabilities while other subordinated debt has not been fully converted into equity or written down, except in the case of liabilities excluded from the bail-in.

**4** The write-down and conversion of liabilities arising from derivatives shall be effected only upon or after closing out the derivatives. Once the resolution of an institution has been decided, the FROB may terminate and close out any derivative contract for that purpose. Where derivative transactions are subject to a netting agreement, the FROB or an independent expert shall determine as part of the valuation provided for in Article 5 the net amount of the liability arising from the closing out of the transactions in accordance with the terms of that agreement.

The FROB shall determine the value of liabilities arising from derivatives in accordance with the rules and principles laid down in regulations.

**5** The FROB, when exercising the powers provided for in Articles 38 and 40, may apply different conversion rates to different classes of capital instruments and liabilities, taking account of the following principles:

**a** The conversion rate shall represent appropriate compensation to the creditor for any loss incurred by virtue of the write-down or conversion.

**b** The conversion rate applied to senior creditors shall be higher than the conversion rate applied to lower ranking creditors.

### **20.3 Article 49. Business reorganisation plan.**

**1** On applying the bail-in tool, the FROB shall require the institution's management body or the person or persons appointed for that purpose to submit a business reorganisation plan containing the measures aiming to restore the long-term viability of the institution or parts of its business within a reasonable timescale, having regard to the economic and market conditions under which the institution operates.

**2** A business reorganisation plan may include, among others, the following measures:

**a** The reorganisation of the activities of the institution.

**b** Changes to the operational systems and infrastructure within the institution.

**c** The withdrawal from loss-making activities.

**d** The restructuring of activities that can be made competitive.

**e** The sale of assets or of business lines.

**3** The FROB, after consulting the competent preventive resolution authority and the competent supervisor, is responsible for approval of the reorganisation plan and the amendments thereto.

If the FROB, after consulting the competent preventive resolution authority and the competent supervisor, considers that the plan will not achieve the objectives laid down in paragraph 1, it shall notify the management body or the persons appointed for that purpose, as per the aforementioned paragraph, and require the amendment of the plan in a way that enables achievement of such objectives.

**4** The FROB, in co-operation with the competent preventive authority and the competent supervisor, shall assess and ensure compliance with the approved reorganisation plan.

**5** The deadline and procedure for submitting such plans, their minimum content, their execution and possible review, as well as the applicable rules in the case of groups of institutions, shall be determined in regulations.

## **21 Section 6. Other contributions to the bail-in**

**Article 50.** *Conditions for the contribution by the National Resolution Fund.*

**1** In the circumstances envisaged in Article 43(4), the National Resolution Fund provided for in Article 53(1)(a) may make a contribution to the institution under resolution to:

- a** cover any losses which have not been absorbed by bail-inable liabilities and restore the net asset value of the institution under resolution to zero, or
- b** purchase shares or other instruments of ownership in the institution under resolution, in order to recapitalise the institution.

**2** The National Resolution Fund may make a contribution referred to in paragraph 1 only where the following conditions are met:

- a** a contribution to loss absorption and recapitalisation equal to an amount of at least 8% of the total liabilities including own funds of the institution, measured at the time of resolution in accordance with the valuation provided for in Article 5, has been made by the shareholders, the holders of other instruments of ownership and the holders of other bail-inable liabilities through write-down, conversion or otherwise; and
- b** the contribution of the resolution financing arrangement does not exceed 5% of the total liabilities including own funds of the institution under resolution, calculated at the time of resolution action in accordance with the valuation provided for in Article 5.

**3** Compliance with the condition laid down in paragraph 2(a) may be substituted by compliance with the following conditions:

- a** the contribution to loss absorption and recapitalisation provided for in paragraph 2(a) is equal to an amount not less than 20% of the risk-weighted assets of the institution concerned;
- b** the National Resolution Fund has at its disposal, by way of ex-ante contributions (not including contributions to a deposit guarantee scheme) raised in accordance with Article 53(1)(a), an amount which is at least equal to 3% of the deposits covered by the Deposit Guarantee Scheme for Credit Institutions of all the credit institutions authorised in Spain; and
- c** the institution concerned has assets below €900 billion on a consolidated basis.

**4** As an alternative or in addition to the provisions of Article 51, the National Resolution Fund may make a contribution from resources which have been raised through ex-ante contributions in accordance with Article 53(1)(a) and which have not yet been used, provided that the following conditions are met:

- a** The 5% limit specified in paragraph 2(b) has been reached.
- b** All unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

#### **21.1 Article 51. Alternative financing sources.**

**1** In extraordinary circumstances, the FROB may seek funding from alternative financing sources, once the conditions laid down in Article 50(4)(a) and (b) have been met.

**2** Where the FROB's action has an impact on the State Budget, the FROB shall submit an economic report to the Minister of Finance and Public Administration and to the Minister of Economic Affairs and Competitiveness outlining how this support will financially impact the funds provided to the FROB out of the State Budget.

**3** The action taken by the FROB in accordance with this article may be performed in cash, through the delivery of public-debt securities, or of securities issued by the FROB itself. The FROB may also pay the price by offsetting any credit claims it holds against the corresponding institutions.

The issuing of guarantees by the FROB shall be subject to the limits established to that effect in the State Budget Laws for each year.

## **22 CHAPTER VII. FROB**

### **23 Section 1. Nature, composition and legal regime**

#### **23.1 Article 52. FROB.**

**1** The purpose of the FROB shall be to manage the resolution processes of institutions in the executive phase and, in any event, to exercise the powers conferred on it by this Law, other national legislation and European Union law.

**2** The FROB, which is a public law entity with own legal personality and full public and private capacity to pursue its goals, shall be governed by the provisions of this Law.

**3** The FROB shall be subject to private law, save when it exercises the administrative powers granted by this Law, EU law or by other rules with the status of a law. Any institution resolution actions taken by the FROB shall be notified, as appropriate, to the European Commission or to the National Commission on Markets and Competition, for the purposes of State aid and competition legislation.

**4** When discharging its functions as a resolution authority, the FROB shall not be subject to the provisions of Law 6/1997 of 14 April 1997 on the Organisation and Functioning of the Central Government; however, the tenth additional provision of the aforementioned law is applicable to the remainder of its functions.

**5** For the purpose of its budgetary regime, with respect to the matters not addressed in this Law, the FROB shall apply the provisions of Articles 64 to 68 of Budget Law 47/2003 of 26 November 2003.

Notwithstanding the foregoing, the FROB shall not be subject to the general rules on the economic-financial, accounting and control system of public bodies controlled by or related to central government, save for external auditing by the Spanish Court of Auditors, in accordance with the provisions of Organic Law 2/1982 on the Court of Auditors of 12 May 1982, and for the ongoing financial control of its internal economic-financial management regulations by the National Audit Office, pursuant to the provisions of Chapter III of Title VI of Budget Law 47/2003 of 26 November 2003.

**6** When discharging its resolution functions, the FROB shall not be subject to the provisions of Law 33/2003 of 3 November 2003 on general government assets. In any event, the FROB shall not be subject to the provisions of Title VII of Law 33/2003 of 3 November 2003 regulating central government business enterprises.

The holdings, shares, securities and other instruments held by the FROB or which it might acquire when exercising its resolution powers shall not constitute general government assets. Such holdings, shares, securities and other instruments, together with their issuers, which shall not be considered State-owned commercial-law companies, even when the FROB exercises direct or indirect control over them, shall be subject for all purposes to private law, without prejudice to the reporting obligations that may be necessary for preparing the national accounts.

**7** The FROB's personnel shall be selected in line with the principles of equality, merit, ability and transparency and shall be bound by employment contracts. Notwithstanding the foregoing, the public officials who are to provide services to the FROB may do so under the "special services" system. The personnel expenses of the FROB and of its executives shall be subject to the limits set for state entities.

**8** The FROB shall have the same tax treatment as the Deposit Guarantee Scheme for Credit Institutions.



**9** The FROB may, in exceptional circumstances, hire third parties to undertake any material, technical or instrumental activities necessary in order for it to duly perform its resolution-authority functions laid down in this Law, in accordance with the principles of transparency and competition, save in exceptional or urgent cases. For other agreements, the applicable procurement regime shall be that established in Royal Legislative Decree 3/2011 of 14 November 2011, approving the consolidated text of the Law on Public Sector Contracts for non- government contracting authorities.

### **23.2 Article 53. Financing arrangements and raising of the available financial means.**

**1** To fund the measures envisaged in this Law, the FROB shall have the following financing arrangements:

**a** a “National Resolution Fund”, without independent legal status, administered by the FROB and set up as a separate fund, whose available financial means should be at least 1% of the amount of the covered deposits of all institutions.

To this end, the FROB shall, at least annually, raise ordinary contributions from institutions, including branches in Spain of institutions established outside the European Union pursuant to the following criteria:

**1** The contribution of each institution shall be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions, in accordance with the provisions of Royal Decree-Law 16/2011 of 14 October 2011.

**2** Contributions shall be adjusted in proportion to the risk profile of each institution, in accordance with the criteria established in regulations.

The available financial means to be taken into account in order to reach the target level may include irrevocable payment commitments which are fully backed by collateral of unencumbered, low risk assets at the free disposal and earmarked for the exclusive use by the FROB for the purposes specified in paragraph 2. The share of irrevocable payment commitments shall not exceed 30% of the total amount of contributions raised in accordance with this Article.

When institutions’ ordinary contributions prove insufficient to finance the measures envisaged in this Law, the FROB may raise extraordinary contributions.

**b** The possibility of making a request to borrow from the financing arrangements of the other European Union Member States, under the procedure envisaged in the attendant regulations.

A loan may only be requested from other financing arrangements if ordinary contributions are insufficient to cover resolution costs, extraordinary contributions are not immediately accessible, and the alternative financing arrangements laid down in paragraph 5 cannot be used on reasonable terms.

The FROB may, likewise, lend to financing arrangements of other European Union Member States out of the National Resolution Fund.

**2** The FROB may use the financing arrangements envisaged in this Article only to the extent necessary to ensure effective application of the resolution tools, in order to fulfil the objectives and subject to the limitations provided for in regulations. In particular, the financing arrangements may be used, inter alia, for one or more of the following measures:

**a** the provision of guarantees.

**b** the grant of loans or credit.

**c** the acquisition of assets or liabilities, which it may manage itself or through a third-party.

**d** contributions to a bridge institution or to an asset management vehicle.

- e** the payment of compensation to the shareholders and creditors.
- f** contributions to the institution when the decision is made to exclude certain liabilities from the scope of the bail-in.
- g** the grant of loans to other financing arrangements.
- h** the recapitalisation of an institution under the terms and subject to the limitations provided for in this Law.

The FROB shall not use the financial support instruments to reduce any losses deriving from the resolution that should be absorbed by the shareholders and subordinated creditors in accordance with the provisions of this Law and, in particular, bearing in mind the principles outlined in points (a) and (b) of Article 4(1).

The FROB's use of the financial support instruments shall be subject to the procedure laid down in the second paragraph of Article 54(6) in the event it has an impact on the State budget.

**3** In the event of the resolution of a group containing Spanish and other European Union institutions, the FROB shall contribute to the financing of its resolution in accordance with the criteria and procedures provided for in regulations.

**4** To cover its operating expenses, the FROB shall charge institutions a fee under the terms laid down in the sixteenth additional provision.

Likewise, the FROB's own funds may be increased by converting into equity the loans, claims or any other borrowing operation of the FROB in which the central government participates as a creditor.

**5** In order to fulfil its objectives, the FROB may also resort to alternative means of funding such as the issuance of fixed-income securities, receiving loans, applying for the opening of credit lines and arranging whatsoever other forms of borrowing, provided that the ordinary contributions are insufficient to cover resolution costs and that extraordinary contributions are not immediately accessible or sufficient.

Irrespective of the form they take, the borrowed funds raised by the FROB must not exceed the limit established for the purpose in the State Budget Laws for each year.

**6** The National Resolution Fund's uncommitted assets must be held in the form of public debt or other highly liquid low-risk assets. Subject to the provisions of this Law and, in particular, to the provisions of Chapter V in relation to the application of the resolution tools, any profits generated and accounted for in the FROB's annual accounts shall become part of the Fund's capital.

**7** When the FROB takes resolution action, the deposit guarantee scheme to which the institution is affiliated is liable for, in addition to the responsibilities provided for in regulations, in accordance with the limits laid down in Article 11 of Royal Decree-Law 16/2011 of 14 October 2011, the following costs:

**a** when the bail-in tool is applied, the amount by which the covered deposits would have been written down in order to absorb the losses in the institution pursuant to Article 48, had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority in the creditor hierarchy under insolvency legislation.

**b** when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority in the creditor hierarchy under insolvency legislation.

### **23.3 Article 54. Governing Committee.**

**1** The FROB shall be managed and administered by a Governing Committee with 11 members:

**a** The Chair.

**b** Four members appointed by the Banco de España, one of whom shall be the Deputy Governor, who shall be the First Deputy Chair of the Governing Committee and shall stand in for the Chair in the event of absence, illness or if the office falls vacant.

**c** Three representatives from the Ministry of Economic Affairs and Competitiveness appointed by the Minister, having at least the rank of Director General.

**d** The Deputy Chair of the National Securities Market Commission.

**e** Two representatives from the Ministry of Finance and Public Administration appointed by the Minister, having at least the rank of Director General.

A person appointed by the Comptroller and Auditor General and another appointed by the Attorney General-Director of the State Legal Service shall also attend the meetings of the Governing Committee, with the right to speak but not to vote.

The Executive Commission of the Banco de España shall appoint the members of the Governing Committee other than the Deputy Governor.

In addition, the Governing Committee may authorise observers to participate in its meetings, provided that such participation does not cause any conflicts of interest that may interfere with performance by the FROB of the functions envisaged in this Law. The Governing Committee shall set its own rules on such participation by observers, who shall not, in any case, have the right to vote and shall be bound by the duty of secrecy.

**2** The functions of Secretary of the Governing Committee shall be performed by the person appointed by the Committee in accordance with the internal regulations of the FROB.

**3** Without prejudice to the provisions governing the Chair in the following article, the members of the Governing Committee shall cease to be members thereof on the following grounds:

**a** They cease to hold their respective posts.

**b** The Executive Commission of the Banco de España thus resolves, in the case of a member appointed by that Commission other than the Deputy Governor.

**4** The Governing Committee shall meet whenever called by its Chair, at his/her own initiative or whenever requested by any of the members. The Committee shall be authorised to determine its own rules for calling meetings.

**5** The Governing Committee is empowered to make decisions in relation to the powers and functions entrusted to the FROB, without prejudice to any delegations or authorisations it may approve for the due exercise of such powers and functions. It may not, in any case, delegate the following functions:

**a** the decision-making functions assigned to the FROB in respect of the resolution plans of institutions, the write-down of capital instruments and bail-in actions.

**b** the approval of the decision to enter into the financing transactions provided for in Article 53(1) of this Law.

**c** the approval of the annual accounts of the FROB which must be submitted each year to the Minister of Economic Affairs and Competitiveness and to the National Audit Office, to be included in the General Accounts of the State and passed on to the Spanish Court of Auditors, and of the report that must be submitted to the Minister of Economic Affairs and Competitiveness to be sent to the Spanish Parliamentary Committee on Economic Affairs and Competitiveness.

**d** The adoption of the decisions necessary to use the National Resolution Fund pursuant to this Law.

**e** The decisions whereby the FROB orders the disposal or divestment at an institution of the instruments provided for in Article 32(4).

**6** In order for the Governing Committee to have a quorum to hold meetings, conduct deliberations and adopt resolutions, meetings must be attended by at least half of the Committee's voting members. Resolutions shall be adopted by a majority of the members in attendance; in the event of a tie, the Chair has the casting vote.

Notwithstanding the foregoing, the Governing Committee shall be composed as follows when adopting decisions affecting the State budget or the FROB's management of its portfolio of investments, shares, securities and other instruments:

**a** The Chair.

**b** The three representatives of the Ministry of Economic Affairs and Competitiveness.

**c** The three representatives of the Ministry of Economic Affairs and Competitiveness.

**7** The Governing Committee shall approve internal regulations for the FROB which shall detail the essential rules governing its conduct in economic, financial, capital, budgetary, accounting, organisational and procedural matters. The rules shall reflect the guiding principles of its policy of ownership of institutions to which it has provided public financial support and shall include internal control mechanisms for the governance of the FROB. These rules shall be based on the principles of good governance, objectivity, openness, competition and transparency.

#### **23.4 Article 55. Chair.**

**1** The Chair of the FROB shall discharge the functions of representation, administration and day-to-day management of the National Resolution Fund and such other functions as are delegated to him/her by the Governing Committee. The Chair shall be appointed from among candidates with sufficient expertise, technical training and experience to discharge the functions attached to this office.

The Chair shall be appointed and removed by Royal Decree of the Council of Ministers, at the proposal of the Minister of Economic Affairs and Competitiveness, having regard to the supervisory authorities, and following an appearance by the proposed candidate before the Spanish Parliamentary Committee on Economic Affairs and Competitiveness in order to recount the experience, training and expertise that render him/her fit for the position.

**2** The Chair shall discharge the functions of the office on an exclusive basis, shall be subject to the rules governing incompatibilities for senior central government officials, and the office shall be incompatible with the performance of any public or private professional activity, irrespective of whether it be remunerated or not, unless such activities are inherent in his/her capacity as Chair of the FROB.

**3** The Chair's term of office shall be 5 years, non-renewable. The Chair shall only cease to discharge such office on the following grounds:

**a** Completion of the term of office.

**b** Resignation accepted by the Government.

**c** Involvement in a situation of incompatibility.

**d** Supervening incapacity to discharge the office's functions.

**e** Conviction for deliberate crime.

**f** Gross breach of his/her obligations. In this case, his/her removal shall be ordered by the Government, following a proceeding conducted by the Ministry of Economic Affairs and Competitiveness, which it shall report to the Spanish Parliamentary Committee on

Economic Affairs and Competitiveness, and in which the other members of the Governing Committee shall be heard.

**4** The Chair of the FROB shall be responsible for:

**a** Chairing the Governing Committee and promoting and supervising all operations to be performed by the FROB under this Law.

**b** Steering the day-to-day, economic and administrative management of the FROB, including the administration of the National Resolution Fund, and acting as its legal representative.

**c** Preparing the FROB's annual accounts and submitting them to the auditor for verification and to the Governing Committee for approval.

**d** Proposing for adoption by the Governing Committee decisions that lie within the area of its competence under this Law, without prejudice to the fact that the Governing Committee may also make decisions of its own motion.

**e** Implementing the resolutions of the Governing Committee and performing any functions delegated to him/her by such Committee, in accordance with the provisions of Article 54(5).

**f** Reporting to the Governing Committee on the exercise of his/her functions.

**g** Representing the FROB at international organisations and institutions at which it is scheduled to participate and, in particular, on the Single Resolution Board of the Single Resolution Mechanism.

### **23.5 Article 56. Parliamentary control.**

**1** The Chair of the FROB shall appear at least half-yearly before the Spanish Parliamentary Committee on Economic Affairs and Competitiveness to report on the activities of the FROB, the essential elements of its economic and financial actions and the management of the financing arrangements laid down in this Law.

**2** In addition, the Chair of the Governing Committee of the FROB shall appear, on the terms determined by the Spanish Parliamentary Committee on Economic Affairs and Competitiveness, to report specifically on resolution actions taken by the FROB.

**3** The Governing Committee shall submit a quarterly report to the Minister of Finance and Public Administration and to the Minister of Economic Affairs and Competitiveness on the management and actions of the FROB, giving due account, inter alia, of the most significant actions in terms of economic and budget impact performed by the FROB in the period. The Minister of Economic Affairs and Competitiveness shall pass this report on to the Spanish Parliamentary Committee on Economic Affairs and Competitiveness.

### **23.6 Article 57. Cooperation and coordination with other competent Spanish authorities.**

**1** The FROB shall collaborate with the authorities that have been entrusted with functions relating to the supervision or resolution of institutions and, in particular, with the supervisory or preventive resolution bodies or authorities overseeing the institutions covered by the scope of this Law. It shall also collaborate with the Directorate General for Insurance and Pension Funds, the authorities appointed by the regional governments to discharge some of the aforementioned functions, the Insurance Compensation Consortium, the Deposit Guarantee Scheme for Credit Institutions and the Investment Guarantee Scheme. For that purpose it may enter into the appropriate collaboration agreements with such authorities and request any information that may be needed for the exercise of its powers.

In particular, the competent supervisor and competent preventive resolution authority shall cooperate with the FROB in the preparation, planning and application of the resolution actions laid down in this Law.

In addition, the FROB shall provide to the authorities referred to in the previous paragraph any information that may be needed for the exercise of their powers in accordance with the law.

**2** In the event of resolution of institutions that belong to a financial group or conglomerate:

**a** When adopting the measures and exercising the powers conferred on it by this Law to that effect, the FROB shall reduce to a minimum the potential impact of such measures and powers on the other entities of the group or conglomerate and on the group or conglomerate overall.

**b** The FROB shall assume the function of resolution coordinator where the competent Spanish supervisor is responsible for oversight and supervision of the consolidated group to which the parent institution of the conglomerate belongs, or failing this, of the parent institution considered individually.

### **23.7 Article 58. Cooperation and coordination with other international authorities.**

**1** In the exercise of its powers and, in particular, in the event of the resolution of institutions belonging to international groups, the FROB and the preventive resolution authority shall collaborate with the European Union institutions, including the Single Resolution Board, the European Central Bank, the European Banking Authority, and the foreign authorities entrusted with functions relating to the supervision or resolution of institutions, and they may to this end conclude collaborative agreements with them and request and exchange information to the extent necessary for the exercise of the powers conferred on them in relation to the planning and execution of early intervention or resolution actions.

In any event, the FROB and the preventive resolution authority will participate in any resolution colleges that may be established to ensure the necessary cooperation and coordination with foreign resolution authorities.

In general, the FROB will be the Spanish liaison and coordination authority for the purposes of all cooperation with the pertinent international authorities and, in particular, those of the other European Union Member States.

**2** If the competent foreign authorities do not belong to a European Union Member State, any exchange of information will require that there is reciprocity, that the competent authorities are bound by the duty of secrecy on terms that are at least equivalent to those established by Spanish law, and that the information that is necessary for the foreign authority to exercise functions relating to the supervision, recovery or resolution of financial institutions, under its national legislation, is comparable to that established by Spanish law. Any transfer of confidential information to the authorities indicated in the previous paragraph, when such information originates in another European Union Member State, shall require the express agreement of the authority that disclosed the information, and the information may only be conveyed for the purposes for which that authority expressed its agreement. Agreement shall also be required when a request is submitted to the FROB or to the competent preventive resolution authority for information that was furnished by a resolution authority from a third country.

Relationships with the competent authorities of non-EU countries may be concluded in bilateral agreements that shall contain the rules on mutual recognition and the implementation of those countries' resolution proceedings, and on the resolution of third-country branches in Spain.

**3** In the event of resolution of institutions that belong to a financial group or conglomerate that also operates in other European Union Member States and whose consolidated supervision is not the responsibility of the Spanish authorities, before a resolution process is initiated, the FROB or the competent supervisor shall consult the group-level resolution

authority, the European Union authority responsible for the consolidated supervision of the group to which the institution belongs and the members of the group resolution college. In the event of the resolution of a European Union parent institution that is established in Spain, the FROB shall act as the group-level executive resolution authority.

**4** The FROB, the competent preventive resolution authority or the competent supervisor shall promote the steps necessary to facilitate the adoption of a joint decision with the resolution authorities of other European Union Member States.

**5** In the event of resolution of institutions that belong to a financial group or conglomerate that also operates in other European Union Member States, when adopting the measures and exercising the powers conferred on them by this Law to that effect, the FROB, the competent preventive resolution authority and the competent supervisor shall minimise the adverse effects that such measures and powers may have on the stability of the financial system of the European Union and, in particular, on the stability of the financial systems of the European Union Member States where the group or conglomerate operates.

**6** The rules on coordination and cooperation regulated in this Article and the scenarios in which the FROB shall act as the resolution authority in respect of a branch in Spain shall be detailed in regulations.

### **23.8 Article 59. Duty of secrecy.**

**1** The data, documents and information held by the FROB by virtue of the functions entrusted to it by this Law shall be confidential and, with the exceptions provided for in law, may not be disclosed to any person or authority or used for purposes other than those for which they were obtained. They shall cease to be confidential when the parties concerned make public the facts to which such data, documents and information relate.

**2** Any authorities and persons that may receive information from the FROB or access confidential information, pursuant to the provisions of the previous articles, and any auditors, legal advisers and other independent experts that may be appointed by the FROB in connection with the implementation of resolution actions, shall also be bound to hold the information received confidential and to use it exclusively for the purpose for which it was provided to them. Furthermore, they shall be obliged to adopt internal rules on confidentiality, with the scope and in the terms provided for in regulations.

**3** Without prejudice to the provisions of Article 58 of this Law, the provisions on confidentiality and secrecy applicable to the Banco de España and, in particular, those laid down in Article 82 of Law 10/2014 of 26 June 2014 shall apply to the FROB on a supplementary basis.

**4** Without prejudice to the provisions laid down in the preceding paragraphs:

**a** employees and experts of the bodies or entities referred to in paragraph 2 may share information within each body or entity; and

**b** the resolution authorities and the competent supervisors, including their employees and experts, may share information with each other and with other European Union resolution authorities, other Union supervisory authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for insolvency proceedings, authorities responsible for maintaining the stability of the financial system through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, and the European Banking Authority or, pursuant to Article 58(2), third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

**5** The exchange of information shall also be authorised:

- a** subject to strict confidentiality requirements, with any other person where necessary for the purposes of planning or carrying out a resolution action;
  - b** with parliamentary enquiry committees, the Spanish Court of Auditors or other public authorities in charge of enquiries, under appropriate conditions.
- 6** This Article shall be without prejudice to the law concerning disclosure of information for the purpose of legal proceedings.

**23.9 Article 60. Application of competition law.**

In the exercise of their powers, the FROB, the competent preventive resolution authority and the competent supervisory authority shall minimise any possible competitive distortions that their actions may create, complying to that effect both with Spanish and European Union competition and State aid legislation. For that purpose, the competent preventive resolution authority and the competent supervisory authority shall cooperate with the European Commission, providing it with the necessary information in the framework of the authorisation procedures envisaged in European Union competition and State aid legislation.

**23.10 Article 61. Adoption of international recommendations.**

In the exercise of their powers, and provided they do not conflict with the provisions of this Law and the prevailing legislation, the FROB and the competent preventive resolution authority and the competent supervisory authority may take into consideration the recommendations and other initiatives implemented internationally in the area of institution resolution.

Without prejudice to the foregoing, the Minister of Economic Affairs and Competitiveness, or with his/her express authorisation the competent preventive resolution authority and the competent supervisory authority, may incorporate into Spanish legislation the recommendations and guidelines on resolution issued by international organisations, committees or authorities. In the case of authorisation, the other authorities' input must inform the corresponding circular.

**24 Section 2. The FROB's powers**

**24.1 Article 62. The FROB's powers.**

The FROB shall exercise the powers needed to apply the tools and actions provided for in this Law. These shall be commercial and administrative powers.

**24.2 Article 63. Commercial powers.**

The FROB shall exercise the powers generally granted under commercial law:

- a** to the management body of the institution, where it acquires that status.
- b** to the shareholders or holders of any securities or financial instruments, where the FROB has subscribed or acquired such securities or instruments.
- c** to the general meeting or assembly in cases where such meeting or assembly obstructs or rejects adoption of the resolutions needed to implement the resolution actions, and in cases where, for reasons of special urgency, it is not possible to meet the conditions required by law for the valid convening of, and adoption of resolutions by, the general meeting or assembly. In such cases, the FROB, either directly or through the natural or legal persons it appoints, shall be deemed to have all such powers as may lie with the general meeting or assembly of the institution by law or by virtue of the articles of association and which are needed to exercise the functions envisaged in this Law in connection with the resolution of institutions.



### **24.3 Article 64. General administrative powers.**

**1** In addition to the other powers provided for in this Law, the FROB shall have the following general administrative powers:

**a** to approve the value of the assets and liabilities of the institution for the purpose of applying the actions and tools laid down in this Law.

**b** to request from any person any information needed to prepare and apply a resolution action or tool.

**c** to transfer or order the transfer of shares, contributions to share capital or, in general, equity instruments or securities convertible into them, whosoever their holders, and of other financial instruments, assets and liabilities of the institution.

**d** to increase or reduce capital, to issue or redeem, in full or in part, bonds, including convertible instruments, and any other securities or financial instruments, and to make any amendments to the articles of association related to such transactions, with the authority to disapply pre-emption rights in capital increases and in convertible bond issues, including in the cases envisaged in Article 343 of the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010.

**e** to write down or convert capital instruments or apply the bail-in tool and adopt such ancillary measures as required to perform such actions.

**f** to determine the tools to be used to implement the resolution actions, including, in particular, actions that entail structural modifications to the institution and winding-up and liquidation measures.

**g** to immediately order, following a report from the National Securities Market Commission, the transfer of securities deposited at an institution to another institution authorised to pursue that activity, even if such assets are deposited at third institutions in the name of the institution providing the deposit service.

For these purposes, the FROB, or the natural or legal person representing it, in its capacity as administrator of the institution, shall take the measures required to grant access to the accounting and computer records and documentation needed to effect the transfer to the institution to which the securities are to be transferred.

**h** to exercise, in respect of the transfer of securities, financial instruments, assets or liabilities of the institution, all or some of the following powers:

**1** to oblige the institution and the acquirer to provide the necessary information and assistance.

**2** to require that any entity of the group to which the institution belongs provide the acquirer with the necessary operating services so that it may effectively conduct the business transferred. Where the entity of the group is already providing those services to the institution, it shall continue to do so on the same terms and conditions, and where this is not the case it shall provide such services on commercial terms.

**i** to defer, suspend, eliminate or modify certain rights, obligations, terms and conditions of all or some of the debt instruments issued and of other eligible liabilities issued by the institution under resolution.

**j** to oblige the institution to repurchase securities issued by it at the price and on the terms determined by the FROB.

**k** to order that the transfers of shares or contributions to capital or, generally, of the financial instruments, assets and liabilities of the institution be effected free of any charge or levy, and to cancel the option and pre-emption rights, without any provision of the articles of association or agreements being enforceable in respect thereof.

**l** to direct the National Securities Market Commission to suspend trading on a regulated market or the official listing of financial instruments pursuant to Law 24/1988 of 28 July 1988 and the other applicable legislation.

**m** to terminate or amend the terms and conditions of an agreement to which the institution under resolution is party or to be subrogated to the rights of the acquirer.

**n** to adopt the measures required to ensure the continuity of the business transferred and of the agreements concluded by the institution so that the acquirer acquires the rights and assumes the obligations of the institution under resolution.

**ñ** to review any operation or action conducted by the institution under resolution which might result in liability being incurred with respect to the actions applicable under Article 4(1)(g), for which purpose it will be entitled to bring any applicable action for restitution of the damage.

**o** to oblige the institution to adopt the measures required to ensure that the resolution actions adopted are effective vis-à-vis shares or other instruments of ownership, assets and liabilities located in third countries.

Where the FROB assesses that the steps taken will not be effective in relation to certain assets located in a third country or certain shares or other instruments of ownership, assets or liabilities under the law of that third country, it shall halt those steps and revoke those adopted with regard to the shares or other instruments of ownership, assets or liabilities.

**2** In order for the FROB to be able to fulfil the resolution objectives and comply with the principles established in Articles 3 and 4, in the exercise of the general administrative powers laid down in paragraph 1 and the other powers provided for in this Law, the limitations and requirements pursuant to the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, Law 3/2009 of 3 April 2009 on structural changes to commercial companies, and legislation applicable to credit co-operatives shall not apply in relation to capital increases and decreases, the conversion of capital instruments or bail-ins, structural modifications or any other operation required to apply the tools and actions provided for in this Law. Likewise, it shall not be necessary to draw up the reports required under the aforementioned laws.

#### **24.4 Article 65. Enforceable nature of the measures.**

**1** The administrative acts ordered by the FROB to apply the tools envisaged in Chapter V of this Law and the resolutions adopted under the provisions of Article 63(c) shall be immediately effective, with no need to comply with any formality or requirement established by law or contractually, without prejudice to the requirements provided for in this Law and the formal obligations relating to evidencing, recording or disclosure established by law, for which purpose certification of the corresponding administrative act or resolution shall be sufficient, with no need for independent experts' or auditors' reports.

**2** The implementation of the administrative acts referred to in the previous paragraph shall not be affected by banking secrecy rules.

#### **24.5 Article 66. Exclusion of certain contractual terms in early intervention and resolution.**

**1** The adoption of any early intervention measure or resolution action and any event that is directly linked thereto shall not per se constitute an event of default or enable any counterparty to declare the acceleration, amendment, suspension or early termination of the transactions or agreements concluded with the institution, request the enforcement of collateral over any of the assets of the institution or the netting of any rights or obligations under the transaction or agreement, or affect in any other way the agreement, with the clauses that establish any of the foregoing being excluded.

In particular, the implementation by the competent resolution authorities or the competent supervisor of the actions and powers laid down in this Law shall not be considered insolvency proceedings for the purposes of Law 41/1999 of 12 November 1999 on payment and securities settlement systems, nor for the purposes of the provisions of Chapter II, Section 3, of Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and enhance public sector procurement.

Notwithstanding the provisions of the previous paragraphs, the counterparty may declare, on the terms and conditions established in the corresponding agreement, the acceleration or early termination of the agreement or corresponding transaction as a consequence of an event of default prior or subsequent to the adoption or exercise of the corresponding action or power directly linked to the application of action or power.

**2** The provisions of paragraph 1 shall be applicable in respect of the subsidiaries, the obligations of which are guaranteed or otherwise supported by a group entity, or in respect of any contracts entered into by any group entity which includes cross-default provisions.

#### **24.6 Article 67. Partial transfer of assets and liabilities.**

**1** If some, but not all, of the assets and liabilities of the institution are transferred, the FROB shall adopt the necessary measures to achieve the following objectives:

**a** prevent the termination, novation or transfer of some, but not all, of the assets and liabilities susceptible to netting by virtue of a title transfer financial collateral arrangement or a contractual netting agreement as provided for in Chapter II of Title I of Royal Decree-Law 5/2005 of 11 March 2005, or a netting agreement.

**b** allow collateralised debt securities and the assets serving as collateral to be transferred together or to remain at the institution together.

**c** prevent termination or novation of the collateral agreement if this implies that the corresponding debt security ceases to be guaranteed.

**d** prevent the termination, novation or transfer of some, but not all, of the assets and liabilities covered by a structured finance agreement, save when they affect only assets or liabilities related to the institution's deposits.

Notwithstanding the foregoing, the FROB may, in order to facilitate the resolution and afford appropriate protection to the depositors, transfer covered deposits which are part of the agreements mentioned in the preceding points, without transferring the assets and liabilities that are part of the same agreement, or transfer, modify or terminate those assets and liabilities without transferring the covered deposits.

**2** The implementation of any early intervention or resolution action or power shall not affect the functioning of the Spanish payment or securities and financial instruments clearing and settlement systems recognised under Law 41/1999 of 12 November 1999, or those designated by other Member States for the purposes of the provisions of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, including those systems managed by central counterparties, where the FROB:

**a** transfers some of the assets or liabilities of an institution under resolution; or

**b** terminates or amends the terms of a contract to which the institution under resolution is a party or replaces the buyer as a party.

In particular, it shall not affect the irrevocability, finality or validity of the settlement orders or their clearing, or the funds, securities or commitments to which Law 41/1999 of 12 November 1999 refers, or any collateral provided to the managers of the system or participant entities. Likewise it shall not affect the right to compensation or the enforcement

of collateral provided to the Banco de España, the European Central Bank, or any other European Union national central bank.

#### **24.7 Article 68. Urgent measures.**

For reasons of urgency and to guarantee the objectives established in Article 3, the FROB may:

**a** adopt, before the corresponding resolution plan is approved, the tools provided for in Article 25(1)(a) and (b) and, in the framework of the provisions of both Spanish and European Union competition and State aid legislation and taking into account the principle of ensuring the most efficient use of public funds and of reducing public financial support to a minimum, provide the assistance laid down in Article 20(1)(d).

**b** use a procedure to estimate the value of the institution that does not resort to independent expert reports in order to perform the provisional valuation referred to in Article 5(3), so as to implement resolution actions or exercise the power to write down or convert capital instruments.

#### **24.8 Article 69. Disclosure.**

**1** Without prejudice to the provisions of Article 24, the FROB shall take the steps necessary to make public the actions adopted under Chapter IV and, in particular, the implementation of resolution tools and exercise of the corresponding powers, to apprise any shareholders, creditors or third parties that may be affected by them of such measures.

**2** Without prejudice to the provisions of paragraph 1, the FROB shall communicate the measures adopted to the institution, the Ministry of Economic Affairs and Competitiveness, the competent supervisory authority and the competent preventive resolution authority.

Moreover, where appropriate, the FROB shall notify the European Banking Authority and the European Union authority responsible for the supervision of any group that may be affected of the measures adopted.

**3** While the early intervention and resolution actions are being prepared and, in particular, while the valuation referred to in Article 5 is being conducted and while any transaction whereby any of the resolution actions may be effected is being studied or negotiated, the institution shall be exempt from the obligation to make public and disclose any information that may be considered a material event for the purposes of Article 82 of Law 24/1988 of 28 July 1988.

#### **24.9 Article 70. Powers to suspend contracts and collateral.**

**1** The FROB shall have the power to suspend or restrict any payment or delivery obligations, enforcement of collateral or acceleration of obligations, in the terms set out in this section, by administrative act, for a maximum period beginning with the publication of a notice of the exercise of this power following the opening of the resolution process until midnight on the following working day, without prejudice to the provisions of Article 70 ter.

**2** These powers shall not apply to:

**a** systems or system operators designated in Law 41/1999 of 12 November 1999 or those designated by other Member States for the purposes of the provisions of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

**b** central counterparties authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of that Regulation; and

**c** central banks.

#### **24.10 Article 70 bis. Suspension powers following initiation of the resolution process.**

**1** The FROB may suspend any payment or delivery obligations pursuant to any contract to which the institution is a party.

In the event of application of the powers provided for in the preceding subparagraph or in Article 70 ter, when a payment or delivery obligation would have been due during the suspension period the payment or delivery obligation shall be due immediately upon expiry of the suspension period.

Where the payment or delivery obligations under a contract concluded by the institution are suspended, the payment or delivery obligations of the institution's counterparties under that contract shall also be suspended for the same period of time.

**2** Without prejudice to the provisions of Chapter VI, the FROB may prevent or limit enforcement of security interests over any of the institution's assets.

Where Article 67 applies, the FROB shall ensure that any restrictions imposed pursuant to the power referred to in the preceding subparagraph are consistent for all group entities in relation to which a resolution action is taken.

**3** The FROB may suspend the right of a party to accelerate or terminate a contract concluded with an institution under resolution provided that the substantive obligations under the contract continue to be performed, including the payment and delivery obligations and the provision of collateral.

The provisions of this paragraph shall also apply to those contracts concluded with a subsidiary of the institution under resolution where:

**a** the obligations under that contract are guaranteed or are supported by the institution under resolution.

**b** the acceleration or termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution.

**c** in the event that the power to transfer shares or other instruments of ownership, assets or liabilities has been or may be exercised, where the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to a buyer or where the FROB provides in any other way protection for such obligations.

**4** Notwithstanding the provisions of the preceding paragraph, a person may exercise the right to accelerate or terminate the contract before the end of the suspension period if that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be transferred to another entity or subject to the application of the bail-in tool.

Where the right to suspend is exercised and no notice has been given pursuant to the preceding subparagraph, the right to accelerate or terminate the contract may be exercised:

**a** if the assets and liabilities have been transferred to another entity, only on the occurrence of any continuing or subsequent acceleration or termination event by the recipient entity.

**b** on expiry of the suspension period, if the rights and liabilities covered by the contract remain with the institution under resolution and the FROB has not applied the bail-in tool to them.

**5** When exercising a power under the first subparagraph of paragraph 1 of this Article, the FROB shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

#### **24.11 Article 70 ter. Suspension powers prior to the initiation of a resolution process.**

**1** The FROB may also exercise the powers provided in for Article 70 bis(1) in relation to any payment or delivery obligations arising from any contract entered into by an institution or

entity referred to in Article 1(2)(b), (c) or (d) after consulting the competent supervisor, which shall respond as soon as possible, when all of the following conditions are met:

- a** it has been determined that the institution or entity is failing or likely to fail in the near future in accordance with Article 19(1)(a);
- b** there is no immediately available private sector measure referred to in Article 19(1)(b) that would prevent the failure of the institution or entity;
- c** exercise of the suspension power is considered necessary to prevent further deterioration of the institution or entity's financial situation; and
- d** exercise of the suspension power is:
  - 1** necessary to determine the circumstance referred to in Article 19(1)(c); or
  - 2** necessary to choose appropriate resolution action or to ensure the effective application of one or more resolution tools.

**2** The suspension period provided for in paragraph 1 shall be as short as possible and shall not exceed the minimum period that the FROB considers necessary for the purposes referred to in paragraph 1, points (c) and (d), and shall in no case be longer than the period from the publication of the suspension notice pursuant to Article 69(2) until the end of the business day following that publication.

At the end of the suspension period referred to in the first subparagraph, the suspension shall cease to have effect.

**3** When exercising its powers under paragraph 1 of this Article, the FROB shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets and shall take into consideration insolvency law, supervisory authorities' powers and judicial powers to safeguard creditors' rights and ensure creditors are treated in an equitable manner should the institution be wound up under insolvency proceedings. The FROB shall have regard in particular to the potential winding-up of the institution or entity under insolvency proceedings as a result of the public interest determination under Article 19(1)(c).

**4** When the FROB exercises the power to suspend payment or delivery obligations pursuant to paragraph 1, the FROB may also exercise the following powers during the suspension period:

- a** restrict the institution's secured creditors in relation to any assets of that institution during that same period, in which case the provisions of Article 70 bis(2) shall apply.
- b** suspend the termination rights of any party to a contract with the institution or entity in question during that same period, in which case the provisions of Article 70 bis(3) shall apply.

**5** Where, after determining that an institution is failing or likely to fail under Article 19(1)(a), the FROB has exercised the power to suspend payment or delivery obligations in the circumstances set out in paragraphs 1 or 4 of this Article and if resolution action is subsequently taken in respect of the institution in question, the FROB shall not exercise its powers under Article 70 bis in respect of the institution.

**24.12 Article 70 quater. Scope of the power to suspend payment or delivery obligations.**

**1** The FROB shall establish the scope of the powers referred to in Articles 70 bis(1) and 70 ter taking into account the circumstances of each case. In particular, the FROB shall carefully assess the desirability of extending the suspension to eligible deposits as defined in Article 4 of Royal Decree 2606/1996 of 20 December 1996 on deposit guarantee schemes for credit institutions, especially to covered deposits held by natural persons, microfirms or small and medium-sized enterprises.

2 When exercising the power to suspend payment or delivery obligations in relation to eligible deposits provided for in this Article, the FROB shall allow access to a daily amount to be determined by it in each case. It may determine a single common daily amount or different amounts depending on the categories of depositors with covered deposits that are specified, which may be:

- a natural persons;
- b foundations, associations and joint ownerships;
- c third sector social action entities as defined in Article 2 of Law 43/2015 of 9 October 2015 on the social action third sector;
- d small and medium-sized enterprises, as defined in Annex 1 of Commission Regulation (EU) No 651/2014 of 17 June 2014, which are not natural persons;
- e other legal persons.

#### **24.13 Article 70 quinquies. Contractual recognition of resolution stay powers.**

1 Where institutions enter into financial contracts which are subject to the law of a State outside the European Union, they shall include a term whereby the parties recognise that such contracts may be subject to the exercise of powers by the FROB to suspend or restrict the rights and obligations under Articles 70, 70 bis and 70 ter, and recognise that they are bound by the requirements of Article 66.

2 Parent undertakings shall also ensure that their subsidiaries established in a State outside the European Union include in the financial contracts mentioned in paragraph 1 terms to exclude that the exercise of the FROB's power to suspend or restrict the parent undertaking's rights and obligations pursuant to paragraph 1 constitutes a valid ground for termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests, provided that those financial contracts include obligations whose fulfilment is guaranteed or ensured by a Spanish institution belonging to the parent undertaking's resolution group.

The requirement set out in the first subparagraph shall apply to subsidiaries established in a State outside the European Union that are:

- a credit institutions;
- b investment firms (or firms which would be investment firms if they had a head office in Spain); or
- c financial institutions.

3 Paragraph 1 shall apply to any financial contract which:

- a creates a new obligation or materially amends an existing obligation after the entry into force of the Royal Decree-Law.
- b provides for the exercise of one or more acceleration or termination rights or rights to enforce security interests, to which Articles 66 and 70 to 70 quater would apply if the financial contract were governed by the law of a Member State.

4 Where an institution does not include the contractual term required in accordance with paragraph 1 of this Article, that shall not prevent the FROB from applying the powers provided for in Articles 66 and 70 to 70 quater in relation to that financial contract.

## **25 CHAPTER VIII. PROCEDURAL RULES**

### **25.1 Article 71. Actions against decisions and resolutions adopted by the FROB in the exercise of its commercial powers laid down in Article 63.**

1 The decisions and resolutions the FROB adopts pursuant to Article 63 shall only be open to challenge in accordance with the rules and procedures envisaged for challenging

corporate resolutions of limited companies on the grounds that they are contrary to the law. In all cases, the challenge action shall expire within fifteen days of the publication by the FROB of such actions, pursuant to Article 69.

**2** Shareholders, members, bondholders, creditors or any other third parties who consider that their legitimate interests and rights have been infringed by any decision adopted by the FROB, directly or through its natural or legal-person representatives, in its role as administrator may apply for damages, pursuant to Article 241 of the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010. No corporate action may be brought for liability with regard to the actions of the supervisory authorities, preventive resolution authorities or the FROB in the context of the early intervention or resolution of the institution.

**3** If a contentious-administrative appeal is lodged pursuant to Article 72 against any of the FROB's acts issued under this Law, where the challenged administrative act concerns the FROB's decisions under Article 63, the competent court shall stay the proceedings begun under the provisions of this article until the contentious-administrative proceedings have been decided. In this case, the competent court shall be bound by the decision adopted by the court in the contentious-administrative proceedings on the preliminary issue.

**25.2 Article 72. Special features of appeals against administrative decisions and acts taken during early intervention and resolution processes.**

**1** The approval of the recovery and resolution plans by the competent supervisor or the competent preventive resolution authority will conclude administrative proceedings. Any appeal against such approval shall be filed with the Contentious-Administrative Appeal Division of the National High Court.

**2** The acts and decisions of the competent supervisor and the competent resolution authorities in the context of early intervention processes and the preventive and executive phases of the resolution shall conclude administrative proceedings. Any appeal against them shall be filed with the Contentious-Administrative Appeal Division of the National High Court.

The valuation accompanying the acts and decisions of the competent supervisor and the competent resolution authorities referred to in the preceding paragraph may not be challenged in a separate appeal and may only be challenged in the appeals filed against such acts and decisions. If the valuation is not challenged, it shall be used by the court as a basis for its own assessment of the acts and decisions challenged by a contentious-administrative appeal.

**3** Appeals against resolutions by the competent resolution authorities shall be afforded priority, save in relation to the special procedure to protect fundamental rights and the priority afforded to direct appeals brought against general provisions provided for in Article 66 of Law 29/1998 of 13 July 1998 on the Contentious-Administrative Jurisdiction.

**4** In the exercise of resolution powers and tools, the competent resolution authorities may request and the competent court shall stay, during the period required to ensure the effectiveness of the objective pursued, any court proceeding or action involving the institution under resolution.

**25.3 Article 73. Special features of appeals against administrative decisions and acts taken in relation to the write-down or conversion of capital instruments or bail-in.**

**1** The following parties shall be entitled to file contentious-administrative appeals against the FROB's acts and decisions concerning the write-down or conversion of capital instruments or bail-in:



- a** shareholders or members of the institution that issued the capital instruments and bail-inable liabilities holding at least 5% of the share capital, and where applicable, the wholly-owned entity used as the vehicle for the issue.
  - b** holders of securities included within the scope of the write-down or conversion of capital instruments or bail-in action.
  - c** the commissioner or representative of the syndicate or assembly to which the holders of securities from a particular issue affected by the measure belong, provided that he/she is duly authorised under the terms and conditions of the issue and the rules governing the functioning of the syndicate or assembly.
  - d** the institution's depositors and creditors.
- 2** Court orders adopting precautionary measures shall be published in the "Official State Gazette" and the institution and the FROB shall give the same publicity to any such order as to the write-down or conversion of capital instruments or bail-in action.
- 3** If the contentious-administrative appeal brought by the holders of securities included within the scope of the write-down or conversion of capital instruments or bail-in action or by either the commissioner or representative of the syndicate or assembly to which such holders belong is upheld, the judgment will only be applicable to the issue or issues in which they have invested.
- 4** The institution and the FROB will give the same publicity to the judgment as to the write-down or conversion of capital instruments or bail-in action.

**25.4 Article 74. Impossibility of enforcing a ruling handed down in the contentious-administrative appeals referred to in Articles 72 and 73.**

- 1** The competent supervisor and the competent resolution authorities may plead to the court the existence of grounds rendering it materially impossible to enforce a judgment declaring any of the decisions or acts envisaged in Articles 72 and 73 to be unlawful. The court shall assess whether or not these grounds exist and, where applicable, set the compensation that must be paid. The amount of this compensation shall be at most the difference between the loss actually suffered by the appellant and the loss the latter would have suffered if, at the time the decision or resolution concerned was adopted, the institution had been wound up under insolvency proceedings.
- 2** When assessing whether grounds rendering it impossible to enforce a ruling exist, pursuant to paragraph 1, the court shall take the following points in particular into account:
- a** the complexity or particularly large scale of the operations which are or may be affected.
  - b** the potential loss or damage that would be caused to the institution and the stability of the financial system should the ruling be enforced in its strict terms.
  - c** the existence of legitimate interests or rights of other shareholders, members, bondholders, creditors or other third parties, whose rights are legally recognised.

## **26 CHAPTER IX. SANCTIONING REGIME**

### **27 Section 1. General provisions**

#### **27.1 Article 75. General provisions.**

- 1** Institutions, along with their directors and executives, that infringe the rules laid down in this Law shall be liable to administrative penalties pursuant to the provisions of this Chapter.
- 2** The respective liability attributable to an institution and to its directors and executives shall be independent. The non-initiation of sanctioning proceedings or the shelving or

dismissal of the case against an institution shall not necessarily affect the potential liability of its directors and executives, and vice versa.

**3** When the infringements refer to obligations of consolidated groups of institutions, the parent company shall be penalised as will, where appropriate, its directors and executives.

#### **27.2 Article 76. Competence for hearing proceedings.**

**1** The following are the competent authorities for conducting the sanctioning proceedings and imposing the penalties applicable to the infringements set out in this Law:

**a** the FROB in the case of infringements related to its functions as executive resolution authority and, in particular, those infringements of the rules laid down in Chapters IV to VII, with the exception of those corresponding to the Banco de España or the National Securities Market Commission as laid down in points (b) and (c).

**b** the Banco de España in the case of infringements related to its functions as competent supervisor and preventive resolution authority, in particular, those infringements of the rules laid down in Chapters II and III, as well as the infringements laid down in Section 4 bis of Chapter VI and Articles 21(4), 26(7)(f)(3), 41(2) and 70 quinquies.

**c** the National Securities Market Commission in the case of infringements related to its functions as competent supervisor and preventive resolution authority, those infringements of the rules laid down in Chapters II and III, as well as the infringements laid down in Section 4 bis of Chapter VI and Articles 21(4), 26(7)(f)(3), 41(2) and 70 quinquies.

**2** The Banco de España, the National Securities Market Commission and the FROB shall collaborate with each other in all such sanctioning proceedings that, owing to their nature, might concurrently involve the various authorities.

**3** The competent supervisor and resolution authorities shall notify the Minister of Economic Affairs and Competitiveness of the imposition of penalties for very serious infringements, giving reasons, and shall, in any event, submit quarterly to the latter the basic information on proceedings under way and the resolutions adopted.

#### **27.3 Article 77. Limitation period for infringements and penalties.**

**1** The respective limitation periods for very serious, serious and minor infringements shall be five years, four years and two years.

**2** The limitation period shall run from the date on which the infringement was committed. For infringements arising from a continuous activity or omission, the starting date shall be that of the end of the activity or that of the last action whereby the infringement is committed.

**3** The limitation period shall be interrupted by the initiation, with the knowledge of the party concerned, of the sanctioning procedure. It shall resume if the proceedings remain halted for six months owing to a cause not attributable to those against whom the proceedings are directed.

Proceedings shall not be deemed to be halted for the purposes of the terms of the previous paragraph if such halt arises as a result of the adoption of a resolution to stay the procedure due to the concurrence of a criminal proceeding.

**4** The limitation period regime for penalties shall be as laid down in Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure.

## **28 Section 2. Infringements**

### **28.1 Article 78. Infringement categories.**

The administrative infringements laid down in this Law shall be classified as very serious, serious and minor.

## **28.2 Article 79. Very serious infringements.**

The following shall constitute very serious infringements:

- a** refusing to cooperate with or resisting actions by the competent supervisor or resolution authorities in the exercise of the functions conferred upon them by this Law, save on an occasional or isolated basis.
- b** the institution's failure to cooperate in, or obstruction of, the early intervention measures that the competent supervisor has decided to apply, save on an occasional or isolated basis.
- c** the institution's failure to cooperate with the competent preventive resolution authority, for the purposes of preparing the resolution plans, save on an occasional or isolated basis.
- d** the institution's failure to cooperate in, or obstruction of, the application of the resolution actions the FROB has decided to apply, save on an occasional or isolated basis.
- e** any action that seriously impedes or hinders the economic valuation of the institution entrusted to the independent experts, save on an occasional or isolated basis.
- f** not forwarding to the competent supervisor or resolution authorities whatsoever data and documentation that should be sent thereto or which they may require in the exercise of their functions, or sending such data in an incomplete or inaccurate manner, thereby hampering any assessment of whether or not the institution or the consolidated group or financial conglomerate to which it belongs is failing. For the purposes of this point, sending information or documents outside the period stipulated in the corresponding regulation or the deadline given by the competent body, where applicable, when making the relevant request, will also be considered a failure to send data or documents.

In particular, this point covers:

- 1** The failure to submit to the competent supervisor the recovery plan and the failure to submit the revised plans required by the competent supervisor.
  - 2** The institution's failure to submit to the competent supervisor the report on the degree of compliance with the measures envisaged in the action plan and the other early intervention measures.
  - 3** The institution's failure to submit to the competent preventive resolution authority the information required to prepare the resolution plan.
- g** failure to comply with the duty of accuracy when reporting to the competent supervisor and competent resolution authorities, where, due to the number of parties concerned or the significance of the information, the non-compliance was of particular importance.
  - h** non-compliance with the duty of confidentiality regarding the data obtained in the context of an early intervention or resolution process, or the use of such data for ends other than those provided for in the law, where, due to the number of parties concerned or the significance of the information, the non-compliance was of particular importance.
  - i** failure to notify or a manifestly delayed notification by an institution or consolidated group or sub-group of institutions that it meets the conditions for early intervention, when the management body was aware of, or, given the objective circumstances, should have been aware of, such circumstance, where, owing to the gravity of the circumstance in which the institution finds itself or the length of the delay, such failure should be deemed a very serious infringement.
  - j** failure to notify or a manifestly delayed notification by the management body to the competent supervisor or the competent resolution authorities that the institution is failing, when the management body was aware of, or, given the objective circumstances, should have been aware of, such circumstance, where, owing to the gravity of the circumstance in which the institution finds itself or the length of the delay, such failure should be deemed a very serious infringement.

**k** failure to propose to the competent preventive resolution authority appropriate measures to reduce or remove the impediments to resolvability and the failure to apply the alternative measures proposed by the competent preventive resolution authority to reduce or remove the impediments, save on an occasional or isolated basis.

**l** failure to update the recovery plan annually or following a change in the legal or organisational structure of the institution necessitating changes in the plan, where the institution's circumstances have changed significantly and warrant a substantial change in the plan.

**m** non-compliance with the obligations, requirements and limitations provided for in this Law in relation to intragroup financial support. In particular, granting the group financial support without the competent supervisor's authorisation or obtaining such authorisation by falsifying the circumstances and requirements; concluding an intra-group financial support agreement when any of the parties meets the conditions for early intervention; the failure by the institutions belonging to a group to disclose the applicable information regarding whether or not they have concluded a financial support agreement; and the failure to notify the competent supervisor of the resolutions adopted to lend group financial support, save, in all cases, on an occasional or isolated basis.

**n** the failure to pay the contributions referred to in Article 53(1)(a) or payment after the deadline.

**ñ** unauthorised actions or operations when authorisation is mandatory, without observing the basic conditions therefor, or having obtained authorisation by means of misrepresentations or through other irregular means, save on an occasional or isolated basis.

**o** serious infringements, involving fraudulent actions or the use of natural or legal persons as a front.

**p** In relation to the asset management vehicle, and without prejudice to the application of the other points:

**1** Pursuing activities beyond its corporate purpose that might jeopardise achievement of the overall objectives set for the vehicle in this Law and in the regulations implementing it, save on an occasional or isolated basis.

**2** Failing to keep the accounting records required by law, or keeping such records in an essentially irregular manner that masks its financial position.

**3** Failing to fulfil the obligation to have its annual accounts audited in accordance with applicable legislation.

**4** Refusing or resisting inspection measures, provided that an express request is made in writing for such measures to be taken.

**5** Failing to fulfil its transparency obligations, unless only on an occasional or isolated basis.

**6** Failing to send any data or documents that must be sent to the FROB, or that the latter may request in the exercise of its powers, or having inaccuracies in such data or documents, when this hinders assessment of the company's financial position. For the purposes of this sub-point, failure to send data or documents shall be understood to exist when these are not sent within the period set for that purpose by the competent body when it issues a reminder in writing or reiterates the request.

**q** Non-compliance with the obligation to include any of the terms referred to in Article 46 or 70 quinquies which is not occasional or isolated.

**r** Failure to sufficiently cover the minimum requirement for own funds and eligible liabilities, where these fall below 80% of the minimum set by the preventive resolution authority and such circumstance persists for a period of at least six months.

### **28.3 Article 80. Serious infringements.**

The following shall constitute serious infringements:

**a** refusing to cooperate with or resisting actions by the competent supervisor or resolution authorities in the exercise of the functions conferred upon them by this Law, unless it constitutes a very serious infringement because it takes place on a sustained or repeated basis.

**b** the institution's failure to cooperate in, or obstruction of, the early intervention measures that the competent supervisor has decided to apply, where on an occasional or isolated basis.

**c** the institution's failure to cooperate with the competent preventive resolution authority, for the purposes of preparing the resolution plans, where on an occasional or isolated basis.

**d** the institution's failure to cooperate in, or obstruction of, the resolution actions the FROB has decided to apply, where on an occasional or isolated basis.

**e** any action that impedes or hinders the economic valuation of the institution entrusted to the independent experts, unless it constitutes a very serious infringement because it takes place on a sustained or repeated basis.

**f** failure to report to the competent supervisor or competent resolution authorities the data or documents that must be transmitted to them or that they require in the performance of their duties, or the incomplete or inaccurate transmission thereof, unless this constitutes a very serious infringement. For the purposes of this point, sending information or documents outside the period stipulated in the corresponding regulation or the deadline given by the competent body, where applicable, when making the relevant request, will also be considered a failure to send data or documents.

**g** non-compliance with the duty of accuracy when reporting to the competent supervisor and the competent resolution authorities and non-compliance with the duty of confidentiality regarding the data obtained in the context of an early intervention or resolution process, or the use thereof for ends other than those laid down in the law, unless this constitutes a very serious infringement.

**h** failure to notify or a delayed notification by an institution or consolidated group or sub-group of credit institutions that it meets the conditions for early intervention, where the management body was aware of, or, given the objective circumstances, should have been aware of, such circumstance, unless it should be deemed a very serious infringement.

**i** failure to notify or a delayed notification by the management body to the competent supervisor or the competent resolution authorities that the institution is failing, where the management body was aware of, or, given the objective circumstances, should have been aware of, such circumstance, unless it should be deemed a very serious infringement.

**j** failure to propose to the competent preventive resolution authority appropriate measures to reduce or remove the impediments to resolvability and the failure to apply the alternative measures imposed by the competent preventive resolution authority to reduce or remove the impediments, where done so on an occasional or isolated basis.

**k** failure to update the recovery plan annually or following a change in the legal or organisational structure of the institution necessitating updates to the plan, unless it constitutes a very serious infringement.

**l** non-compliance with the obligations, requirements and limitations provided for in this Law in relation to intragroup financial support, unless it constitutes a very serious infringement.

**m** unauthorised actions or operations when authorisation is mandatory, without observing the basic conditions therefor, or having obtained authorisation by means of misrepresentations or through other irregular means, where done so on an occasional or isolated basis.

**n** failing on an occasional or isolated basis to fulfil the other obligations enforceable under the provisions of this Law and the regulations implementing it, following a prior request made by the competent supervisor or the competent resolution authorities.

**ñ** minor infringements when, over the two years prior to their being committed, a final administrative penalty for the same type of infringement has been imposed on the institution.

**o** In relation to the asset management vehicle, and without prejudice to the application of the other points:

**1** Pursuing activities beyond its corporate purpose that might jeopardise achievement of the overall objectives set for the vehicle in this Law and in the regulations implementing it, provided they are not considered very serious infringements.

**2** Failing to fulfil its transparency obligations on an occasional or isolated basis, following a request made by the supervisory authority.

**3** Failing to send any data or documents that must be sent to the FROB, or that the latter may request in the exercise of its powers, or having inaccuracies in such data or documents, unless this represents a very serious infringement. For the purposes of this sub-point, failure to send data or documents shall be understood to exist when these are not sent within the period set for that purpose by the competent body when it issues a reminder in writing or reiterates the request.

**4** Failing to observe the applicable rules on accounting for transactions and on preparation of the balance sheets, statements of profit and loss and financial statements that must be reported to the competent administrative body.

**5** Failing to fulfil the corporate governance obligations or those relating to the asset management vehicle's organisational structure established by this Law or by the regulations implementing it.

**p** Making any of the distributions laid down in Article 16 bis(1) without having previously made the notification referred to in the last subparagraph therein.

**q** Non-compliance with the obligation to include any of the terms referred to in Article 46 or 70 quinquies which is merely occasional or isolated.

**r** Failure to sufficiently cover the minimum requirement for own funds and eligible liabilities set by the preventive resolution authority, such circumstance persisting for a period of at least six months, provided that this does not constitute a very serious infringement pursuant to the provisions of the preceding article.

#### **28.4 Article 81. Minor infringements.**

Such breaches of the obligations laid down in this Law that do not constitute either very serious infringements or serious infringements pursuant to the two preceding articles shall constitute minor infringements.

## **29 Section 3. Penalties**

### **29.1 Article 82. Penalties.**

**1** The penalties imposed by the FROB in the exercise of the functions assigned to it under this Law, and those imposed by the Banco de España and the National Securities Market Commission in the exercise of their functions as preventive resolution authority, shall be those laid down in this section.

**2** The penalties imposed by the Banco de España and the National Securities Market Commission in the exercise of the functions envisaged in Chapter II shall be those provided for in Title IV of Law 10/2014 of 26 June 2014, in relation to credit institutions, and in Chapter II of Title VIII of Law 24/1988 of 28 July 1988, in relation to investment firms.

**3** The penalties imposed, and any appeal brought against them and the outcomes of such appeals, must be reported to the European Banking Authority, in the case of credit institutions, and to the European Securities and Markets Authority, in the case of investment firms.

### **29.2 Article 83. Penalties for very serious infringements.**

**1** One or more of the following penalties shall be imposed on institutions that have committed very serious infringements:

**a** a fine, which may, in the judgement of the resolving competent body, be:

**1** up to twice the amount of the benefit derived from the infringement where that benefit can be determined; or

**2** up to 10% of total net annual turnover, including gross revenue from interest receivable and similar revenue, income from shares and other fixed-income or variable-yield securities, and commissions or fees receivable by the institution, in the preceding business year.

Where the institution is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the parent undertaking in the preceding business year.

**b** withdrawal of the institution's authorisation, following a report by the competent supervisor.

In the case of branches of institutions authorised in another European Union Member State, the authorisation withdrawal penalty shall be understood to be replaced by the prohibition on commencing new business in Spanish territory.

**c** suspension or limitation of the type or volume of the operations or activities that the infringer may conduct in the securities markets for a period of not more than five years.

**2** In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

**a** an order requiring the infringer to cease the conduct and to desist from a repetition of that conduct.

**b** a public statement published in the Official State Gazette which indicates the infringer's identity, the nature of the infringement and the penalties imposed.

### **29.3 Article 84. Penalties for serious infringements.**

**1** One or more of the following penalties shall be imposed on institutions that have committed serious infringements:

**a** a fine, which may, in the judgement of the resolving competent body, be:

**1** up to 1.5 times the amount of the benefit derived from the infringement where that benefit can be determined; or

- 2** up to 5% of total net annual turnover, including gross revenue from interest receivable and similar revenue, income from shares and other fixed-income or variable-yield securities, and commissions or fees receivable by the institution, in the preceding business year.

Where the institution is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the parent undertaking in the preceding business year.

**b** suspension or limitation of the type or volume of the operations or activities that the infringer may conduct in the debt or equity securities markets for a period of not more than one year.

**2** In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

**a** an order requiring the infringer to cease the conduct and to desist from a repetition of that conduct.

**b** a public statement published in the Official State Gazette indicating the infringer's identity, the nature of the infringement and the penalties or accessory measures imposed; or a private reprimand.

#### **29.4 Article 85. Penalties for minor infringements.**

**1** A fine shall be imposed on an institution that has committed minor infringements which may, in the judgement of the resolving competent body, be:

**a** up to 1.2 times the amount of the benefit derived from the infringement where that benefit can be determined; or

**b** up to 1% of total net annual turnover, including gross revenue from interest receivable and similar revenue, income from shares and other fixed-income or variable-yield securities, and commissions or fees receivable by the institution, in the preceding business year.

Where the institution is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the parent undertaking in the preceding business year.

**2** In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

**a** an order requiring the infringer to cease the conduct and to desist from a repetition of that conduct.

**b** a private reprimand.

#### **29.5 Article 86. Penalties for directors or executives for very serious infringements.**

**1** Irrespective of any penalty imposed on the infringing institution for very serious infringements, one or more of the following penalties may be imposed on the institution's de facto or de jure directors or executives responsible for the infringement:

**a** a fine for each of them of up to €5 million.

**b** suspension from the office of director or executive at the institution for a term of no more than three years.

**c** removal from office at the institution, disqualifying such persons from holding a directorship or executive post at this same institution for a maximum term of five years.

**d** disqualification from serving as a director or executive at any credit institution or institution in the financial sector, with removal, where appropriate, from the directorship or executive office held by the infringer at an institution, for a term not exceeding ten years.

**2** In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:



**a** an order requiring the infringer to cease the conduct and to desist from a repetition of that conduct.

**b** a public statement published in the Official State Gazette indicating the infringer's identity, the nature of the infringement and the penalties or accessory measures imposed.

**29.6 Article 87. Penalties for directors or executives for serious infringements.**

**1** Irrespective of any penalty imposed on the infringing institution for serious infringements, one or more of the following penalties may be imposed on the institution's de facto or de jure directors or executives responsible for the infringement:

**a** a fine for each of them of up to €2.5 million.

**b** suspension from office for a term of no more than one year.

**c** removal from office and disqualification from serving as a director or executive at the same institution for a maximum term of two years.

**d** disqualification from serving as a director or executive at any credit institution or institution in the financial sector, with removal, where appropriate, from the directorship or executive office held by the infringer at an institution, for a term not exceeding five years.

**2** In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

**a** an order requiring the infringer to cease the conduct and to desist from a repetition of that conduct.

**b** a public statement published in the Official State Gazette indicating the infringer's identity, the nature of the infringement and the penalties or accessory measures imposed.

**29.7 Article 88. Penalties for directors or executives for minor infringements.**

**1** Irrespective of any penalty imposed on the infringing institution for minor infringements, a fine of up to €500,000 may be imposed on the institution's de facto or de jure directors or executives responsible for the infringement:

**2** In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

**a** an order requiring the infringer to cease the conduct and to desist from a repetition of that conduct.

**b** a private reprimand.

**29.8 Article 89. Criteria for determining penalties.**

**1** Where the FROB is the competent sanctioning body, or where the Banco de España and the National Securities Market Commission act in the exercise of their functions as preventive resolution authority, the penalties applicable in each case for the commission of very serious infringements, serious infringements or minor infringements shall be determined on the basis of the following criteria:

**a** the nature and magnitude of the infringement.

**b** the degree of responsibility for the events.

**c** the gravity and duration of the infringement.

**d** the significance of the benefits derived from, or losses avoided by, as appropriate, the actions or omissions constituting the infringement.

**e** the financial strength of the legal person responsible for the infringement, as indicated, among other objective criteria, by the total turnover of the legal person responsible.

**f** the financial strength of the natural person responsible for the infringement, as indicated, among other objective criteria, by the annual income of the natural person responsible.

**g** the unfavourable consequences of the infringement for the financial system or the national economy.

**h** the rectification of the infringement on the infringer's initiative.

- i the restitution of the damage or losses caused.
  - j the losses caused to third parties as a result of the infringement.
  - k the level of cooperation with the competent authority.
  - l the systemic consequences of the infringement.
  - m the level of representation of the infringer in respect of the infringing institution.
  - n in the event of inadequate own funds, the objective difficulties that may have arisen to reach or maintain the legally required level.
  - ñ the previous conduct of the infringer in relation to the early intervention and resolution processes in which he/she has been involved, with regard to final penalties having been imposed, over the past five years.
- 2** The penalties imposed by the Banco de España and the National Securities Market Commission in the exercise of the functions envisaged in Chapter II shall be determined on the basis of the criteria laid down in Title IV of Law 10/2014 of 26 June 2014, in relation to credit institutions, and in Chapter II of Title VIII of Law 24/1988 of 28 July 1988, in relation to investment firms.

**29.9 Article 90. Responsibility of directors or executives.**

- 1** The institution's directors or executives shall be responsible for infringements when such infringements are attributable to their wilful misconduct or negligence.
- 2** Its directors or members of its management bodies shall not be considered responsible for the infringements in the following cases:
- a** when members of management bodies have voted against or expressly refrained from voting on the decisions or resolutions giving rise to the infringements.
  - b** when these infringements are exclusively attributable to executive committees, members of the management body with executive functions, general managers or similar officers, or other persons with executive functions at the institution.

**29.10 Article 91. Temporary appointment of members of the management body.**

If, owing to the number and office of the persons affected by suspension or removal penalties, it is strictly necessary to ensure continuity in the management and stewardship of the institution, the competent supervisor(s) and the competent resolution authorities may temporarily appoint the members needed so that the management body may adopt resolutions, or appoint one or more administrators, specifying their functions. These persons shall perform their duties until the competent body of the institution, which shall be convened immediately, provides for the corresponding appointments and those designated take office, where appropriate, until the term of suspension has elapsed.

**30 Section 4. General procedural rules**

**30.1 Article 92. Procedure for imposing penalties.**

- 1** The Banco de España and the FROB shall conduct and resolve the sanctioning proceedings in their respective areas of competence pursuant to the procedural, transparency and notification rules laid down in Chapter IV of Title IV of Law 10/2014 of 26 June 2014, without prejudice to the special features contained in this Law.
- 2** The National Securities Market Commission shall conduct and resolve the sanctioning proceedings in its area of competence pursuant to the procedural, transparency and notification rules laid down in Title VIII of Law 24/1988 of 28 July 1988, without prejudice to the special features contained in this Law.
- 3** The procedure and principles provided for in Law 30/1992 of 26 November 1992 shall apply on a supplementary basis.

4 In any event, the penalties imposed for very serious and serious infringements will be published in the Official State Gazette once final in administrative proceedings.

**30.2 Article 93. Enforceability of penalties and challenge in administrative proceedings.**

The FROB's resolutions bring administrative proceedings to an end and shall be subject to a discretionary administrative appeal for reconsideration, in accordance with the provisions of Articles 116 and 117 of Law 30/1992.

**30.3 First additional provision. Structure and functioning of preventive resolution authorities.**

1 The Banco de España and the National Securities Market Commission shall adopt the necessary measures so that their organisational structure may ensure operational independence and prevent conflicts of interest between the supervisory functions and preventive resolution functions entrusted to them by this Law.

In the exercise of preventive resolution functions, the Banco de España and the National Securities Market Commission shall exclusively pursue compliance with the objectives laid down in Article 3. Performance of the aforementioned functions shall be functionally and hierarchically separate from the exercise of supervisory functions. The two institutions shall draw up rules for managing potential conflicts of interest in order to duly identify, manage, control and, where appropriate, eliminate them.

2 The provisions of Articles 57-59 shall apply to the Banco de España and the National Securities Market Commission, as preventive resolution authorities. In particular, they shall provide the information that the FROB requires in order to exercise the powers envisaged in Article 21 and, in general, the powers it holds as the executive resolution authority.

**30.4 Second additional provision. Deadline for raising the available financial means of the National Resolution Fund.**

Contributions to the National Resolution Fund in accordance with the provisions of this Law shall begin during 2015, achieving the level of available financial means required by this Law no later than 31 December 2024.

Without prejudice to the provisions of the previous paragraph, institutions shall only be required to make contributions to the National Resolution Fund when the FROB requests ordinary and extraordinary contributions, specifying the amount corresponding to each institution. No general obligations to make contributions shall arise prior to that request.

The FROB may order any acts that may be required to raise the contributions to the National Resolution Fund under the terms laid down in this Law.

**30.5 Third additional provision. Legal framework applicable to collateral provided to the FROB and the Deposit Guarantee Scheme for Credit Institutions.**

The legal framework established in the sixth additional provision of Law 13/1994 of 1 June 1994 of Autonomy of the Banco de España shall also be applicable to collateral provided to the FROB and the Deposit Guarantee Scheme for Credit Institutions in the exercise of their functions.

**30.6 Fourth additional provision. Single Resolution Mechanism and Single Resolution Fund.**

1 This Law shall be applied in conjunction with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, as and when these provisions come into effect, in accordance with Article 99 of the Regulation; in particular, as regards the functions of the European authorities within the framework of the Single Resolution Mechanism, and the duty of national authorities to cooperate with European authorities for

the correct enforcement in Spain of the decisions taken by the European authorities in the exercise of their powers.

**2** In accordance with the provisions of Regulation (EU) No 806/2014 of 15 July 2014, the rest of applicable European Union law and the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund signed on 21 May 2014, the relevant part of the National Resolution Fund shall be transferred to the Single Resolution Fund in the amount and form stipulated in the aforementioned legislation and agreement.

The foregoing shall be carried out by the corresponding time limits, in accordance with the pertinent dates of entry into force and, in particular, pursuant to Articles 96 and 99(6) of the Regulation and Articles 3(3), 11 and 12 of the Agreement.

**30.7 Fifth additional provision. Retention of records of financial contracts by entities.**

Competent supervisors and competent resolution authorities may require entities to keep a record including detailed information of financial contracts in relation to securities and commodities, forwards and futures contracts and swap arrangements to which they are party, as well as a copy of the corresponding supporting documentation. Competent supervisors may determine the minimum information to be included in this record for their respective supervised entities.

**30.8 Sixth additional provision. Integration of deposit guarantee schemes for savings banks, commercial banks and credit cooperatives.**

The provisions of this Law do not alter any of the effects of the integration or subrogation of the rights and obligations of the pre-existing deposit guarantee schemes for savings banks, commercial banks and credit cooperatives, required upon the entry into force of Royal Decree-Law 16/2011 of 14 October 2011.

**30.9 Seventh additional provision. References to Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions.**

Any references made in law to Law 9/2012 of 14 November 2012 shall be understood to be made to the corresponding provision of this Law.

**30.10 Eighth additional provision. The Spanish resolution authority in the context of the Single Resolution Mechanism.**

The FROB and the preventive resolution authorities, in accordance with the powers conferred under this Law, shall be the Spanish resolution authorities for the purposes of the provisions of Regulation (EU) No 806/2014 of 15 July 2014.

The FROB shall represent the Spanish resolution authorities on the Single Resolution Board of the Single Resolution Mechanism. The Banco de España may participate as an observer in the Board.

**30.11 Ninth additional provision. Financial institutions and other types of companies.**

This Law shall be applicable to the institutions and entities envisaged in Article 1(2)(b), (c) and (d) to the extent necessary in order to give full effect to the resolution objectives and principles provided for in Articles 3 and 4, and to strictly comply with the provisions of Directive 2014/59/EU of 15 May 2014; specifically, they shall fall under the scope of the provisions of Articles 3, 4, 5, 6(6), 7, 14, 16, 16 bis, 17(2 bis), 18, 21, 24, 25, 38–40, 42, 45, 46, 49, 58, 63–65, 67, 70–70 quinquies and 71, the fifth additional provision, paragraphs 2 and 3 of the fourteenth additional provision, and the fifteenth additional provision, without prejudice to those other provisions of the law whose wording encompasses or requires their application to these institutions and entities.

### **30.12 Tenth additional provision. General viability plans.**

The requirement to draw up a general viability plan as envisaged in Article 30 of Law 10/2014 of 26 June 2014 and Article 70 ter(2)(g) of Law 24/1988 of 28 July 1988 shall be understood to be met through the preparation of the recovery plans foreseen in Article 6 of this Law.

### **30.13 Eleventh additional provision. Creation of the Governing Committee of the FROB.**

The Governing Committee of the FROB shall be set up under the terms laid down in Chapter VII within two months from the entry into force of this Law.

Until the Governing Committee is established as provided for in Chapter VII, the existing Governing Committee at the date of entry into force of this Law shall exercise all the functions envisaged in this Law.

### **30.14 Twelfth additional provision. Authorised capital for the conversion of capital instruments upon the occurrence of a trigger event.**

If the maximum amount of authorised capital provided for in Article 297(1)(b) of the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, is insufficient for the conversion envisaged in Article 52(1)(n) of Regulation (EU) No 575/2013 of 26 June 2013, and a trigger event occurs, this limit may be exceeded, following a report from the statutory auditor. The maximum time limit set in the aforementioned article may also be exceeded, and the requirement that contributions must be monetary shall not apply. When notice is given of the general meeting, the aforementioned auditor's report accrediting the need to apply such exceptions shall be made available to the shareholders at the registered office.

The same regime of exceptions and requirements shall be applicable to Tier 2 capital instruments that include clauses providing for conversion upon the occurrence of a trigger event.

### **30.15 Thirteenth additional provision. Banco de España staff at the FROB.**

The FROB may hire staff who provide services at the Banco de España, without prejudice to the Banco de España's autonomy as regards staff matters and in accordance with the principles of equality, merit, ability and transparency that, under the terms referred to in Article 52(7), must govern the selection of FROB staff. Under no circumstance may the hiring of staff be detrimental to the required operational independence or give rise to conflicts of interest between the supervisory and resolution functions.

Where Banco de España staff, having obtained authorisation from this institution, join the FROB, they shall take mandatory leave of absence, with the right to return, and the period during which they are on such leave shall be computed for the purposes of length of service. Staff from other public authorities or bodies who join the FROB shall be entitled to receive an amount, to be borne by the latter, in respect of their length of service, equivalent to that which they received prior to their joining the FROB.

### **30.16 Fourteenth additional provision. Regime applicable in the event of insolvency of an entity.**

In the event of insolvency of one of the entities envisaged in Article 1(2) of this Law:

**1** General preferred claims ranked in the order of priority below the general preferred claims provided for in Article 280(5) of the consolidated text of the Insolvency Law approved by Royal Legislative Decree 1/2020 of 5 May 2020 shall be considered to be:

- a** deposits covered by the Deposit Guarantee Scheme for Credit Institutions and any rights to which the Fund has subrogated, should the guarantee have been enforced, and
- b** that part of deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Royal Decree-Law 16/2011 of

14 October 2011 and deposits that would be covered deposits from natural persons, micro, small and medium-sized enterprises were they not made through branches located outside the European Union of institutions established within the European Union.

**2** Non-preferred ordinary claims ranked in the order of priority below the other ordinary claims provided for in Article 269(3) of the consolidated text of the Insolvency Law approved by Royal Legislative Decree 1/2020 of 5 May 2020 shall be considered to be debt instruments that meet the following conditions:

- a** they were issued or created with an effective maturity equal to or exceeding one year;
- b** they are not derivative financial instruments, nor do they contain embedded derivative financial instruments; and
- c** the terms and conditions and, where appropriate, issue prospectus include a clause stipulating that in the order of priority they are ranked below other ordinary claims and that, therefore, the claims derived from these debt instruments shall be paid after other ordinary claims.

Ordinary claims that meet the conditions listed in the foregoing points shall be ranked above, and paid before, the subordinated claims included in Article 281 of the consolidated text of the Insolvency Law approved by Royal Legislative Decree 1/2020 of 5 May 2020.

**3** The order of priority of the subordinated claims included in Article 281(1)(2) of the consolidated text of the Insolvency Law shall be as follows:

- a** The principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital.
- b** The principal amount of Tier 2 instruments.
- c** The principal amount of Additional Tier 1 instruments.

All claims arising from Tier 2 instruments and Additional Tier 1 instruments referred to in numbers 2 and 3 of the previous paragraph, regardless of whether they are only partially recognised as Tier 2 instruments or Additional Tier 1 instruments, shall be ranked below, and paid after, the other claims included in Article 281(1) of the consolidated text of the Insolvency Law.

**30.17 Fifteenth additional provision. Effects of early intervention and resolution processes on the continuity of an institution's activities.**

**1** Once an early intervention or resolution process has begun, the courts may not accept applications for insolvency proceedings in relation to an institution, and legal actions that infringe this provision shall be null and void.

**2** Institutions included within the scope of this Law may not apply for voluntary insolvency without having made the communication envisaged in Articles 9(1) and 21(4) and without a decision from the competent supervisor and the FROB on whether to commence an early intervention or resolution process in relation to the institution. The two-month deadline established in Article 5 of Insolvency Law 22/2003 of 9 July 2003 shall be suspended until such decision is made.

Where either of the processes is to be conducted or the application for insolvency is not accompanied by the communication provided for in the foregoing paragraph, the competent judicial body shall not admit such application for consideration.

**3** If an application for insolvency proceedings in relation to an institution is made by a creditor, the competent judicial body, staying the processing of the application, shall notify the competent supervisor and the FROB so that, within the following seven days, they indicate whether, in the exercise of the powers provided for in this Law, they will commence an early intervention or resolution process in relation to the institution. If either of these processes is to be commenced, the competent judicial body shall not admit the application for consideration.

4 The resolution tools applied by the FROB shall be deemed to be reorganisation measures for the purposes of the provisions of Law 6/2005 of 22 April 2005 on the reorganisation and winding-up of credit institutions.

**30.18 Sixteenth additional provision. Fee for the activities performed by the FROB as resolution authority.**

1 The fee for the activities performed by the FROB as resolution authority shall be governed by the provisions of this Law or, otherwise, by Law 8/1989 of 13 April 1989, on Public Fees and Prices, and by General Tax Law 58/2003 of 17 December 2003.

2 Chargeable event. The chargeable event of the fee for the activities performed by the FROB, as resolution authority, is the exercise of its oversight and reporting functions and the application of resolution tools during the preventive and executive phases of the resolution.

3 Accrual. The fee accrues on 1 January each year, except in cases of newly-incorporated institutions, for which the fee shall accrue on the date of incorporation.

4 Persons obliged to pay the fee. The institutions envisaged in Article 1(2)(a) of this Law shall be obliged to pay this fee.

5 Fee base. The fee base shall be the amount that each institution must pay as their annual ordinary contribution to the National Resolution Fund or, where appropriate, the Single Resolution Fund.

6 Fee payable. The fee payable shall be the result of multiplying the fee base by a chargeable rate of 2.5%.

7 Management, settlement and collection. The FROB shall be empowered to manage, settle and collect the fee, under the terms set out in regulations.

8 The revenue from the fee for the activities performed by the FROB as resolution authority shall have the nature of budget revenue of the FROB.

**30.19 Seventeenth additional provision. Legal framework of the Official Credit Institute.**

In accordance with Article 2(2) of Directive 2014/59/EU, the Official Credit Institute is excluded from the scope of this Law, as envisaged in Article 1.

**30.20 First transitional provision. Regime applicable to certain recovery and resolution proceedings.**

1 Recovery and resolution proceedings commenced prior to the entry into force of the Law, as well as all the relevant ancillary measures, including financial support instruments and management of hybrid instruments, shall continue to be regulated, until their conclusion, by the legislation applicable prior to the entry into force of this Law.

Notwithstanding the foregoing, in the recovery and resolution proceedings envisaged in the previous paragraph, the time limit referred to in Article 31(4) of Law 9/2012 of 14 November 2012 shall be seven years. This time limit may be extended by resolution of the Council of Ministers, adopted at the proposal of the Minister of Economic Affairs, Industry and Competitiveness and following a report from the Ministry of Finance and the Civil Service and from the FROB, where deemed necessary for better fulfilment of the resolution objectives.

2 Recovery and resolution proceedings commencing before 1 January 2016 shall continue to be regulated, as regards financial support instruments and the management of hybrid instruments, by the legislation applicable prior to the entry into force of this Law, and shall not be within the scope of the rules on bail-ins envisaged in Chapter VI.

### **30.21 Second transitional provision. Rules on bail-in.**

The rules on bail-ins contained in Chapter VII of Law 9/2012 of 14 November 2012 shall remain in force until 31 December 2015.

### **30.22 Third transitional provision. Administrative and court proceedings commencing prior to entry into force.**

Administrative and court proceedings commencing prior to the entry into force of this Law shall be processed and resolved in accordance with the legislation applicable prior to such entry into force.

### **30.23 Fourth transitional provision. Annual contributions to the deposit guarantee compartment.**

1 The Banco de España shall develop, before 31 May 2016, the methods necessary to ensure that the annual contributions of institutions to the deposit guarantee compartment of the Deposit Guarantee Scheme are proportionate to their risk profiles.

2 Until the Banco de España develops these methods, the annual contributions shall be calculated in accordance with the provisions of Royal Decree-Law 16/2011 of 14 October 2011, creating the Deposit Guarantee Scheme for Credit Institutions, prior to the amendments made by this Law.

### **30.24 Fifth transitional provision. Accrual of the fee for the activities performed by the FROB as resolution authority in 2015.**

In 2015, the fee for the activities performed and services provided by the FROB as resolution authority shall accrue on the date of the entry into force of this Law.

### **30.25 Sixth transitional provision. Adaptation to the changes under Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013.<sup>1</sup>**

*Repealed by the single repealing provision of Royal Legislative Decree 4/2015 of 23 October 2015.*

### **30.26 Seventh transitional provision.<sup>2</sup> Application of the first final provision and of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving security settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.**

*Repealed by the single repealing provision of Royal Legislative Decree 4/2015 of 23 October 2015.*

### **30.27 Repealing provision.**

All legal rules of equal or lower rank that conflict with the provisions of this Law are hereby repealed, including, specifically, Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions, with the exception of its provisions amending other legal rules and the second, third, fourth, sixth to thirteenth, fifteenth, seventeenth, eighteenth and twenty-first additional provisions.

### **30.28 First final provision. Amendments to Securities Market Law 24/1988 of 28 July 1988.**

Securities Market Law 24/1988 of 28 July 1988 has been amended as follows:

A) As regards securities clearing, settlement and recording:

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<sup>1</sup> Repealed by the single repealing provision of Royal Legislative Decree 4/2015 of 23 October 2015

<sup>2</sup> Repealed by the single repealing provision of Royal Legislative Decree 4/2015 of 23 October 2015



One. Article 5 is amended and reads as follows:

“Article 5. Representation of securities.

1. Transferable securities may be represented by book entries or by certificates. The chosen form of representation must apply to all the securities making up a single issue.

2. Securities admitted to trading on official secondary markets or on multilateral trading facilities shall necessarily be represented by book entries.

As an exception to the provisions of the previous paragraph, special provisions shall be established in regulations to ensure that foreign securities represented through certificates may be traded on Spanish official secondary markets or multilateral trading facilities and be recorded in the central securities depositories established in Spain.

3. Both the representation of securities through book entries and the representation through certificates shall be reversible. The reversal of the representation through book entries to certificates shall require the prior authorisation of the National Securities Market Commission, under the terms provided for in regulations. The changeover to the book-entry system may be made as and when the holders give their consent to the change.”

Two. Article 6 is amended and reads as follows:

“Article 6. Issue document.

1. Representation of securities by book entry shall always require that the issuer draft a document stating the information needed to identify the securities making up the issue.

In the case of equity securities, the aforementioned document, which may be the deed of issuance, shall be converted into a public deed.

In the case of non-equity securities, converting the issuance document into a public deed shall be optional. This document may be replaced by:

(a) The prospectus approved and registered by the National Securities Market Commission, in accordance with the provisions of this Law.

(b) The publication of the characteristics of the issue in the appropriate official gazette, in the case of State or regional government debt issues, as well as in those other cases in which this requirement is established.

(c) The certificate issued by authorised persons in accordance with the legislation in force, in the case of issues that are to be admitted to trading on a multilateral trading facility established in Spain, in accordance with the provisions of Article 30 ter(4).

2. The issuer shall deposit one copy of the issue document and its amendments with the entity responsible for the accounting records and another with the National Securities Market Commission. For securities admitted to trading on an official secondary market or on a multilateral trading facility, a copy shall also be deposited with the market's operator.

3. The issuer and the entity responsible for the accounting records must at all times have a copy of that document available to the holders and interested members of the public.

4. The issue document shall not be required for financial instruments traded on official secondary futures and options markets, or in other cases, subject to the conditions to be established in regulations.”

Three. Article 7 is amended and reads as follows:

“Article 7. Entities responsible for accounting records.

1. The keeping of accounting records of the securities represented by book entries relating to an issue shall be entrusted to a single entity which shall ensure the integrity of the issue.

2. In the case of securities not admitted to trading on official secondary markets or on multilateral trading facilities, said entity shall be freely designated by the issuer from among the investment firms and credit institutions authorised to carry on the activity provided for under Article 63(2)(a). The designation must be recorded in the Register of the National

Securities Market Commission provided for under Article 92, as a prerequisite for the commencement of the keeping of the accounting records. Central securities depositories may also assume such function in accordance with the requirements, if any, established in applicable legislation and the related regulations.

3. In the case of securities admitted to trading on official secondary markets or on multilateral trading facilities, the entity responsible for keeping the accounting records of the securities shall be the designated central securities depository which shall exercise such function together with its participating entities.

4. The entities referred to in this article shall be liable to those who suffer damage as a result of non-performance of the appropriate entries, inaccuracies or delays therein or, in general, as a result of an intentional or negligent breach of their legal obligations. Compensation for damage caused shall, as far as possible, be paid in kind.”

Four. A new Article 7 bis is added with the following wording:

“Article 7 bis. System of recording and holding of securities.

1. Any central securities depository providing services in Spain shall adopt a recording system consisting of a central record and the detailed records kept by the entities participating in that system.

2. The central record shall be maintained by the central securities depository and shall recognise the following account types for each participating entity which so requests:

(a) One or more of its own accounts in which the balances of securities held by the participating entity shall be recorded.

(b) One or more general third-party accounts in which are recorded, on a global basis, the securities balances of the clients of the participating entity, or of the clients of a third entity that has entrusted the requesting entity with the custody and detailed recording of the securities of these clients.

(c) One or more individual accounts in which the balances of securities of those clients of the participating entities who request the keeping of this type of accounts in the central record shall be recorded separately.

3. Each participating entity with general third-party accounts shall keep a detailed record showing the clients to which the balances of securities booked in those accounts in the central record correspond.

4. The government shall implement, in relation to the different entities entrusted with keeping accounting records and the different types of securities, whether or not admitted to trading on official secondary markets or on multilateral trading facilities, the rules for the organisation and operation of the relevant records, the legal status of the different accounts of eligible securities, the collateral and other requirements that may be applicable to them, the systems for the identification and control of securities represented by book entries, as well as the relations of those entities with issuers and their involvement in securities administration. The conditions and cases in which central securities depositories may be authorised to carry out the direct keeping of client securities accounts in the central record may be determined in regulations.”

Five. Article 12 bis is amended and reads as follows:

“Article 12 bis. Transfer of securities and pro rata rule.

1. In the event of insolvency of an entity responsible for keeping accounting records of securities represented by book entries or of an entity participating in the recording system, the holders of securities recorded in those records shall have the right to withdraw the securities recorded in their name and to request their transfer to another entity, without prejudice to the provisions of Articles 44 bis(8) and 70 ter(2)(f).

2. For the purposes of this article, the insolvency judge and the insolvency administrators shall safeguard the rights deriving from transactions in the process of being settled at the time that any of the entities to which the previous paragraph refers are declared insolvent, in accordance with the rules of the corresponding clearing, settlement and recording system.

3. Central securities depositories and other entities responsible for keeping records of securities represented by book entries shall ensure the integrity of securities issues. Recording systems operated by central securities depositories shall offer sufficient guarantees that there are no discrepancies between the central record and the detailed records. To this end, in addition to the provisions of this Law, the supervisory mechanisms available to the central securities depositories and the control systems of their participating entities, the situations in which possible incidents that have occurred shall be notified to the supervisory authorities, as well as the mechanisms and time limits for their resolution shall be established in regulations.

4. In any event and without prejudice to the provisions of the previous paragraph, when the balances of securities with the same International Securities Identification Number (ISIN) entered in the set of general third-party accounts of a participating entity in the central record are not sufficient to fully satisfy the rights of the holders of securities with the same ISIN entered in the detailed record maintained by said participating entity, the balance recorded in said set of general third-party accounts shall be distributed pro rata according to the rights of the holders recorded in the detailed record. Aggrieved holders shall have a claim against the participating entity for undelivered securities.

5. Where there are limited rights in rem or liens of any other kind on the securities, and without prejudice to agreements between the collateral provider and the beneficiary of the collateral, once the pro rata rule has been applied, such liens shall be understood to apply to the result of the pro rata rule and the claims vis-à-vis the participating entity which, where applicable, exist for the part not paid in securities.”

Six. Paragraphs 2(g) and 7 of Article 31 bis are amended, and a new paragraph 8 is added, and read as follows:

“(g) Present draft market rules and regulations which must contain at least the applicable rules on transferable financial instruments, issuers, members, the collateral system, types of transactions, trading, rules on clearing, settlement and recording of transactions, distribution of dividends and other corporate events, and market supervision and discipline, as well as organisational measures relating to conflicts of interest and risk management, among other matters. Provision shall also be made for consultation with issuers of financial instruments admitted to trading on the market and with members of the market when a substantial amendment to its rules and regulations is proposed.

7. Regulations shall determine the transferable securities whose transactions carried out in the multilateral trading segments of the official secondary markets shall be subject to mechanisms that allow their orderly settlement and conclusion through the necessary intervention of a central counterparty.

8. In order to provide for the settlement of transactions in securities executed on official secondary markets, their market operators shall enter into agreements with at least one central securities depository and, where applicable, one or more central counterparties, without prejudice to the right of issuers to arrange for their securities to be recorded in any central securities depository in accordance with Article 49 of Regulation (EU) No 909/2014 and the right of members of official secondary markets to designate the settlement system in accordance with Article 44 quinquies of this Law.”

Seven. A new Article 36 bis is added with the following wording:

“Article 36 bis. Settlement of transactions.

1. Buyers and sellers of transferable securities admitted to trading on official secondary markets shall be obliged, in accordance with the rules of said market, to deliver cash and transferable securities as soon as their respective orders are executed, even if their effective settlement is carried out subsequently.

2. The purchaser of transferable securities admitted to trading on an official secondary market shall acquire ownership of them when they are entered in their name in the securities accounts in accordance with the rules of the recording system.

3. Official secondary markets shall determine in their rules and regulations the notional settlement date of the transactions executed, and may establish different dates depending on the transferable securities to be settled, the trading segments and other criteria, in accordance with applicable EU law and in coordination, where appropriate, with the central counterparties and central securities depositories involved in the settlement processes.”

Eight. A new Article 36 ter is added with the following wording:

“Article 36 ter. Settlement of rights or obligations of a financial nature associated with securities.

1. The issuing entity shall give sufficient notice to the market operator of the official secondary markets on which its securities are admitted to trading at its request, and to the central securities depository responsible for recording them, of the rights or obligations of a financial nature generated by the securities as soon as the appropriate agreement has been adopted.

2. Taking into account the rules applicable to the trading, clearing, settlement and recording of transactions in securities admitted to trading on such markets, these communications shall specify the relevant dates for the recognition, exercise, enforcement and payment of the relevant rights and obligations.

3. Without prejudice to the foregoing, the benefits, rights or obligations inherent in the ownership of shares and securities equivalent to shares shall be for the account and benefit of the acquirer from the date of purchase on the relevant official secondary market, whereas they shall be for the account and benefit of the acquirer from the date of settlement of the relevant purchase transaction in the case of fixed-income securities and other securities not equivalent to shares. In the event of delays or other incidents that have occurred in the settlement process, appropriate adjustments may be made to the settlement of such rights or obligations.”

Nine. A new Article 36 quáter is added with the following wording:

“Article 36 quáter. Collateral aimed at mitigating settlement risk.

1. Members of official secondary markets, members of central counterparties and entities participating in central securities depositories shall have, ex lege, a pledge of those provided for in Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to boost productivity and improve public procurement, exclusively on securities or cash resulting from the settlement of transactions on behalf of natural or legal persons, when those entities have had to advance the cash or securities necessary to settle such transactions due to their clients’ non-compliance or entering insolvency proceedings.

2. This pledge shall be exclusively on the securities and cash resulting from the transactions not settled by the clients and shall exclusively secure the amount that the entities benefiting from this right have had to advance in order to settle the aforementioned transactions, including, where applicable, the price of the securities that they have had to deliver and any

sanctions that they have had to pay as a consequence of the non-compliance of their clients.

3. The creation and enforcement of the aforementioned pledge shall not require any formality, without prejudice to the duty of the beneficiary entities to keep at the disposal of their clients the information evidencing the occurrence of the requirements under this and the previous paragraphs.

4. Members of official secondary markets, in the event of any of their clients' entering insolvency proceedings, may introduce in said markets and on behalf of the insolvent party, securities purchase or sale orders in the opposite direction to the transactions contracted on behalf of the latter, when the opening of insolvency proceedings occurs while said transactions are in the course of settlement. Members of central counterparties and entities participating in central securities depositories shall enjoy the same right vis-à-vis their clients, who shall exercise this right by requesting from members of official secondary markets the introduction of orders in the opposite direction to those referred to in this paragraph.

5. The provisions of the previous paragraphs are understood to be without prejudice to the settlement discipline measures referred to under Articles 6 and 7 of Regulation (EU) No 909/2014 of 23 July 2014, and without prejudice to the collateral referred to in this Law in favour of official secondary markets, central securities depositories and central counterparties, which shall have preference over the rights mentioned in the previous paragraphs.”

Ten. Article 44 bis is amended and reads as follows:

“Article 44 bis. Central securities depositories.

1. Authorisation as a central securities depository, the withdrawal of authorisation and its operation when said entity is established in Spain shall be governed by the provisions of Regulation (EU) No 909/2014 of 23 July 2014, by the provisions of this Law and by any other applicable Spanish or EU law.

The National Securities Market Commission shall be the competent authority responsible for authorising, supervising and sanctioning central securities depositories in accordance with Regulation (EU) No 909/2014 of 23 July 2014.

Central securities depositories shall provide the National Securities Market Commission and the various public supervisory bodies with the information they may request, within the scope of their respective powers, on the clearing, settlement and recording activities in the systems managed by them, provided that such information is at their disposal and in accordance with applicable legislation.

2. Central securities depositories incorporated in Spain shall take the form of a public limited company. Their articles of association and amendments thereto, with the exceptions that may be established in regulations, shall require the prior approval of the National Securities Market Commission. The appointment of members of the board of directors, general managers and similar officers of central securities depositories shall be subject to the prior authorisation of the National Securities Market Commission.

The direct or indirect holding of capital of central securities depositories shall be subject to the rules on qualifying holdings provided for under Article 69 for investment firms, under the terms established in regulations, it being understood that, in any event, any holding that directly or indirectly amounts to at least 1% of the capital or of the voting rights of the central securities depository or that, without reaching that percentage, allows a significant influence to be exercised over it, under the terms established in the regulations, shall be considered as such.

Without prejudice to the provisions of Article 69(6), the National Securities Market Commission may oppose the acquisition or transfer of a qualifying holding in the capital of the central securities depository when it deems it necessary to ensure the proper functioning of the markets or of the securities clearing, settlement and recording systems or to avoid distortions therein, or because Spanish entities in the acquirer's home country are not treated in an equivalent manner.

Central securities depositories shall have the bodies and committees provided for in Regulation (EU) No 909/2014 of 23 July 2014.

3. Central securities depositories shall also be governed by internal rules, the approval of which and any amendments thereto, with the exceptions, if any, established in regulations, shall be the responsibility of the National Securities Market Commission, following a report from the Banco de España. These internal rules shall regulate the functioning of central securities depositories, the services provided by them, their financial rules, the procedures for setting and communicating rates, the conditions and principles under which they shall provide the aforementioned services, the records relating to the services provided and the legal regime of their participating entities. Likewise, the rules shall regulate the procedures for managing the delivery of securities and their payment, the determination of the moment of finality of the settlement instructions, the risk management policy as well as the collateral of all kinds that the participating entities may have to provide depending on the activities they carry on.

The internal rules may be completed by means of circulars approved by the central securities depository itself. Such circulars must be communicated to the National Securities Market Commission and the Banco de España under the terms provided for in regulations. The National Securities Market Commission may oppose them, suspend them or render them null and void when it deems that they infringe applicable legislation, or prejudice the prudent and safe functioning of the central securities depository and of the securities markets or the protection of investors.

4. The internal rules and articles of association shall have the nature of rules for the organisation and discipline of the securities market, and shall specify the obligations and the organisational and procedural requirements necessary to comply with the provisions of Regulation (EU) No 909/2014 of 23 July 2014. The Minister of Economic Affairs and Competitiveness or, with his/her express authorisation, the National Securities Market Commission may implement the structure and minimum content of the internal rules.

Central securities depositories shall prepare a report detailing how they shall comply with the technical, organisational, operational and risk management requirements of Regulation (EU) No 909/2014 of 23 July 2014 in order to carry out their functions. The Minister of Economic Affairs and Competitiveness or, with his/her express authorisation, the National Securities Market Commission may regulate the format this report must take. The central securities depository shall keep said report updated, the amendments to which shall be sent to the National Securities Market Commission, duly explained.

5. The specific monitoring and control functions to be exercised by central securities depositories over their participating entities, the solvency requirements applicable to their participating entities, the types of entities that may qualify as participating entities, the accounting organisation requirements, technical means, specific reporting obligations to the National Securities Market Commission and such other aspects as may be deemed necessary for their proper functioning, taking into account, among others, proportionality criteria depending on their level of activity, shall be established in regulations.

Central securities depositories shall send to the National Securities Market Commission, under the terms provided for in regulations, their estimated annual budget, in which the prices and fees to be applied shall be expressed in detail, as well as any subsequent modifications they may make to their financial rules. The National Securities Market Commission may require the central securities depository to expand the documentation received and may establish exceptions to and ceilings on the maximum prices of such services when these may affect the financial solvency of the central securities depository, have a disruptive effect on the development of the securities market or the principles that govern it, or introduce unjustified discrimination between the different users of the depository's services.

6. Central securities depositories may outsource their core services, enter into agreements with central counterparties, official secondary markets and multilateral trading facilities or establish links with other central securities depositories in accordance with Regulation (EU) No 909/2014 of 23 July 2014, this Law, its implementing regulations and the internal rules referred to in paragraph 3.

7. When an entity participating in the systems managed by central securities depositories enters insolvency proceedings, the latter shall enjoy the absolute right of separation with respect to the assets or rights that make up the collateral provided by such entity participating in the systems managed by the central securities depositories. Without prejudice to the foregoing, the surplus remaining after the settlement of the secured transactions shall be included in the participant's insolvency estate.

8. When an entity participating in the systems referred to in this article enters insolvency proceedings, the National Securities Market Commission, without prejudice to the powers of the Banco de España and the Fund for the Orderly Restructuring of the Banking Sector, may immediately and at no cost to the investor, order the transfer of its accounting records of securities to another entity qualified to carry on this activity. If no entity is in a position to take charge of the aforementioned records, this activity shall be assumed by the appropriate central securities depository on a provisional basis, until the holders request the transfer of the recording of their securities. For these purposes, both the insolvency judge and the insolvency administrators shall provide the entity to which the securities are to be transferred with access to the documentation and accounting and computer records necessary to make the transfer effective. The existence of the insolvency proceedings shall not prevent the securities purchased in accordance with the rules of the clearing, settlement and recording system or the cash arising from the exercise of the financial rights or from the sale of the securities from being delivered to the client."

Eleven. Paragraphs 2 and 3 of Article 44 ter are amended and read as follows:

"2. Central counterparties must have the form of a public limited company and must be recognised as a system for the purposes of Law 41/1999 of 12 November 1999 on payment and securities settlement systems.

In order to facilitate the performance of their tasks, central counterparties may become participants in central securities depositories which admit them as such, in any other securities and financial instruments settlement system or in a regulated market or multilateral trading facility, provided that they fulfil the conditions required by each system and provided that the participation of the central counterparty in that system does not jeopardise the safety or solvency of the central counterparty.

3. Central counterparties may not be authorised as central securities depositories."

Twelve. Article 44 septies is added with the following wording:

“Article 44 septies. Information system for the supervision of trading, clearing, settlement and recording of transferable securities.

1. Central securities depositories providing services in Spain shall establish a data information, transfer and storage system that serves as a tool for the exchange and processing of information for the performance of the activities of clearing, settlement and recording of securities admitted to trading on an official secondary market and that enables the correct keeping of the securities record to be supervised, both at the level of the central record and at the level of detailed records.

2. The system provided for in the previous paragraph must include, at least, the transactions, events and entries likely to give rise to variations in the balances of each holder’s securities, both in the central record and in the detailed records.

3. The information system for the supervision of trading, clearing, settlement and recording of transferable securities shall:

(a) Ensure the traceability of transactions carried out in securities admitted to trading on an official secondary securities market, from trading to entry in the securities record and vice versa, as well as ascertain their status;

(b) Facilitate the transfer of the information necessary to carry out the clearing, settlement and recording of securities, as well as ascertain the status of said transactions;

(c) Facilitate the control of the risks and collateral required by the appropriate entities and market infrastructures;

(d) Inform issuing entities on a daily basis of the ownership of the securities issued by them when they so request.

4. The central securities depository, in its capacity as the entity responsible for and manager of the data information, transfer and storage system, shall:

(a) Establish the means necessary for the information to be entered into the system in accordance with the stipulated rules and so as to be complete;

(b) Allow the introduction of the necessary information in the period established;

(c) Provide sufficient security and confidentiality to the information supplied, so that the entities that enter information into the system only have access to the data strictly necessary for their activity or to those for which they are authorised;

(d) Ensure the maintenance and continuity of the system;

(e) Allow non-discriminatory access to market infrastructures and entities involved in securities clearing and settlement processes.

5. The information system shall be fed by the information that official secondary markets, central counterparties, central securities depositories and their respective members or participating entities shall be obliged to provide according to regulatory provisions. Such entities shall be responsible for the completeness and accuracy of the information communicated by each of them through that system and shall retain ownership of that information.

6. The information stored in the system may not be used or transferred for purposes other than those provided for in the Law, except with the authorisation of the respective supplying entity, without prejudice to the information obligations vis-à-vis the National Securities Market Commission or the Banco de España in the exercise of their respective powers.

7. Central securities depositories shall sign the appropriate contracts in which they shall establish the legal relationships necessary for the proper functioning of the system. They shall also publish the rules for the operation of the information system, establishing the rights, obligations and responsibilities of the persons who shall manage and make use of the information stored in the system. The National Securities Market Commission shall



approve these rules and their amendments. Both the rules and their amendments shall be previously examined by the user committee of the central securities depository, which may send its observations on the matter to the National Securities Market Commission.

8. With full respect for the principles of equal treatment and non-discrimination, foreign central counterparties and central securities depositories with which central securities depositories enter into agreements or establish links may access this system and shall be obliged to provide the information necessary for its purposes to be fulfilled, in accordance with the provisions of this article. These infrastructures must ask their members or participating entities for the necessary information so as to suitably perform their functions.”

Thirteen. Article 44 octies is added with the following wording:

“Article 44 octies. Monitoring and control of the proper functioning of the securities trading, clearing, settlement and recording systems.

1. Without prejudice to the powers of supervision, inspection and sanction that lie with the National Securities Market Commission pursuant to Title VIII, the market operators of the official secondary markets, the central counterparties and the central securities depositories that provide services in Spain shall ensure, within the scope of their respective powers, the proper functioning and efficiency of the processes of trading, clearing and settlement of transactions and recording of securities.

2. The government is empowered to implement by way of regulation the content of the function provided for in the previous paragraph, including the obligations and powers for its proper exercise.”

Fourteen. Article 54 is deleted.

Fifteen. Article 57 is amended and reads as follows:

“1. The Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (The Management Company of the Securities Recording, Clearing and Settlement Systems) referred to in the seventeenth additional provision and its member entities so authorised by virtue of their status as registered dealers in the public debt market shall be responsible for the recording of the securities admitted to trading on the public debt book-entry market.

2. In addition to the Banco de España, the clearing and settlement systems and bodies of the official secondary markets, the interbank clearing systems intended to manage the collateral system, and those which meet the requirements to be established for that purpose by the market regulation may be owners of accounts in their own name on the public debt book-entry market and hold accounts as member entities in their own name in the recording system of the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores.”

Sixteen. A new paragraph 7 is added to Article 60, with the following wording:

“7. The provisions of this article shall not apply in the event of the use of the resolution tools, powers and mechanisms established in Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms.”

Seventeen. The second subparagraph of paragraph 2(f) of Article 70 ter is amended and reads as follows:

“Once insolvency proceedings have been initiated in relation to a central securities depository, the National Securities Market Commission, without prejudice to the powers of the Banco de España and the Fund for the Orderly Restructuring of the Banking Sector, may immediately and at no cost to the investor, transfer the securities deposited on behalf of its clients to another entity authorised to carry on this activity, even if such assets are deposited with third parties in the name of the entity providing the deposit service. For these

purposes, both the competent judge and the bodies involved in the insolvency proceedings shall provide the entity to which the securities are to be transferred with access to the documentation and the accounting and computer records necessary to make the transfer effective. The existence of insolvency proceedings shall not prevent the securities purchased or cash arising from the exercise of financial rights or the sale of the securities from being made available to the client in accordance with the rules of the clearing, settlement and recording system.”

Eighteen. Points (a) and (b) of Article 84(1) are amended and read as follows:

“(a) The market operators of official secondary markets, the market operators of multilateral trading facilities, central counterparties and central securities depositories. The Banco de España is not included.

(b) The Sociedad de Bolsas and those companies which own all the shares or a controlling holding, either directly or indirectly, in the entities listed in the preceding point.”

Nineteen. The final paragraph of Article 95 is amended and reads as follows:

“In particular, the following shall be considered rules for the organisation and discipline of the securities market:

1. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

2. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

3. Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.”

Twenty. Paragraph 3 bis of Article 98 has been redrafted and paragraphs 3 ter and 3 quáter have been added to this article, with the following wording:

“3 bis. Publications of sanctions on the National Securities Market Commission website and in the Official State Gazette shall include information on the type and nature of the infringement and the identity of the natural or legal person to whom the sanction applies.

3 ter. In relation to the provisions of the previous paragraph, when the National Securities Market Commission deems that any of the circumstances provided for in paragraph 3 quáter arise, it may resolve:

(a) That impositions of sanctions of the types applicable to investment firms set out in Article 99(d), (e), (e bis), (e ter), (e quáter), (e quinquies), (e sexies), (k), (l), (l bis), (m), (q), (u), (w), (z), (z septies), (z octies) and (z nonies), Article 100(c), (c bis) (g), (g bis), (k), (n), (ñ), (p), (t) and (z septies) and Article 107 quáter(3) to (7) and impositions of sanctions by virtue of the provisions of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms be published without disclosure of the identity of the parties penalised.

(b) That impositions of sanctions of the types set out in Article 99(m) and (p), Article 100(j) and Article 101(1), for breaches of the obligations provided for under Articles 35, 35 bis, 53 and 53 bis, be published without disclosure of the identity of the parties penalised, or that their publication be delayed.

(c) In respect of impositions of sanctions of the types set out in Article 107 quinquies(1) to (4):

(1) To delay the publication of the sanction imposed until the moment when the reasons justifying the delay cease to exist.

(2) To publish the sanction imposed on an anonymous basis if such anonymous publication ensures effective protection of personal data. In this case, the publication of the relevant data may be postponed for a reasonable period if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(3) Not to publish the sanction imposed in the event that the options set out in points (a) and (b) above are considered to be insufficient to ensure that the stability of financial markets would not be put in jeopardy, or the proportionality of the publication of such sanctions with regard to measures which are deemed to be of a minor nature.

3 quáter. The National Securities Market Commission may order the measures provided for in paragraph 3 ter when any of the following circumstances arise:

(a) Where the sanction is imposed on a natural person or, in the case of the sanctions referred to in paragraph 3 ter(c), when the sanction is imposed on a legal entity, and, following a prior assessment, the publication of personal data is deemed disproportionate.

(b) Where publication could jeopardise the stability of financial markets or an ongoing official or criminal investigation.

(c) Where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved. This circumstance shall not apply to the sanctions referred to in paragraph 3 ter(c).”

Twenty-one. Points (c quinquies), (c sexies), (c septies), (c octies), (c nonies) and (c decies) have been added to Article 99, with the following wording:

“(c quinquies) Breach by central securities depositories and by entities participating in the recording systems of the rules on recording of securities contained in Chapter II of Title I and Chapter I of Title IV, when a number of investors suffer a financial loss.

(c sexies) Breach by members of central counterparties of their obligations to provide collateral when such failure jeopardises the risk management of central counterparties, except where the failure is the result of a situation of insolvency or insolvency proceedings.

(c septies) Breach by the members of official secondary markets and members of multilateral trading facilities of the obligations referred to under Article 31 bis(7) and Article 125(3), respectively, or inadequate coordination with central counterparties and their members, when such conduct is not merely occasional or isolated.

(c octies) Breach of the obligations regarding settlement discipline, as referred to under Articles 6 and 7 of Regulation (EU) No 909/2014 of 23 July 2014, by market operators of official secondary markets, market operators of multilateral trading facilities, central counterparties, central securities depositories and investment firms.

(c nonies) Breach by central securities depositories of the obligations provided for under Article 44 septies, when such conduct is not merely occasional or isolated.

(c decies) Breach by official secondary markets, multilateral trading facilities, central counterparties and central securities depositories, as well as their respective members and participating entities, of the obligations provided for under Article 44 septies(5), when it is not merely an occasional or isolated failure or when it seriously affects the functioning of the information system referred to in said article.”

Twenty-two. Points (z octies), (z nonies), (z decies), (z undecies) and (z duodecies) have been added to Article 100 with the following wording:

“(z octies) Breach by central securities depositories and by entities participating in the recording systems of the rules on the recording of securities contained in Chapter II of Title I and Chapter I of Title IV, where such failure does not constitute a very serious infringement.

(z nonies) Breach by members of central counterparties of their obligations regarding the provision of collateral when such failure does not constitute a very serious infringement, except if it is the result of a situation of insolvency or insolvency proceedings.

(z decies) Breach by the members of official secondary markets and members of multilateral trading facilities of the obligations referred to under Article 31 bis(7) and Article 125(3), respectively, or inadequate coordination with central counterparties and their members, where such conduct is of a merely occasional or isolated nature.

(z undecies) Breach by official secondary markets, multilateral trading facilities, central counterparties, their respective members and the participating entities of central securities depositories of the obligations provided for under Article 44 septies(5), where such breach does not constitute a very serious infringement.

(z duodecies) Breach by central securities depositories of the obligations provided for under Article 44 septies where such breach does not constitute a very serious infringement.”

Twenty-three. Two paragraphs have been added to Article 102(1)(a) with the following wording:

“In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No 909/2014 of 23 July 2014, which commit very serious infringements as referred to under Article 107 quinquies(1) and (3), the fine to be imposed shall be at least twice the amount of the gross profit obtained as a result of the acts or omissions constituting the infringement, if this can be determined, and at the most up to the highest of the following amounts: five times the gross profit obtained as a result of the acts or omissions constituting the infringement; 10% of the total annual turnover of the offender, according to the latest available accounts approved by the governing body, 5% of the total funds, own or borrowed, used in the infringement, or; €20,000,000. If the offender is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts, the relevant total annual turnover shall be that shown in the latest available consolidated accounts.

In the case of breaches of the obligations provided for under Articles 35, 35 bis, 53 and 53 bis, which constitute a very serious infringement, the following fine shall be imposed:

(i) In the case of legal persons, the amount shall be up to the highest of the following amounts:

– €10,000,000 or 5% of its total annual turnover, according to the latest available approved annual accounts. If the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with commercial law, the total turnover to be taken into account shall be the total annual turnover or the relevant type of income, in accordance with applicable accounting legislation and according to the latest available approved consolidated accounts of the parent undertaking.

– Double the amount of the profits made or losses avoided as a result of the breach, if they can be determined.

(ii) In the case of natural persons, it shall be for an amount of up to the greater of the following amounts: €2,000,000, or double the amount of the profits made or losses avoided as a result of the breach, if they can be determined.”

Twenty-four. A fourth paragraph has been added to Article 103(1)(a) with the following wording:

“In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No 909/2014 of 23 July 2014, which commit serious infringements as referred to under Article 107 quinquies(2) and (4), the fine to be imposed shall be at least twice the amount of the gross profit obtained as a result of the acts or

omissions constituting the infringement, if this can be determined, and at the most, up to the highest of the following amounts: double the profit obtained as a consequence of the acts or omissions constituting the infringement; 5% of the total annual turnover of the offender, according to the latest available accounts approved by the governing body, 2% of the total funds, own or borrowed, used in the infringement, or; €10,000,000. If the offender is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts, the relevant total annual turnover shall be that shown in the latest available consolidated accounts.”

Twenty-five. A third paragraph has been added to Article 105(1)(a) with the following wording:

“In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No 909/2014 of 23 July 2014 which commit the very serious infringements referred to under Article 107 quinquies(1) and (3), the fine to be imposed shall be up to €5,000,000.”

Twenty-six. A third paragraph has been added to Article 106(1)(a) with the following wording:

“In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No 909/2014 of 23 July 2014 which commit the serious infringements referred to under Article 107 quinquies(2) and (4), the fine to be imposed shall be up to €2,500,000.”

Twenty-seven. Points (f) and (j) of Article 106 ter(1) are amended and read as follows:

“(f) The profits made or, as the case may be, the losses avoided as a result of the acts or omissions constituting the infringement, to the extent that these can be determined.

(j) Collaboration with the National Securities Market Commission, provided that the natural or legal person has provided relevant elements or data for the clarification of the facts under investigation, without prejudice to the need to ensure recovery of the profits made or the losses avoided by the same.”

Twenty-eight. Article 107 quinquies is added with the following wording:

“Article 107 quinquies. Infringements of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014.

1. Without prejudice to the infringements provided for under Article 99, the following breaches of Regulation (EU) No 909/2014 of 23 July 2014 shall constitute very serious infringements by central securities depositories and by those holding directorships or executive positions in such entities:

(a) The provision of services set out in Sections A, B and C of the Annex to the Regulation, in infringement of Articles 16, 25 and 54, except where such infringement is of a merely occasional or isolated nature.

(b) Obtaining the authorisations required under Articles 16 and 54 by making false statements or by any other unlawful means.

(c) Failure to hold the required capital set out in Article 47(1) when this would jeopardise the solvency or viability of the offender or its group.

(d) Failure to comply, not merely on an occasional or isolated basis, or with substantial irregularities, with the organisational requirements set out in Articles 26 to 30.

(e) Failure to comply, not merely on an occasional or isolated basis, or with substantial irregularities, with the conduct of business rules set out in Articles 32 to 35.

(f) Failure to comply with the requirements for CSD services, as provided for under Articles 37 to 41, where this would seriously jeopardise the integrity of the settlement or recording system, or seriously harm the interests of participants or security holders, or seriously jeopardise the securities of participants or their clients.

(g) Failure to comply with the prudential requirements set out in Article 43 to 47, where this would jeopardise the solvency or viability of the offender or its group.

(h) Failure to comply with the requirements for CSD links set out in Article 48, where this would seriously jeopardise the integrity or functioning of the settlement or recording system.

(i) Failure to comply with the duty to grant access after having been requested to do so by the National Securities Market Commission in accordance with Articles 49 to 53.

2. Without prejudice to the infringements provided for under Article 100, failure to comply with the obligations referred to in paragraph 1(a) to (h), excluding point (b), shall constitute serious infringements by central securities depositories and by those holding directorships or executive positions in such entities, when they do not constitute very serious infringements.

3. The following breaches of Regulation (EU) No 909/2014 of 23 July 2014 shall constitute very serious infringements by credit institutions and by those holding directorships or executive positions in such entities:

(a) Failure to comply with the specific prudential requirements for credit risk set out in Article 59(3), when this would jeopardise the solvency or viability of the offender or its group.

(b) Failure to comply with the specific prudential requirements for liquidity risk set out in Article 59(4), when this would jeopardise the solvency or viability of the offender or its group.

4. Failure to comply with the requirements referred to in paragraphs 3(a) and (b) shall constitute serious infringements by designated credit institutions and by those holding directorships or executive positions in such entities, when they do not constitute very serious infringements.

5. The infringements provided for in this article shall be penalised in accordance with the system provided for in this Law.”

Twenty-nine. Article 125 is amended and shall read as follows:

“Article 125. Central counterparty, clearing and settlement agreements.

1. In order to provide for the settlement of securities transactions executed on multilateral trading facilities, their market operators shall enter into agreements with at least one central securities depository and, where applicable, one or more central counterparties, without prejudice to the right of issuers to arrange for their securities to be recorded in any central securities depository in accordance with Article 49 of Regulation (EU) No 909/2014.

Entities operating multilateral trading facilities may, after informing the National Securities Market Commission, enter into agreements with central counterparties and central securities depositories in another Member State, for the clearing or settlement of some or all of the transactions concluded with members of the market of their respective systems. The National Securities Market Commission may only oppose the conclusion of the aforementioned agreements when it considers that they could undermine the orderly functioning of the multilateral trading facility or, in the case of a settlement system, the technical conditions do not ensure the effective and economic settlement of the transactions.

2. The provisions of Articles 36 bis, 36 ter, 36 quáter and 44 septies in relation to official secondary markets shall apply to multilateral trading facilities.

3. Regulations shall determine the transferable securities whose transactions carried out in the multilateral trading segments of the multilateral trading facilities shall be subject to mechanisms that allow their orderly settlement and conclusion through the necessary intervention of a central counterparty.

4. The National Securities Market Commission shall take account of the tasks to oversee the clearing and settlement system conducted by the Banco de España or by other such competent authorities, in order to avoid unnecessary repetitions of the controls.”

Thirty. The seventeenth additional provision introduced by Law 24/2001 of 27 December 2001 on fiscal, administrative and social measures, is amended and reads as follows:

“Seventeenth additional provision. The Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores and the companies that own central counterparties, central securities depositories and official Spanish secondary markets.

1. The Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Securities Recording, Clearing and Settlement Systems Management Company), hereinafter referred to as the Sociedad de Sistemas, shall act as the central securities depository in accordance with the provisions of Article 44 bis and shall perform such other functions as the government may entrust to it, subject to a report from the National Securities Market Commission.

2. References in this Law or other provisions to the “Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores”, the “Sociedad de Sistemas” or the “Servicio de Compensación y Liquidación de Valores” shall be understood as referring to central securities depositories with the exception of those in Articles 57 and 58.

3. Without prejudice to the jurisdiction of regional governments with regard to securities clearing, settlement and recording systems and secondary markets, the government may, based on a report from the National Securities Market Commission, and after consultation with the regional governments with jurisdiction in this matter, at the proposal of the Minister of Economic Affairs and Competitiveness, grant permission to one or more entities to acquire, directly or indirectly, all of the capital, or a holding that gives the buyer(s) direct or indirect control, of any or all of the companies that manage Spanish central counterparties, central securities depositories and official secondary markets, and allow such entities to own that capital after such acquisition.

A controlling holding is one which, according to the provisions of Chapter V of Title IV and its implementing regulations, requires a takeover bid to be announced for all of the company’s capital.

Subject to the exceptions to be established in regulations, the articles of association of these entities and any amendments thereto shall require prior approval from the National Securities Market Commission, as shall the appointment of board members and general managers, who must meet the requirements of Article 67(2)(f). If the buyers’ registered office is not located in Spain, and their articles of association, amendments thereto and board members and general managers have been verified by the competent authority of another Member State of the European Union or by the supervisory authority of a non-Member State of the European Union whose form of organisation and operation is similar to that of the National Securities Market Commission, the latter authority shall be responsible for checking those verifications.

The government shall determine, by royal decree, the rules governing bids to acquire the shares representing the capital of the aforementioned entities, the rules governing the disclosure of their holdings, the rules governing such entities so that their articles of association reflect any limitation or special feature of the rights deriving from their shares, and any other aspect that may be necessary so as to apply this provision and to ensure proper supervision of such entities.

Authorisation from the government shall be required for the entity or entities directly or indirectly owning all of the capital or a controlling holding in any or all of the companies

referred to in the first subparagraph of this paragraph to perform any act of disposition whereby they cease to own directly or indirectly all of the capital that they hold in those companies or whereby they lose direct or indirect control of those companies. That authorisation shall be issued after consultation with the regional governments with jurisdiction in this matter, following a report from the National Securities Market Commission and at the proposal of the Minister of Economic Affairs and Competitiveness.

The rules governing qualifying holdings provided for under Articles 31(6) and 44 bis(2) shall not apply to transfers subject to the administrative authorisations provided for in this provision.

The National Securities Market Commission is vested with the power to supervise those entities.”

Thirty-one. The duplicated seventeenth additional provision introduced by Law 44/2002 of 22 November 2002 on financial system reform measures is deleted.

Thirty-two. A twenty-second additional provision has been added with the following wording:

“Twenty-second additional provision. Proper functioning of the securities clearing, settlement and recording systems.

1. In accordance with international standards and European Union law relating to central counterparties, central securities depositories and other financial market infrastructures, the National Securities Market Commission and the Banco de España shall ensure that the operation of national securities clearing, settlement and recording systems preserves the stability of the financial system as a whole. To this end, these authorities shall assess the degree of adaptation of Spanish market infrastructure procedures to international best practices and recommendations, and shall prepare and publish a biennial report.

2. The National Securities Market Commission and the Banco de España, within 18 months of the entry into force of this Law, shall sign a collaboration agreement in order to carry out the work provided for in paragraph 1. This agreement shall determine their respective roles and responsibilities in the matter, as well as the system for the exchange of information between the two authorities.

3. The provisions contained herein shall not alter the respective powers granted to each of these authorities by their regulations.”

B) For the improvement of the transparency of securities issuers:

One. The first subparagraph of Article 35(1) has been redrafted and reads as follows:

“1. Where Spain is the home Member State, issuers whose securities are admitted to trading on an official secondary market or another regulated market domiciled in the European Union shall publish and disseminate their annual financial report within a maximum of four months from the end of each year, and shall ensure that it is kept available to the public for at least ten years. They shall also have their annual accounts audited. The audit report shall be published together with the annual financial report.”

Two. The first subparagraph of Article 35(2) has been redrafted and reads as follows:

“2. Where Spain is the home Member State, issuers whose shares or debt securities are admitted to trading on an official secondary market or another regulated market domiciled in the European Union must publish and disseminate a half-yearly financial report relating to the first six months of the year within a maximum of three months from the end of each period. Issuers must ensure that the report is kept available to the public for at least ten years.”

Three. Article 35(5)(a) is amended and reads as follows:



“(a) Member States of the European Union, regional governments, local governments and other analogous entities of the Member States of the European Union, international public bodies of which at least one Member State of the European Union is a member, the European Central Bank, the European Financial Stability Facility (EFSF) established by the EFSF Framework Agreement and any other mechanism established with the aim of preserving the financial stability of the European Monetary Union by providing temporary financial assistance to Member States whose currency is the euro and the national central banks of the Member States of the European Union, whether or not they issue shares or other securities; and”

Four. The first subparagraph of Article 35 bis(1) is amended and reads as follows:

“1. Issuers whose securities are admitted to trading on an official secondary market or another regulated market domiciled in the European Union, where Spain is the home Member State, must disclose and disseminate any change in the rights inherent in those securities. Issuers must present that information to the National Securities Market Commission, for inclusion in the official register regulated under Article 92(g).”

Five. Paragraph 3 of Article 35 bis is deleted.

Six. Article 53(3) has been redrafted and reads as follows:

“3. The provisions of the preceding paragraphs shall also apply to anyone directly or indirectly owning, acquiring or transferring other securities or financial instruments that grant the unconditional right or the discretionary power to acquire shares that assign voting rights or financial instruments that are linked to shares that assign voting rights and have a financial effect similar to the aforementioned securities and financial instruments, regardless of whether or not they give the right to settlement by physical delivery of the underlying securities, on such terms and with such breakdown as may be determined in regulations.”

Seven. A new subparagraph has been added to Article 91(1), with the following wording:

“In exercising its sanctioning and investigative powers, the National Securities Market Commission shall cooperate with other competent authorities of the European Union to ensure that sanctions and measures produce the desired results and shall coordinate its actions with other authorities in cross-border cases.”

### **30.29 Second final provision. Amendment to Law 6/1997 of 14 April 1997 on the Organisation and Functioning of the Central Government.**

Paragraph one of the tenth additional provision of Law 6/1997 of 14 April 1997 on the Organisation and Functioning of the Central Government is amended as follows:

“1. The National Securities Market Commission, the Nuclear Safety Council, the non-devolved Universities, the Spanish Data Protection Agency, the Canary Islands Special Zone Consortium, the National Commission on Markets and Competition, the Transparency and Good Governance Board, the Prado National Museum, the Reina Sofía Art Centre National Museum and the FROB shall be governed by their specific legislation and on a supplementary basis by this Law.

The Government and central government shall exercise in respect of those bodies the powers that their respective legislation confers on them, where applicable, strictly respecting their respective areas of independence.”

### **30.30 Third final provision. Amendment to Law 29/1998 of 13 July 1998 on the contentious-administrative jurisdiction.**

Article 11(1)(g) of Law 29/1998 of 13 July 1998 on the contentious-administrative jurisdiction is amended and now reads as follows:

“(g) the appeals against the acts of the Banco de España, the National Securities Market Commission and the FROB adopted pursuant to the provisions of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms.”

**30.31 Fourth final provision. Amendment to Law 41/1999 of 12 November 1999 on payment and securities settlement systems.**

The first paragraph of Article 6 of Law 41/1999 of 12 November 1999 on payment and securities settlement systems has been amended as follows:

“The Banco de España and the National Securities Market Commission shall notify the European Securities and Markets Authority of the systems recognised under this Law that are managed by them or by entities supervised or overseen by them, and shall be the bodies entrusted with receiving or serving the notices referred to in Article 6(2) and (3) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems. Furthermore, they shall furnish without delay to the European Securities and Markets Authority, at its request, all the information required to discharge its functions in accordance with the provisions of Article 35 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.”

**30.32 Fifth final provision. Amendment to Insolvency Law 22/2003 of 9 July 2003.**

The wording of the second additional provision of Insolvency Law 22/2003 of 9 July 2003 is amended as follows:

“Second additional provision. Special rules applicable to credit institutions, investment firms and insurance undertakings.

1. In insolvency proceedings involving credit institutions or legally similar entities, investment firms, insurance undertakings, entities that are members of official securities markets or entities that participate in securities clearing and settlement systems, the special provisions established in their specific legislation for insolvency situations shall apply, except for those relating to the composition, appointment and functioning of the insolvency administration body.

2. For the purposes of applying paragraph 1, specific legislation shall be deemed to be that regulated in the following provisions:

(a) Articles 10, 14 and 15 of Law 2/1981 of 25 March 1981 on mortgage market regulation and the provisions governing other securities or instruments that are subject to the same solvency rules as those applicable to covered bonds.

(b) Article 16 of Royal Decree-Law 3/1993 of 26 February 1993 on urgent budgetary, tax, financial and employment measures.

(c) Securities Market Law 24/1988 of 28 July 1988 as regards the rules applicable to the clearing, settlement and recording systems regulated therein, and the entities participating in those systems and, in particular, Articles 12 bis, 36 quáter, 44 bis, 44 ter, 58 and 70 ter(2)(f).

(d) Article 16(4) and paragraph 7 of the fourth additional provision of Law 5/2015 on the promotion of business financing.

(e) Law 13/1994 of 1 June 1994 of Autonomy of the Banco de España, as regards the rules applicable to the collateral provided to the Banco de España, the European Central Bank or other European Union national central banks, in the exercise of their functions.

(f) The third additional provision of Law 1/1999 of 5 January 1999 governing venture capital entities and their management companies.

- (g) Law 41/1999 of 12 November 1999 on payment and securities settlement systems.
- (h) Articles 26 to 37, inclusive, 39 and 59 of the consolidated text of the Private Insurance Law, approved by Royal Legislative Decree 6/2004 of 29 October 2004, and the consolidated text of the Statute of the Insurance Compensation Consortium, approved by Royal Legislative Decree 7/2004 of 29 October 2004.
- (i) Chapter II of Title I of Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and enhance public sector procurement.
- (j) Law 6/2005 of 22 April 2005 on the reorganisation and winding-up of credit institutions.
- (k) Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms.
- (l) Article 34 of Law 14/2013 of 27 September 2013 on support for and internationalisation of business.

3. The legal provisions referred to in the preceding paragraph shall be applied with the scope and to the transactions or agreements envisaged therein and, in particular, the transactions concerning the payment and securities clearing and settlement systems, repurchase agreements, sell/buy-backs or financial transactions concerning derivatives.”

**30.33 Sixth final provision. Amendment to Collective Investment Institutions Law 35/2003 of 4 November 2003.**

Article 54 bis(1) and (2) shall now read as follows:

“Article 54 bis. Conditions for cross-border management of collective investment institutions by management companies authorised in Spain pursuant to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, and for the provision of services in other Member States.

1. The collective investment institution management companies authorised in Spain pursuant to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 may manage collective investment institutions established in other Member States, either directly or by establishing a branch, provided that the collective investment institution management company is authorised to manage that type of collective investment institution. Furthermore, it may provide in another Member State the services referred to in Article 40(2) for which it has been authorised.

2. A management company that intends to manage collective investment institutions established in another Member State for the first time shall communicate the following information to National Securities Market Commission:

- (a) The Member State in which it intends to manage collective investment institutions directly or by establishing a branch or whether or not the services referred to in Article 40(2) for which it has been authorised will be provided; and
- (b) a programme of operations stating in particular the services which it intends to perform and identifying the collective investment institutions it intends to manage.”

**30.34 Seventh final provision. Amendments to Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and enhance public sector procurement.**

One. The wording of Article Two of Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and enhance public sector procurement is amended as follows:

“Article Two. Purpose.

The purpose of this chapter is to incorporate into Spanish legislation the provisions of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, and to organise and systematise the prevailing legislation

applicable to contractual netting agreements and financial collateral. The effects on those agreements and collateral arising from the commencement of insolvency proceedings or administrative winding-up proceedings are also established.

Articles 6(2), 9(2) to (5); 11, 15(4) and 16(1) shall not apply in the scenarios in which the enforcement of financial collateral arrangements is impeded or limited or the effectiveness of agreements on assets pledged, close out netting agreements, or set-off arrangements is limited, in the terms provided for in Chapters VI and VII of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms and the regulations implementing it, or in the terms provided for in other applicable legislation whose purpose and safeguards are comparable to those laid down in that law.

The provisions of this chapter shall be without prejudice to the applicable legislation on consumer credit and the legislation on the recovery and resolution of credit institutions and investment firms.”

Two. Article 4(1)(d) is amended and shall read as follows:

“(d) The authorities for official secondary markets or multilateral trading facilities and undertakings that manage securities and financial instrument clearing, settlement and recording systems, central counterparties, settlement agents or clearing houses referred to in Law 41/1999 of 12 November 1999 on payment and securities settlement systems, and similar entities operating on options, futures and derivatives markets, as well as members and participants of all the aforementioned infrastructures where they operate as such.”

Three. A point (f) has been added to Article 5(2), reading as follows:

“(f) Spot transactions in relation to the transferable securities provided for in Article 2(1) of Securities Market Law 24/1988 of 28 July 1988 admitted to trading on an official secondary market or on another regulated market located in the European Union or on a multilateral trading facility.”

### **30.35 Eighth final provision. Amendments to Law 6/2005 of 22 April 2005 on the reorganisation and winding-up of credit institutions.**

Law 6/2005 of 22 April 2005 on the reorganisation and winding-up of credit institutions has been modified as follows:

One. In Article 2, the following paragraphs are added:

“1(d) Investment firms, as defined in Article 4(1) of Royal Decree 217/2008, and to their branches established in Member States other than those in which their headquarters are established.

2. In the event of application of the resolution tools and exercise of the resolution powers provided for in Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms, the provisions of this Law shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Law 11/2015 of 18 June 2015.

3. Articles 6 and 13 of this law shall not apply where Article 21 of Law 11/2015 of 18 June 2015 applies.

4. Article 4 of this law shall not apply where Article 59 of Law 11/2015 of 18 June 2015 applies.”

Two. In Article 3, the following paragraphs are added:

“7. The reorganisation measures include the application of the resolution tools and the exercise of the resolution powers envisaged in Law 11/2015 of 18 June 2015.

8. For the purposes laid down in this Law, ‘branch’ means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions.

9. For the purposes laid down in this Law, 'financial instrument' means:

- (a) a contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party;
- (b) an instrument specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
- (c) a derivative financial instrument;
- (d) a primary financial instrument; or
- (e) a cash instrument.

The instruments referred to in points (a), (b) and (c) are only financial instruments if their value is derived from the price of an underlying financial instrument or another underlying item, a rate, or an index.”

Three. Points (d) and (e) of Article 8(1) now read as follows:

“(d) The exercise of property or other rights over financial instruments the existence or transfer of which gives rise to an entry in a register, in an account or in a centralised deposit system maintained or located in a European Union Member State shall be governed by the legislation of the Member State in which the register, account or centralised deposit system in which those rights are registered is established or located. For these purposes, 'financial instruments' means any instrument indicated in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

Without prejudice to the foregoing or the provisions of Articles 66 and 70 of Law 11/2015 of 18 June 2015, the sell/buy-backs and the transactions carried out on a regulated market or an organised multilateral trading facility shall be governed solely by the law of the contract which governs such agreements or transactions.

(e) Without prejudice to Articles 66 and 70 of Law 11/2015 of 18 June 2015, contractual netting and novation agreements shall be governed solely by the law of the contract which governs such agreements.”

**30.36 Ninth final provision. Amendment to Royal Legislative Decree 1/2010 of 2 July 2010 approving the consolidated text of the Limited Companies Law.**

A tenth additional provision has been added to the consolidated text of the Limited Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, which shall read as follows:

“Tenth additional provision.

1. For the purposes of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms, the general meeting of listed companies subject to this Law may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in Article 176 of this Law, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Articles 8 to 10 of Law 11/2015 of 18 June 2015 are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 19 to 21 of that Law.
2. For the purposes of the preceding paragraph, the deadlines laid down in Articles 179(3) and 519(2) of this Law shall not apply.”

**30.37 Tenth final provision. Amendments to Royal Decree-Law 16/2011 of 14 October 2011 creating the Deposit Guarantee Scheme for Credit Institutions.**

Royal Decree-Law 16/2011 of 14 October 2011 creating the Deposit Guarantee Scheme for Credit Institutions is amended as follows:

One. Article 5 now reads as follows:

“Article 5. Member institutions.

1. All Spanish credit institutions must be members of the Deposit Guarantee Scheme for Credit Institutions established in this Royal Decree-Law.

The obligation established in the preceding paragraph does not apply to the Official Credit Institute.

The Banco de España shall promptly notify the European Banking Authority when a credit institution becomes a member of the Scheme.

2. The branches of credit institutions of non-EU countries operating in Spain shall become members of the Scheme as laid down in regulations. Notwithstanding the foregoing, where these institutions offer a level of protection to the depositors that is equal to or greater than that laid down in this Royal Decree-Law and the regulations implementing it, branches may be exempted from becoming members of the Scheme.

3. A credit institution’s failure to discharge its obligations vis-à-vis the Deposit Guarantee Scheme for Credit Institutions shall be defined as a serious infringement pursuant to the provisions of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, unless such non-compliance is occasional or isolated or is remedied in a reasonable period of time.

The Deposit Guarantee Scheme for Credit Institutions shall report such instances of non-compliance to the Banco de España, which, following consultation with the Scheme, shall impose the measures required for the institution to restore compliance with its obligations. Credit institutions may be excluded from the Scheme once the measures adopted pursuant to the preceding paragraph have failed. The Minister of Economic Affairs and Competitiveness shall be the competent authority for ordering the exclusion of the institution, at the Banco de España’s proposal and following a report issued by the Scheme's Management Committee.

4. Credit institutions wishing to relocate their business to another European Union Member State shall give at least six months’ notice of this to the Scheme. During the period up to relocation, the institution shall contribute to the deposit guarantee compartment in the terms provided for in this Royal Decree-Law and the regulations implementing it.

The contributions to the Scheme's deposit guarantee compartment by the credit institutions that relocate their business to other European Union Member States and are therefore subject to another deposit guarantee scheme shall be transferred to such scheme in the terms provided for in regulations.

Under no circumstance shall the contributions made more than 12 months before the relocation or those made under Article 6(2)(b) be reimbursed, and the institution in question shall, prior to relocating its business, pay the outstanding amounts relating to contributions approved pursuant to that article.”

Two. Article 6 is amended and reads as follows:

“Article 6. Assets.

1. To discharge its functions the Scheme will receive the following funds:

(a) The annual contributions laid down in the following paragraphs.

(b) The supplementary contributions requested by the Scheme from the member institutions, in the same proportions as the annual contributions and with the limits

determined in regulations. These supplementary contributions shall be recognised as assets once ordered.

(c) Funds raised on the securities markets, loans or any other borrowing operation.

In any event, when the Scheme has insufficient assets to carry out its functions, it shall take the necessary action to restore them to a sufficient level.

Also, institutions' payment commitments to the Scheme may be counted as funds by the deposit guarantee compartment provided that such commitments:

(a) are fully backed by collateral of low risk assets unencumbered by any third party rights and at the free disposal of the Scheme.

(b) do not exceed 30% of the total amount of the funds available in the compartment.

2. The funds raised pursuant to the preceding paragraph shall be assigned to one of the following compartments, separated for accounting purposes, into which the Scheme will be divided:

(a) deposit guarantee compartment.

(b) securities guarantee compartment.

Each compartment shall assume only the costs, expenses and obligations expressly allocated to it by this Royal Decree-Law and the regulations implementing it.

In any event, the Scheme shall assign to each compartment the obligations stemming from the raising of funds in accordance with Article 6(1)(c) on the basis of the expected use of the funds raised.

In addition, the contribution by each compartment to the costs, expenses and obligations that have not been expressly allocated to either compartment shall be calculated on the basis of the amount of the deposits or securities covered by each compartment, under the terms laid down in regulations.

3. The Management Committee shall determine the amount of the institutions' annual contributions to the deposit guarantee compartment.

The annual contributions shall be calculated on the basis of the amount of covered deposits and the risk profile of each institution.

The Banco de España shall develop the methods necessary to ensure that the contributions are in proportion to the risk profile of institutions. For these purposes, the following factors, among others, will be taken into account:

(a) the difference between the target level for the main indicators under solvency legislation and that actually achieved by the institution.

(b) the difference between the volume of own funds and eligible liabilities the institution is required to hold to meet the minimum requirement for own funds and eligible liabilities, in accordance with Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms, and that actually held by the institution.

(c) any guidelines issued by the European Banking Authority pursuant to Article 13(3) of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

(d) the phase of the business cycle and the impact of the procyclical contributions.

4. The deposit guarantee compartment's available financial means shall reach at least 0.8% of the amount of covered deposits.

Notwithstanding the foregoing, the Scheme may request that the European Commission reduce this level to 0.5% on the basis of factors such as:

(a) the unlikelihood of a significant share of the deposit guarantee compartment's available financial means being used for measures to protect covered depositors other than resolution proceedings.

(b) the likelihood of the credit institutions undergoing resolution proceedings in the event of bankruptcy due to the banking sector being highly concentrated with a large quantity of assets held by the major institutions.

5. The annual contributions to the securities guarantee compartment envisaged in Article 6(1)(a) may not exceed 0.3% of the amount of the guaranteed securities.

6. The contributions to a compartment shall be suspended when the assets not committed to operations specific to the purpose of the compartment are equal to or exceed 1% of the total amounts covered by the compartment.”

Three. Article 8(1) and (2) now read as follows:

“1. The Scheme shall repay depositors the amount of the covered deposits using only the deposit guarantee compartment in the terms provided for in regulations if and when any of the following events arise:

(a) an insolvency order has been made against the institution or an application for insolvency proceedings has been filed.

(b) a default on payment of deposits having occurred, the Banco de España determines that the institution is unable to make immediate repayment for reasons directly relating to its financial position. The Banco de España will make its decision as soon as possible and, in any event, shall do so within the maximum time permitted in the regulations, after confirming that the institution has failed to repay deposits that are due and payable.

2. The Scheme shall repay the holders of securities or other financial instruments entrusted to a credit institution the guaranteed amounts using only the securities guarantee compartment, if and when any of the following events arise:

(a) an insolvency order has been made against the institution or an application for insolvency proceedings has been filed, and these situations entail the suspension of the repayment of securities or financial instruments; notwithstanding the foregoing, these amounts shall not be paid if, within the period provided for in regulations to commence disbursement, the insolvency proceedings are closed.

(b) the restitution of the securities or financial instruments not having occurred, the Banco de España determines that the credit institution is unable to make repayment in the immediate future for reasons directly relating to its financial situation. The Banco de España will make its decision as soon as possible and, in any event, shall decide on the applicability of the compensation within the period established in the regulations.”

Four. A new paragraph has been added to Article 10(1), reading as follows:

“In addition, the following deposits shall be protected irrespective of amount for three months after the amount has been credited or from the moment when such deposits become legally transferable:

(a) deposits resulting from real estate transactions relating to private residential properties.

(b) deposits arising from one-off payments received by the depositor linked to marriage, divorce, retirement, dismissal, redundancy, invalidity or death.

(c) deposits based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.”

Five. Article 11 now reads as follows:

“Article 11. Credit institution resolution support measures.

1. To perform the role envisaged in Article 4, and to defend the interests of the Scheme and of the depositors whose funds it guarantees, the Scheme may adopt measures supporting the resolution of a credit institution using funds from the deposit guarantee compartment.

To this end, when a credit institution is under resolution pursuant to Law 11/2015 of 18 June 2015, the Scheme, within the framework of the approved resolution plan, may participate in



funding the resolution of credit institutions in accordance with Article 53(7) of the aforementioned law.

2. The Scheme may ask the Governing Committee of the FROB for any information about the resolution process that it needs in order to facilitate its participation as laid down in this article. When furnished with this information, the Scheme will be bound by the duty of secrecy stipulated in Article 59 of Law 11/2015 of 18 June 2015.

3. The FROB shall determine, following consultation with the Scheme, the amount for which the Scheme is responsible. In any event, the Deposit Guarantee Scheme for Credit Institutions may not assume funding costs in excess of the lower of the following amounts: (a) the amount of the disbursement it would have had to make had it opted, at the time the resolution process commenced, to pay the amounts covered in the event of the winding-up of the institution. If, in accordance with the subsequent valuation laid down in Article 5(3) of Law 11/2015 of 18 June 2015, it is concluded that the Scheme's contribution to resolution was greater than the net losses it would have incurred in the event of winding up pursuant to insolvency legislation, the National Resolution Fund shall pay the Deposit Guarantee Scheme for Credit Institutions the difference between the two amounts.

(b) 50% of the target level set for the deposit guarantee compartment pursuant to Article 6(4).

4. Where the Scheme makes payments in the context of bank resolution proceedings, it shall have a claim against the relevant credit institution for an amount equal to its payments.

5. In exceptional circumstances, provided that a resolution process has not commenced, the Scheme may use its funds to prevent a credit institution from being wound up where:

(a) the costs of such intervention are less than the costs of paying the guaranteed amounts were the institution to be wound up.

(b) specific measures are imposed on the credit institution in order for it to restore compliance with the solvency, regulatory and disciplinary rules.

(c) intervention is conditional upon the institution's commitment to ensuring access to the covered deposits.

(d) the Scheme considers the cost can be borne out of the ordinary or extraordinary contributions of the member institutions.

The foregoing conditions may be specified in regulations."

Six. A new Article 12 is added with the following wording:

"Article 12. Stress tests

1. The Banco de España shall subject the Scheme, at least once every three years, to stress tests of its capacity to meet its payment obligations in situations of stress.

2. The Scheme shall provide the Banco de España with the information required to conduct the stress tests. The Banco de España may only use this information to conduct such tests and shall not keep it for any longer than is necessary for such purposes."

Seven. An additional provision with the following wording is added:

"First additional provision. Division into compartments of the Deposit Guarantee Scheme for Credit Institutions.

The rights acquired and obligations assumed by the Deposit Guarantee Scheme for Credit Institutions prior to the entry into force of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms shall be assigned solely to the deposit guarantee compartment."

Eight. An additional provision with the following wording is added:

"Second additional provision. Deadline for raising the available financial means of the Deposit Guarantee Scheme for Credit Institutions

1. The available financial means of the Deposit Guarantee Scheme for Credit Institutions shall reach the level required under Article 6(4) by 3 July 2024.

Without prejudice to the foregoing, institutions shall only be required to make contributions when such contribution is requested by the Scheme, specifying for each institution the corresponding amount and the ordinary or extraordinary contributions. No general obligations to make contributions shall arise prior to the request.

2. If in the period from the entry into force of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms and 3 July 2024 the available financial means reach the level laid down in paragraph 1, but subsequently fall to less than two-thirds of that level, the annual contributions to the deposit guarantee compartment shall be set at a level allowing the target level to be reached within six years.

3. Furthermore, the deadline established in paragraph 1 may be extended to 3 July 2028 if between the entry into force of Law 11/2015 of 18 June 2015 and 3 July 2024 the deposit guarantee compartment has made cumulative disbursements in excess of 0.8% of covered deposits at 3 July 2024.”

**30.38 Eleventh final provision. Amendments to Law 3/2012 of 6 July 2012 on urgent labour market reform measures.**

The seventh additional provision of Law 3/2012 of 6 July 2012 on urgent labour market reform measures now reads as follows:

“Seventh additional provision. Legal provisions applicable to credit institutions.

One. Termination benefits.

1. Institutions majority owned or financially supported by the Fund for the Orderly Restructuring of the Banking Sector (“FROB”), or those institutions under resolution that require financing from the National Resolution Fund or the European Single Resolution Fund, may not pay under any circumstance termination benefits exceeding the lower of the following amounts: (a) two times the maximum bases resulting, respectively, from Rules 3 and 4 of Article 5(3)(a) of Royal Decree-Law 2/2012 of 3 February 2012 on the reorganisation of the financial sector or (b) two years of the stipulated fixed remuneration.

2. Exempted from the preceding rule is the case of those directors and executives who joined the institution or group after or at the same time as the FROB took a holding or extended financial support to it or the National Resolution Fund or the European Single Resolution Fund provided financing. In this case, the Banco de España may, in view of the contractually stipulated conditions and of the results of the reorganisation plan, authorise higher amounts than those resulting from applying the bases resulting from Rules 3 and 4 of Article 5(3)(a) of Royal Decree-Law 2/2012 of 3 February 2012, subject always to the limit of two years of the originally stipulated fixed remuneration.

Two. Termination of employment of individuals holding the post of director or executive at a credit institution due to the imposition of penalties.

1. The imposition of the penalties referred to in Articles 100 and 101 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, and Articles 86 and 87 of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms, on individuals holding the post of director or executive at a credit institution under an employment contract, including special employment contracts for senior management, shall be deemed, for the purposes of labour legislation, a serious breach of contract and, therefore, grounds for disciplinary dismissal and may give rise to the termination of employment by the employer.

2. Also, the imposition of such penalties shall be deemed to be due cause for extinguishment or termination of contracts other than employment contracts.

3. In the cases of termination of contract in accordance with the provisions of the preceding paragraphs, the individuals holding the post of director or executive at a credit institution shall not be entitled to termination benefits of any amount or in any form, regardless of the legal provision, individual or collective employment contract or agreement, or civil or commercial contract or agreement in which payment of termination benefits is envisaged.

Three. Suspension of employment of individuals holding the post of director or executive at a credit institution.

1. The employment contract or agreement of any other nature of the individuals holding the post of director or executive at a credit institution may be suspended on the following grounds:

(a) where, in accordance with Article 112 of Law 10/2014 of 26 June 2014, the temporary suspension of the individuals who, holding the post of director or executive at a credit institution, are allegedly responsible for very serious infringements is ordered.

(b) where, in the scenarios provided for in Law 10/2014 of 26 June 2014 or in Law 11/2015 of 18 June 2015, the temporary replacement of the credit institution's management bodies is ordered by the competent supervisor or the competent resolution authorities.

2. The suspension of contract referred to in the paragraph 1 shall run for the same period as the temporary suspension or the temporary replacement ordered and shall entail the mutual exemption from working or rendering services and compensating for work or the provision of services.”

**30.39 Twelfth final provision. Amendments to Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.**

Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions is amended as follows:

One. Article 70 now reads as follows:

“Article 70. Grounds for appointing temporary administrators to work with or replace management body members.

1. Grounds for appointing temporary administrators to work with a credit institution's management body or to replace one or more of its members shall exist:

(a) in accordance with Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms.

(b) where there is sound evidence that the credit institution, while not in any of the situations envisaged in Law 11/2015 of 18 June 2015, is in an exceptionally serious situation that might jeopardise its stability, liquidity or solvency.

(c) where a qualifying holding is acquired in a credit institution in breach of the provisions of this law, or where there are well-founded and established grounds to believe that the influence exerted by the owners of that holding might be detrimental to the sound and prudent management of the institution, and might seriously harm its financial situation.

2. The measures to appoint temporary administrators to work with or replace management body members referred to in this article may be adopted while a sanctioning proceeding is under way or independently of the exercise of sanctioning powers.

Two. Article 73 now reads as follows:

“Article 73. Content of decisions to appoint temporary administrators to work with or replace management body members.

1. The decision shall name the temporary administrator(s) who will work with or replace management body members and shall indicate if they are to act jointly, severally or jointly and severally. The persons named shall have the qualifications, ability and knowledge required to carry out these functions and shall be free of any conflict of interest.

Likewise, the decision shall determine whether such appointment of temporary administrators shall entail the replacement of its management body or of one or more of its members or whether the temporary administrator will work with the management body.

2. The decision, which shall be enforceable as soon as it is issued, shall be immediately published in the Official State Gazette and recorded in the relevant public registers. Once it is published in the Official State Gazette, the decision shall be effective vis-à-vis third parties.

3. Where necessary for the purposes of enforcement of a decision to appoint temporary administrators to work with or replace management body members, recourse may be had to direct compulsion in order to take possession of the relevant offices, records and documents or to examine the latter, without prejudice to Article 96(3) of Law 30/1992 of 26 November 1992.

4. The Banco de España may, on a reasoned basis and following the procedure provided for in this chapter, amend the measure to appoint temporary administrators to work with or replace management body members when the circumstances so require.”

**30.40 Thirteenth final provision. Amendment to Law 22/2014 of 12 November 2014 regulating venture capital entities and other closed-end collective investment institutions and the management companies of closed-end collective investment institutions, and amending Collective Investment Institutions Law 35/2003 of 4 November 2003.**

Paragraphs 1 and 2 of Article 81 are amended and read as follows:

“Article 81. Conditions for cross-border management of venture capital entities and closed-end collective investment institutions by management companies authorised in Spain pursuant to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, and for the provision of services in other Member States.

1. The closed-end collective investment institution management companies authorised in Spain pursuant to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 may manage venture capital entities and closed-end collective investment institutions established in other Member States, either directly or by establishing a branch, provided that the closed-end collective investment institution management company is authorised to manage that type investment firm. Furthermore, it may provide in another Member State the services referred to in Article 42(4) for which it has been authorised.

2. Any management company intending to manage a venture capital entity or closed-end collective investment institution established in another Member State for the first time shall communicate the following information to the National Securities Market Commission:

(a) the Member State in which it intends to manage the venture capital entity or closed-end collective investment institution;

(b) whether it intends to manage the venture capital entity or closed-end collective investment institution directly or establish a branch, or whether the services referred to in Article 42(4) for which it has been authorised will be provided; and

(c) a programme of operations stating in particular the services which it intends to perform and identifying the venture capital entities or closed-end collective investment institutions it intends to manage.”

**30.41 Fourteenth final provision. Competence.**

This Law is issued under the provisions of Article 149(1)(6), (11) and (13) of the Spanish Constitution, which give the State competence over mercantile and procedural law, the regulation of credit, banking and insurance, and the regulation and coordination of the general planning of economic activity, respectively.

Final provisions one to thirteen are issued under the enabling provisions stated in the laws amended thereby.

**30.42 Fifteenth final provision. Incorporation of European Union legislation.**

This Law partially incorporates into Spanish law Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014, Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 and Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013.

**30.43 Sixteenth final provision. Implementing authority.**

The government may issue any regulations necessary to implement the provisions of this law.

**30.44 Seventeenth final provision. Entry into force.**

1. This law shall enter into force on the day following its publication in the Official State Gazette.

2. Without prejudice to the provisions laid down in the paragraph 1:

(a) the bail-in rules contained in Chapter VI shall enter into force on 1 January 2016.

(b) the provisions of the new Article 12(1) of Royal Decree-Law 16/2011 of 14 October 2011 introduced by the tenth final provision shall not enter into force until 3 July 2017.