

DISCIPLINE AND INTERVENTION OF CREDIT INSTITUTIONS

Law 26/1988, of 29 July (BOE day 30)

(Correction of errors, BOE of 4 August 1989)

Numerous experiences accumulated over many years internationally and in Spain herself have demonstrated the absolute need for financial institutions to be submitted to a special regime of administrative supervision that is, in general, much more intense, than the regulatory framework borne by most other sectors of the economy. These institutions raise financial resources from a very broad public that is largely lacking in the necessary information and expertise for making its own evaluation of the solvency of the institutions. Public regulation and supervision aspire to palliate the effects of this lack of information and expertise and promote confidence in financial institutions, an indispensable condition for the development and proper functioning of institutions which are essential not just for depositors of funds, but for the economy as a whole, given the pivotal role they play in payment systems.

These problems are usually dealt with in all parts by articulating special supervisory provisions for these institutions. The mechanisms basically consist of a set of rules aimed at providing supervisory authorities with full information on the situation and evolution of financial institutions, and of another set of rules intended to restrict or prohibit those practices or operations that augment risks of insolvency or lack of liquidity, and to strengthen the capital with which the institutions can handle those risks without causing harm to depositors. The effectiveness of the rules will obviously depend on the delegation of sufficient enforcement powers to the supervisory authorities for financial institutions. This regulatory system must be complemented by the development and implementation of those powers in the form of an adequate system of administrative sanctions.

Our legal system contains many laws and regulations establishing rules inspired in the criteria set out above for different types of financial institution and laying down administrative penalties for violation of those rules. That regulatory framework has very serious deficiencies, however, which may be grouped into two categories: those that obscure the proper application of the rule of no crime or punishment without prior law applicable to the essential elements of enforcement rules (delegation of enforcement powers to the authorities, precise definition of infractions and sanctions); and those which arise from the enormous dispersion and variety of the instruments in which the laws are set out, with the attendant voids and lack of coordination.

In order to address these deficiencies, and at the same time following the policy promoted by the EEC on fostering the creation of a common supervisory framework for financial institutions, it is necessary to publish the present Law. The objective is to adapt the enforcement powers for these matters to the constitutional norms applicable to the relevant doctrine laid down by the Spanish Constitutional Court and also to cover the broadest possible group of financial institutions, thereby generalising this facet of their regulatory framework.

By way of summary of the content of this law, the most notable principles and solutions are:

I. Common enforcement rules are established for a group of credit institutions (entidades de crédito), a name more consistent with our juridical tradition than the term "credit establishments" (establecimientos de crédito) that it replaces and which, moreover, extends to other types of financial institutions that essentially pursue the activity that defines a credit institution.

II. The parties subject to the enforcement provisions are clearly determined, by

involving the infringing entity and those persons holding directorships or powers of management or control, where such persons are accountable within the entities.

III. The infractions are defined with the aim of defining the punishable conducts, having regard to their gravity, striking a balance between the indispensable level of specificity and the necessary degree of generality, so as to avoid the law being rendered unenforceable in the future and without relying on an excessively exhaustive list of prohibited acts, given that any such list would be as impossible as it would be useless for an activity undergoing such rapid change.

IV. A range of sanctions scaled to the seriousness of the infractions is established, without detriment to the affected parties' right to legal certainty and to application of the principle of proportionate punishment.

V. Lastly, in relation to enforcement powers, application of the Law rests with the state, without prejudice to the exercise of the powers delegated to regional governments for these matters. In all events, the regional governments must respect the principles that are declared basic under paragraphs 11, 13 and 18 of article 149.1 of the Spanish Constitution, while powers are reserved to the state in relation to infractions affecting monetary or capital adequacy rules.

Along with the development of these central issues, and of the closely linked procedural questions, this Law is also used to regulate other important aspects bearing relation to enforcement provisions and whose regulation was fragmentary, incomplete or defective: the powers of the administration to safeguard that the names and activities reserved to credit institutions are not used and pursued by natural or legal persons lacking authority to do so; and the measures for intervention and substitution of management bodies which may, in exceptional circumstances, be adopted by the competent authorities. In relation to the important sector of insurance undertakings, this Law does not confine itself to filling legal voids, but opts to bring insurers, with the logical adaptations, within the scope of the sanctioning provisions and solutions in relation to intervention and substitution of directors. The purpose of doing so is to take one more step toward achieving homogeneity of administrative sanctioning provisions for the financial world and to overcome the deficiencies detected in the application of the related provisions of Law 33/1984, enacted on 2 August, on Regulation of Private Insurance. (Ley de Ordenación del Seguro Privado)

This Law, however, goes beyond the strict regulation of rules governing credit institutions. In the absence of a general law regulating the activity of credit institutions— which is needed but whose complexity precludes it being drawn up hastily—it has been considered appropriate to use the approval of this Law to resolve certain important substantive problems in the legal regimes governing diverse categories of financial institutions.

Thus, this Law contains provisions that form part of an effort to construct a comprehensive framework for the activities of credit institutions, broadening the scope of this category to include the Instituto de Crédito Oficial, to financial leasing companies and to companies that act as mediators in the money market, and eliminating rules in force prior to this Law that force certain financial institutions to undergo an artificial specialisation or that represent an unnecessary restriction on the activity of others. Noteworthy in this regard is the extension to all credit institutions of the possibility of issuing debentures without limits tied to their capital; the extension to banks of the authority to issue mortgage bonds or, together with savings banks and credit cooperatives, to engage in financial leasing; and the delegation of authority to the government to submit all credit institutions to the rules on cash reserves requirements, investments and capital adequacy. Nevertheless, the unification of treatment of credit institutions is not absolute. In particular, limitations are maintained on the capacity of specified specialist credit institutions to use certain means of raising funds from the public.

Along the same lines, powers to register, monitor and inspect all credit institutions, as well as mutual guaranty companies, are concentrated in Banco de España. This concentration is justified, first, by the similarity of activities and the problems of these entities, which need coordinated treatment; second, by the de facto relations that often exist between credit institutions of different types; and third, in the specific case of official credit entities, by the ICO's disqualification from discharging its previous supervisory functions as a result of its conversion into a holding company of such undertakings.

In other areas, this Law creates a common system for monitoring equity holdings in credit institutions which, while respecting the general principle of freedom of holdings, guarantees transparency in control relations by means of public disclosure and reporting to supervisory authorities. In the particular case of banks, and given their special importance in the financial system, special rules are established requiring persons who acquire qualifying holdings in banks to report such holdings both to the investee and to the supervisory authority, with acquisitions of holdings representing more than 15% of the bank's capital subject to an authorisation requirement. Exercise of voting and other nonfinancial rights is subject to such notice or authorisation requirement.

The Law consolidates and generalises the provisions under which financial authorities have been empowered to minimum capital requirements for credit institutions, to determine their accounting statements and to impose minimum provisions in their standard contracts for the sake of ensuring transparency of the credit institutions and protecting the interests of their clientele.

Finally, the Law takes up the general regulation of financial leasing. The provisions in this regard reproduce, improving certain technical aspects, those laid down in previous regulations. But changes are introduced in the tax treatment, which under the previous rules was tantamount to acceptance of an unlimited principles of free depreciation. Thus, the new provisions stipulate separation of lease charges into a financial charge component and into a component representing recovery of the leased asset's cost by the lessor, which would be equivalent to the concept of depreciation in the case of an outright acquisition. The Law accepts the principle that this second component is an expense which may be amortised by the lessor, but stipulates that the amount thereof must be the same or increase over the term of the lease agreement, in order to avoid amortisable expenses being brought forward by means of decreasing the amounts thereof. At the same time, tax deductibility is rejected in the case of leases of assets which by their nature are not depreciable. These rules, taken together with the government's authority to establish minimum time frames (a possibility already present under the existing legislation, but which has not been used), should allow limits to be placed on practices that would entail abuse of the flexibility that financial leases provide in relation to corporate income tax rules, without eliminating that flexibility.

TITLE I

Enforcement rules for credit institutions

CHAPTER I

General provisions

Article 1

1. Credit institutions, and persons holding directorships or management offices therein, who violate regulatory and disciplinary provisions shall be liable for administrative sanctions according to the terms of this title.

Such liability shall also be borne by the natural or legal persons who possess a qualifying holding, within the meaning of title VI below, and by Spanish nationals who

control a credit institution of another European Community member state. Liability shall also be borne by persons holding directorships or management offices in the liable entities. **(1)**

2. For the purposes of the provisions of this Law, credit institutions shall be those undertakings set out in article 1.2 of Legislative Royal Decree 1298/1986, of 28 June.

3. The provisions laid down in this Law shall also apply to branches opened in Spain by foreign credit institutions.

4. For the purposes of this Act, management offices in credit institutions are considered to be held by their directors or members of their collective management bodies, their general managers or similar officers, understood as those persons in the institution who have senior management responsibilities and report directly to the board of directors or to executive committees or managing directors appointed by the directors, and the persons who direct Spanish branches of foreign credit institutions.

5. Regulatory and disciplinary provisions are considered to be those laws and general provisions that contain rules specifically referring to credit institutions and of compulsory compliance for those institutions. Such provisions shall be understood to include those approved by state bodies, those approved by regional authorities with powers for such matters, European Union regulations and other directly applicable legal provisions approved by European Union institutions, and the Circulars approved by Banco de España, on the terms laid down herein.

Regulatory and disciplinary provisions shall include particularly 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. **(2)**

Article 2

Exercise of the enforcement powers referred to by this Law shall be independent of any eventual concurrence of criminal offences or faults. Nevertheless, where criminal proceedings are being pursued for the same acts or for others which cannot be rationally separated from those punishable under this Law, the administrative proceeding shall be suspended with respect to the same until a final decision is handed down by the courts. Once the proceeding has resumed, where such is the case, the resolution entered must respect the assessment of facts made in the court ruling.

CHAPTER II

Infractions

Article 3

Violation of the regulatory and disciplinary provisions referred to in article 1 above shall be classified as very serious, serious or minor.

Article 4

The following are very serious infractions:

a) Execution of the acts set out below, without authorisation where such authorisation is required, without fulfilling the basic conditions stipulated in such authorisation, or obtaining the same by means of false statements or in some other irregular way: **(3)**

One. Mergers, take-overs or split-ups affecting credit institutions.

Two. Direct or indirect acquisition of shares or other securities representing equity interests, or assignment of voting rights, in:

— Spanish credit institutions by other Spanish or foreign credit institutions or by a corporate subsidiary or parent company of the same.

— Spanish credit institutions by other Spanish or foreign natural or legal persons, where such transaction implies de jure or de facto control of the former, or a change of such control of the same.

— Foreign credit institutions by Spanish credit institutions or by a subsidiary or controlling entity of Spanish credit institutions.

Three. Distribution of booked or hidden reserves.

Four. Opening by Spanish credit institutions of operating offices abroad.

b) Maintenance during six months of capital below the levels required for obtaining authorisation for the type of credit institution in question.

c) Failure by a credit institution or by the consolidated group or financial conglomerate to which it belongs to hold capital amounting to at least 80% of the level required by the minimum capital requirements established by regulations, according to the risks assumed, or at least 80% of the level required by any capital requirements that may be set by Banco de España for that specific institution, when this situation continues for a period of at least six months. **(4)**

d) Pursuit of activities not included within their legally determined exclusive corporate objects, except on a merely occasional or sporadic basis.

e) Execution of acts or transactions prohibited by regulatory and disciplinary provisions laid down by statute or in violation of the requirements laid down in those provisions, except on a merely occasional or sporadic basis.

f) Failure to maintain the legally required accounting or conducting the accounting with essential irregularities that do not allow the financial and equity position of the entity or the consolidable group or financial conglomerate to which it belongs to be known. **(5)**

g) Breach of the obligation to submit the annual accounts to audit in accordance with the current legislation on the matter.

h) Rejection of or resistance to inspections requested expressly and in writing.

i) Failure to file with the competent administrative agency all data or documents that must be submitted thereto or are requested in the discharge of the functions of the agency, or mistruth in such filings, where the same hinders assessment of the financial strength of the institution or of the consolidable group or financial conglomerate to which it belongs. For the purposes of this subparagraph, a failure to file shall be deemed to occur when the relevant filing is not made within the time period stipulated for such purpose by the competent agency when it served written notice of the obligation or repeated the request. **(5)**

j) Breach of the truthful reporting duty to members, depositors, lenders and to the public in general, as well as breach of the duty of confidentiality in respect of data received from the Central Credit Register, use of such data for purposes other than those provided for in the law regulating the same or requesting reports on borrowers other than in the cases specifically authorised in that law. In all these cases the breach must be considered as especially significant due to the number of persons affected or the importance of the information. **(6)**

k) Execution of fraudulent acts or use of nominee individuals or legal persons for the purpose of achieving a result which if attained directly would imply the commission of at least a serious infraction.

l) Acquisition or increase of qualifying holdings in violation of the provisions of title VI of this Law. **(7)**

ll) Endangerment of the sound and prudent management of a credit institution by means of the influence exerted by the owner of a qualifying holding, within the meaning of article 62 of this Law. **(7)**

m) Serious infractions where during the five years preceding their commission a final sanction had been imposed on the credit institution for the same type of infraction. **(8)**

n) Existence of deficiencies in the organisational structure, internal control mechanisms or administrative or accounting procedures, including those relating to risk management and control, of a credit institution or of the consolidable group or financial conglomerate to which it belongs, where such deficiencies jeopardise the solvency or viability of the institution or of the consolidable group or financial conglomerate to which it belongs. **(9)**

ñ) Failure by an institution to implement policies relating to provisions, the treatment of assets or the mitigation of the risk inherent in its activities, products or systems, which Banco de España has specifically required it to implement, within the period and upon the terms set for the purpose by Banco de España, where this failure jeopardises the solvency or viability of the institution. **(10)**

o) Failure to comply with restrictions or limitations imposed by Banco de España in relation to the businesses, operations or branch network of a specific institution. **(10)**

p) Failure of the directors of a credit institution to send to Banco de España the plan for return to compliance with solvency standards or the action or restructuring referred to in Law 9/2012 of 14 November on restructuring and resolution of credit institutions, when required to do so. Failure to send will be deemed to have occurred when the period set for them to do so, as of the time the directors know or ought to know that the institution is in any of the situations giving rise to this obligation, has elapsed. **(11)**

Article 5

The following are serious infractions:

a) Execution of acts or transactions without authorisation where such authorisation is required, without fulfilling the basic conditions stipulated in such authorisation, or obtaining the same by means of false statements or in some other irregular way, except in those cases where this amounts to commission of a very serious infraction under the preceding article. **(12)**

b) Failure to notify, where such notification is required, in the events set out in subparagraph a) of the preceding article and in the events where the same refers to the composition of the management bodies of the institution or to the composition of its shareholder base.

c) Merely occasional or sporadic pursuit of activities outside the legally determined exclusive corporate objects.

d) Merely occasional or sporadic execution of acts or transactions prohibited by regulatory and disciplinary provisions laid down by statute or in violation of the requirements laid down in those provisions.

e) Executing acts or transactions in violation of the rules issued under Article 28.2 of this Law or under Article 29.2 of the Sustainable Economy Law. **(13)**

f) Execution of acts or transactions prohibited by regulatory and disciplinary provisions laid down by regulation or in violation of the requirements laid down in those provisions, except on a merely occasional or sporadic basis.

g) **(14)**

h) Failure by a credit institution or by the consolidated group or financial conglomerate to which it belongs to meet the minimum capital requirements established by regulations or that may be set by Banco de España for that specific institution, where that situation continues for a period of at least six months, provided that such failure does not amount to a very serious infraction under Article 4 above. **(15)**

i) Breach of the rules on risk limits or of any other type setting down quantitative limits, absolute or relative, on the volume of certain lending or deposit-taking operations.

j) Breach of the conditions and requirements stipulated in the legal rules on lending transactions that qualify for interest subsidies or other public assistance.

k) Insufficient provisioning to mandatory reserves and to allowances for bad debts.

l) Failure to file with the competent administrative agency data or documents that must be submitted thereto or are requested in the discharge of the functions of the agency, or mistruth in

such filings, except where the same is considered a very serious infraction. For the purposes of this subparagraph, a failure to file shall be deemed to occur when the relevant filing is not made within the time period stipulated for such purpose by the competent agency when it served written notice of the obligation or repeated the request.

m) Failure by the directors to report to the general meeting or assembly those events or circumstances whose notification has been ordered by the administrative agency with authority to do so.

n) Breach of the truthful reporting duty to members, depositors, lenders and to the public in general, as well as breach of the duty of confidentiality in respect of data received from the Central Credit Register, use of such data for purposes other than those provided for in the law regulating the same or requesting reports on borrowers other than in the cases specifically authorised in that law, when the circumstances referred to in subparagraph j) of the preceding article do not apply. **(16)**

o) Execution of fraudulent acts or use of nominee individuals or legal persons for the purpose of achieving a result contrary to regulatory and disciplinary provisions, provided such conduct is not covered by subparagraph k) of the preceding article.

p) Breach of current rules on booking transactions and on preparation of balance sheets, profit and loss accounts, and financial statements of compulsory filing with the competent administrative agency.

q) Minor infractions where during the two years preceding their commission a final sanction had been imposed on the credit institution for the same type of infraction.

r) The existence of deficiencies in the organisational structure, internal control mechanisms or administrative and accounting procedures, including those relating to risk management and control, of a credit institution or of the consolidable group or financial conglomerate to which it belongs, where the time period granted by the competent authorities for redressing them has expired and provided that such deficiencies do not constitute a very serious infraction under Article 4 above. **(15)**

s) Failure to comply with the provisions of Title VI of this Law in the event of transfer or reduction of a qualifying holding. **(17)**

t) The effective administration or management of credit institutions by persons not holding de jure a post of such nature therein. **(17)**

u) Failure to perform the obligation to publish the information referred to in Article 10.ter.1 of Law 13/1985, or publishing such information with omissions or with false, misleading or inaccurate data. **(18)**

v) Failure by an institution to implement policies relating to provisions, the treatment of assets or the mitigation of the risk inherent in its activities, products or systems, which Banco de España has specifically required it to implement, within the period set for the purpose by Banco de España, where this failure does not amount to a very serious infraction under Article 4 above. **(18)**

w) Acquiring a holding in a credit institution as described in Article 57.2 without duly notifying Banco de España. **(19)**

x) Failing to have a customer service department, or having a malfunctioning customer service department when the period granted by Banco de España to remedy the malfunctioning has expired. **(20)**

Article 6

Minor infractions are violations of compulsory rules for credit institutions contained in regulatory and disciplinary provisions that are not considered serious or very serious infractions under the terms of the two preceding articles.

Article 7

1. Liability shall lapse after five years for very serious and serious infractions and after two years for minor infractions.

2. In both cases the limitation period shall be reckoned from the date on which the infraction is committed. In infractions produced by a continued activity, the starting date for calculating the limitation period shall be the date on which the activity ended or the date of the last act by which the infraction was consummated.

3. The running of the limitation period shall be interrupted by the initiation, with notice to the interested party, of the enforcement proceeding, and shall resume if the proceeding is halted for six months for reasons not attributable to those against whom it is brought.

CHAPTER III **Penalties**

Article 8

The infractions referred to by the preceding articles shall give rise to the imposition of the sanctions laid down in this chapter.

Article 9 (21)

For the commission of very serious infractions, one or more of the following penalties shall be imposed on the infringing credit institution:

- a) A fine of up to the larger of 1 percent of its own funds or 1,000,000 euro. **(22)**
- b) Revocation of authorisation of the institution. In the case of branches of credit institutions authorised in another Member State of the European Union, the sanction of revocation of authorisation shall be deemed replaced by a ban on new operations on Spanish territory.

Public reprimand published in the *Boletín Oficial del Estado* (Official State Gazette).

Article 10 (23)

For the commission of serious infractions, one or more of the following penalties shall be imposed on the credit institution:

- a) A fine of up to the larger of 0.5 percent of its own funds or 500,000 euro. **(24)**
- b) A public reprimand published in the *Boletín Oficial del Estado* (Official State Gazette).

Article 11

The commission of minor infractions shall be punished by imposing one of the following penalties on the infringing credit institution:

- a) Private reprimand.
- b) A fine of up to 150,000 euro. (25)**

Article 12

1. In addition to the appropriate sanction to be imposed on the infringing credit institution for the commission of very serious infractions, the following sanctions may be imposed on persons who, holding directorships therein, de facto or de jure, are responsible for the infraction: **(26)**

- a) A fine of no more than 500,000 euro for each such person. **(27)**
- b) Suspension from exercise of their office for no more than three years.
- c) Removal from office, with disqualification from holding directorships or management offices in the same credit institution during a maximum of five years.
- d) Disqualification from holding directorships or management posts in any credit or financial-sector institution and, where applicable, removal from the directorship or management post held by the infringing person at a credit institution, for a period of not more than ten years. **(26)**

2. Notwithstanding the provisions of paragraph 1 above of this article, in the event the sanctions provided in subparagraphs c) and d) thereof are imposed, the sanction provided in subparagraph a) may also be imposed simultaneously.

Article 13

1. In addition to the appropriate sanction to be imposed on the infringing credit institution for the commission of serious infractions, the following sanctions may be imposed on persons who, holding directorships therein, de facto or de jure, are responsible for the infraction: **(28)**

a) Private reprimand.

b) Public reprimand.

c) A fine of no more than 250,000 euro for each such person. **(29)**

d) Disqualification from holding directorships or management posts in any credit or financial-sector institution and, where applicable, removal from the directorship or management post held by the infringing person at a credit institution, for a period of not more than ten years. **(28)**

2. Notwithstanding the provisions of paragraph 1 above of this article, in the event the sanction provided in subparagraph d) thereof is imposed, the sanction provided in subparagraph c) may also be imposed simultaneously.

Article 13 bis (30)

Irrespective of such sanctions as may be imposed under the foregoing articles of this chapter, serious and very serious infractions committed by those natural or legal persons and directors or officers referred to by the second paragraph of article 1.1 of this Law shall be subject to the fines and disqualifications set out in articles 12 and 13 above, with the possibility of simultaneous imposition of both.

Article 14

1. The penalties applicable in each case for the commission of very serious, serious or minor infractions shall be determined on the basis of the following criteria:

a) The nature and magnitude of the infraction.

b) The gravity of the danger occasioned or of the harm caused.

c) The profits obtained, where applicable, as a consequence of the acts or omissions that constitute the infraction.

d) The size of the credit institution concerned, measured according to its total assets as recorded on its balance sheet.

e) The unfavourable consequences of the conduct for the national financial system or economy.

f) The fact of the credit institution having proceeded to correct the infraction at its own initiative.

g) In the case of capital inadequacy, the objective difficulties which may have been presented for attaining or maintaining the legally required capital adequacy levels.

h) The prior conduct of the credit institution in relation to the regulatory and disciplinary provisions that affect it, having regard to such final sanctions as may have been imposed thereon during the last five years.

2. To determine which of the penalties provided in articles 12 and 13 are to be applied, consideration shall be given, *inter alia*, to the following circumstances: a) The degree of responsibility of the person concerned in question for the infractions.

b) The prior conduct of the person concerned, in the same or in another credit institution, in relation to regulatory and disciplinary provisions, taking into consideration in this regard the final penalties imposed thereupon during the previous five years.

c) The representative capacity in which the person is acting.

Article 15

1. Person holding directorships or management offices in the credit institution shall be liable for very serious or serious infractions where such violations are imputable to their negligence or wilful misconduct.

2. Notwithstanding the provisions of paragraph 1 above, liability for very serious or

serious infractions committed by credit institutions shall be considered to rest with their directors or members of their collective management bodies, except in the following cases:

a) Where the persons forming part of those collective management bodies did not attend the meetings in question for justified reason or voted against or withheld their vote in relation to the decisions or resolutions that gave rise to the infractions.

b) Where the said infractions are exclusively imputable to executive committees, managing directors, general managers or other similar officers or bodies or other persons with functions in the credit institution.

Article 16

1. Where the infractions defined in articles 4, 5 and 6 refer to obligations of the consolidable groups of credit institutions, the institution subject to the obligations and, if appropriate, its directors and officers, shall be sanctioned.

Also, when such infractions refer to the obligations of financial conglomerates, the sanctioning measures provided for in this Law shall be applied to the obliged institution, when this is a credit institution or a mixed financial holding company, provided that in the latter case Banco de España is responsible for performing the role of coordinating the additional supervision of such financial conglomerate. The sanctioning measures referred to may be extended, where appropriate, to the directors and officers of the obliged institution.

(31)

2. If the applicable penalty is revocation of the authorisation referred to by article 9.b and the financial institution parent company of the consolidated group does not hold credit institution status, that said parent company shall be punished with mandatory winding-up and opening of the liquidation period.

3. Where under the terms of paragraphs 1 and 2 above or under the provisions of article 4.a.2 of this Law, sanctions are to be imposed on natural persons or entities that do not hold credit institution status, there shall apply for such purpose the provisions laid down in this Law for entities that do hold such status, without prejudice to the terms of paragraph 2 of this article.

Article 17

Where strictly necessary to assure continuity in the administration and management of the credit institution due to the number or class of persons affected by the sanctions of suspension or removal, the sanctioning authority may order the appointment, on a provisional basis, of the members needed so that the collective management body can adopt resolutions or of one or more directors, specifying their functions. Such appointees shall discharge their offices until the competent body of the credit institution, which shall be convened immediately, makes the relevant appointments and the appointees take office, where applicable, until the stipulated suspension ends.

CHAPTER IV

Competence for these matters

Article 18 (32)

Notwithstanding the provisions of Article 42 hereof, Banco de España shall be competent to hear the proceedings referred to by this Title and to impose the relevant sanctions.

When Banco de España imposes sanctions for very serious infractions it shall inform the Minister of Economic Affairs and Competitiveness of their adoption, along with the reasons therefor.

Banco de España shall send to the Ministry of Economic Affairs and Competitiveness, on a quarterly basis, the essential information on procedures currently being conducted and the resolutions adopted.

CHAPTER V

Rules of procedure

Article 19

The procedure to be followed for imposing sanctions under this Law shall be governed by the terms of articles 133 *et seq.* of the Spanish Administrative Procedure Act, of 17 July 1958, (Ley de Procedimiento Administrativo) with the particularities laid down in the following articles.

Article 20

Sanctions for minor infractions may be imposed in a summary proceeding, in which it shall only be required that the interested credit institution be heard.

Article 21

Sanctions on credit institutions and on their directors or officers arising from one and the same infraction shall be imposed in a single resolution as the result of a single proceeding.

Article 22

In the decision to initiate the proceeding, or during the course of the proceeding, adjunct examining officers or secretaries may be named where so counselled by the complexity of the case. Adjunct examiners shall act under the instructions of the examiner.

Article 23

Once the statement of charges has been answered, the examiner may resolve, *ex officio* or at the request of the interested parties filed in their answer to the charges, to hear the additional evidence he deems necessary.

Article 23 bis (33)

The supervisory authorities of credit institutions authorised in another EU Member State shall be notified of the opening of proceedings that concern the branches of such institutions, so that, without prejudice to the sanctions appropriate under this Law, they may adopt the measures they consider appropriate to ensure that the institution terminates its infringing activities or avoids their repetition in future. When the proceedings have been concluded, Banco de España shall notify such authorities of the decision adopted and, when it involves a sanction for a serious or very serious infringement, the European Commission and the European Banking Authority shall also be so notified.

Article 24

1. In the decision to initiate the proceeding, or during the course of the proceeding, provisional suspension may be ordered of directors or officers of the credit institution presumed to have committed very serious infractions, provided such suspension is advisable for purposes of protecting the financial system or the economic interests in question. The suspension shall be registered in the Companies Registry or in other relevant registers.

2. Provisional suspensions shall have a maximum duration of six months, unless the proceeding is halted for reasons attributable to the interested party, and may be lifted at any time *ex officio* or at the request of the interested party.

3. The duration of the provisional suspension shall count toward the fulfilment of sanctions involving suspension.

4. The provisional suspension provided in this article shall be subject to the provisions of article 17 of this Law.

Article 25 (34)

1. The penalties imposed under this Law will not be enforced until administrative proceedings have been concluded.

2. Resolutions of the Banco de España concluding procedures may be challenged by appeal to the Ministry of Economic Affairs and Competitiveness pursuant to Articles 114 and 115 of Law 30/1992 of 26 November on the legal status of public administration and common administrative proceedings.

Article 26

1. Where the sanctions consists of a fine, the amount of the fine shall be paid into the public treasury.

2. Where the sanction consists in making non-remunerated compensatory deposits, the deposits shall be made with Banco de España.

3. If the sanction referred to by the preceding paragraph is not complied with in the stipulated time period, Banco de España may levy coercive fines on the persons holding directorships or management offices in the credit institution. These coercive fines may be repeated every seven days, subject to an aggregate maximum amount that shall not exceed ten million pesetas on each occasion.

Article 27

1. The imposition of sanctions, except for private reprimands, shall be recorded in the relevant administrative registers of credit institutions and senior officers.

2. Once they have been rendered enforceable, sanctions involving suspension, removal and removal with disqualification shall also be recorded, where applicable, in the Companies Registry or Registry of Cooperatives.

3. The appointment of provisional members of the management body or directors referred to by article 17 above shall also be recorded in the relevant registers.

4. Once the sanctions imposed on the credit institution or on their directors or management officers are rendered enforceable, they shall be notified to the general meeting or assembly held immediately thereafter.

5. Sanctions for very serious infractions shall be published in the *Boletín Oficial del Estado* (Official State Gazette) once they are final. Public reprimands shall also be published. The authority imposing the rest of the sanctions for serious infractions may also order their publication in the *Boletín Oficial del Estado* once they have been rendered final.

TITLE II

Pursuit of activities and use of names reserved to credit institutions

Article 28

1. Without prejudice to the provisions of title V below, no Spanish or foreign natural or legal person shall, without obtaining the requisite authorisation and having been registered in the relevant registers, pursue in Spanish territory activities which by law are reserved to credit institutions or use the general names applicable to credit institutions or other names capable of inducing confusion with the same. **(35)**

2. The following activities in particular are reserved to credit institutions:

a) The activity defined in Article 1.1. of Legislative Royal Decree 1298/1986 of 28 June 1986 on the adaptation of the current law on credit institutions to the law of the European Communities.

b) The acceptance of repayable funds from the public, for whatever purpose, in the form of deposits, loans, repurchase agreements or other similar transactions that are not subject to regulatory and disciplinary provisions governing securities markets. **(36)**

Article 29

1. Persons or entities that violate the provisions of Article 28, as well as their de facto or de jure directors or their shareholders, shall be deemed to commit a very serious infraction and be penalised with a fine of up to 500,000 euro. If after being ordered to immediately cease the use of the names or pursuit of the activities, they continue using or pursuing them, they shall be sanctioned with a fine of up to 1,000,000 euro, which may be levied repeatedly in connection with subsequent orders. **(37)**

2. Banco de España shall have powers to issue the orders and levy the fines referred to in paragraph 1 above. The orders shall be issued upon prior hearing of the person or entity concerned and fines shall be levied in accordance with the procedure provided in this Law.

3. The provisions of this article shall be construed without prejudice to such other

liabilities, including criminal liability, as may be enforceable.

Article 30

The Companies Registry and all other public registers shall not register those entities whose activity or corporate objects or name contravene the provisions of article 28 above. Where such registrations have been made nonetheless, they shall be absolutely null and void as a matter of law and shall be cancelled ex officio or at the request of the competent authority. This nullity shall not prejudice the rights of third parties acting in good faith that were acquired according to the rules for the registers in question.

Article 30 bis (38)

1. Credit institutions may freely open new offices in Spanish territory. This right shall be construed without prejudice to the prior authorisation rules to which they may be subject under article 11.3 of Law 13/1985, of 25 May, on the regulatory restrictions which may be established on the opening of offices during the initial years of activity of Spanish credit institutions or of branches of institutions authorised in states that are not members of the European Community, and of the restrictions which may be contained in the articles of association of those institutions.

1 bis. Credit institutions and consolidable groups of credit institutions shall have an appropriate organisational structure proportionate to the nature, scale and complexity of their activities, with well defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures, as well as compensation policies and practices consistent with the fostering of sound and effective risk management.

As part of these governance and organisational structure procedures, credit institutions and consolidable groups of credit institutions shall draw up a general viability plan and keep it up to date. This plan, which is to be submitted to Banco de España for approval, is to set out the measures to be adopted to return the institution to viability and financial soundness in the event of it suffering a significant deterioration. Banco de España may require the modification of the plan's content, and if it considers it inadequate, may impose on the institution the measures established in Article 24 of Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution. The implementing regulations shall specify the required content of the general viability plan.

Also as part of these governance and organisational structure procedures, credit institutions and consolidable groups of credit institutions providing investment services must comply with the internal organisational requirements of Article 70 ter.2 of Law 24/1988 of 28 July 1988 on the securities market, with the regulatorily stipulated specifications.

The adoption of these measures is without prejudice to the need to define and apply other organisational policies and procedures that, specifically in relation to the provision of investment services, may be required of these institutions under the specific regulations of the securities market. **(39)**

2. Regulations may be promulgated laying down the requirements to be met by those who regularly act as agents in Spain of credit institutions, and the conditions to which they shall be subject in the pursuit of their activities.

3. The establishment of branches or provision of services without a branch in European Community member states shall be subject to the rules laid down in title V of this Law.

4. The establishment of branches in states that are not members of the European Community shall require authorisation from Banco de España in the manner stipulated by regulation. Lack of a resolution within the stipulated time limit shall be deemed denial of the request. Provision of services without a branch shall be notified to Banco de España.

5. Prior authorisation from Banco de España shall also be required for the creation of a foreign credit institution by a Spanish credit institution or group of Spanish credit institutions, or for acquisition of a holding in an already existing institution, where the said foreign credit

institution is to be incorporated or has its registered office in a state that is not a member of the European Community. The information that must be included in the authorisation application shall be determined by regulation.

Banco de España shall resolve on the application within three months after receiving all of the information required. Failure to hand down the resolution shall be deemed denial of the request. The request may also be denied where Banco de España, having regard to the financial situation of the credit institution or to its management capacity, considers that the project may affect it adversely; where, in view of the location and characteristics of the project, effective supervision by Banco de España of the group on a consolidated basis cannot be assured; or where the activity of the controlled credit institution is not subject to effective control by a national supervisory authority.

TITLE III

Intervention and substitution measures

Article 31 (40)

1. When a credit institution is in any of the situations described in Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution, it may be decided to provisionally replace its governing body as provided herein, with the particularities set out in the aforementioned Law.

2. It may also be decided to intervene in a credit institution or provisionally replace its governing body as provided herein if there is substantiated evidence that it is in a situation of exceptional severity jeopardising its stability, liquidity or solvency.

3. Similarly, intervention or the provisional replacement of the governing bodies of credit institutions shall apply in the situations referred to in Articles 59 and 62 regarding non-compliance by persons with a qualifying holding in them.

Article 32

1. The intervention or substitution measures referred to by the preceding article shall be resolved by Banco de España, giving a reasoned explanation of their adoption to the Minister of Economy and Finance.

2. Where such resolution is adopted at the reasoned request of the credit institution itself, the request may be submitted not just by the directors of the credit institution, but also by its internal audit body and, where applicable, by a minority of members equal at least to the one required by the applicable statutes for forcing the call of an extraordinary general meeting or assembly.

Article 33

Intervention or substitution resolutions shall be adopted upon prior hearing of the credit institution concerned during the time period stipulated for such purpose, which shall be no less than five days. Nevertheless, the prior hearing shall not be necessary where the resolution has been preceded by a request from the credit institution itself or where the delay entailed by the prior hearing would seriously compromise the effectiveness of the measure or the economic interests involved. In the latter event, the time limit for resolving on the appeal shall be ten days.

Article 34

1. The resolution shall name the person or persons who are to discharge the intervention duties or act as provisional directors, and shall indicate whether such persons are to act collectively, jointly but not severally, or jointly and severally.

2. The resolution shall be enforceable immediately, be published in the *Boletín Oficial del Estado* and be registered in the relevant public registers. Both the publication and registration shall render the resolution valid as against third parties.

3. Where necessary for enforcing the intervention or substitution of directors resolution, direct compulsion may be used to take possession of the offices, books and relevant documents or to examine such documents.

Article 35

1. In the event of intervention, the acts or resolutions of any body of the credit institution adopted after the date on which the resolution is published in the *Boletín Oficial del Estado* shall be not be valid and may not be carried into effect without the express approval of the designated intervention trustees. An exception to this approval requirement is made for the lodging of claims or appeals by the credit institution in relation to the intervention measure or to the actions of the trustees.

2. The appointed trustee shall be authorised to revoke all powers or delegations conferred by the management body of the credit institution or by its attorneys or delegates prior to the resolution publication date. Once the measure has been adopted, the trustees shall demand return of the documents recording the powers of attorney and arrange to have their revocation registered in the competent public registers.

Article 36

1. In the event of substitution of the management body, the provisional directors appointed shall have trustee status for purposes of the acts or resolutions of the general meeting or assembly of the credit institution, and they shall be subject to the provisions of article 35.1 above.

2. The obligation to prepare the annual accounts of the credit institution and to have those accounts and the institution’s management approved shall be suspended, for no longer than one year reckoned from expiry of the legally stipulated time limit for such obligations, if the new management body considers on a reasoned basis that there do not exist reliable and complete data for such purposes.

Article 37

Once Banco de España resolves to end the substitution measure, the provisional directors shall immediately call a general meeting or assembly of the credit institution at which the new management body shall be named. Until the new directors have taken office, the provisional directors shall continue to perform their duties.

Article 37 bis (41)

Where a credit institution decides to wind itself up voluntarily, it shall notify this fact to Banco de España, which may impose conditions on such decision within three months from presentation of the relevant application.

Article 38

1. Where a credit institution is wound up, the Minister of Economy and Finance may resolve intervention of its liquidation operations if advisable due to the number of persons affected or the financial position of the institution.

2. The provisions of article 35 of this Law shall apply to the resolution referred to by paragraph 1 of this article, and the provisions of article 36 shall apply to the acts of the liquidators and to the powers of the trustees.

3.(42)

TITLE IV

Supplementary provision

Article 39

1. The title of Legislative Royal Decree 1298/1986, of 28 June, on adaptation of current legislation on credit entities to the European Community law is hereby amended henceforth to read as follows:

{ change incorporated into the said Legislative Royal Decree }

2. The heading of chapter I of the said Legislative Royal Decree is hereby amended henceforth to read as follows: { change incorporated into the said Legislative Royal Decree }

3. Article 1 of Legislative Royal Decree 1298/1986, of 28 June, referred to by the following two paragraphs shall henceforth read as follows:

{ change incorporated into the said Legislative Royal Decree with the wording contained

in article 5 of Law 3/1994, of 14 April.}

4. The rest of the references contained in Legislative Royal Decree 1298/1986, of 28 June, or in other subsequent rules to credit establishments shall be understood to be made to credit institutions.

5. Letter f) of article 57 bis of the Banking Regulatory Act of 31 December 1986, introduced into the said Act by virtue of article 4 of Legislative Royal Decree 1298/1986, of 28 June, shall henceforth read as follows:

{ change incorporated into the said Act }

Article 40

1. Liability for an administrative offence shall be borne by the members of the control committees (comisiones de control) of savings banks (cajas de ahorro) held liable for the infractions set forth in the following paragraphs, and shall be subject to application of the sanctions laid down in the same paragraphs.

2. The following are considered very serious infractions by members of savings banks control committees:

a) Gross and persistent negligence in the discharge of the functions legally entrusted to them.

b) Failure to propose to the competent administrative authority the suspension of resolutions adopted by the management body where such resolutions manifestly contravene the Law and unfairly and seriously affect the financial position, results, credit of the savings bank or its depositors or clients, or failure, in such events, to request that the chairman call an extraordinary general assembly of the savings bank.

c) Serious infractions where during the five years preceding their commission a final sanction had been imposed on them for the same type of infraction.

3. The following are considered very serious infractions by members of savings banks control committees:

a) Gross negligence in the discharge of the functions legally entrusted to them, where such conduct is not covered by subparagraph 2.a of this article.

b) Failure to submit to the competent administrative authority the data or reports that must be submitted thereto or which are requested by the said authority in the discharge of its functions, or gross delay in submitting the same.

c) Failure to propose to the competent administrative authority the suspension of resolutions adopted by the management body where the committee considers that such resolutions contravene the law or unfairly and seriously affect the financial position, results, credit of the savings bank or its depositors or clients, provided such conduct is not considered a very serious infraction under paragraph 3 above, or failure, in such events, to request that the chairman call an extraordinary general assembly of the savings bank.

4. Minor infractions imputable to the members of savings banks control committees are considered to be breach by the savings banks of any obligations, provided such breach is not considered a very serious or serious infraction, and repeated failure by those members to attend the meetings of the committees.

5. The sanctions applicable to members of savings banks control committees liable for very serious or serious infractions shall be, respectively, those provided in subparagraphs b), c) and d) of article 12, and a), b) and d) of article 13. In addition, the commission of very serious or serious infractions may be sanctioned with a fine of up to one million pesetas and of up to 500.000 pesetas, respectively. The commission of minor infractions may be sanctioned with a private reprimand or a fine of up to 50.000 pesetas. In determining the specific penalty to be imposed, there shall be taken into account, inasmuch as applicable, the criteria laid down in article 14 of this Law.

6. For the purposes of this article there shall apply the provisions of articles 2, 7, 15, 17 and 18, as well as the provisions of chapter V of title I of this Law.

Article 41

1. Mutual guaranty companies and re-guaranty companies, as well as their directors and managers, who violate regulatory and disciplinary provisions shall bear administrative liability punishable in accordance with the terms of title I of this Law.

2. In this regard, the provisions considered mandatory for those companies in Royal Decree 1885/1978, of 26 July, in Royal Decree 1695/1982, of 18 June, and in the rest of the general provisions that supersede or supplement those regulations shall be considered regulatory and disciplinary provisions.

Article 42

1. For the purposes of exercise by Spanish regional governments of the enforcement powers delegated to them in relation to savings banks or credit cooperatives, the provisions contained in articles 20, 21, 22, 23, 25.2 and 26.1, except for the references contained therein to state agencies or entities, are declared as basic provisions within the meaning of subparagraphs 11, 13 and 18 of article 149.1 of the Spanish Constitution. The provisions of this paragraph shall be construed without prejudice, where applicable, to the possible definition by the regional governments of other violations of their own regulatory and disciplinary rules as very serious, serious or minor infractions.

3. In all events, Banco de España or the authorities of the state administration referred to by article 18 shall maintain enforcement powers in relation to savings banks and credit cooperatives for the infractions covered by subparagraphs b), c) and f) of article 4 and in by subparagraphs g), h), i), k) and p) of article 5 of this Law, or, in general, infractions of provisions of a monetary nature or affecting the solvency of credit institutions to the extent warranted by the need for uniform exercise of those powers to achieve proper functioning of the national monetary or credit system.

4. There shall also rest with Banco de España or with the authorities of the state administration referred to by article 18 the enforcement powers for the afore said institutions in relation to infractions covered by subparagraphs a), h) and i) of article 4, and by a), b), i) and k) of article 5, or similar minor infractions, to the grant of authorisations or receipt of notices, data or documents incumbent upon those institutions, or to resistance, refusal or obstruction of their inspection activities.

5. Where Banco de España learns of acts that may constitute infractions other than those cited in paragraphs 2 and 3 above, it shall forward the same to the relevant regional government. Banco de España shall proceed in the same manner with respect to infractions included in paragraph 2 if it does not deem there to exist the implications for the proper functioning of the national monetary or credit system referred to in the same paragraph.

6. Where a regional government has knowledge of deeds which according to paragraphs 2 and 3 of this article may be infractions that must be sanctioned by the authorities referred to by article 18 of this Law, it shall forward the same to Banco de España.

7. Where the infractions are very serious or serious and the case has been examined and processed by a regional government, the proposed resolution must necessarily be informed by Banco de España.

8. Under paragraphs 1, 11 and 13 of article 149.1 of the Spanish Constitution, and for the purposes of exercise by the regional governments of the powers delegated thereto in relation to savings banks and credit cooperatives, the following are declared basic:

a) The provisions laid down in title II of this Law, except for the references contained therein to state agencies or entities.

b) The provisions laid down in title III of this Law.

Article 43 (43)

1. Banco de España is responsible for authorising the creation of credit institutions and the establishment in Spain of branches of credit institutions not authorised in a European Union Member State. Banco de España is also responsible for registering them in the relevant

registers and for keeping those registers. **(44)**

2. Authorisation of a credit institution shall require prior consultation with the competent supervisory authority of the relevant European Union Member State in any of the following circumstances:

a) Where the new institution will be controlled by a credit institution, an investment firm or an insurance or reinsurance undertaking authorised in the said State.

b) Where its control will be exercised by the parent company of a credit institution, an investment firm or an insurance or reinsurance undertaking authorised in that State.

c) Where its control will be exercised by the same natural or legal persons who control a credit institution, an investment firm or an insurance or reinsurance undertaking authorised in that Member State.

A credit institution shall be considered to be controlled by another where there exists any of the circumstances provided for in article 4 of Law 24/1988, of 28 July, on the Stock Market (Ley de Mercado de Valores).

This consultation shall involve, in particular, assessment of the suitability of the shareholders and the repute and experience of the directors and officers of the new institution or of the parent company, and may be repeated for continual assessment of compliance, by the Spanish credit institutions, with such requirements. **(45)**

3. In the event of creation of credit institutions that will be controlled directly or indirectly by one or more credit institutions authorised or with registered office in a state that is not a member of the European Community, grant of the requested authorisation shall be suspended, denied or restricted as to its effects, where Spain has been notified, according to the provisions of article 9 of the Second Council Directive of 15 December 1989, of a decision adopted by the Community verifying that EC credit institutions do not benefit in the said state from a treatment offering the same competitive opportunities as are available to that state's domestic credit institutions and that the conditions of effective market access are not fulfilled.

4. Authorisation to create a credit institution shall be denied if it lacks the required minimum capital, an appropriate organisational structure, a satisfactory administrative and accounting organisation and adequate internal control procedures within the meaning of Article 30.bis.1.bis to ensure the institution is soundly and prudently managed; or if its directors and managers or those of its parent, if any, do not have the required commercial and professional integrity; or if it does not meet the other legal requirements for engaging in banking activities. **(46)**

5. Authorisation shall also be denied if, in view of the need to ensure the institution is soundly and prudently managed, the suitability of the shareholders who will have a percentage of voting rights or capital equal to or more than 5% or a qualifying holding as defined in Article 56 is not considered to be adequate.

Suitability shall be assessed, among other factors, on the basis of:

a) The commercial and professional integrity of the shareholders. Such integrity shall be presumed where the shareholders are governments or government entities.

b) The financial resources available to these shareholders for meeting their commitments.

c) Lack of transparency in the structure of the group to which the credit institution may eventually belong, or the existence of serious difficulties for inspecting or obtaining needed information on the conduct of its activities.

d) The likelihood that the institution may become inappropriately exposed to the risk associated with the non-financial activities of its sponsors; or, in the case of financial activities, that the stability or control of the institution may be affected by the high risk of said non-financial activities. **(47)**

6. Authorisation granted in accordance with the provisions of this article shall expire if the authorised activities are not commenced within twelve months following the date of notification of the authorisation, for a reason attributable to the party concerned. **(48)**

Article 43 bis (49)

1. Responsibility for overseeing and inspecting credit institutions shall rest with Banco de España. These powers shall extend to any office or centre inside or outside Spanish national territory and, inasmuch as required for the discharge of the functions entrusted to Banco de España, to the companies belonging to the group of the affected credit institution. Banco de España shall also be responsible for supervising consolidatable groups of credit institutions, as provided in Law 13/1992 , of 1 June, on capital and consolidated supervision of financial institutions (Ley sobre Recursos Propios y Supervisión en base consolidada de las Entidades Financieras).

1bis. To properly carry out its supervision functions specified in paragraph 1 above and any others assigned to it by law, Banco de España may gather from the institutions and persons subject to its supervision under the applicable regulations whatsoever information needed to check compliance with the regulatory and disciplinary rules by which they are bound.

To enable Banco de España to obtain such information or confirm its accuracy, the aforesaid institutions and persons are hereby obliged to make available to Banco de España any books, registers and documents it may consider necessary, including software programs, files and databases on any physical or virtual medium.

To this end, access to the information and data required by Banco de España is protected by Article 11.2.a) of Organic Law 15/1999 of 13 December 1999 on the protection of personal data. **(50)**

1ter. Pursuant to Article 4 of Law 30/1992 of 26 November 1992 on the legal regime of general government and of common administrative procedures, the bodies of any State, regional or local government have a duty to cooperate with Banco de España and are obliged to provide, at the latter's request and in a timely manner, any data and information available to them which may be necessary for Banco de España to carry out its functions under current law. **(50)**

1quáter. Banco de España may, by electronic means, communicate to and require of the institutions subject to its supervision, inspection and sanctioning powers stipulated herein the information and measures set out in this Law and in its implementing provisions. Said institutions are obliged to set in place, in the time period specified for doing so, the technical resources required by Banco de España for the efficacy of their electronic communication systems, in the manner specified by the latter for the purpose. **(51)**

2. In the case of branches of credit institutions authorised in other European Community member states, Banco de España may inspect such branches:

a) Pursuant to its own oversight powers, in particular as regards to the liquidity of the branch, execution of monetary policy and proper functioning of the payment system.

b) To collaborate with the supervisory authorities of the member state where the credit institution is authorised, particularly for overseeing the risks undertaken in transactions made in Spanish financial markets.

c) To verify that the activity of the branch is carried on in accordance with the provisions of public interest.

3. For the purposes of adequate discharge of its functions, Banco de España may request of the branches of European Community credit institutions the same information as required from Spanish credit institutions. In accordance with the provisions of article 48.1, there shall be determined the scope of their accounting obligations and of the information they must report for statistical purposes.

4. The administrative rules laid down in this Law for branches of European Community credit institutions shall apply, with the adaptations established by regulation, to the branches of the financial entities provided for in article 55 of this Law.

5. The inspection carried out by Banco de España may likewise extend to the Spanish persons who control credit institutions of other European Community member states, within the framework of collaboration with the authorities responsible for supervising those credit institutions.

6. Without prejudice to the powers that rest with the Spanish Securities Markets Commission , Banco de España shall also have oversight and inspection responsibilities in relation to application of Law 2/1981 , on Regulation of the Mortgage Market (Ley sobre Regulación del Mercado Hipotecario).

7. The resolutions handed down by Banco de España pursuant to the functions referred to by the foregoing paragraphs shall admit of appeal lodged with the Minister of Economy and Finance.

8. The provisions of this article and of the preceding article shall be construed without prejudice to the powers delegated to the regional governments and to the terms of the agreements between Banco de España and regional governments referred to by paragraph 3 of the first additional provision of Law 31/1985, of 2 August, on the Governing Bodies of Savings Banks (Ley de Organos Rectores de las Cajas de Ahorros). In all events, registration in the relevant registers of Banco de España and, where applicable, of the competent regional government shall be an indispensable requirement for the credit institutions referred to by this article to be able to pursue their activities.

Article 44

Article 85 of the General Tax Law (Ley General Tributaria) shall henceforth read as follows:

{article 85 of the said Law was given a new wording by Law 25/1995 , of 20 July.)

Article 45

Article 5.2 of Law 40/1979, of 10 December, on the Legal Rules Governing Currency Controls (Ley sobre Régimen Jurídico de Control de Cambios) shall henceforth read as follows:

{text incorporated into the said Law.)

Article 46

The government shall periodically update the upper limits on the monetary fines provided in title I and in article 40 of this Law, and in the first additional provision, in accordance with the variation recorded in the consumer price index.

Article 47

1. With the aim of guaranteeing the liquidity and solvency of credit institutions for the optimum pursuit of monetary policy and of the function those institutions are called on to play in the national economy, the government is authorised to:

a) Establish and modify, upon prior report from Banco de España, the minimum share capital or, as applicable, the minimum endowment capital which credit institutions must have subscribed, as well as the degree to which the said capital must be paid in, in order to obtain their authorisation and registration in the relevant special registers and maintain the said authorisation and registration.

b) Extend to all the credit institutions set forth in article 2 of Legislative Royal Decree 1298/1986, of 28 June, as worded according to the provisions of this Law, the rules provided in Law 26/1983, of 26 December, on cash reserve requirements of financial intermediaries and in titles one and two of Law 13/1985, of 25 May, on investment requirements, capital adequacy and reporting obligations of financial intermediaries.

2. The provisions approved by the government under paragraph 47.1 above shall be considered basic for the purposes provided in subparagraphs 1, 11 and 13 of article 149.1 of the Spanish Constitution.

Article 48

1. The Minister of Economy and Finance is authorised to establish and modify the accounting standards and forms to be used for the balance sheet and profit and loss account of credit institutions, as well as for the consolidated balance sheets and profit and loss accounts provided for in Law 13/1985, of 25 May, stipulating the frequency and the degree of detail with which the corresponding data must be supplied to the administrative authorities responsible for

their oversight and made public in general by the credit institutions themselves. Pursuant to this authority, which may be delegated by the Minister to Banco de España, there shall not exist any restrictions other than the requirement that the publicity criteria be homogeneous for all credit institutions belonging to the same category and similar for the various categories of credit institutions.

Establishment and modification of the aforesaid standards and forms, with the exception of the reserved accounting statements shall require a prior report from the Spanish Accounting and Auditing Institute (Instituto de Contabilidad y Auditoría de Cuentas). **(52)**

2. With the aim of protecting the legitimate interests of credit institutions' loan and deposit clientele, and without prejudice to the freedom to contract which, in its substantive aspects and with such limitation as may emanate from other legal provisions, must govern the relationships between credit institutions and their clientele, the Minister of Economy and Finance is authorised to:

a) Mandate that the relevant contracts be formalised in writing and determine the precise rules to ensure that those contracts reflect explicitly and with sufficient clarity the parties' commitments and rights given the specific contingencies of each type of transaction, particularly matters relating to transparency of the financial conditions of mortgage loans. For such purpose, the Minister may determine the matters or contingencies which the contracts for typical financial transactions with their customers must address or provide for expressly, require that credit institutions to establish forms of contract for those transactions, and impose some type of administrative monitoring of those forms. The information relating to the transparency of mortgage loans, provided that the mortgage is residential, shall be provided irrespective of the amount of those loans. **(53)**

b) Make it obligatory for clients to be given a copy of the contract duly signed by the credit institution.

c) Mandate that credit institutions must report to the administrative authorities responsible for their oversight and notify to their clientele any conditions regarding the lending or deposit-taking operations, with the obligation to apply those conditions until their modification has been reported or notified.

d) Dictate the necessary rules so that the publicity, by any means, of lending and deposit-taking operations of credit institutions includes all necessary elements for assessing their genuine conditions, regulating the classes of administrative control of that publicity, and with authority to establish, amongst those classes, the prior authorisation system.

e) Carry on, directly or through Banco de España, the regular official publication of certain base interest rates or indices that may be applied by credit institutions to floating rate loans, especially in the case of mortgage loans.

Without prejudice to the freedom to contract, the Minister of Economy and Finance may establish special requirements in relation to the information contained in the contract clauses defining the interest rate and to notification to the debtor of the rate applicable in each period, for those floating rate loan contracts in which there is covenanted the use of base interest rates or indices other than the official ones referred to in the preceding paragraph. **(54)**

f) Extend the scope of application of the rules dictated under the foregoing paragraphs to any contracts or operations of the nature provided for in the said rules, even where the undertaking involved does not hold credit institution status. **(54)**

g) Regulate the special activity of electronic sales of banking services in accordance with the provisions of the legal rules that regulate electronic dealing generally. **(55)**

h) Determine the minimum information to be provided by credit institutions to their customers a reasonable time in advance of the latter assuming any contractual obligation to the institution or accepting any contract or offer thereof, as well as the banking transactions or contracts in which such pre-contractual information will be required. Such information is intended to enable customers to familiarise themselves with the essential features of the products proposed

and assess whether they suit their needs and, insofar as it may be affected, their financial situation. (53)

3. The rules approved under number 1 of this article shall be considered basic for the purposes of subparagraphs 1, 11 and 13 of article 149.1 of the Spanish Constitution. The provisions which the regional governments may dictate under the powers delegated to them in relation to the matters referred to by number 2 of this article may not offer a lower level of protection of the clientele than offered by the provisions approved by the Minister of Economy and Finance under that number.

TITLE Y (56)

Pursuit of lending activities in European Community member states

CHAPTER I

Opening of branches and freedom to provide services in other European Community member states by Spanish credit institutions

Article 49

1. Where a Spanish credit institution intends to open a branch in another member state of the European Community, it shall file a prior application to such effect with Banco de España. The application shall be accompanied by the following information:

- a) A programme of activities specifically indicating the operations it proposes to carry on and the branch organisational structure.
- b) The name and background of the branch's senior officers.

2. Banco de España shall issue a reasoned decision on applications no later than three months after receiving all the information. Banco de España shall approve the application unless the programme of operations presented includes activities for which the credit institution is not authorised or unless Banco de España has reason to doubt, in view of the project in question, the adequacy of the administrative structures or of the financial situation of the credit institution. The absence of a decision by the applicable deadline shall be equivalent to denial of the application.

Banco de España shall communicate to the European Commission and the European Banking Authority the number and nature of the applications referred to in this Article which have been denied.

3. The resolutions handed down by Banco de España in the discharge of the functions provided in the foregoing paragraphs and in titles V and VI shall admit of an ordinary appeal before the Minister of Economy and Finance. (57)

Article 50

When a Spanish credit institution wishes to pursue for the first time, under the freedom to provide services, some type of activity in another EC member state, it shall give prior notice of such intention to Banco de España. No later than one month after receiving this notice, Banco de España shall forward it to the supervisory authority of the member state in question.

The administrative regime laid down in chapter I of title V of Law 26/1988, of 29 July, on Discipline and Intervention of Credit Institutions (Ley sobre Disciplina e Intervención de Entidades de Crédito) may be applied, with the adaptations established by regulation, to the opening of branches or to the freedom to provide services by Spanish financial entities that conform to the regime set out in article 55.

The adaptation shall take into account the specific legislation for those entities, and, where applicable, the powers of non-bank supervisory authorities.

CHAPTER II
Opening of branches and freedom to provide services in Spain by credit institutions from another European Community member state

Article 51

1. Credit institutions authorised in another member state of the European Community may pursue in Spain the activities indicated in article 52, either by opening a branch or under the freedom to provide services. An indispensable condition for this purpose shall be that the authorisation, articles of association and legal regime governing the institution must authorise it to pursue the proposed activities.

2. The credit institutions referred to by the preceding paragraph shall in the pursuit of their activities in Spain abide by the provisions dictated in the public interest at the state, regional or local level, and by such regulatory and disciplinary provisions for credit institutions as may be applicable to them.

Article 52

The activities referred to by the preceding article and which benefit from mutual recognition inside the European Community are the following:

a) Acceptance of deposits or other repayable funds, in accordance with the terms of article one of Legislative royal Decree 1298/1986 of 28 June 1986 on adaptation of current law on credit institutions to European Community law.

b) Lending and credit facilities, including consumer loans, mortgage credit and financing of commercial transactions.

c) Factoring, with or without recourse.

d) Financial leasing.

e) Payment services as defined in Article 1 of the payment services law. **(58)**

f) Issuance and management of other means of payment, such as credit cards, travellers' cheques or bankers' drafts, where this activity is not included in subparagraph e) above. **(59)**

g) Grant of guarantees and similar commitments.

h) Money broking.

i) Trading for own account or for account of customers in: transferable securities, money market instruments or foreign exchange, and financial futures, options and swaps. To carry on these transactions, EC credit institutions may be members of the relevant organised markets established in Spain, provided such membership is allowed by the rules regulating those markets.

j) Participation in securities issues and mediation for direct or indirect account of the issuer in their placement and underwriting of securities issues.

k) Advising and provision of business services in the following areas: capital structure, corporate strategy, acquisitions, mergers and similar matters.

l) Portfolio management and advice.

m) ll) Safekeeping of securities represented as certificates or administration of securities represented as book entries for the account of their owners.

n) Credit reference services.

o) Safe custody services

ñ) Issuance of electronic money. **(59)**

Article 53

1. The opening in Spain of branches of credit institutions authorised in another European Community member state shall not be subject to any prior authorisation requirement or requirement to provide endowment capital.

2. When Banco de España receives notification from the supervisory authority of the credit institution that contains, at least, the information provided in article 49.1, and the rest of the regulatory requirements are fulfilled, it shall proceed to register the branch in the relevant register

of credit institutions. In order to organise its supervision of the branch, Banco de España may stipulate a waiting period of no more than two months after receiving notification from the supervisory authority before the branch can commence its activities. It may also instruct the branch, where appropriate, as to the conditions on which it must pursue its activities in Spain for reasons of public interest.

3. The relevant regulatory instruments shall determine the procedure to be followed if the credit institution intends to make changes which entail modification of the information reported to Banco de España.

Article 54

Credit institutions authorised in another European Community member state may commence their activity in Spain under the freedom to provide services as soon as Banco de España receives notification from the institution's supervisory authority indicating which of the activities set out in article 52 the institution intends to pursue in Spain. This freedom shall also apply where the credit institution proposes to commence for the first time in Spain some other activity of those listed in the said article.

Article 55

1. The administrative regime provided in this chapter, with its regulatory implementation, shall apply to the opening of branches or freedom to provide services in Spain by financial entities authorised or having their registered offices in another member state on the following terms:

1st) Financial entities shall be considered to be those financial institutions which are not credit institutions and whose principal activity consists in acquiring holdings in other entities or in pursuing one or more of the activities set out in article 52 except for those described in subparagraphs a), m) and n).

2nd) The said financial entities must be controlled by one or more credit institutions of the same nationality as the financial entities and which, moreover, hold 90 percent or more of the voting rights.

3rd) The financial entities must be subject to a legal regime that authorises them to pursue the activities they propose to carry on in Spain and must actually pursue those activities in their home state.

4th) The controlling credit institution or institutions shall have demonstrated to the satisfaction of their supervisory authorities that they carry on prudent management of the financial entities and, with the consent of those authorities, that they have declared themselves as joint and several guarantors of the commitments assumed by those entities.

5th) The financial entities and their controlling credit institutions must be subject to supervision on a consolidated basis according to the applicable prudential legal criteria.

The information submitted by the supervisory authority of the financial entity shall include a certificate stating that all of the requirements laid down in this article are fulfilled.

2. The regulatory development referred to by number one above must take into account the specific statutes for those entities and, where applicable, the powers of nonbank supervisory authorities.

TITLE VI (60)

Rules on qualifying holdings

Article 56 Qualifying holdings in credit institutions. (61)

1. For the purposes of this Law, a qualifying holding in a Spanish credit institution shall mean a holding that reaches, directly or indirectly, at least ten percent of the capital or voting rights in the institution. Holdings which do not reach this percentage but allow the holder to exercise notable influence in the institution shall also be considered qualifying. Regulations shall be approved to determine, having regard to the characteristics of the different types of credit institution, when a natural or legal person shall be presumed to exercise notable influence, taking

into account for such purposes, inter alia, the possibility of appointing or replacing a member of its board of directors.

2. The provisions of this title regarding credit institutions shall be construed without prejudice to application of the rules on takeover bids and reporting of qualifying holdings contained in Law 24/1988, of 28 July, on the Stock Market.

Article 57 Obligations relating to holdings in credit institutions. (62)

1. Every natural or legal person who, by themselves or jointly with others, hereinafter referred to as the “potential acquirer”, has decided to acquire, directly or indirectly, a qualifying holding in a Spanish credit institution or to increase, directly or indirectly, such a holding in such a way that, either the percentage of voting rights or capital held is greater than or equal to 20, 30 or 50 percent, or else, by virtue of the acquisition may obtain control of the credit institution, hereinafter referred to as the “proposed acquisition”, shall give prior notice to Banco de España, indicating the amount of the planned holding and all such information as may be determined by regulations. This information must be relevant to the evaluation, and proportional and appropriate to the nature of the potential acquirer and the proposed acquisition.

For the purposes of this title, a control relation shall be considered to exist whenever any of the circumstances provided for in article 42 of the Commercial Code obtain.

For the purposes of this paragraph 1, the voting rights or capital resulting from the underwriting of an issue or placing of financial instruments or placing of financial instruments on a firm commitment basis shall not be taken into account, provided that such rights are not used to intervene in the management of the issuer and are transferred within a year of their acquisition.

When Banco de España receives two or more notifications relating to the same credit institution it shall treat the potential acquirers in a non-discriminatory way.

2. Every natural or legal person who, by themselves or jointly with others, has acquired, directly or indirectly, a holding in a Spanish credit institution, in such a way that the percentage of voting rights or capital held is greater than or equal to five percent, shall immediately notify Banco de España and the credit institution of this fact in writing, stating the amount of the holding obtained.

Article 58 Evaluation of the proposed acquisition. (63)

1. Upon examining the notification referred to in article 57.1, Banco de España, in order to guarantee the sound and prudent management of the credit institution in which the acquisition is proposed, and considering the possible influence of the potential acquirer over the same, shall evaluate the suitability of the potential acquirer and the financial solidity of the proposed acquisition, in accordance with the following criteria:

- a) the commercial and professional repute of the potential acquirer;
- b) the commercial and professional repute and the experience of the directors and managers who are to direct the activity of the credit institution as a consequence of the proposed acquisition;
- c) the financial solvency of the potential acquirer to meet the commitments assumed, especially in relation to the type of activity that is performed or planned to be performed by the credit institution in which the acquisition is proposed;
- d) the capacity of the credit institution to comply over time with the regulatory and disciplinary provisions applicable to it, and in particular, where appropriate, if the group which it will become part of has a structure that does not prevent effective supervision, and that enables information to be effectively exchanged between the authorities competent to carry out such supervision and the division of responsibilities between them to be determined; and,
- e) that there are no signs that would reasonably allow one to assume that:
 - i) in relation to the proposed acquisition, money laundering or terrorist financing operations, in the sense provided for in the law to prevent such activities, are being carried out or have been carried out or attempted; or,
 - ii) that the acquisition may increase the risk that such operations will be carried out.

As soon as it receives the notification, Banco de España will request a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary

Offences, in order to obtain an appropriate assessment of this criterion. Together with this request Banco de España will send to the Executive Service all such information as it may have received from the potential acquirer or have access to in the exercise of its powers that may be relevant to the assessment of this criterion. The Executive Service must send the report to Banco de España within 30 business days from the day following that on which the request for information is received.

2. Banco de España will have a period of 60 business days, from the date on which it has acknowledged receipt of the notification referred to by article 57.1, to carry out the evaluation referred to by the previous paragraph and, where applicable, to oppose the proposed acquisition. The acknowledgement of receipt shall be made in writing within two business days from the date of receipt of the notification by Banco de España, provided that the latter is accompanied by all the information that can be required under article 57.1, and it shall specify to the potential acquirer the exact date on which the evaluation period expires. In the terms of article 71 of Law 30/1992, of 26 November, on the general government legal regime and common administrative procedure, if the notification does not contain all the information that can be required, the potential acquirer will be requested to remedy the defect or provide the necessary information within ten days and advised that if it fails to do so it will be assumed to have desisted from the proposed acquisition.

If Banco de España fails to pronounce an opinion within the above-mentioned period it will be deemed not to oppose the acquisition.

3. If it considers necessary, Banco de España may request information additional to that which it is generally appropriate to require in accordance with the provisions of article 57.1, to properly assess the proposed acquisition. This request shall be made in writing and shall specify the additional information needed. When the request for additional information is made within the first fifty business days of the period established in the previous paragraph, Banco de España may, on a single occasion, stop the period from running from the date of the request for additional information until the date of its receipt. This halt may last for a maximum of twenty business days, which may be extended to thirty, in such cases as may be determined by regulations.

4. Banco de España may only oppose the proposed acquisition when there are reasonable grounds to do so, on the basis of the criteria established in paragraph 1, or if the information supplied by the potential acquirer is incomplete. If, when the evaluation has been completed, Banco de España raises objections to the proposed acquisition it will inform the potential acquirer in writing, giving reasons for its decision, within two business days. This must take place within the period for performance of the evaluation.

When Banco de España does not oppose the proposed acquisition, it may establish a period within which it must be concluded and, where appropriate, it may extend this period.

5. Banco de España may not impose any prior conditions regarding the amount of the holding that must be acquired or take into account the financial needs of the market when the evaluation is performed.

6. The decisions of Banco de España will mention the possible observations or reservations expressed by the competent authority responsible for the supervision of the potential acquirer, consulted in the terms of article 58 bis.

7. At the request of the acquirer or ex officio, Banco de España may publish the reasons for its decision, provided that the information revealed does not affect third parties unconnected with the operation

Article 58 bis Collaboration between supervisory authorities for the evaluation of the proposed acquisition. **(64)**

1. Banco de España, when performing the evaluation referred to in the previous article, shall consult the authorities responsible for supervision in other Member States of the European Union, when the potential acquirer is:

a) a credit institution, an insurance or reinsurance undertaking, an investment firm, or a management company of collective investment institutions or pension funds, authorised in another EU Member State;

b) the parent company of a credit institution, an insurance or reinsurance undertaking, an

investment firm or a management company of collective investment institutions or pension funds, authorised in another EU Member State;

c) a natural or legal person exercising control over a credit institution, an insurance or reinsurance undertaking, an investment firm or a management company of collective investment institutions or pension funds, authorised in another EU Member State.

2. Banco de España, when performing the evaluation referred to in article 58 hereof, shall consult:

a) the Spanish Securities Markets Commission, whenever the potential acquirer is an investment firm or a management company of collective investment institutions, a parent company of an investment firm or of a management company of collective investment institutions or a natural or legal person exercising control over an investment firm or a management company of collective investment institutions.

b) the Directorate General of Insurance and Pension Funds, whenever the potential acquirer is an insurance or reinsurance undertaking, or a management company of pension funds, or a parent company of an insurance or reinsurance undertaking, or of a management company of pension funds, or a natural or legal person exercising control over an insurance or reinsurance undertaking, or over a management company of pension funds.

3. Banco de España shall respond, on a reciprocal basis, to the consultations it receives from the authorities responsible for supervision of the potential acquirers of other Member States, and, where applicable, from the National Securities Market Commission or the Directorate General of Insurance and Pension Funds. In addition, it will provide ex officio and without unjustified delays, all essential information for the evaluation, as well as such other information as may be requested, provided that it is appropriate for the evaluation.

Article 59 Effects of non-performance of the obligations relating to holdings in credit institutions. (65)

When one of the acquisitions regulated in article 57.1 is carried out without prior notice having been given to Banco de España, or when the latter has been notified, but the period provided for in article 58.2 has still not elapsed, or when Banco de España expressly opposes the acquisition, then the following effects arise:

a) In every case, and as a matter of course, the voting rights corresponding to the irregularly acquired holdings cannot be exercised. If they are exercised the votes in question shall be null and void and resolutions may be challenged through legal proceedings, as provided in Section 2 of Chapter V of Legislative Royal Decree 1564/1989, of 22 December, which approved the consolidated text of the Public Limited Companies Law, Banco de España being authorised to do this.

b) If necessary, intervention of the entity or substitution of its directors shall be resolved in accordance with the provisions of Title III.

In addition, the sanctions provided for in Title I shall be imposed.

Article 60 Reduction of holdings. (66)

Every natural or legal person who has decided to cease to hold, directly or indirectly, a qualifying holding in a credit institution, shall give prior notice to Banco de España, indicating the amount of the planned holding. Such a person shall also notify Banco de España if they have decided to reduce their qualifying holding in such a way that the percentage of the voting rights or capital they hold falls below 20, 30 or 50 per cent, or else that they may lose control over the credit institution.

Failure to perform this duty may be sanctioned in accordance with the provisions of Title I.

Article 61

1. Credit institutions shall notify Banco de España as soon as they learn of acquisitions or disposals of interests in their capital that cross any of the levels indicated in articles 57 and 60.

2. Without prejudice to the provisions of paragraph 1 above, credit institutions must report to Banco de España, in the manner and with the frequency established by regulation, on

the composition of their shareholder bases or on such changes as may occur in that composition. The reports shall necessarily include information on interests held in their capital of whatever size by other financial institutions.

Article 62

Where there are well-founded and supported reasons indicating that the influence exercised by persons holding significant interests in a credit institution could be detrimental to the sound and prudent management of the institution and seriously harms its financial position, the Minister of Economy and Finance, at the proposal of Banco de España, may adopt one or more of the following measures:

a) Those provided in paragraphs a) and b) of article 59, although the suspension of voting rights shall not last longer than three years.

b) On an exceptional basis, revocation of the authorisation. In addition, the sanctions applicable under title I of this Law may be imposed.

ADDITIONAL PROVISIONS

First (35) 1. Entities and other persons subject to the regulation and discipline of credit institutions are obliged to maintain the confidentiality of information relating to balances, positions, transactions and other customer operations, without communicating or disclosing such information to third persons.

2. This duty does not apply when the customer or the law permits the communication or disclosure of such information to third persons, or where it is requested by or it must be sent to the respective supervision authorities. In this case, the transfer of the information shall comply with the customer's conditions or with the law.

3. Also exempt from the duty of confidentiality are exchanges of information between credit institutions belonging to the same consolidatable group.

4. Breach of the terms of this provision shall be considered a serious infraction and shall be sanctioned in the terms and in accordance with the procedure provided for in Title I of Law 26/1988, of 29 July, on the Discipline and Intervention of Credit Institutions.

Second. 1. The capital of credit institutions organised as public limited companies (sociedades anónimas) shall in all cases be represented by registered shares.

2. (67)

3. Credit institutions shall make public, in the manner and to the extent determined by the government, the interests held by other Spanish or foreign credit institutions in their capital, and their own equity interests in other credit institutions.

4. (67)

5. (67)

Third. 1. (68)

2. Article 45.c of the Banking Regulatory Act of 31 December 1946 is hereby amended henceforth to read as follows:

{text incorporated into the said law }

Fourth. The credit institutions set forth in article 1.2 of Legislative Royal Decree 1298/1986, of 28 June, shall not be subject to the restriction established in relation to issues of debentures by the first paragraph of article 111 of the Spanish Public Limited Companies Act and article 1.2 of Law 211/1964, of 24 December, on debenture issues by public limited companies and other legal persons.

Fifth. The first paragraph of article 12 of Law 2/1981, of 25 March, on Regulation of the Mortgage Market , is hereby amended henceforth to read as follows:

{text incorporated into the said law }

Sixth. 1. Financing undertakings, financial leasing companies and mortgage lending companies shall not accept funds from the public in the form of deposits, loans, temporary assignment of financial assets or other similar transactions, at sight, for an indeterminate term or for a term less than that determined by the Ministry of Economy and Finance. The said term shall

in no event be less than one year.

2. The provisions of the preceding paragraph shall be applicable to money market brokers, except in relation to temporary assignment of financial assets.

Seventh. 1. Contracts whose exclusive subject matter is the assignment of use of movable or immovable property acquired for that purpose according to the specifications of the future user in exchange for a consideration consisting of periodic payment of the instalments referred to by number 2 of this provision shall be considered financial leasing transactions. The property thus assigned must be used only for the farm, fishery, industrial, commercial, artisan, service or professional operations of the user. The financial lease shall necessarily stipulate an option to buy at the end of the lease term.

Where for whatever reason the user does not eventually acquire the leased property, the lessor may assign the same to a new user, without the principle laid down in the preceding paragraph being considered to have been violated by the circumstance of the property not having been acquired according to the specifications of the new user.

- 2. (69)
- 3. (69)
- 4 (69)
- 5 (69)
- 6. (69)
- 7. (69)

8. The principal activity of financial leasing companies shall be execution of financial leasing transactions. On a supplementary basis, and without their qualifying for the specific tax rules laid down in this provision, they may also pursue the following activities:

- a) Maintenance and upkeep of the leased properties.
- b) Granting of financing in relation to a present or future financial lease.
- c) Intermediation in and management of financial leasing transactions.
- d) Non-financial leasing transactions, which may or may not be supplemented with a purchase option.
- e) Commercial reports and advisory services. (70)

9. The government is authorised to regulate, insofar as not provided for herein, the rules to be complied with by financial leasing companies in the conduct of their activities.

10. Beginning 1 January 1990 the financial leasing transactions provided for in this article may also be carried on by official credit institutions, banks, savings banks, including the Confederación Española de Cajas de Ahorro, Caja Postal de Ahorros and credit cooperatives, in all events in compliance with the conditions laid down in this statute and in the regulatory instruments implementing the same.

Eighth. (71)

Banco de España shall send an annual report to the Spanish parliament on the actions which have given rise to very serious sanctions and to interventions or substitutions under title III of this Law.

Ninth. (72)

Tenth. 1. In relation to natural or legal persons who, without being registered in the legally prescribed administrative registers for financial institutions, offer the public lending or deposit-taking operations or provision of financial services, of whatever nature, the Ministry of Economy and Finance is delegated powers to:

- a) Request from those persons any accounting or other type of information regarding their financial activities with the degree of detail and frequency the Ministry deems fit.
- b) Carry out, directly or through Banco de España, the inspections the Ministry considers necessary for ascertaining the truthfulness of the information referred to by subparagraph a) above or clarifying any other aspect of the financial activities of those persons or institutions.

2. Failure to provide the information requested under 1a) above within the stipulated time limit granted for such purpose, mistruth in the information provided and refusal to accept or resistance to the inspection activities referred to by 1b) shall be considered very serious infractions and may give rise to the Minister of Economy and Finance imposing a fine on the person or institution in question in an amount not to exceed 5.000.000 pesetas, graduated according to the criteria laid down in article 14 of this Law. This sanction may be imposed each time the said information is not provided in due time or each time the obligor refuses to accept or resists the aforesaid inspection activities.

Eleventh..... (73)

Twelfth. (74)

Thirteenth. The foregoing second through twelfth additional provisions shall be considered basic to the regulation of lending activities to the extent that their content does not derive from other instruments that necessarily imply state competence.

Fourteenth. 1. The changes of legal ownership of entities that take place as a result of mergers between credit institutions agreed prior to 1 January 1992 shall not be considered a taxable event for purposes of the establishment opening license fee (Tasa de Licencia de Apertura de Establecimientos).

For these purposes, there shall not apply the provisions of article 187.1 of the consolidated text of the current legal provisions governing local administration as approved by Legislative Royal Decree 781/1986, of 18 April..

2. In mergers of credit institutions, shareholders dissenting or absent from the general meeting in which the merger is resolved shall not have the right of withdrawal.

Fifteenth. When the competent bodies of the regional governments, and their subsidiary agencies and entities so resolve, in the exercise of their powers in relation to savings banks and other entities, to obtain the services of auditors or audit firms to carry out, in the exercise of such powers, work other than the tasks of auditing regulated in article 1 of the Audit Law 19/1988 of 12 July 1988, the provision of services in the exercise of these powers shall be incompatible with the simultaneous performance or performance within the five preceding or subsequent years of any audit work at these same entities or their related firms, all this being without prejudice to the provisions of article 8 of the Audit Law. **(75)**

TRANSITIONAL PROVISIONS

First. 1. Companies which at the effective date of this Law are registered in the Special Register of Financial Leasing Companies maintained by the Directorate General of the Treasury and Finance Policy shall not require authorisation and shall be registered ex officio according to number 8 of the seventh additional provision above, and shall for all purposes hold as from that date financial leasing company status.

2. Within six months after the effective date of this Law, the companies referred to by paragraph 1 above whose capital is represented by bearer shares shall amend their articles of association to transform those shares into registered shares and make the appropriate swap.

3. The operations referred to by paragraph 2 above shall be carried out without accruing any tax in respect thereof directly or indirectly. In particular, the share swap shall not be considered a change in net worth for the purposes of article 20 of Law 44/78 , of 8 September, on the Personal Income Tax (Ley del Impuesto sobre la Renta de las Personas Físicas) and article 15 of Law 61/1978, of 27 December, on the Corporate Income Tax (Ley del Impuesto sobre Sociedades).

4. The provisions of the preceding two paragraphs shall also apply to insurance and reinsurance public limited companies, for which the time limit stipulated in number 2 of this article shall be two years.

Second. Until the Minister of Economy and Finance dictates the relevant provisions in the discharge of the functions delegated thereto in article 48 of this Law, there shall remain in force the rules already dictated regulating those matters.

Three. Banco de España Circulars issued prior to the effective date of this Law under the legal provisions in force from time to time shall continue to apply until they have been modified or superseded by others approved according to the provisions of the eighth additional provision to this Law.

Within one year after this Law comes into force, Banco de España shall approve and publish a consolidated text containing the circulars in force.

Four. Enforcement proceedings whose initiation was ordered prior to the effective date of this Law shall continue to be conducted by the same bodies responsible for them theretofore.

REPEALING PROVISION

At the effective date of this Law, there shall be repealed all provisions of equal or lower ranking opposed to the terms hereof and, in particular, the following:

— In Royal Decree-Law 2532/1929, of 21 November, regulating the rules for people's savings banks and approving the special statute for the Cajas Generales de Ahorro Popular: articles 116 to 139, 143 to 146, 156, 159 and 160.

— The Law of 27 August 1938 on government powers in banking matters.

— The Order of 30 October 1940 on rules for the inspection and intervention of the Cajas Generales de Ahorro y Depósito.

— In the Banking Regulatory Act, of 31 December 1946: articles 38, first paragraph, 56, 57 and 58.

— In Decree-Law 53/1962, of 29 November, on industrial and business banks: the second paragraph of article 3.

— In Royal Decree-Law 15/1977, of 25 February, on fiscal, financial and investment measures: the second title.

— In Royal Decree 896/1977, of 28 March, on the legal rules governing financial institutions: article 3.2 and articles 6 and 13.

— In the 14 February 1978 Order of the Ministry of Finance on the legal rules governing finance entities, as amended by the Order of 19 June 1979: article 13.

— In Royal Decree-Law 5/1978, of 6 March, modifying the powers of Banco de España laid down in the Banking Regulatory Act of 31 December 1946 and Decree-Law 18/1962, of 7 June, article 1.

— In Royal Decree 2860/1978, of 3 November, regulating Credit Cooperatives: article 8.

— In Law 27/1980, of 19 May, modifying the Law of 17 July 1951 on the legal regime governing public limited companies and the Law of 24 September 1964 on debenture issues: number 2 of the additional provision.

— In Royal Decree 685/1982, of 17 March, implementing certain aspects of Law 2/1981, of 15 March, on regulation of the mortgage market: articles 76 to 79.

— In Royal Decree-Law 18/1982, of 24 September, on deposit guaranty funds for savings banks and credit cooperatives: article 5.

— In Law 13/1985, of 25 May, on investment requirements, capital adequacy and reporting obligations of financial intermediaries: article 22.

- .(1) *Incorporated by Law 3/1994, of 14 April, the second paragraph.*
- .(2) *Redrafted according to Royal Decree-Law 14/2013, of 29 November.*
- .(3) *Redrafted according to Law 44/2002, of 22 November.*
- .(4) *Redrafted according to Law 36/2007, of 16 November.*
- .(5) *Redrafted according to Law 5/2005, of 22 April, the letters f) and i).*
- .(6) *Redrafted according to Law 44/2002, of 22 November.*
- .(7) *Redrafted according to Law 3/1994, of 14 April, the letters l) and ll).*
- .(8) *The old letter l) became the current letter m) by application of Article 3 of Law 3/1994, of 14 April.*
- .(9) *Redrafted according to Law 36/2007, of 16 November.*
- .(10) *Letters ñ) and o) incorporated according to Law 36/2007, of 16 November.*
- .(11) *Redrafted according to Law 9/2012, of 14 November, the letter p)..*
- .(12) *Redrafted according to Law 44/2002, of 22 November.*
- .(13) *Redrafted according to Law 2/2011, of 4 March.*
- .(14) *Incorporated by Law 3/1994, of 14 April.*
- .(15) *Redrafted according to Law 36/2007, of 16 November, the letters h) and r)*
- .(16) *Redrafted according to Law 44/2002, of 22 November, the letter u).*
- .(17) *Incorporated by Law 44/2002, of 22 November, the letters s) and t).*
- .(18) *Incorporated by Law 36/2007, of 16 November, the letters u) and v).*
- .(19) *Incorporated by Law 5/2009, of 29 June, the letter w).*
- .(20) *Incorporated by Law 2/2011, of 4 March, the letter x).*
- .(21) *Redrafted according to Law 44/2002, of 22 November.*
- .(22) *Redrafted according to Law 2/2011, of 4 March, the letter a).*
- .(23) *Redrafted according to Law 44/2002, of 22 November.*
- .(24) *Redrafted according to Law 2/2011, of 4 March, the letter a).*
- .(25) *Redrafted according to Law 2/2011, of 4 March, the letter b).*
- .(26) *Redrafted according to Law 44/2002, of 22 November.*
- .(27) *Redrafted according to Law 2/2011, of 4 March, the letter l.a)*
- .(28) *Redrafted according to Law 44/2002, of 22 November.*
- .(29) *Redrafted according to Law 2/2011, of 4 March, the letter l. c*
- .(30) *Incorporated by Law 3/1994, of 14 April.*
- .(31) *Redrafted according to Law 5/2005, of 22 April, the first paragraph.*
- .(32) *Redrafted according to Law 9/2012, of 14 November*
- .(33) *Redrafted according to Royal Decree-Law 10/2012, of 23 March.ç*
- .(34) *Redrafted according to Law 9/2012, of 14 November.*
- .(35) *In accordance with Law 3/1994, of 14 April.*
- .(36) *Redrafted according to Law 21/2011, of 26 July, the second paragraph.*
- .(37) *Redrafted according to Law 2/2011, of 4 March, the first paragraph.*
- .(38) *Incorporated by Law 3/1994, of 14 April.*
- .(39) *Redrafted according to Law 9/2012, of 14 November, paragraph 1 bis.*
- .(40) *Redrafted according to Law 9/2012, of 14 November.*
- .(41) *Incorporated by Law 6/2005, of 22 April.*
- .(42) *Repealed by Law 6/2005, of 22 April, the third paragraph.*
- .(43) *Amended by Law 3/1994, of 14 April.*
- .(44) *Redrafted according to Law 9/2012, of 14 November, the first paragraph.*
- .(45) *Redrafted according to Law 5/2005, of 22 April, the second paragraph.*
- .(46) *Redrafted according to Law 36/2007, of 16 November, the fourth paragraph.*
- .(47) *Redrafted according to Law 5/2009, of 29 June, the fifth paragraph.*
- .(48) *Incorporated by Law 44/2002, of 22 November, the sixth paragraph.*
- .(49) *Incorporated by Law 3/1994, of 14 April.*

- .(50) *Redrafted according to Law 2/2011, of 4 March, the last subparagraph of paragraph 1 bis and paragraph 1 ter.*
- .(51) *Redrafted according to Law 21/2011, of 26 July, paragraph 1 quáter.*
- .(52) *Incorporated this paragraph by Law 13/1992, of 1 June.*
- .(53) *Redrafted according to Law 41/2007, of 7 December, the letters a) and h).*
- .(54) *Incorporated by Law 2/1994, of 30 March, the letters e) and f).*
- .(55) *Incorporated by Law 44/2002, of 22 November, the letter g).*
- .(56) *Incorporated the Title V by Law 3/1994, of 14 April.*
- .(57) *Redrafted according to Royal Decree-Law 10/2012, of 23 March, paragraph 2.*
- .(58) *Redrafted according to Law 16/2009, of 13 November, the letters e) and f)*
- .(59) *Incorporated by Law 21/2011, of 26 July, the letter ñ).*
- .(60) *Incorporated the Title VI by Law 3/1994, of 14 April.*
- .(61) *Redrafted according to Law 5/2009, of 29 June.*
- .(62) *Redrafted according to Law 5/2009, of 29 June.*
- .(63) *Redrafted according to Law 5/2009, of 29 June.*
- .(64) *Incorporated by Law 5/2009, of 29 June.*
- .(65) *Redrafted according to Law 5/2009, of 29 June.*
- .(66) *Redrafted according to Law 5/2009, of 29 June.*
- .(67) *Repealed by Law 3/1994, of 14 April.*
- .(68) *Implicit repeal by Law 3/1994, of 14 April.*
- .(69) *Repealed by Law 43/1995, of 27 December.*
- .(70) *In accordance with Law 3/1994, of 14 April.*
- .(71) *Repealed by Law 13/1994, of 1 June , the first paragraph.*
- .(72) *Implicit repeal by Law 43/1995, of 27 December.*
- .(73) *Implicit repeal by Law 1/1994, of 11 March.*
- .(74) *Implicit repeal by Law 13/1992, of 1 June.*
- .(75) *Incorporated by Law 53/2002, of 30 December.*