MINISTRY OF ECONOMY AND FINANCE

19250 ROYAL DECREE 1332/2005, 11 November 2005, implementing Law 5/2005, 22 April 2005, on the supervision of financial conglomerates, amending other financial sector legislation.

Law 5/2005, 22 April 2005, on the supervision of financial conglomerates, amending other financial sector legislation has two basic goals: to implement a regime of supplementary supervision for financial conglomerates, and the revision of sectoral rules (banking, securities and insurance) so as to achieve an adequate level of consistency between them and align them with the new regime for financial conglomerates.

The Law partially translates into Spanish legislation Directive 2002/87/EC of the European Parliament and of the Council, 16 December 2002, on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, which amends Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC of the Council and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council. Community regulation needs to be set in the context of the actions of the Financial Services Action Plan, which in its pursuit of the achievement of a single market in financial services, provided for the need to bolster the precautionary structures as one of its objectives. Along these lines of action, the Green paper on Financial Services (2005-2010), which defines the criteria for convergence over the next five years, has as one of its objectives the establishment of efficient and effective supervision through the translation, implementation and continuous evaluation of the directives provided for in this plan of action.

However, the law provided for a partial transposition of the directive, which should be completed through this Royal Decree, by virtue of the government's having been empowered in the second final provision of the law to implement the regulations.

Chapter I of the Royal Decree is devoted to establishing the scope of application of the regulation, with a delimitation of the entities subject to the supplementary supervision regime, the means of identifying them, and the determination of the relevant competent authorities. On this issue a special reference should be made to the existence in Spain since 1995 of a supervisor regime covering what Spanish legislation has termed "non-consolidatable mixed groups". This Royal Decree therefore adapts the applicable reporting regime along the lines defined Law 5/2005, 22 April 2005, which allowed the Government to extend all the obligations envisaged for financial conglomerates to non-consolidatable mixed groups that do not comply with the requirement for significant sectoral diversification.

Chapter II establishes the elements of which this supplementary supervision consists: capital adequacy policies, intra-group transactions, risk concentration and management, internal control mechanisms, and the good repute and sufficient experience of the executives of mixed financial holding companies.

Chapter III envisages how the coordinator is to be appointed to supervise the conglomerate, completing its activities through the identification of the financial conglomerate and the entity at its head. Cooperation between competent authorities linked to the same financial conglomerate is also regulated.

Chapter IV covers the activities of the coordinator in the case of breach of the obligations provided for by the Law and by this Royal Decree.

Chapter V indicates the regulatory empowerment of the different supervisors for the implementation of supplementary supervisory methods for groups whose parent company is a regulated entity or a mixed financial holding company whose head office is located outside the European Union.

The final provisions establish the revision of the sectoral rules (banking, securities and insurance) at the level of regulations, in order to achieve sufficient consistency between them and align them with the new regime for financial conglomerates. These provisions also fulfil two purposes in this Royal Decree: firstly, the transposition of Directive 2005/1/EC of the European Parliament and of the Council, 9 March 2005, amending Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC

and 93/6/EEC of the Council, and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC, in order to establish a new organisational structure for financial services committees, which expands certain reporting obligations regarding credit institutions and insurance undertakings, and secondly, the establishment of requirements of common requirements of good professional and business repute for a series of regulated entities (which include money changing establishments and valuation firms), which aims to correct the conceptual dispersion that has existed up until now.

Also, in the insurance field, the regulatory amendments included in the final provisions to establish the reasonable valuation of real property by insurance undertakings.

In virtue whereof, at the proposal of the Ministry of the Economy and the Treasury, in accordance with the Council of State and prior to the Meeting of the Council of Ministers on the 11 November 2005, I hereby P R O V I D E :

CHAPTER I

General provisions

Article 1.- *Object.*

The object of this decree is to implement the provisions of Law 5/2005, 22 April 2005, on the supervision of financial conglomerates, amending other laws on the financial sector (hereinafter, the Law).

Article 2. *Scope of application.*

1. Without prejudice to the provisions on the supervision of groups of financial institutions envisaged in the sectoral rules, regulated entities belonging to financial conglomerates shall be subject to the set of obligations envisaged in this Royal Decree and their implementing provisions.

2. Groups fulfilling all the requirements envisaged in Articles 2 and 3 of the Law, except those envisaged in Article 2.1.c), shall be subject to the provisions of Article 13.2 of this Royal Decree regarding their reporting obligations. Articles 5, 6 and 7 of the Law shall also be applicable to them.

3. In those groups referred to in the last sub-paragraph of the second paragraph of Article 2.5 of the Law, the coordinator and the competent authorities may decide, by common accord:

a) That they are not subject to the set of obligations provided for in chapter II, in which case, the provisions of the preceding paragraph shall apply.

b) That they are only subject to the obligations envisaged in Article 6.

The stated authorities may take the decisions referred to in this paragraph if they consider that the application of the set of obligations envisaged in this Royal Decree is not necessary, or would be inappropriate, or might lead to error regarding the objectives of the supplementary supervision, bearing in mind:

1º. The size of the smallest financial sector, particularly if less than five per cent, calculated in accordance with the average referred to in Article 2.5 of the Law, or in terms of the balance sheet total or the solvency requirements of the aforementioned financial sector.

2º. Their market share, particularly if it does not exceed five per cent in any Member State, measured in terms of the balance sheet total in the banking or investment services sectors and in terms of gross premiums written in the insurance sector.

4. In the case of regulated entities, as referred to in Article 4.4 of the Law, in which one or more natural or legal persons hold participations or have capital ties, or exercise significant influence, the competent authorities may, by mutual accord, require fulfilment of some or all of the obligations envisaged in this chapter, as if the regulated entity constituted a financial conglomerate, provided that at least one of the companies belongs to the insurance sector and another to the banking and investment services sector and that both sectors are significant in the terms laid down in Article 2.5 of the Law.

When arriving at their decision, the aforementioned authorities must take into account the following factors:

a) The possibility that the aforementioned persons may assume, *de facto* or *de jure*, whether by virtue of contractual agreements or any other legal link, sufficient powers, independently from whether they exercise such powers or not, to determine the strategy or form of management of the business of the regulated entities, or appoint a third or more of the members of the board of directors of these entities.

b) The existence of economic interrelations between regulated entities based, among other factors, on direct, indirect or reciprocal financial support, or similar interrelations that entail substantial financial or economic dependence.

c) In the case of cooperatives or mutual insurers, the partner base, whether direct or indirect partners, common to the credit cooperative or mutual insurer affected.

Article 3. *Financial institutions and the financial sector.*

1. For the purposes of this Royal Decree and the provisions of Article 2.4 of the Law, the following entities shall be considered to make up the financial sector of a group:

a) Regulated entities as described in 2.3 of the Law.

b) Mixed financial holding companies envisaged in Article 2.7 of the Law.

c) Venture capital firms and venture capital management companies.

d) Variable capital investment companies.

e) Entities whose main activity is the holding of shares or participations; an entity's main activity shall be understood to be that of holding shares or participations when, on the date of the consolidated financial statements, more than half its assets consist of permanent financial investments in capital, whatever the activity, corporate purpose or articles of association of the participated entities.

f) Conduit companies whose activity is the extension of the business of a financial institution, or which fundamentally consists of providing group entities with auxiliary services, such as holding real property or material assets, providing computer services, valuations, representation, intermediation, or other similar services.

2. The banking and financial services sector shall consist of the financial conglomerate's credit institutions and investment services companies, together with the other entities making up a consolidatable group of credit institutions or consolidatable subgroup of investment services companies.

The insurance sector shall consist of the financial conglomerate's insurance and reinsurance undertakings, and other entities making up a consolidatable group or subgroup of insurance undertakings.

For the above purposes, the provisions of Article 6.4 of Royal Decree 1343/1992, 6 November 1992, implementing Law 13/1992, 1 June 1992, on own funds and supervision of financial institutions on a consolidated basis, shall apply.

Article 4. *Rules applicable to the calculations necessary to identify financial conglomerates.*

1. The calculations envisaged in Article 2 shall be carried out once a year in all those groups in which at least one of the group's entities belongs to the insurance sector and at least one other entity to the banking and investment services sector.

2. The calculations regarding the balance sheet shall be carried out on the basis of the total aggregate balance sheet of the group's entities, in accordance with their annual accounts. Nevertheless, when consolidated accounts are available and these offer independent data for the sectors mentioned in the preceding article, prepared using criteria for assignment equivalent to those indicated in it, these shall be used instead of the aggregate accounts. For the purposes of

these calculations, participations held in companies will be taken into account at the value of the total balance which corresponds to the aggregated proportional part held by the group, provided that consolidated accounts are not used or when they are used that these companies are not included in the figures for the sector in which they have to be integrated.

3. The relevant competent authorities may, by common accord:

a) Exclude an entity when performing the calculations envisaged in paragraphs 4 and 5 of Article 2 of the Law, under the same circumstances as those referred to in Article 6.4 of this Royal Decree.

b) Take into consideration whether the thresholds envisaged in the Law have been observed over three consecutive years, to avoid sudden changes of regime and cease to take this circumstance into consideration if the group's structure suffers significant changes.

For financial conglomerates already identified as such, the foregoing decisions will be taken based on a proposal from the coordinator for the conglomerate.

4. The relevant competent authorities may, in exceptional cases and by common accord, adopt the decision envisaged in Article 2.6 of the Law when they consider that the parameters referred to in the aforementioned precept are especially important for the purposes of supplementary supervision.

Article 5. *Relevant competent authorities.*

For the purposes of the provisions of this Royal Decree, the following shall be the relevant competent authorities:

a) The Spanish competent authorities, or those of other Member States of the European Union that are responsible for the supervision on a consolidated basis of the regulated entities belonging to a financial conglomerate.

b) The coordinator appointed in accordance with Article 14 if different from the authorities referred to in sub-paragraph a) above.

c) Other competent authorities involved, when decided by common accord between the authorities referred to in the two preceding sub-paragraphs; to this end, these shall take into consideration in particular the market share of the regulated entities in the conglomerate in other Member States of the European Union, in particular if it is more than five per cent, and the importance any regulated entity incorporated in another Member State has in the conglomerate.

d) In the case of a financial conglomerate whose foreign regulated entities do not belong to a Member State of the European Union, the *Banco de España* if the financial conglomerate includes a Spanish credit institution; the *Comisión Nacional del Mercado de Valores* if the financial conglomerate includes a Spanish investment services company; or the *Dirección General de Seguros y Fondos de Pensiones* if the financial conglomerate includes a Spanish insurance or reinsurance undertaking.

CHAPTER II

Elements of supplementary supervision

Article 6. *Supplementary capital adequacy requirements.*

1. In those cases where the parent company of the conglomerate is a Spanish regulated entity, or when all the relevant competent authorities are Spanish, the rules envisaged in paragraphs 3 and 4 of this article shall be applied.

In cases other than those envisaged in paragraph 1, the coordinator will decide, after consulting with other relevant competent authorities and the financial conglomerate's regulated entity, which method from among those described in the annex it will use to calculate the capital adequacy requirements of regulated entities in the financial conglomerate.

2. The financial conglomerate eligible own funds are the result of the sum of:

a) The eligible own funds of the credit institution or consolidatable group of credit institutions which form part of the financial conglomerate, as defined in chapter II of title I of Royal Decree 1343/1992, 6 November 1992, and in its implementing regulations.

b) The eligible own funds of the financial services company or consolidatable group of financial services companies which form part of the financial conglomerate, as defined in chapter II of title II of Royal Decree 1343/1992, 6 November 1992, and in its implementing regulations.

c) The uncommitted equity of the insurance undertaking or consolidatable group of insurance undertakings which form part of the financial conglomerate, as defined in the Regulation on the organisation and supervision of private insurance, approved by Royal Decree 2486/1998, 20 November 1998.

From this sum will be deducted:

1. Cross-holdings of shares between the entities within the financial conglomerate, unless their amount has already been eliminated by consolidation or deducted from the eligible own funds of the entities or consolidatable groups comprising the financial conglomerate. These deductions will be made using the book value of the entity holding the shareholdings.

2. The excess, if any, of those elements making up the eligible own funds or uncommitted equity which is not considered as such under the regulations applicable to individual financial institutions or consolidatable financial groups supervised by the Spanish authority acting as the coordinator for the financial conglomerate, on the requirements for the minimum uncommitted own funds or equity of the individual financial institution or consolidatable group in which they are computed. In order to determine this excess, if it exists, the eligible own funds of lowest quality in accordance with the criteria provided for in the applicable sectoral legislation, will be applied first, and those requirements covered by the own funds of the same group as the elements to exclude will be distributed on a pro rata basis.

The coordinator may establish that the amount of any financial transactions or commitments entered into, whether by the various financial institutions belonging to the conglomerate that are not consolidatable with one another or between any of the financial institutions of this group and any third party, that result in a duplication in the computation of the own funds of the financial conglomerate or weaken the effectiveness of the own funds to cover losses on risks assumed by the financial conglomerate as a whole be deducted from the financial conglomerate's effective own funds.

3. The effective own funds of the financial conglomerate, once the deductions envisaged in the preceding paragraph have been made, may not be less at any time than the sum of the own funds and solvency margin requirements established, according to the specific rules, for each class of entities or consolidatable groups making up the financial conglomerate.

When the assets represented by participations or other internal transactions between non-consolidatable entities belonging to the financial conglomerate imply own resource requirements for any of them, or for the consolidatable group, these requirements will not be taken into account in the calculation of the minimum own-resource requirements of the financial conglomerate.

The assets deducted from the own funds will not be considered in the calculation of the minimum own resource requirements of the financial conglomerate.

4. The coordinator may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases:

a) If the entity is situated in a third country where there are legal impediments to the transfer of the necessary information.

b) If the entity is of negligible interest with respect to the objectives of the supplementary supervision. When several companies of the group are in this situation, they must nevertheless be included when collectively they are of non-negligible interest.

c) If the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision. In this case, the coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.

When a regulated entity is excluded under one of the cases provided for in (b) and (c), the competent authorities of the Member State in which that entity is situated may ask the entity which is at the head of the financial conglomerate (reporting entity) for information which may facilitate their supervision of the regulated entity.

5. The solvency requirements referred to in this article will be calculated according to the corresponding sectoral rules.

Article 7. *Technical principles of capital adequacy.*

1. In the cases envisaged in paragraph 2 and in those envisaged in paragraph 5 of the previous article, independently of the method used in this latter case, the technical principles stated in this article shall apply.

2. Whichever method is used, when the entity is a subsidiary undertaking and has a solvency deficit, or, in the case of a non-regulated financial sector entity, a notional solvency deficit, the total solvency deficit of the subsidiary has to be taken into account. Where in this case, in the opinion of the coordinator, the responsibility of the parent company owning a part of the capital is limited strictly and unambiguously to that part of the capital, the coordinator may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

Where there are no capital ties between entities in a financial conglomerate, the coordinator, after consultation with the other relevant competent authorities, shall determine which proportional part will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

3. Moreover, the following principles must be taken into account:

a) The multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (multiple gearing) as well as any inappropriate intra-group creation of own funds must be eliminated; in order to ensure the elimination of multiple gearing and the intra-group creation of own funds, competent authorities shall apply by analogy the relevant principles laid down in the relevant sectoral rules.

b) The solvency requirements for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules; when there is a deficit of own funds at the financial conglomerate level, only own funds elements which are eligible according to each of the sectoral rules shall qualify for verification of compliance with the additional solvency requirements.

c) Where sectoral rules provide for limits on the eligibility of certain own funds instruments, which would qualify as cross-sector capital, these limits would apply mutatis mutandis when calculating own funds at the level of the financial conglomerate.

d) When calculating own funds at the level of the financial conglomerate, competent authorities shall also take into account the effectiveness of the transferability and availability of the own funds across the different legal entities in the group, given the objectives of the capital adequacy rules.

e) Where, in the case of a non-regulated financial sector entity, a notional solvency requirement is calculated according to the Annex, the notional solvency requirement means the capital requirement with which such an entity would have to comply under the relevant sectoral or general rules as if it were a regulated entity of that particular financial sector. In the case of mixed financial holding companies, the notional solvency requirement shall be calculated according to the sectoral rules for the financial conglomerate's most significant financial sector.

Article 8. *Intra-group transactions.*

1. The entity considered to be the head of the financial conglomerate must inform the coordinator, with the frequency the latter decides, and at least annually, of any significant intra-group transactions between the financial conglomerate's regulated entities.

2. For the purposes of the preceding paragraph, an intra-group transaction shall mean any transaction or dealings, independently of their nature, directly or indirectly between the regulated entities belonging to a financial conglomerate and companies of the same group and any natural or legal person linked to the undertakings within that group by "close links", for the fulfilment of an obligation, whether or not contractual, and whether or not for payment.

3. Without prejudice to the provisions of Article 10, any intra-group transaction shall be considered significant if the amount involved is more than five per cent of the eligible own funds of the financial conglomerate.

Article 9. *Risk concentration*.

1. The entity considered to be the head of the financial conglomerate must inform the coordinator, with the frequency the latter decides, and at least annually, of any significant concentration of risk within the financial conglomerate.2. For the purposes of the preceding paragraph, risk concentration" shall mean all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate. Such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

3. Without prejudice to the provisions of the following articles, risks exceeding 10 per cent of the financial conglomerate's eligible own funds shall be considered a significant risk concentration.

Article 10. *Provisions common to intra-group transactions and risk concentrations*.

1. The coordinator, following consultation with the other relevant competent authorities, shall identify those types of operations and risks which regulated entities belonging to financial conglomerates must report, in accordance with the provisions of the two preceding articles, and the valuation criteria of such transactions and risk and other technical points that must be taken into account for the calculations.

For this purpose the aforementioned authorities will take into account the specific characteristics of each financial conglomerate and its risk management structure.

2. The coordinator, following consultation with the other relevant competent authorities and with the financial conglomerate, may define specific thresholds for transactions and risks to be considered significant that are lower than those established in the two preceding articles.

3. When overviewing the intra-group transactions and risk concentrations, the coordinator shall in particular monitor the possible risk of contagion in the financial conglomerate, the risk of a conflict of interests, the risk of circumvention of sectoral rules, and the level or volume of risks.

4. The Ministry of Economy and Finance is empowered to establish, following a report from the *Banco de España*, *Comisión Nacional del Mercado de Valores* and the *Dirección General de Seguros y Fondos de Pensiones*, general quantitative limits and qualitative requirements in relation to significant intra-group transactions and risk concentrations referred to in this article.

Article 11. *Risk management and internal control*.

1. Regulated entities must have, at the level of the financial conglomerate, risk management procedures and adequate internal control mechanisms, and a good administrative and accounting organisation.

2. The risk management processes shall include:

a) Sound governance and management with periodic approval and review by the set of management bodies of the entities included in the conglomerate.

b) Capital adequacy policies appropriate to envisage the impact of the financial conglomerate's commercial strategy on the risk profile and its additional capital requirements.

c) Appropriate procedures to ensure the risk control systems are integrated in the organisation and that the necessary measures are taken to guarantee that the systems applied in all entities included in the financial conglomerate are consistent and that risks can be measured, monitored and controlled at the level of the financial conglomerate.

3. The internal control mechanisms shall include:

a) Adequate mechanisms with respect to the adequacy of additional capital so as to identify and calculate all the significant internal and external risks to which the entity is exposed, and to establish an appropriate relationship between own funds and risks.

b) Sound reporting and accounting procedures to identify measure, monitor and control the intra-group transactions and the risk concentration.

4. Bearing in mind the specific characteristics of each financial conglomerate, the coordinator may, after consulting the other relevant competent authorities, determine the scope and minimum content of the risk management procedures and internal control mechanisms the financial conglomerate must have, as referred to in paragraphs 2 and 3.

5. All the companies included in a financial conglomerate must have appropriate internal control mechanisms in order to collect the necessary data and information for the purposes of supplementary supervision.

Article 12. *Requirements upon the directors of mixed financial holding companies*.

1. The members of the board of directors of mixed financial holding companies, including natural persons representing legal entities that are board members, must be of recognised good business and professional repute and the majority, at least, must have adequate knowledge and experience to perform their duties. General managers or other similar executives of the company must also be of good business and professional repute and have sufficient experience.

2. A person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices. At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law.

3. Persons who have performed duties of top management, direction, control or consultancy in financial institutions or had similar duties in other public or private entities or similar size to the regulated entities of the financial conglomerate for not less than three years shall be considered to have appropriate knowledge and experience to perform their duties in mixed financial holding companies.

4. The financial conglomerate's reporting entity must contact the coordinator to notify it of the status as directors or executives of the people referred to in this article and request their inscription in the special register the coordinator will maintain for this purpose. This notification must be given within 15 days of the person's accepting the office, and it must include the personal and professional details generally required by the coordinator responsible for the register and the documentation declaring the person's acceptance of the office and that he or she meets the requirements of good professional or business repute and, if applicable, experience as set out in this article, and that her or she is not subject to any limitation or incompatibility pursuant to any applicable rules.

Article 13. *Obligation to submit information*.

1. The reporting entities for financial conglomerates must send the coordinator the information, whether periodic or otherwise, the latter requires of them in order to fulfil their obligations. They must also respond to the coordinator's requirements and facilitate inspections, if applicable, without prejudice to the fact that the competent authorities responsible for supervising entities or groups belonging to the conglomerate may address the latter directly in the exercise of their powers of supervision on a standalone or consolidated basis in relation to the entities included in the conglomerate.

2. In the case of the groups envisaged in Article 2.2 of this Royal Decree, the reporting entity must send the relevant competent Spanish authorities all the information that the authority responsible for supervision of the reporting entity might require of them in relation to the calculations envisaged in Article 2 of the Law, in order to verify that the group is not subject to the obligations regarding supplementary supervision, and in relation to the calculation of additional capital that may be required in the event that it comes to be classed as a financial conglomerate.

The reporting entity referred to in the previous sub-paragraph shall be that assigned by application of criteria analogous to those in Article 5.5 of the Law.

CHAPTER III

Elements of supplementary supervision

Article 14. *Rules for the appointment of the coordinator.*

1. When the parent company of a financial conglomerate is a Spanish regulated entity, the coordination function will be exercised by the competent authority responsible for supervision of the consolidatable group to which it belongs or, otherwise, of the entity itself on a standalone basis.

2. In cases other than those provided for in the preceding paragraph, the coordination function will be exercised by the competent authority responsible for supervision of the Spanish regulated entity with the largest balance-sheet total in the most important financial sector.

3. The relevant competent authorities may by common agreement waive the criteria referred to in paragraph 2 if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and appoint a different competent authority as coordinator. In such cases, before taking their decision, the competent authorities shall give the conglomerate an opportunity to state its opinion on that decision.

Article 15. *Identification of the financial conglomerate and the reporting entity.*

1. The *Banco de España* the *Comisión Nacional del Mercado de Valores* and the *Dirección General de Seguros y Fondos de Pensiones* will cooperate closely with one another and with other competent authorities to identify financial conglomerates in which Spanish entities are included. To this end, they may approach regulated entities for which they have competence in order to gather the information necessary, if they do not already possess it, to perform this identification.

2. Having identified a financial conglomerate, the coordinator will inform the reporting entity for the financial conglomerate as defined in Article 5.5 of this fact, of its status as coordinator, and the scope of the obligations of the conglomerate pursuant to the first sub-paragraph of this Royal Decree.

The same procedure will be followed, for the purposes envisaged in Article 13, with respect to the groups defined in Article 2.2.

3. The coordinator will also inform the European Commission and the competent authorities in the Member State in which the mixed financial holding company has its head office, if any, and which authorised the regulated entities belonging to the financial conglomerate of the identification performed, the appointment of the reporting entity, and its status as coordinator.

4. The Ministry of Economy and Finance may establish a register of financial conglomerates detailing the composition and structure of each conglomerate. The Ministry of Economy and Finance may maintain his register itself or through the competent authorities.

Article 16. *Cooperation between competent authorities*.

The collection and exchange of information between competent authorities will take place under the terms of Article 6.3 of the Law and shall cover at least the following aspects:

a) Identification of the group structure of all major entities belonging to the financial conglomerate, as well as of the competent authorities of the regulated entities in the group;

b) Information on the financial conglomerate's strategic policies;

c) The financial situation of the financial conglomerate, in particular as regards capital adequacy, intra-group transactions, risk concentration and profitability.

d) The financial conglomerate's major shareholders and management.

e) The organisation, risk management and internal control systems at the level of the financial conglomerate.

f) Procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;

g) Adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities.

h) Penalties imposed for having committed serious or very serious breaches, and the exceptional measures taken by the competent authorities.

CHAPTER IV

Enforcement measures

Article 17. *Actions in the event of breach*.

1. If the coordinator is of the view that the financial conglomerate is failing to comply with any of the obligations upon it by virtue of the Law and this Royal Decree, and its implementing provisions, it shall notify the competent authorities concerned so as to coordinate its actions to apply those powers granted to it by legislation over regulated entities and mixed financial holding companies.

2. If the breach refers to additional solvency requirements, intra-group transactions or risk concentration, the coordinator, in agreement with the other relevant competent authorities, shall require the reporting entity to prepare an appropriate plan for its return to compliance. This requirement shall not be obligatory when the non-compliance detected in the financial conglomerate is a direct consequence of a deficit of an individual entity or consolidatable group belonging to it, unless, in the coordinator's judgment, this situation places the solvency of the other entities or consolidatable groups of financial institutions belonging to the financial conglomerate at risk.

CHAPTER V

Groups based in third countries

Article 18. *Regulatory empowerment*.

Under the provisions of the second sub-paragraph of Article 8.2 of the Law, the Ministry of Economy and Finance, the *Banco de España* (Bank of Spain) and the *Comisión Nacional del Mercado de Valores* (National Securities Market Commission), each within its respective area of competence, are empowered to provide for other methods of supplementary supervision of groups of which the parent company is a regulated entity or a mixed financial holding company which has its head office outside of the European Union. These methods shall include the indicated authorities' having the power to demand the creation of a mixed financial holding company which has its head office in the European Union.

The methods must achieve the objectives of supplementary supervision and must be notified to the other competent authorities involved and the European Commission.

First transitional provision. *Transitional regime for non-consolidatable mixed groups.*

Until such time as identification of financial conglomerates or the group referred to in Article 2.2. is carried out, and, if applicable, that of its reporting entity according to the provisions of this Royal Decree, groups that at the time of its entry into force are considered non-consolidatable mixed groups shall continue to be subject to all the obligations to send information to which they were subject under title V of Royal Decree 1343/1992, 6 November 1992.

Second transitional provision. *Inscription in special registers.*

Within six months of the entry into force of this Royal Decree, the members of the board of directors, managers or similar of the parent company of any Spanish regulated entity, other than a credit institution, investment services company or insurance or reinsurance undertaking, must apply for its inscription in the corresponding register of senior officials, pursuant to the applicable regulations.

Third transitional provision. *Transitional regime for dossiers of applications for valuation of real property belonging to insurance undertakings by the services of the* Dirección General de Seguros y Fondos de Pensiones*.*

Applications for the valuation of real property belonging to insurance undertakings by the technical services of the *Dirección General de Seguros y Fondos de Pensiones* (Directorate-General for Insurance and Pension Funds) submitted prior to the entry into force of this Royal Decree shall be processed and decided in accordance with the legislation in force at the time of the application.

Single repealing provision. *Regulatory repeal.*

Titles IV and V of Royal Decree 1343/1992, 6 November 1992, implementing Law 13/1992, 1 June 1992, on the own funds and supervision on a consolidated basis of financial institutions, are hereby repealed.

The provisions regarding applications for the valuation of real property belonging to insurance undertakings by the technical services of the *Dirección General de Seguros y Fondos de Pensiones* contained in Order ECO/805/2003, 27 March 2003, on standards of valuation of real property and particular rights for certain financial purposes, are also repealed.

First final provision. *Amendment of Royal Decree 1343/1992, 6 November 1992, implementing Law 13/1992, 1 June 1992, on the own funds and supervision on a consolidated basis of financial institutions.*

Royal Decree 1343/1992, 6 November 1992, implementing Law 13/1992, 1 June 1992, on the own funds and supervision on a consolidated basis of financial institutions, is amended as follows:

One. Article 1 is amended so as to read as follows:

"Article 1. *Concept.*

Groups of financial institutions referred to in chapters I and II of Law 13/1992, 1 June 1992, on the own funds and supervision on a consolidated basis of financial institutions, are those groups of entities of that nature in which any of the following circumstances arise:

a) That a financial institution controls one or more financial institutions.

b) That a natural person, or group of persons acting systematically in concert, or a non-financial entity controls a number of financial institutions."

Two. Article 2 is amended so as to read as follows:

"Article 2. *Control over an entity.*

1. In order to determine whether a relationship of control exists, the criteria envisaged in Article 4 of Law 24/1988, 28 July 1988, on the Securities Market, shall apply.

2. For the purposes of prudential supervision on a consolidated basis envisaged in this Royal Decree, the financial institutions in which a participation is owned will be taken into account. A participation shall be understood to be any right over the capital of another company which, creates a lasting bond with that company and is destined to contribute to the activity of the company, and at all events, the holding, directly or indirectly, of at least 20 per cent of the capital or voting rights.

Three. The first sub-paragraph of paragraph 1 of the Article "Financial Institutions" reads as follows:

"1. For the purposes of this Royal Decree, the following shall have the consideration of financial institutions:

a) Credit institutions.

b) Investment services companies.

c) Insurance and reinsurance undertakings.

d) Investment companies.

e) The management companies of collective investment institutions, and pension fund management companies, whose sole corporate purpose is the administration and management of these funds.

f) Venture capital firms and venture capital management companies.

g) Entities whose main activity is the holding of shares or participations, except mixed financial holding companies subject to supervision at the level of the financial conglomerate.

h) Institutions, of whatever name or type, that in accordance with the regulations applicable to them, carry out business typical of those listed above."

Four. A sub-paragraph 3 is added to Article 4, "Entities belonging to groups of financial institutions by nationality criteria", which reads as follows:

"3. In the case where a credit institution's parent company is a financial institution whose head office is outside of the European Union, the provisions of Article 16.2' shall apply."

Five. Paragraphs 1 and 3 of Article 6, "Consolidation of financial groups", reads as follows:

"1. For the compliance of the obligations envisaged in this Royal Decree and without prejudice to the provisions of paragraph 3, financial institutions belonging to the same group shall consolidate their financial statements with one another under the terms of the specific regulations applicable to each type of group of financial institution. For these same purposes, financial institutions which do not have subsidiaries must prepare financial statements in which they apply analogous criteria to those for consolidation if they have participations in the sense indicated in paragraph 1 of Article 185 of the consolidated text of the Law on Joint Stock Companies, approved by Legislative Royal Decree 1564/1989, 22 December 1989, or if they hold, directly or indirectly, at least 20 percent of the capital or voting rights in another financial institution.

Consolidatable groups of financial institutions must have adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures, and all the entities or companies belonging to them must have adequate mechanisms for reporting the information necessary for compliance with the regulations applicable to the group."

"3. As an exception, the financial statements of insurance undertakings and their groups shall not be consolidated with those of credit institutions and investment services companies and their respective groups, without prejudice to the accounting operations for which consolidation is obligatory, in those cases stated in Law 5/2005, 22 April 2005, on the supervision of financial conglomerates and amending other laws relating to the financial sector.

The mixed financial holding companies mentioned in Article 3.1.g) shall be integrated with the corresponding group or subgroup of financial institutions when they are controlled by a credit institution, an investment services company or an insurance or reinsurance undertaking."

Six. Paragraph 1 of Article 2, "Types of consolidatable groups of financial institutions", shall be amended to read as follows:

"1. For the purposes of this Royal Decree, the following shall be considered consolidatable financial institutions:

a) Consolidatable groups of credit institutions, as regulated in title I.

b) Consolidatable groups of investment services companies, as regulated in title II.

Seven. Sub-paragraph c) of paragraph 1 of the Article "Definition" reads as follows, and a new paragraph 2' is added with the following definition:

"c) That a company whose main activity is the holding of participations in financial institutions, a natural person, a group of natural persons acting systematically in concert, or an entity that is not consolidatable under this Royal Decree, control various financial institutions, at least one of them being a credit institution, always provided that the credit institutions are the largest entities among the financial institutions, in accordance with the criteria laid down to this end by the Ministry of Economy and Finance."

"2'. If the parent company of a Spanish credit institution is a foreign financial institution with its head office outside of the European Union, the *Banco de España* must verify if it is subject to supervision on a consolidated basis by a competent authority in a third country which is equivalent to that provided for in this Royal Decree.

If it is found that there is no equivalent supervisory regime, the system of supervision on a consolidated basis envisaged in this Royal Decree shall be applicable to credit institutions mentioned in the preceding paragraph.

Notwithstanding the provisions of the preceding paragraph, the *Banco de España* may establish other techniques for the supervision of the groups referred to in this section on a consolidated basis. These methods shall include the *Banco de España*'s having the power to require the creation of a mixed financial holding company which has its head office in the European Union.

The methods must achieve the objectives of supervision on a consolidated basis as defined in this Royal Decree and must be notified to the other competent authorities involved and to the Commission."

Eight. A new section 3 is added to Article 17, "prudential supervision", the text of which is as follows:

"3. The *Banco de España* shall perform general supervision of the transactions between credit institutions and other entities included in their consolidatable group, and between all those indicated and the dominant non-financial entity and its subsidiaries. The *Banco de España* is empowered to define the types of transactions or categories of transactions that shall be the object of supervision, and the scope of the information, periodic or otherwise, that should be sent on this matter."

Nine. Sub-paragraphs d') and f') are added and sub-paragraphs b), c) and f) and the final sub-paragraph of paragraph 1, are reworded, as is the second sub-paragraph of paragraph 2 of Article 20, "Composition of own funds":

"b) Effective and express reserves included in the participation fund and the reserve fund of quota-holders (*cuotapartícipes*) of savings banks and their confederation.

c) Regularisation, asset updating or revaluation reserves, and capital gains registered on the accounts under net equity by applying fair value to assets, provided they are subject to the accounting rules in force for credit institutions; the *Banco de España* may decide, taking into account the volatility of the different types of assets, a reduction of up to two third of their gross amount."

"d') The book balance of the generic coverage corresponding to the risk of customer insolvency, that is to say, linked to inherent losses or losses not specifically assigned due to the deterioration in credit risk, provided they are subject to the accounting rules in force for credit institutions, and to the

extent that, taking their profile over time into account, the *Banco de España* may decide on a general basis. At all events, this element may not exceed 1.25 per cent of the risks that have been used as the basis of the calculation of coverage, weighted in the manner determined in Article 26."

"f) The portion of share capital corresponding to non-voting stock and redeemable shares whose duration is not less than that envisaged in Article 22.3 for subordinate finance, regulated in sections 5 and 6 of chapter IV of the consolidated text of the Law on Joint Stock Companies, approved by Legislative Royal Decree 1564/1989, 22 December 1989.

f') Preference shares issued in accordance with the second additional provision of Law 13/1985, 25 May 1985."

"Only the portion of the elements listed in sub-paragraphs a), f), f'), g) and h) that is effectively disbursed shall be included in the calculation of own funds."

"Without prejudice to the power of the *Banco de España* referred to in Article 22.4, participations representing minority interests shall be distributed between sub-paragraphs b), g) and h) of paragraph 1, for the purposes of the limits established in Article 23, in accordance with the following criteria:

a) The elements envisaged in paragraph 1.b) shall include participations in the form of ordinary shares, those in the form of preference shares issued by foreign subsidiaries, provided they are available for coverage of risks and losses under the same conditions, taking into account their specific commercial nature, as ordinary shares, their duration is indefinite and they do not grant accumulative dividend collection rights, and those in the form of non-voting stock which do not grant accumulative dividend collection rights.

b) The elements indicated in paragraph 1.h) shall include participations in the form of non-voting shares issued by Spanish subsidiaries granting accumulative dividend collection rights, preference shares issued by foreign subsidiaries that are available to absorb the institution's losses without the need to proceed to its liquidation, and which either have an unlimited duration or having a limited duration, that duration is not less than that envisaged in Article 22.3 for subordinate finance, and which do not grant accumulative dividend collection rights, as well as redeemable shares that meet these last two conditions.

c) The elements indicated in paragraph 1.g) shall include participations in the form of redeemable shares, and preference shares issued with defined duration by foreign subsidiaries, when they grant accumulative dividend collection rights. At all events, their duration may not be less than that envisaged in Article 22.3 for subordinate finance.

Ten. Sub-paragraph e) of paragraph 1 of Article 21, "Deductions from own funds", is reworded as follows and a sub-paragraph e') is added, which reads as follows:

"e) Participations in financial institutions which do not belong to the consolidatable group when, in a general way, the participation of the credit institution or the consolidatable group of credit institutions is more than 10 per cent of the entity in which the participation is held.

e') Specifically, in the case of participations in insurance undertakings, reinsurance undertakings or entities whose main activity is the holding of participations in insurance undertakings, those participations accounting for more than 20 per cent of the capital of the entity in which they are held shall be deducted."

Eleven. The first sub-paragraph of paragraph 2 and paragraph 4 of Article 22, "Conditions for eligibility of own funds" read as follows:

"2. In order to be considered own funds, the reserves, funds and provisions referred to in sub-paragraphs c), d), d') and e) of paragraph 1 of Article 20 must fulfil the following requirements, to the satisfaction of the *Banco de España*:"

"4. The *Banco de España* shall be responsible for the classification and inclusion in the own funds of a credit institution or a consolidatable group of credit institutions of all types of preference shares or preference participations, issued in accordance with the applicable legislation, of the elements

covered by paragraphs f), f'), g) and h) of paragraph 1 of Article 20, issued by entities themselves or conduit companies and other subsidiaries. The *Banco de España* shall take special care to ensure that the legislation of the country in which the issue takes place, or the interposition of conduit companies or subsidiaries, do not weaken the effectiveness of the requirements and limitations established for these instruments, or their value as the own funds of the group."

Twelve. Sub-paragraphs a) and c) of paragraph 1 and sub-paragraph a) of paragraph 2 of Article 23, "Limits on the calculation of own funds", read as follows:

"a) The basic own funds of a credit institution consist of the sum of the elements included in paragraphs a), b), d) and f') of paragraph 1 of Article 20, and the non-voting shares which do not grant accumulative dividend collection rights, less the amount of the item envisaged in Article 21.1a) and the items included under the headings envisaged in Article 21.1.b), c) and d) regarding these elements."

"c) A credit institution's second category own funds shall consist of the elements contained in paragraphs c), d'), e), g) and h) of paragraph 1 of Article 20, non-voting shares that do not fulfil the conditions necessary for inclusion in the basic own funds and redeemable shares with a duration not less than that envisaged in Article 22.3 for subordinate funding."

"a) Any excess over 50 per cent of the basic own funds of the consolidatable entity or group of elements included in Article 20.1.g) and redeemable shares eligible for inclusion as second category own funds that grant accumulative dividend collection rights."

Thirteen. The sub-paragraph (c) of paragraph 1 of Article 36, "Definition", reads as follows:

"c) That a company whose main activity is the holding of participations in financial institutions, a natural person, a group of natural persons acting systematically in concert, or an entity that is not consolidatable under this Royal Decree, control various financial institutions, at least one of them being a credit institution, always provided that the credit institutions are the largest entities among the financial institutions, in accordance with the criteria laid down to this end by the Ministry of Economy and Finance."

Fourteen. The references made in Royal Decree 1343/1992, 6 November 1992, to consolidatable groups of companies and securities agencies shall be understood to refer to consolidatable groups of investment services companies.

Second final provision. *Amendment of the Regulations implementing Law 13/1989, 26 May 1989, on credit cooperatives, approved by Royal Decree 84/1993, 22 January 1993.*

Paragraph 2 of Article 2, "Requirements for obtaining and retaining authorisation", of the Regulation implementing Law 13/1989, 26 May 1989, of credit cooperatives, approved by Royal Decree 84/1993, 22 January 1993, reads as follows:

"2. A person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices. At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law."

Third final provision. *Amendment of Royal Decree 1245/1995, 14 July 1995, on the creation of banks, cross-border activity and other issues relating to the legal regime of credit institutions.*

Royal Decree 1245/1995, 14 July 1995, on the creation of banks, cross-border activity and other issues relating to the legal regime of credit institutions, is amended as follows:

One. Sub-paragraph f) of paragraph 1 and paragraph 2 of Article 2 "Requirements for the exercise of banking activity", reads as follows, and a new paragraph 6 is added, which reads as follows:

"f) Have a board of directors comprising no less than five members. All the members of the board of directors of the entity, and the members of the board of directors of the parent company, if any, shall be persons of recognised good business and professional repute and the majority, at least, must have adequate knowledge and experience to perform their duties. General managers or other similar executives of the entity and its parent company, if any, must also be of good business and professional repute and have sufficient experience."

"2. A person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices. At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law.

"6. In addition to managing the register of the senior officials of the banking industry, the *Banco de España* (Bank of Spain) shall also be responsible for the creation and management of a register of directors and general managers of parent companies of Spanish banks, other than credit institutions, investment services companies, or insurance or reinsurance undertakings, in which it shall be obligatory to inscribe the directors and other similar executives. For the inscription in this register of these persons their appointment must be notified within 15 days of their taking up their position, together with their personal and professional details, established, in a general way, by the *Banco de España*, and expressly declare in the document that accredits their acceptance of the position, that they meet the requirements of good repute, and if applicable, professional repute, as referred to in this article, and that they are not subject to any limitations or incompatibilities as established in the applicable standards."

Two. Paragraph 2 of the final sub-paragraph of Article 7, "Authorisation of banks subject to control by foreign persons", reads as follows:

"2. If a Spanish bank is due to be controlled by a credit institution, investment services company, or an insurance or reinsurance undertaking authorised in another Member State of the European Union, by the parent company of such entities, or by the same natural or legal persons who control a credit institution, investment services company, or an insurance or reinsurance undertaking in another Member State, before issuing its report as referred to in paragraph 1 of Article 1, the *Banco de España* must consult the authorities responsible for supervision of the foreign credit institution, investment services company, or an insurance or reinsurance undertaking."

"Authorisations granted to banks indicated in this paragraph shall be notified by the *Banco de España* to the European Commission and the competent authorities in the other Members States, specifying the structure of the group to which the controlled entity belongs."

Three. Paragraph 2 of Article 19, "Information on the capital structure of credit institutions", reads as follows:

"3. As soon as it becomes aware of the transfer of shares or contributions of a credit institution that imply a change in control over the entity, as indicated in Article 4 of Law 24/1988, of 28 July 1988, the *Banco de España* shall notify the Ministry of Economy and Finance. The *Banco de España* shall also notify the European Commission and the competent authorities of the other Member States of the modifications in the capital structure established in this paragraph."

Fourth final provision. *Amendment of Royal Decree 692/1996, 26 April 1996, on the legal regime applicable to credit finance institutions.*

Royal Decree 692/1996, 26 April 1996, on the legal regime applicable to credit finance institutions is amended as follows:

One. Paragraph 2 of Article 4, "Authorisation and registration of credit finance establishment subject to control by foreign persons", reads as follows:

"2. If a Spanish credit finance establishment is due to be controlled by a credit institution, investment services company, or an insurance or reinsurance undertaking authorised in another Member State of the European Union, by the parent company of such entities, or by the same natural or legal persons who control a credit institution, investment services company, or an insurance or reinsurance undertaking in another Member State, before issuing its report as referred to in Article 3.1, the *Banco de España* must consult the authorities responsible for supervision of the foreign credit institution, investment services company, or an insurance or reinsurance undertaking.

Authorisations granted to credit finance establishments indicated in this paragraph shall be notified by the *Banco de España* (Bank of Spain) to the European Commission and the competent authorities in the other Members States, specifying the structure of the group to which the controlled entity belongs."

Two. Sub-paragraph e) of paragraph 1 and of Article 5 "Requirements for the exercise of the activity", reads as follows, and a new second sub-paragraph is added to paragraph 3, which reads as follows:

"e) Have a board of directors comprising no less than three members. All the members of the board of directors of the entity, and the members of the board of directors of the parent company, if any, shall be persons of recognised good business and professional repute and at least three of the members of each of the boards must have adequate knowledge and experience to perform their duties. General managers or other similar executives of the entity and its parent company, if any, and natural persons representing legal entities on the board, must also be of good business and professional repute and have sufficient experience.

A person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices. At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law.

Persons who have performed duties of top management, direction, control or consultancy in financial institutions or had similar duties in other public or private entities or similar size to the entity which is planned to create for not less than three years shall be considered to have appropriate knowledge and experience to perform their duties in credit finance establishments."

"The *Banco de España* shall also be responsible for creating and managing a register of directors and general managers of parent companies of Spanish credit finance establishments other than credit institutions, investment services companies and insurance and reinsurance undertakings, in which it shall be mandatory to inscribe directors, managers and other executives with similar responsibilities." The same procedure as envisaged in the preceding sub-paragraph shall be followed for the inscription of such persons in this register."

Fifth final provision. *Amendment of Royal Decree 775/1997, 30 May 1997, on the legal regime for the official approval of valuation services and companies.*

Paragraph 2 of Article 3, "Requirements of official approval" in Royal Decree 775/1997, 30 May 1997, on the legal regime for the official approval of valuation services and companies reads as follows:

"2. For the purposes of official approval, a person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of

commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices.

At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law."

Sixth final provision. *Amendment of the Regulation on the organisation and supervision of private insurance, approved by Royal Decree 2486/1998, 20 November 1998.*

The Regulation on the organisation and supervision of private insurance, approved by Royal Decree 2486/1998, 20 November 1998, is amended as follows:

One. In Article 4, "Application and administrative authorisation", paragraph 1, sub-paragraph b') is added and sub-paragraph e) is amended, to read as follows:

"b') List of shareholders that are classified as insurance undertakings, credit institutions or investment services companies, and, if applicable, participations, regardless of amount, of which the holder is any shareholder in an insurance undertaking, credit institution or investment services company."

"e) List of those who, under any title, are responsible for the effective management of the entity, or its parent entity, with which shall be included the completed questionnaire established for this purpose by the Ministry of Economy and Finance, referring to the conditions in terms of qualifications and professional experience laid down in Article 15 of the Law."

Two. Article 50, "Property and rights suitable for investment of technical provisions", paragraph 10, sub-paragraph d), reads as follows:

"d) Have been valued by an entity authorised to value property in the mortgage market, in accordance with the specific rules for the valuation of real property suitable for the coverage of the technical provisions of insurance undertakings approved by the Ministry of Economy and Finance."

Three. A final sub-paragraph is added to paragraph 1.d) of Article 52, "Valuation of investments of technical provisions", which reads as follows:

"Through its technical services, the *Dirección General de Seguros y Fondos de Pensiones* may verify and review, ex officio, the valuations given to real property and rights over real property."

Four. In Article 59, "Uncommitted own assets", sub-paragraphs e) and f) are added to paragraph 2, and a new paragraph 2' is added, which read as follows:

"e) Participations by insurance undertakings in insurance or reinsurance undertakings, credit institutions, investment services companies, or entities whose main activity consists of the holding of participations in insurance undertakings, equal to or greater than 20 per cent of the capital or voting rights of the entity in which the participation is held."

f) Subordinate finance or other eligible securities in the uncommitted own funds issued by the entities mentioned in the preceding sub-paragraph and acquired by the insurance undertaking."

"2'. The deductions envisaged in paragraph 2 above shall be made at their book value in the holding entity.

As an alternative to the deduction of the elements envisaged in sub-paragraphs e) and f) of paragraph 2, that the insurance undertaking hold in credit institutions, investment services companies and any entity in the financial sector, insurers may apply the methods in the annex to Royal Decree 1332/2005, 11 November 2005, implementing Law 5/2005, 22 April 2005, on the supervision of financial conglomerates and amending other laws on the financial sector. The method ("accounting consolidation") shall only be applied when the entities included in the scope of application of consolidation have a level of integrated management and internal control in

accordance with the provisions of Article 110 of this regulation. The method chosen shall be applied in a consistent manner over time.

At all events, entities belonging to insurance groups and financial conglomerates subject to supplementary supervision may not deduct the elements envisaged in paragraph 2 sub-paragraphs e) and f) that they hold in credit institutions, investment companies, insurance or reinsurance undertakings or insurance undertaking holding companies included within the scope of supplementary supervision."

Five. Sub-paragraph e) of paragraph 1 of the Article "Consolidated group of insurance undertakings" reads as follows:

"e) Entities whose main activity is the holding of shares or participations, except mixed financial holding companies subject to supervision at the level of the financial conglomerate that are not controlled by an insurance or reinsurance undertaking."

Six. The title of Article 110 and paragraph 1 thereof read as follows:

"Article 110. *Internal control and risk management of insurance undertakings*.

1. Insurance undertakings must establish adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures, and have sufficient information available, so that the management of the entity may have up-to-date knowledge of the progress of its activity, the functioning of its departments and distribution networks, and the behaviour of the basic economic and actuarial figures of its business.

The consolidatable group of insurance companies, through the entities comprising it, shall establish adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures to ensure the full availability and adequate presentation of all data and information in general that are necessary for the preparation and completion of the consolidated accounts, including consolidated statements of coverage of solvency margin technical provisions."

Seven. Article 121 reads as follows:

"Article 121. *Administrative registers*.

Books will be opened for each of the types of insurance and reinsurance undertakings envisaged in the Law and the organisations for the distribution of risk coverage between entities or for the provision of common services relating to its activity, and for senior officials and those of the parent company, and for insurance brokers and insurance brokerage firms and their senior officials, all with the necessary breakdown."

Eight. The first sub-paragraph of Article 123, "Administrative register of senior officials of insurance and reinsurance undertakings", paragraph 1, reads as follows:

"1. Insurance undertakings and those whose main activity is the holding of participations in insurance undertakings must apply for the inscription of their directors, general managers or executives with similar responsibilities, authorised representatives, and any other person, whatever their title, responsible for the effective management of such undertakings."

Nine. A ninth additional provision is added, which reads as follows:

"Ninth additional provision. *Information that must be supplied by the* Dirección General de Seguros y Fondos de Pensiones *to the European Union's supervisory bodies*.

In those cases referred to in sub-paragraphs a) and b) of Article 77.2 of the Law, the *Dirección General de Seguros y Fondos de Pensiones* shall inform both the European Commission and the competent authorities in the other Member States."

Seventh final provision. *Amendment of Royal Decree 2660/1998, 14 December, on the changing of foreign currency in establishments open to the public other than credit institutions*.

Paragraph 3 of Article 4, "Requirements for the obtaining and maintaining of authorisation to undertake foreign currency changing activities", of Royal Decree 2660/1998, 14 December, on the changing of foreign currency in establishments open to the public other than credit institutions, reads as follows:

"3. A person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices.

In those cases envisaged in Article 2.1, it shall be considered that the requirements of good professional or business repute are met by the existence of an establishment open to the public in which the applicant's main activity is being undertaken.

At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law."

Eighth final provision. *Amendment of Royal Decree 867/2001, 20 July 2001, on the legal regime applicable to investment services companies.*

Royal Decree 867/2001, 20 July 2001, on the legal regime applicable to investment services companies is amended as follows:

One. Article 14, "Requirements for the exercise of the activity", sub-paragraph e) of paragraph 1 and paragraph 2 read as follows:

"e) Have a board of directors comprising no less than five members in the case of broker-dealers (*sociedades de valores*), and not less than three in the case of brokers (*agencias de valores*) and asset managers (*sociedades gestoras de carteras*). All the foregoing, and their parent company, if any, shall be persons of recognised good business and professional repute and the majority in each board, at least, must have adequate knowledge and experience relating to the securities market to perform their duties. General managers or other similar executives of the entity and its parent company, if any, and natural persons representing legal entities on the board, must also be of good business and professional repute and have sufficient experience.

"2. A person may be deemed to be of good professional or business repute when their career has been characterised by an observance of the laws of commerce or other laws regulating economic activity and business life, and to have abided by good commercial, financial and banking practices. At all events, a person shall be understood to lack such good professional or business repute when they have a criminal record in Spain or abroad, have been disqualified from holding public office, directorships or the management of financial institutions, or are disqualified pursuant to Law 22/2003, 9 July 2003, on Bankruptcy, until the period of disqualification laid down in the court order delivered during the bankruptcy proceedings has elapsed, or are disqualified and not rehabilitated as a result of bankruptcy proceedings prior to the entry into force of the afore-mentioned Law.

Two. A new paragraph 3 is added to Article 16, "Requirements of the application", which reads as follows:

"3. The *Comisión Nacional del Mercado de Valores* shall be responsible for creating and managing a register of directors and general managers of parent companies of Spanish investment services companies, other than credit institutions, investment services companies and insurance and reinsurance undertakings, in which it shall be mandatory to inscribe directors, managers and other executives with similar responsibilities.

For their inscription in this register such persons must give notice of their appointment within 15 days of taking possession of their post, including their personal and professional details as established by the *Comisión Nacional del Mercado de Valores*, and expressly declare, in the document accrediting their acceptance of the post, that they meet the requirements of good repute,

and if applicable, professional repute, as referred to in this article, and that they are not subject to any limitations or incompatibilities as established in the applicable standards

Three. Article 19, "Authorisation of investment services companies subject to control by foreign persons", reads as follows:

"1. Authorisation to create a Spanish investment services company must be the object of prior consultation with the competent supervisory authority in the European Union Member State concerned when any of the following circumstances arise:

a) The new entity is due to be controlled by an investment services company, a credit institution or an insurance or reinsurance undertaking authorised in that Member State.

b) It is due to be controlled by the parent company of an investment services company, a credit institution or an insurance or reinsurance undertaking authorised in that Member State.

c) It is due to be controlled by the same natural or legal persons as those who control an investment services company, a credit institution or an insurance or reinsurance undertaking authorised in that Member State.

An undertaking is considered to be controlled by another when any of the situations envisaged in Article 4 of Law 24/1988, 28 July 1988, on the Stock market, arise.

2. The consultation will be addressed by the *Comisión Nacional del Mercado de Valores* to the equivalent competent supervisory body in the country of origin of the entity exercising control. This consultation will deal, in particular, with the assessment of the suitability of the shareholders and that the directors and executives of the new entity or the parent company are of good repute and have sufficient experience. This consultation may be repeated for the ongoing assessment of compliance by Spanish investment services companies of these requirements."

Ninth final provision. *Amendment of the Regulation on pension funds and plans, approved by Royal Decree 304/2004, 20 February 2004*.

The second sub-paragraph of Article 75, paragraph 2, of the Regulation on pension funds and plans, approved by Royal Decree 304/2004, reads as follows:

"The fund's real property must be valued at least annually. These valuations must be performed by a valuation entity authorised to undertake valuations in the mortgage market, in accordance with the specific regulations for the valuation of real property approved by the Ministry of Economy and Finance. Through its technical services, the *Dirección General de Seguros y Fondos de Pensiones* may verify and review, ex officio, the valuations given to real property."

Tenth final provision. *Basic character*.

This Royal Decree, which shall be basic in nature, is decreed under the competency envisaged in Article 149.1.11 and 13 of the Spanish Constitution.

Eleventh final provision. *Incorporation of European Union Law*.

This Royal Decree completes the translation into Spanish legislation of Directive 2002/87/EC of the European Parliament and of the Council, 16 December 2002, on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, which amends Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC of the Council and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council. This Royal Decree also incorporates into Spanish law Directive 2005/1/EC of the European Parliament and of the Council, 9 March 2005, amending Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC of the Council, and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC, in order to establish a new organisational structure for financial services committees.

Twelfth final provision. *Empowerment for regulatory implementation*.

The Ministry of Economy and Finance, the *Banco de España* and the *Comisión Nacional del Mercado de Valores* are expressly empowered to issue all such provisions as are necessary for the implementation and enforcement of this Royal Decree.

Thirteenths final provision. *Entry into force*.

This Royal Decree shall enter into force on the day following its publication in the "*Boletín Oficial del Estado*" (Official State Gazette) and shall first be applied to the supervision of annual accounts in the 2005 financial year.

Done at Madrid, 11 de November de 2005.

JUAN CARLOS

The Second Vice-President of the Government and Minister for Economy and Finance,

PEDRO SOLBES MIRA

ANNEX

CALCULATION METHODS

The methods referred to Article 6.1 are the following:

Method 1: "Accounting consolidation" method

1. The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the consolidated accounts.

2. The supplementary capital adequacy requirements shall be calculated as the difference between:

a) The own funds of the financial conglomerate calculated on the basis of the consolidated position of the group; the elements eligible are those that qualify in accordance with the relevant sectoral rules; and

b) The sum of the solvency requirements for each different financial sector represented in the group; the solvency requirements for each different financial sector are calculated in accordance with the corresponding sectoral rules.

In the case of non-regulated financial sector entities which are not included in the aforementioned sectoral solvency requirement calculations, a notional solvency requirement shall be calculated.

4. The difference shall not be negative.

Method 2: "Deduction and aggregation" method

1. The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the accounts of each of the entities in the group.

2. The supplementary capital adequacy requirements shall be calculated as the difference between:

a) The sum of the own funds of each regulated and non-regulated financial sector entity in the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules; and

b) The sum of:

1. The solvency requirements for each regulated and non-regulated financial sector entity in the group; the solvency requirements shall be calculated in accordance with the relevant sectoral rules, and

2. The book value of the participations in other entities of the group.

3. In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated. The own funds and solvency requirements will be taken into account in the ratio of their proportional parts, in accordance with the provisions of Article 6.3 and Article 7.

4. The difference shall not be negative.

Method 3: book value/deduction of requirements method

1. The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the accounts of each of the entities in the group.

2. The supplementary capital adequacy requirements shall be calculated as the difference between:

a) The own funds of the parent company or the entity at the head of the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules; and

b) The sum of:

1º. The solvency requirement of the parent company or the head referred to in sub-paragraph a) above, and

2º. The higher of the book value of the parent company's participation in other entities in the group and these entities' solvency requirements; the solvency requirements of the latter shall be taken into account for their proportional share as provided for in Article 6.3 and in Article 7.3.

3. In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated. When valuing the elements eligible for inclusion in the calculation of the supplementary capital adequacy requirements, participations may be valued by the equity method.

4. The difference shall not be negative.

Method 4: combination of methods

A combination of two or three of the methods described above may be used to calculate the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate.