Financial regulation: 2003 Q1

1. INTRODUCTION

During 2003 Q1, the enactment of new financial provisions has proceeded at a relatively moderate pace compared with the previous quarter.

The solvency rules of financial institutions were amended to broaden the definition of trading book to include positions in commodities and in commodities derivatives, and capital requirements were established for the coverage of exposure arising from positions in gold. As regards credit institutions, clearer and more accurate procedures were laid down for communication to the Banco de España of the list of agents to be reported and of the agreements with foreign credit institutions for regular mutual provision of financial services.

The new developments in the field of securities markets were as follows. First, regulations were enacted for Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Securities Registration, Clearing and Settlement System Management Company). These regulations—provided for in the Financial Law—incorporate the existing rules governing the operation of the Securities Clearing and Settlement Service and of the Book-Entry Public Debt Market registration, clearing and settlement system. Second, the scope of collaboration of market-makers was broadened to encompass not only the medium- and long-term government bond market, but also the Treasury bills market. Third, the regulations setting forth the issuance conditions for 2003 and for January 2004 have been enacted, subject to the limitation established in the 2003 State Budget Law. Finally, implementing provisions addressing certain aspects of the secondary markets for olive oil futures and options were laid down.

Other provisions worthy of mention relate to: reporting obligations of insurance undertakings marketing insured provision-for-retirement schemes; regulation of "new firm" private limited companies (*sociedades limitadas nueva empresa*) and amendment of the legal regime governing private limited companies; partial reform of the audit regulations; and changes to State coverage of risk exposure arising from foreign trade.

Finally, three Community directives have been published: the first regulates the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate; the second seeks to bring closer together Member States' regulations on the distance marketing of consumer fi-

nancial services; and the third harmonises the national rules on the taking-up and pursuit of the activities of insurance and reinsurance intermediaries.

2. MODIFICATION OF THE SOLVENCY RULES FOR FINANCIAL INSTITUTIONS

Royal Decree 1343/1992 of 6 November 1992 implementing Law 13/1992 of 1 June 1992 (1) on own funds and the supervision of financial institutions on a consolidated basis empowered the Ministry of Economy to establish the weighting factors of items entailing credit risk for the purpose of calculating the solvency ratio of both credit institutions and securities-dealer companies. These matters were implemented by the Order of 30 December 1992 on solvency rules for credit institutions and by the Order of 29 December 1992 on own funds and the consolidated-basis supervision of securities-dealer companies and their groups.

Subsequently, Royal Decree 1419/2001 of 17 December 2001 (2) partially amended Royal Decree 1343/1992 with a dual objective. On the one hand, it extended, subject to certain requirements, the benefits applicable to State debt to the public debt issued by local authorities (3). As a result the latter was assigned a zero weighting (previously it had a 20% weighting in all cases) for the purposes of calculating the solvency ratio and for the purposes of the law on large exposures. On the other, it transposed to Spanish law Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 amending Directive 93/6/EEC of the Council of 15 March 1993 on the capital adequacy of investment firms and credit institutions and, consequently, broadened the definition of trading book to include positions in commodities and commodity derivatives and in gold.

In addition it empowered the Ministry of Economy to determine, at the proposal of either the Banco de España or the National Securities Market Commission (*Comisión Nacional del Mercado de Valores—CNMV*), depending on the type of institution, the capital requirements for covering the exposure arising from positions in gold and in commodities and commodity derivatives.

In exercise of this power, *Order Eco/3451/2002 of 27 December 2002* (BOE of 17 January 2003) and *Order Eco/29/2003 of 8 January 2003* (BOE of 17 January 2003), partially amending the Order of 30 December 1992 and the Order of 29 December 1992, respectively, were enacted.

First, these Ministerial Orders reproduce the zero weighting of the debt securities of local authorities under the conditions established by the aforementioned Royal Decree.

Second, commodities and commodity derivatives are included in the trading book of credit institutions and of securities-dealer companies. Also, the Banco de España or, if appropriate, the CNMV, is empowered to set the capital requirements of these institutions for covering their exposure arising from positions in these instruments. These requirements will be additional to those established for other obligations.

Finally, capital requirements applicable to credit institutions are established for covering exposure arising from positions in gold. The treatment is similar to that of positions in foreign currencies. In the case of securities-dealer companies, the CNMV is empowered to set capital requirements based on the exposure arising from positions in gold and to define the calculation methods.

3. CREDIT INSTITUTIONS: AGENTS AND AGREEMENTS FOR THE PROVISION OF FINANCIAL SERVICES

Royal Decree 1245/1995 of 14 July 1995 (4) on the establishment of banks, cross-border activities and other matters relating to the legal regime of credit institutions, provided for the figure of agents of credit institutions. Agents are defined as individuals or legal entities to which an institution has granted powers of attorney so that they may regularly act on its behalf, vis-à-vis customers, in the negotiation and execution of operations that are typical of the business of credit institutions, although their activity cannot extend to the execution of guarantees or other off-balance sheet exposures. For their part, credit institutions shall communicate to the Banco de España, in such manner as may be determined, a list of their agents, and a list of foreign credit institutions, indicating the scope of their powers. Subsequently, Banco de España Circular (CBE) 5/1995 of 31 October 1995 specified how these communications must be

(1) See "Regulación Financiera: cuarto trimestre de 1992", in the *Boletín económico,* Banco de España, January 1993, pp. 65-71.

(2) See "Financial Regulation 2001 Q4", in the *Economic bulletin,* Banco de España, January 2002, p. 86.

(3) Pursuant to Article 50.3 of Law 39/1988 of 28 December 1988 regulating local tax authorities, as amended by Article 59 of Law 50/1998 of 30 December 1998 on fiscal, administrative and social measures.

(4) See "Regulación Financiera: tercer trimestre de 1995 ", in the *Boletín económico,* Banco de España, October 1995, pp. 83-90.

made and an annex to the regulation included a specimen of the form on which they must be reflected.

The extensive experience gained since this Circular came into force has shown that it is advisable to specify more clearly and accurately, for practical purposes, the agreements and agents to be reported and, in particular, the manner of communicating to the Banco de España the agreements reached with foreign credit institutions for regular mutual provision of financial services. For this purpose, *CBE 6/2002 of 20 December 2002* (BOE of 23 January 2003), which relates to information on agents of credit institutions and agreements for regular provision of financial services and which replaces and repeals CBE 5/1995, was published.

Under CBE 6/2002 the time period that Spanish credit institutions and the branches in Spain of foreign credit institutions have for communicating to the Banco de España the information on their agents remains at 15 calendar days from the date that powers of attorney are granted. This communication shall not include correspondents; agents with power of attorney for a single specific operation; persons tied to the institution, or to other institutions of the same group, by an employment relationship; agents that only have powers to attract transactions but lack authorisation to negotiate or execute them; and representatives, attorneys-in-fact or employees of legal entities that are agents. All this is without prejudice to the prohibition to act through sub-agents referred to in Article 22 of Royal Decree 1245/1995. The same time period applies for communicating the cancellation of powers to act as representatives or any change in previously communicated data.

As regards the reporting of agreements with foreign institutions, Spanish credit institutions shall communicate to the Banco de España, within one month from signature of the related agreements, the information indicated in the annex to the Circular on foreign credit institutions with which agreements have been reached for regular provision in Spain of financial services to customers on behalf of the foreign institution. This communication shall not include correspondent agreements, i.e. specific agreements under which the Spanish institution only makes deposits and payments on behalf of the foreign institution.

In the case of agreements with foreign credit institutions for mutual provision of financial services, the powers of attorney granted to the foreign institution to act on behalf of the Spanish institution are to be reported, if so required in view of the scope of the functions to be performed, by the same procedure and within the same time period (maximum of 15 days) as for agents. Those granted to the Spanish institution to operate in Spain on behalf of the foreign institution must be reported in the same way as agreements with foreign institutions (maximum of one month).

The communications shall be made on magnetic media or by interlinkage of computers, in accordance with the technical specifications that will be communicated for this purpose. However, exceptionally if there are justified reasons, the Banco de España may grant authorisation to submit this information on the forms included in the annex to the Circular, which must be dated, stamped and signed by a person duly authorised by the remitting institution.

Lastly, to strengthen the legal certainty of the parties, particularly that of the end customer, involved in the provision of financial services through agents, it is stipulated that the information received in this connection shall be public and at all times in the power of the Banco de España, which shall disseminate it appropriately.

4. REGULATION ON SOCIEDAD DE GESTIÓN DE LOS SISTEMAS DE REGISTRO, COMPENSACIÓN Y LIQUIDACIÓN DE VALORES

Law 44/2002 of 22 November 2002 (5) on Reform of the Financial System (hereafter "the Financial Law"), which partially amended Law 24/1988 of 28 July 1988 (6) on the Securities Market, provided that Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Securities Registration, Clearing and Settlement System Management Company, hereafter "the Systems Company") would be governed by this Law and its implementing provisions and by a Regulation to be approved by the Ministry of Economy, following reports from the National Securities Market Commission (CNMV), from the Banco de España and from the regional (autonomous) governments whose autonomy statutes grant them regulatory powers over securities trading centres.

The Financial Law also provided that the Systems Company would be established by

(5) See "Financial Regulation 2002 Q4", in the *Economic bulletin,* Banco de España, January 2003, pp. 101-113.

(6) See "Regulación Financiera: tercer trimestre de 1988", in the *Boletín económico,* Banco de España, October 1988, pp. 61 and 62.

transformation of the company "Promotora para la Sociedad de Gestión de los Sistemas Españolas de Liquidación, S.A." (hereafter "the Sponsor Company"), with the participation of the Servicio de Compensación y Liquidación de Valores (Securities Clearing and Settlement Service, hereafter "the SCLV") and of the Banco de España, and following contribution to the Sponsor Company of the shares of the SCLV and of the resources required to carry out the functions relating to the Book-Entry Public Debt Market.

Once the above-mentioned requirements had been met and the time periods specified in the Financial Law had elapsed, *Order Eco/689/2003 of 27 March 2003* (BOE of 28 March 2003) approving the Systems Company Regulation was enacted. This Regulation will draw on the Regulation of Organisation and Functioning of the Securities Clearing and Settlement Service, with additions and modifications as established in the Order, and the existing rules governing the registration, clearing and settlement system of the Book-Entry Public Debt Market will be applied.

The institutions that are, or become in the future, SCLV members or Public Debt Market management entities or account holders will be participants in the Systems Company, without loss of the continuity of their respective functions, rights or obligations vis-à-vis the registration, clearing and settlement system manager.

The loss or suspension of the status of management entity or account holder will entail loss or suspension of the status of participant in the registration, clearing and settlement system of the Book-Entry Public Debt Market managed by the Systems Company.

As part of the process of authorisation of new management entities or account holders, the Systems Company will issue a report on the suitability of the applicants' technical resources for carrying out their functions relating to the registration, clearing and settlement system of the Book-Entry Public Debt Market,

Finally, the Systems Company will furnish the Ministry of Economy, the Treasury and the various supervisory bodies in their respective areas of competence, and, if applicable, the relevant regional (autonomous) government, with any information requested by them on its registration, clearing and settlement activities, whenever such information is available to it, in accordance with current legislation. Also, it will advise them on all matters relating to the Systems Company's registration, clearing and settlement activities.

5. TREASURY BILL MARKET-MAKERS

The Ministerial Order of 10 February 1999 (7) implemented by the Resolution of 11 February 1999 of the Directorate-General of the Treasury and Financial Policy (hereafter, "the Treasury") established the basic principles for regulating Spanish government debt market-makers. This Order stipulated that the function of market-makers is to promote the liquidity of the Spanish public-debt market and cooperate with the Treasury in external and domestic dissemination of State debt. Later the Resolution of 20 February 2002 redefined the conditions of these institutions' cooperation with the Treasury in the placement of public debt securities on the primary market and their trading on the secondary market.

Recently the *Resolution of 5 March 2003* (BOE of 11 March 2003) of the Directorate-General of the Treasury and Financial Policy both repealed the Resolution of 20 February 2002 and extended the scope of market-maker cooperation to encompass not only the medium- and long-term government bond market, but also the Treasury bill market, in order to ensure market liquidity and maintain competitiveness with other institutional issuers in the euro area.

This Resolution also took the opportunity to amend the regulation of the second round permitted to medium- and long-term bond market-markers, with a view to strengthening their commitment to provide market liquidity via quotations in organised trading systems.

5.1. Requirements for acquiring Treasury bill market-maker status

The requirements for acquiring market-maker status are as follows: have an account in one's own name in the Banco de España's Book-Entry System; meet the requirements laid down in terms of technical and human resources; satisfy the other economic and legal conditions to qualify as fully-fledged members of at least one of the organised electronic trading systems as so determined by the Treasury; operate for at least one month, demonstrating in the primary and secondary Treasury bill markets a commitment similar to that required of market-markers as a whole.

5.2. Rights of bill market-makers

The Treasury bill market-makers that fulfil their obligations may have exclusive access to a

(7) See "Financial Regulation 1999 Q1", in the *Economic bulletin,* Banco de España, April 1999, pp. 60-62.

second round of the Treasury bill tender, which will take place between the allotment of the tender and midday on the business day following the day the tender was held. During the second round, these market-makers may submit bids, which will be allotted at the marginal price resulting from the tender phase. However, in the call for tenders, the Treasury may specify a method other than that used in the previous second-round allotment of tender.

The maximum amount that the Treasury will issue in the second round for each bill will be 12% of the nominal amount allotted in the tender phase of the same bill. The maximum that market-makers meeting specific requirements may obtain in this second phase is calculated by applying a percentage share to the allotments of the last two bill tenders.

5.3. Obligations of bill market-makers

First, the value of the bids submitted by each market-maker in each tender shall be at least 3% of the amount allotted by the Treasury for each type of bill, at yields not exceeding that corresponding to the marginal price less two basis points. However, tenders meeting certain conditions shall be excluded from the computation of compliance with this obligation.

Second, market-makers must assure Treasury bill secondary market liquidity in compliance with the obligations set forth in the Resolution. The Treasury may change the quotation conditions, subject to prior consultation with the market-makers.

The bills considered to be market benchmarks and two additional bill baskets will be defined in meetings between the Treasury and the market-makers. The baskets will be designed such that the overall maturity and liquidity characteristics of the bills in them are similar. The composition of the baskets will be reviewed in accordance with the criteria established in the meetings of market-makers. Market-makers will be divided into two homogeneous groups, with each group having to quote all the market benchmark bills and all those in the basket assigned to it. Every two months the basket that has to be quoted by each group of market-makers will be changed.

Third, each market-maker must furnish such information as the Treasury may request about the debt market, in general, and about its activity on the market, in particular. Specifically, each market-maker must report monthly on its operations for own account and for the account of third parties, on its geographic service area and on the type of entities making up its clientele, using the form included in the annex to the Resolution or such form as may be agreed in the Community co-operation forums.

Finally, market-makers must operate so as to assure that the market functions well, observing such operating obligations as may be established.

5.4. Evaluation of bill market-makers' activities

The Treasury shall evaluate monthly the activities of Treasury bill market-makers in the following areas: subscription of bills at tenders; participation in public-debt management or promotion operations; total monthly quotation and trading of Treasury bills in such organised electronic trading system or systems as may be specified by the Treasury; participation in monthly Treasury bill trading between members of the Book-Entry Public-Debt Market and between market-makers and entities that are not Book-Entry System account holders; and any other activity that reflects commitment to the Spanish public debt market.

The Treasury shall establish the criteria for evaluating Treasury-bill operations performed by market-makers, having regard to the market-making component they entail. Specifically, priority shall be given to quoting and dealing in the organised electronic trading system or systems specified by the Treasury.

5.5. Loss of market-maker status

The causes for which market-maker status will be lost are as follows: communication of the relinquishment of such status by the market-maker to the Treasury, and a decision to this effect by the Directorate-General of the Treasury and Financial Policy, when it considers the market-maker is not maintaining a proper level of commitment to the Public-Debt Market or has failed to comply with its obligations under the Resolution for three consecutive months.

6. STATE DEBT: ISSUANCE CONDITIONS DURING 2003 AND JANUARY 2004

Law 52/2002 of 30 December 2002 on the State Budget for 2003 authorises the government so that, on the proposal of the Minister of Economy and Finance, it may increase State debt during the year 2003, such that the outstanding balance at end-2003 does not exceed that at 1 January 2003 by more than €13,745

million. This limit will apply as at end-2003, and may be exceeded during the course of the year. The Law also stipulated the circumstances that would give rise to its automatic revision. The Ministry of Economy and Finance is empowered to issue, place and manage State debt, subject to the government's criteria and within the quantitative limits set by the State Budget Law, by Royal Decree-Law 1091/1988 of 23 September 1988, which approved the consolidated text of the State Budget Law. These powers corresponded to the Ministry of Economy further to Royal Decree 689/2000 of 12 May 2000, whereunder the basic organisational structure of the Ministries of Economy and of Finance is established.

As is usual for this time of the year, *Royal Decree 29/2003 of 10 January 2003* (BOE of 11 January 2003) has been enacted, providing for the creation of public debt in 2003; *Order Eco/ 43/2003 of 14 January* (BOE 018/2003 of 21 January 2003) providing for the creation of State debt in 2003 and January 2004, and delegating specific powers to the Director-General of the Treasury and Financial Policy; and two *Resolutions of 22 January 2003* (BOE of 31 January 2003 and 3 February 2003, respectively) of the Director-General of the Treasury and Financial Policy, providing for specific issues of Treasury bills and of medium- and long-term government bonds, and releasing the tender operations calendar for the year 2003 and for January 2004.

Broadly, it is envisaged that the same instruments, techniques, practices and other aspects established for the creation of public debt in 2002 will continue to be used. The debt issued or incurred by the State during the current year under all forms of State debt vehicles shall not exceed the limit for the increase in State debt stipulated in Law 52/2002 of 30 December 2002 on the State Budget for 2003. This limit will extend to the month of January 2004, under the terms established, up to the level of 15% of the total debt authorised for 2003, with the amounts thus issued being counted within the limit envisaged in the State Budget Law for 2004.

Regarding State debt issuance procedures, the arrangements of prior years are retained. In particular, the following issuance procedures remain in place: tenders (with competitive and non-competitive bidding), and any other technique that does not involve inequality of opportunity for potential purchasers.

As in previous years, public debt will be issued as *Treasury bills* and *medium- and long-term government bonds*, in all cases exclusively in book-entry form.

6.1. Treasury bills

For 2003, certain changes in original maturities and in grouping of issues have been made to strengthen the Treasury bill market, assure liquidity and maintain competitiveness with other institutional issuers in the euro area. The tenders will be held every four weeks and, to facilitate reinvestment, the issue dates will coincide with the maturity dates of previous issues. However, the original maturities may differ from those tentatively indicated by the number of days necessary to facilitate the grouping of maturity dates, which will be organised so as to fall at two-month intervals as from February 2004.

In addition, the Treasury has resumed its issues of *three- and six-month bills* to expand its presence in the maturities most popular among institutional investors, and has maintained its offering of twelve- and eighteen-month bills, which are alternated with issues of three- and six-month bills. Moreover, the three- and six-month bills are fungible (interchangeable) with twelve- and eighteen-month bills that have the same maturity date, so the measure will allow the volume of outstanding issues to be increased and their liquidity to be maintained throughout the whole of their life.

Finally, the tender structure is unchanged, although, as with medium- and long-term government bonds, tenders are followed by a second round reserved for financial institutions with market-maker status. This second round will be conducted in accordance with the regulations governing these institutions.

In the course of tenders, competitive (8) and non-competitive (9) bids may be made. The minimum nominal amount of competitive bids continues to be €1,000. Higher bids may be made in integer multiples of €1,000. Non-competitive bids follow the same rules, with a maximum nominal amount per bidder of €200,000.

6.2. Medium- and long-term government bonds

The issuance conditions of medium- and long-term government bonds are broadly the same as last year. It continues to be mandatory to make public the annual calendar of regular quarterly tenders, in accordance with market-makers and depending on market conditions and on issuance-related developments during the year. In any

(8) Competitive bids are those in which the price a bidder is prepared to pay for the debt is indicated as a percentage of the face value.

(9) In non-competitive bids the price is not indicated.

event, if market conditions or financing requirements so demand, the Treasury may decide (in the monthly resolution providing for the issuance of bonds for the following month) not to issue instruments at one or more of the maturities tentatively set in the quarterly calendar.

As regards maturity periods, in view of the acceptance and market share merited by government bonds with the maturities as they currently stand, the issuance of both medium- and long-term bonds with their customary maturity periods has been maintained in 2003. Issuance procedures are also retained, with the exception of ten-year government bonds, in which, based on the experience acquired in 2002, it was decided to reinstate the customary tender procedure used for the other instruments.

As with Treasury bills, the minimum nominal amount of competitive bids is €1,000 and higher bids may be made in integer multiples of €1,000. Non-competitive bids follow the same rules, with a maximum nominal amount per bidder of €200,000

7. DEVELOPMENT OF OLIVE OIL FUTURES AND OPTIONS MARKETS

Royal Decree 1814/1991 of 20 December 1991 (10) broadly regulated the official secondary futures and options markets. It was subsequently amended by Royal Decree 695/1995 of 28 April 1995, which established special rules applicable to the official secondary markets for citrus fruit futures and options and empowered the Ministry of Economy to determine, in general terms, the specialities to which the official secondary markets for futures and options based on non-financial assets other than citrus fruits should be subject.

Law 37/1998 of 16 November 1998, amending Securities Market Law 24/1988 of 24 July 1988, empowers the Government to authorise the creation of the different official secondary futures and options markets.

In application of this power, Order Eco/3235/2002 of 5 December 2002 was mandated to develop rules on the specialities applicable to the official secondary markets for olive oil futures and options. This Order empowered the CNMV to mandate the provisions required to implement and execute it, particularly those needed to determine specialisation, professionalism and solvency requirements for industrial members, as well as what accounting information they must send to the CNMV and the governing bodies of these markets and how and when. The CNMV was so empowered by means of publication of *CCNMV 1/2003 of 22 January 2003* (BOE of 7 February 2003).

Regarding the specialisation and professionalism requirements for industrial members of olive oil futures and options markets, the Circular stipulates that to become and remain an industrial member, the applicant must accredit that, for not less than the two years preceding the application, it has been effectively engaging in one or more of the following activities: production, marketing, intermediation or distribution of olive oil.

Should the applicant be an entity that, while forming part of a group of entities engaging in one or more of the above-mentioned activities, has the sole corporate purpose of trading on the olive oil futures and options market (specific-purpose undertaking), the accreditation of these specialisation and professionalism requirements shall refer to the company or companies in its group on behalf of which it acts. For this purpose, a group is defined as all entities comprising a decision-making unit.

As regards solvency requirements, industrial members may have any corporate form that limits the liability of its members or associates to the economic contributions made, must have own funds of not less than €300,000 and must not have incurred a loss in the two years immediately preceding the application.

Industrial members must immediately notify the CNMV and the governing companies of these markets of any circumstance that may significantly affect their financial soundness. Also, they must furnish to these bodies the following documentation:

1. Within a fortnight from the issuance of the auditors' report: annual accounts and directors' report, together with auditors' report on the individual and, if applicable, consolidated accounts.

2. Within two months from the end of each quarter: profit and loss account and interim balance sheet of the entity and, in the case of specific-purpose undertakings, those of the entity or entities for which they render their services or of the consolidated group to which they belong, for each quarter of the financial year.

3. Monthly, and within the month following that to which the information refers: a list of all

(10) See "Regulación financiera: cuarto trimestre de 1991", in *Boletín económico,* Banco de España, January 1992, pp. 63 and 64.

operations performed on the market, distinguishing the operations performed for hedging and/or arbitrage reasons from those performed on an uncovered basis and not related in any way to cash transactions.

The industrial members that are issuers of securities listed on a stock exchange must submit the above-mentioned report in accordance with the specific regulations applicable to listed companies.

The CNMV may exempt industrial members from submitting consolidated accounts if they are of little significance with respect to their market operations or, in the case of interim accounts, if the information required for consolidation can only be obtained at disproportionate cost or with inevitable delays in its preparation with respect to the stipulated submission deadline.

8. INSURANCE UNDERTAKINGS: INFORMATION ON INSURED PROVISION-FOR-RETIREMENT SCHEMES

Law 46/2002 of 18 December 2002 on partial reform of Personal Income Tax amended the laws on Corporate Income Tax and on the Tax on the Income of Non-Residents, as well as Law 40/1998 of 9 December 1998 on Personal Income Tax and Other Tax Provisions, which first introduced Insured Provision-for-Retirement Schemes (IPRSs). IPRSs are new long-term provident saving instruments, the tax regime for which is on a par with that of individual pension schemes provided they meet certain requirements. Specifically, the premiums paid on IPRSs carry entitlement to a personal income tax credit.

Royal Decree 27/2003 of 10 January 2003 amended the personal income tax regulations, developed the new precepts and adapted the recent legal changes to the text of the regulations. In this connection, it incorporated the IPRSs into the regulations in order to specify when the requirement that the main coverage be retirement is deemed to have been met and to spell out the requirements and conditions for switching the mathematical provision to another IPRS. Specifically, it implemented the requirements and conditions of IPRSs and regulates the information to be furnished for tax purposes by the insurance undertakings that market them. Finally, it mandated that, by means of a Resolution of the Directorate-General of Insurance and Pension Funds (DGIPF), disclosure requirements shall be established whereby insurance undertakings marketing IPRSs have to provide certain information to potential customers before the policy is taken out, about guaranteed interest rates, guarantee periods and anticipated expenses, all without prejudice to the disclosure requirements under private insurance regulations. This mandate was put into effect by means of the DGIPF *Resolution of 5 March 2003* (BOE of 12 March 2003).

The Resolution clarifies the extent of certain information to be given when the marketing of IPRSs commences, specifically the reference to interest rate, which is to be understood as an interest rate that is positive and guaranteed in advance, although, the different commercial possibilities of the product make it advisable that the guarantee should not obligatorily be the same over the entire life of the product.

During the entire contract term, insurance undertakings must inform their policy holders in writing of any changes to the initially provided information, particularly if policy supplements are issued or the applicable legislation is amended. This information must be furnished within a maximum of three months.

Information on the amount of mathematical provisions held by policy holders must be received by them at least quarterly.

If the contract has investments assigned to it, express communication must be made of the possible difference between the market value of the related assets and the amount of the mathematical provision. This quarterly information must include any profit sharing that may have been assigned.

9. THE "NEW FIRM" PRIVATE LIMITED COMPANY (SOCIEDAD LIMITADA NUEVA EMPRESA) AND AMENDMENT OF THE LEGAL REGIME OF PRIVATE LIMITED COMPANIES

The reform of Spanish corporate legislation saw a major step forward in 1995 as a result of the required adaptation of Spanish legislation to Community directives on corporate law. Specifically, Law 2/1995 of 23 March 1995 on Private Limited Companies introduced greater flexibility into the legal regime of this business form, which is developed as an essentially private company in which elements of owner-management and of limited liability co-exist harmoniously, making it particularly recommendable for small and medium-sized enterprises.

Since then, work has continued in European institutions to improve and simplify the conditions required for the establishment of firms.

Recently, *Law 7/2003 of 1 April 2003 (BOE of 2 April 2003)* on the "New Firm" Private Limited Company (*Sociedad Limitada Nueva Empresa*) amending Law 2/1995 of 23 March 1995 on Private Limited Companies was enacted to establish a corporate and administrative legal framework capable of stimulating business activity and improving the competitive position of small and medium-sized enterprises on the market, thereby fulfilling the commitment to small enterprises contained in the European Charter.

Specifically, on the one hand, it implements the so-called "New Firm Project" aimed at stimulating the establishment of new firms, particularly small and medium-sized enterprises, which are an essential element of the Spanish economy. Its objective is to expedite to the utmost the administrative formalities required to form and start up a firm, and thus offers the option of performing them telematically. For this purpose, the Electronic Single Document has been introduced to enable the formalities involved in setting up a firm and initiating its activities to be carried out telematically.

On the other hand, Law 2/1995 of 23 March 1995 has been amended to permit the issuance of non-voting shares, allow companies to acquire and temporarily hold their own shares, and modify current civil law in those precepts regulating relationships between family members and the succession of the production unit to endow it with the means of designing, in the entrepreneur's lifetime, the most appropriate succession of the firm in all its possible forms: limited liability company, partnership, sole proprietorship, etc.

Some of the salient features are summarised below:

9.1. Legal regime of "new firm" companies

"New firm" private limited companies (*sociedades limitadas nueva empresa*—hereafter referred to by the Spanish abbreviation "SLNE") are regulated as a special type of private limited company. The corporate name shall be formed by the two surnames and the given name of one of the founders, followed by an alphanumeric code enabling unique unequivocal identification of the company. The corporate name must necessarily include the words "Sociedad Limitada Nueva Empresa" or its abbreviation "SLNE". Only individuals may be shareholders of an SLNE and it may not have more than five shareholders at the time of its formation. The sole shareholder of any given SLNE may not set up or be the sole shareholder of another SNLE and the fact that there is a sole shareholder must be stated in the deed of incorporation or in the purchase deed.

The steps required for execution and registration of an SLNE's deed of incorporation may be performed by electronic, IT or telematic means. Moreover, the time periods for company formation and registration with the registries and tax authorities have been reduced considerably.

The share capital of an SLNE may not be less than €3,012 or more than €120,202. This minimum capital amount may only be disbursed by means of monetary contributions.

Voluntary *inter vivos* transfer of shares is only permitted if it is to individuals, and it shall be subject to the provisions for such transfer set forth in Law 7/2003.

9.2. Governing bodies

The Annual Shareholders' Meeting shall be subject to the provisions of Law 7/2003 and may be called as provided therein, as well as by registered post, with acknowledgement of receipt, addressed to the domicile stated for that purpose by the shareholders, by telematic procedures for notification to shareholders based on certification that an electronic notice of meeting has been sent or by acknowledgement of receipt by the shareholder. In such cases, notice of meeting need not be published in the Official Gazette of the Mercantile Registry or in any of the larger-circulation newspapers of the municipality in which the company's registered office is located. Company administration may be entrusted to a body consisting of a single person or to a body consisting of more than one person whose members act individually or jointly.

10. AMENDMENT OF AUDIT REGULATIONS

Auditing Law 19/1988 of 12 July 1988, implemented by Royal Decree 1636/1990 of 20 December 1990, was an extremely important development in the business world because it increased the transparency of corporate accounting. This Law was subsequently amended several times to adapt it to the realities of corporate developments, particularly by means of Law 44/2002 of 22 November 2002 (11) on Reform of the Financial System.

(11) See "Financial Regulation 2002 Q4", in the *Economic bulletin,* Banco de España, January 2003, pp. 101-113.

Royal Decree 180/2003 of 14 February 2003 (BOE of 27 February 2003) amending Royal Decree 1636/1990 of 20 December 1990, which approved the regulations implementing Auditing Law 19/1988 of 12 July 1988, has recently been enacted.

From the financial standpoint, and in relation to the obligation of auditors to promptly communicate in writing to the Banco de España, the CNMV and the Directorate-General of Insurance and Pension Funds certain important events or decisions at the audited entity that come to their attention in the course of their work, the period established for effectively complying with that obligation is 10 days from the time the auditor becomes aware that such events or decisions have occurred.

Similarly, auditors are required to send a copy of their auditors' report to the supervisory authorities ten days after the end of the period permitted to the audited entity (one week from delivery of the auditors' report), should the latter not have already sent the auditors' report to the supervisory authorities.

11. EXPOSURE ARISING FROM FOREIGN COMMERCE: STATE COVERAGE

The Ministerial Order of 12 February 1998 amended the Ministerial Order of 19 April 1991 so as to update wherever possible the export credit insurance system by adapting it to the liberalising principles and rules introduced by the European Union and bringing it into step with the new realities of foreign trade and of international transactions.

Since that time, the increasing complexity and interdependence of international economic activity, and the appearance and propagation of new risk factors, along with the progressive liberalisation of the more developed markets, have made it advisable to review the regulations on export credit insurance arranged at the State's expense.

Against this background, *Order Eco/180/2003 of 22 January 2003* on coverage at the State's expense of exposure arising from foreign trade, foreign investment and foreign transactions (BOE of 7 February 2003), which repeals the Order of 12 February 1998, responds to these needs and also appropriately adapts commercial trade legislation to the latest European Union rules (specifically the recent Communication from the Commission to the Member States 2001/C/217/02 on short-term export credit insurance) and to regulatory progress in matters as significant as fighting corruption and preserving the environment.

This Order specifies the insurance coverage written on an exclusive basis by Compañía Española de Seguros de Crédito a la Exportación, Sociedad Anónima, Cía de Seguros y Reaseguros to cover the risk of economic loss or damages arising from foreign trade, foreign investment and foreign transactions.

12. DIRECTIVE ON THE SUPPLEMENTARY SUPERVISION OF CREDIT INSTITUTIONS, INSURANCE UNDERTAKINGS AND INVESTMENT FIRMS IN A FINANCIAL CONGLOMERATE

Recent developments on financial markets have led to the creation of financial groups, known as financial conglomerates, offering services and products on diverse markets. Current Community legislation contains a full set of regulations on the prudential supervision of credit institutions, insurance undertakings and investment firms (hereafter "regulated financial institutions" or "regulated entities") considered individually or, where appropriate, as forming part of a banking, investment firm or insurance group, i.e. groups with homogeneous financial activities. However, to date there has not been any group-wide prudential supervision of the regulated financial institutions forming part of these conglomerates.

To fill this gap and to prevent regulatory arbitrage between sectoral rules and those for financial conglomerates, and between the rules of one sector and another, *Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002* (OJEC of 11 February 2002) has been published on supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. This Directive 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.

The scope of the Directive is the supplementary supervision of regulated financial institutions forming part of a financial conglomerate with significant cross-sectoral financial activities. It spans all the financial activities addressed by sectoral financial legislation and all entities engaging principally in these activities, including particularly asset management companies and mixed financial holding companies, as regards the following:

a) *Capital adequacy:* The adjusted own funds of the conglomerate must be at least equal to the sum of the solvency requirements of each financial sector represented in the group. For this purpose, four calculation methods (Annex I) with slight technical differences are permitted: accounting consolidation, deduction and aggregation, book value/requirement deduction and a fourth method which is a combination of the preceding three methods. Regardless of the method, there are common criteria that are taken into account in the solvency test. These are, among others, that the items eligible as own funds shall be those considered eligible under the relevant sectoral rules, and that, if sectoral rules establish eligibility limits on certain instruments, these limits shall apply *mutatis mutandis* when calculating the own funds of the conglomerate.

   The choice of method shall be subject to the following rules:

   — The Member States may require the application of a particular method if the conglomerate is headed by a regulated entity authorised in the Member State in question and if all the relevant competent authorities are located in the same Member State. Otherwise, the States shall authorise the application of any of the methods.

   — In those cases in which any method can be applied (i.e. the Member State has not restricted it to a single one, should that be possible, or the Directive stipulates that all methods must be recognised), the method shall be chosen by the co-ordinator after consultation with the relevant competent authorities and with the conglomerate itself.

b) *Risk concentration and intra-group transactions:* Operations entailing the risk concentration of a conglomerate's regulated entities and significant intra-group transactions (those between a company in the conglomerate and either another company in the conglomerate or a person or entity having close links with it) shall be monitored. Information on both shall be regularly furnished to the co-ordinator.

   What is deemed to be risk concentration or a significant intra-group transaction, and the type of information to be received, shall be determined by the co-ordinator in each particular case—having regard to the specific features of the group in question—, after consultation with the relevant competent authorities and with the conglomerate. Member States are permitted to apply, at the level of the conglomerate, the sectoral rules on intra-group transactions and risk concentration.

   As regards significant intra-group transactions, if no *ad hoc* minimum threshold has been set, the Directive stipulates that an intra-group transaction shall be deemed to be significant is its amount exceeds 5% of the capital adequacy requirements of the financial conglomerate. Also, Member States are authorised to adopt quantitative or qualitative limits in respect of intra-group transactions.

c) *Internal control mechanisms:* Finally, Member States shall require regulated entities to have in place, at the level of the financial conglomerate, adequate risk management systems and internal control mechanisms. The minimum content of these systems and mechanisms is described. They shall be subject to supervisory overview by the co-ordinator.

The Directive defines a financial conglomerate as any group of entities meeting the following conditions:

a) The ratio of the balance sheet total of the regulated and non-regulated financial sector entities to the balance sheet total of the group as a whole must exceed 40%.

b) If the group engages in activities in different financial sectors, for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group must exceed 10%.

c) Cross-sectoral activities shall also be deemed to be significant if the balance sheet total of the smallest financial sector in the group exceeds €6 billion.

However, if a group complying with c) does not reach the threshold specified in b), the Directive permits the competent authorities to decide by common agreement that, under certain circumstances, the group will not be regarded as a financial conglomerate. Further, the competent authorities may, in exceptional cases and by common agreement, replace the criterion based on balance sheet total with other param-

eters, such as income structure or off-balance-sheet activities, if it is considered that they are of particular relevance for supplementary supervision purposes.

Furthermore, in order to ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate, a single co-ordinator (12) responsible for co-ordinating and exercising supplementary supervision shall be designated, in accordance with certain criteria, from among the competent authorities in the Member States concerned.

The tasks to be carried out by the co-ordinator with regard to supplementary supervision shall include: co-ordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules; supervisory overview and assessment of the financial situation of a financial conglomerate; assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions; and assessment of the financial conglomerate's structure, organisation and internal control system.

The competent authorities responsible for supervising the regulated entities in a financial conglomerate and the competent authority designated as co-ordinator of that financial conglomerate shall co-operate closely with each other. Without prejudice to their respective responsibilities defined in sectoral rules, these authorities, whether or not established in the same Member State, shall provide one another with any information which is relevant or essential for the exercise of the other authorities' supervisory tasks under the sectoral rules and this Directive.

Pending further harmonisation between sectoral rules, the Member States shall provide that their competent authorities shall have the power to take any supervisory measure deemed necessary in order to avoid or to deal with the circumvention of sectoral rules by regulated entities in a financial conglomerate. In addition, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on mixed financial holding companies or their effective managers, which infringe laws, regulations or administrative provisions enacted to implement this Directive. In certain cases, such measures may require the intervention of the courts. The competent authorities shall co-operate closely to ensure that such penalties or measures produce the desired results.

The Directive sets forth in more detail than the sectoral directives the levels of co-operation between authorities, which shall provide one another with essential or relevant information about the conglomerate (they shall communication essential information on their own initiative, and relevant information on request).

Also, competent authorities shall verify whether regulated entities whose parent undertaking has its head office outside the Community are subject to supervision by a third-country competent authority that is equivalent to the supervision provided for by the provisions of this Directive. In the absence of equivalent supervision, Member States shall apply to the regulated entities in the conglomerate, by analogy, the Directive's provisions on supplementary supervision, and may even require the establishment of a mixed financial holding company whose registered office is in the Community to head the European regulated entities. Other supervisory methods considered appropriate may also be applied if they achieve analogous objectives to those pursued by supplementary supervision.

As in the sectoral directives, the negotiation of co-operation agreements with third countries on the supplementary supervision of regulated entities in a financial conglomerate is provided for.

Finally, the Directive appropriately amends the current sectoral directives on credit institutions, insurance undertakings and investment firms to prevent regulatory arbitrage between sectoral rules and those for financial conglomerates, and between the rules of one sector and another. The changes made include most notably the following:

1) The definitions of "financial holding company" and "mixed financial holding company" are changed such that where a group of credit institutions is headed by a financial holding company (an entity engaging principally in the holding of stakes in credit institutions, investment services firms or insurance undertakings) and the conditions are such that it is deemed to head a conglomerate, the group as a whole shall be subject to the supplementary supervision provided for in the new Directive, rather than consolidated supervision under the sectoral directive.

2) In order to avoid double counting of own funds, stand alone entities or groups not

(12) The co-ordinator will normally be the supervisor of the regulated entity heading the financial conglomerate or of the most important entity in it.

deemed to be conglomerates shall deduct stakes in insurance and reinsurance undertakings that exceed 20% of the investee (banking-securities cross-sectoral stakes are already deducted in the portion exceeding 10% of the investee or if the total thereof exceeds 10% of the investee's own funds). As an alternative to such deduction, the Member States may authorise the application, *mutatis mutandis*, of the methods included in the Annex. Similar regulation will foreseeably be introduced in the insurance sector. Further, Member States may provide that for the calculation of own funds on a stand-alone basis, entities subject to supervision on a consolidated or supplementary basis may be authorised not to deduct the items relating to cross-sectoral stakes. Provision is made for the competent authority to permit exceptions to the rules on deduction of cross-sectoral stakes if those stakes are held temporarily as part of a financial assistance operation intended to save the investee.

3) Requirements are established as to the fit and proper character of the senior managers of financial holding companies.

4) Credit institutions' operations with their parent company when that parent is a mixed financial holding company, and with the parent company's other subsidiaries, shall be subject to supervisory overview: compulsory internal control mechanisms to identify, measure and monitor risk, and information about significant operations. Provision is made for the authority to take appropriate measures if the operations are a threat to the credit institution's financial position.

5) In the case of non-Community parent companies (non-EU credit institutions or financial holding companies), a test shall be performed on the supervision to which the group is subject in its home country and on the principles provided for in consolidated supervision to determine whether they are equivalent (it shall be performed by the authority that would have been responsible for such supervision, after consultation with the other interested authorities and with the banking consultative Committee). In the absence of equivalent supervision, by analogy consolidated supervision shall be applied, although the Member States may authorise other supervision techniques if they achieve similar objectives. In particular, the establishment of a mixed financial holding company which has its head office in the Community may be required, and the provisions on consolidated supervision applied to it.

13. DIRECTIVE CONCERNING THE DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES

Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, regulated the minimum precontractual information to be received by consumers and recognised certain rights when distance contracts for goods or services were entered into by a supplier and a consumer. However, financial services were excluded from that Directive.

The distance marketing of financial services (13) will constitute one of the main achievements of the completion of the internal market, both for consumers and for financial service suppliers.

In order to safeguard freedom of choice, which is an essential consumer right, it is advisable to establish a legal framework protecting consumers to enhance their confidence in the new techniques for distance marketing of financial services. This applies whether or not the supplier has an establishment in the consumer's Member State of residence.

For this purpose, *Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002* (OJEC of 9 October 2002) concerning the distance marketing of consumer financial services was published. This Directive amends and adapts the scope of Directive 97/7/EC and of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, as well as the scope of the cancellation period in the second Council Directive 90/619/EEC of 8 November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance.

The main features of the Directive are as follows:

13.1. Scope

The Directive aims to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services. In the case of contracts for financial services comprising an initial service agreement followed by successive operations or a

(13) For the purposes of this Directive, "financial service" shall refer to any banking, credit, insurance, personal retirement, investment or payment service.

series of separate operations of the same nature performed over time, the provisions of this Directive shall apply only to the initial agreement. For the purposes of this Directive, "distance contract" means any contract concerning financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

13.2. Information to the consumer prior to the conclusion of the distance contract

In good time before the consumer is bound by any distance contract or offer, he shall be provided with information concerning, inter alia: the identity and main business of the supplier, the geographical address at which the supplier is established; the trade register in which the supplier is entered and his registration number; the particulars of the related supervisory authority if a certain activity of the supplier is subject to an authorisation scheme; the total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it; the existence or absence of a right of withdrawal and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay, as well as the consequence of non-exercise of that right; and information on any rights the parties may have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any penalties imposed by the contract in such cases.

The information shall be communicated in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of persons.

In the case of voice telephony communications, at the beginning of any conversation with the consumer, the identity of the supplier and the commercial purpose of the call initiated by the supplier shall be made explicitly clear. Following the express acceptance of the consumer, certain information shall be provided, such as: the identity of the person in contact with the consumer and his link with the supplier; a description of the main characteristics of the financial service; the total price to be paid by the consumer to the supplier for the financial service including all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it; the existence or absence of a right of withdrawal and, where the right of withdrawal exists, its duration and the conditions for exercising it.

13.3. Communication of the contractual terms and conditions and of the prior information

The supplier shall communicate to the consumer all the contractual terms and conditions on paper or on another durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

At any time during the contractual relationship the consumer is entitled, at his request, to receive the contractual terms and conditions on paper. In addition, the consumer is entitled to change the means of distance communication used, unless this is incompatible with the contract concluded or the nature of the financial service provided.

13.4. Right of withdrawal

The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from the contract without penalty and without giving any reason. However, this period shall be extended to 30 calendar days in distance contracts relating to life insurance covered by the second Council Directive 90/619/EEC of 8 November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance and personal retirement.

The right of withdrawal shall not apply to:

a) Financial services whose price depends on fluctuations in the financial market outside the supplier's control, such as: services related to foreign exchange transactions; money market instruments; transferable securities; units in collective investment undertakings; financial futures contracts, including equivalent cash-settled instruments; forward interest rate agreements (FRAs); and interest rate swaps.

b) Travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration.

c) Contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his right of withdrawal.

In addition, Member States may provide that the right of withdrawal shall not apply to:

a) Any credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, or for the purpose of renovating or improving a building.

b) Any credit secured either by mortgage on immovable property or by a right related to immovable property.

c) Declarations by consumers using the services of an official, provided that the official confirms that the consumer is guaranteed the rights.

When the consumer exercises his right of withdrawal, he may only be required to pay, without any undue delay, for the service actually provided by the supplier in accordance with the contract. The performance of the contract may only begin after the consumer has given his approval. The amount payable shall not exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract and shall be such that in no case could it be construed as a penalty.

However, Member States may provide that the consumer cannot be required to pay any amount when withdrawing from an insurance contract.

Moreover, Member States shall ensure that appropriate measures exist to allow a consumer to request cancellation of a payment where fraudulent use has been made of his payment card in connection with distance contracts.

13.5. Unsolicited services

Without prejudice to Member States' provisions on the tacit renewal of distance contracts, when such rules permit tacit renewal, Member States shall take the necessary measures to prohibit the supply of financial services to a consumer without a prior request on his part, when this supply includes a request for immediate or deferred payment, and to exempt the consumer from any obligation in the event of unsolicited supplies, the absence of a reply not constituting consent.

13.6. Sanctions

Member States shall provide for appropriate sanctions in the event of the supplier's failure to comply with national provisions adopted pursuant to this Directive. They may provide for this purpose in particular that the consumer may cancel the contract at any time, free of charge and without penalty. These sanctions must be effective, proportional and dissuasive.

To end the comments on this Directive, it should be pointed out that it establishes, for the first time, the maximum level of harmonisation. It has abandoned the minimum harmonisation approach used to date because it seeks to achieve the uniform application of Community legislation needed to build a harmonised single market for financial services.

Finally, it should be pointed out that the Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 9 October 2004. They shall forthwith inform the Commission thereof. Also, not later than 9 April 2006, the Commission shall report to the European Parliament and the Council on the problems facing both consumers and suppliers seeking to buy and sell financial services, and shall submit, where appropriate, proposals to amend and/or further harmonise the information and right of withdrawal provisions in Community legislation concerning financial services.

14. DIRECTIVE ON INSURANCE MEDIATION

Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers and, in particular, transitional measures in respect of those activities, represented a first step to facilitate the exercise of freedom of establishment and freedom to provide services for insurance agents and brokers. Also, Commission Recommendation 92/48/EEC of 18 December 1991 on insurance intermediaries was largely followed by Member States and helped to bring closer together national provisions on the professional requirements and registration of insurance intermediaries.

However, there are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market. It is therefore appropriate to replace Directive 77/92/EEC with a new directive. To this end, *Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002* (OJEC of 15 January 2003) on insurance mediation was published.

The most important new features are described below.

14.1. Scope, authorisation conditions and registration

The Directive lays down rules for the taking-up and pursuit of the activities of insurance and reinsurance mediation by natural and legal persons which are established in a Member State or which wish to become established there.

Insurance and reinsurance intermediaries shall be registered with a competent authority in their home Member State, although the Member States need not apply this requirement to all the natural persons who work in an undertaking and pursue the activity of insurance or reinsurance mediation. As regards legal persons, Member States shall register such persons and shall also specify in the register the names of the natural persons within the management who are responsible for the mediation business.

Registered insurance and reinsurance intermediaries shall be allowed to take up and pursue the activity of insurance and reinsurance mediation in the Community by means of both freedom of establishment and freedom to provide services.

Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary. Also, insurance and reinsurance intermediaries shall be of good repute.

Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least €1,000,000 applying to each claim and in aggregate €1,500,000 per year for all claims.

14.2. Notification of establishment and services in other Member States

Any insurance or reinsurance intermediary intending to carry on business for the first time in one or more Member States under the freedom to provide services or the freedom of establishment shall inform the competent authorities of the home Member State. Within a period of one month after such notification, those competent authorities shall inform the competent authorities of any host Member States wishing to know, of the intention of the insurance or reinsurance intermediary and shall at the same time inform the intermediary concerned.

14.3. Customer protection

Member States shall take all necessary measures to protect customers against the inability of the insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured. Such measures shall take any one or more of the following forms:

a) Provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them.

b) A requirement for insurance intermediaries to have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of €15,000.

c) A requirement that customers' monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy.

d) A requirement that a guarantee fund be set up.

14.4. Information to be provided by the insurance intermediary

Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information: his identity and address; the register in which he has been included and the means for verifying that he has been registered; whether he has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking; whether a given insurance undertaking or parent undertaking of a given insur-

ance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking; the procedures allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and, if appropriate, about the out-of-court complaint and redress procedures.

Finally, the Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 15 January 2005. They shall forthwith inform the Commission thereof.

14.4.2003.