Financial regulation: 2009 Q2

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Introduction

2009 Q2 saw new legal provisions of some importance in different areas of the financial system.

The European Central Bank (ECB) has revised the general selection criteria for eligible counterparties in monetary policy operations and, as a result of that update, has amended the general clauses relating to harmonised conditions for participation in the trans-European automated real-time gross settlement express transfer system (TARGET2). Also, the statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations have been reformed.

Within the EU, the directives on settlement finality in payment and securities settlement systems and on financial collateral arrangements have been amended.

In the field of financial institutions, the legal regime governing significant holdings was reformed so as to adapt it to EU legislation, a model for bank restructuring and the strengthening of credit institutions' capital was approved, and the regulations on the preparation and presentation of mutual guarantee companies' accounting information were updated to adapt them to the principles and criteria in the current accounting framework.

In the terrain of the securities market, certain matters relating to notification of significant information were addressed, and the content and format of the half-yearly reports to be submitted by the depositaries of collective investment institutions to the Spanish National Securities Market Commission (CNMV) were defined.

Further, mortgage market regulations and other mortgage and financial system rules were amended and the provision of mortgage loans and other financial intermediation services by non-financial corporations to consumers was regulated.

European Central Bank: amendment of provisions on monetary policy instruments and procedures of the Eurosystem

Guideline ECB/2009/10 of 7 May 2009 (OJ L of 19 May 2009) amended Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem, and the *Resolution of 21 May 2009* (BOE of 3 June 2009) of the Banco de España Executive Commission, amending that of 11 December 1998, laid down the general clauses applicable to Banco de España monetary operations in order to adapt them to Guideline ECB/2009/10.

The purpose of these provisions is to update the general selection criteria for counterparties to allow access to monetary policy operations (Eurosystem open market operations and standing facilities) by certain entities[1] in view of their specific institutional nature under Community law. These entities, while not strictly credit institutions under Community law,[2] are subject to scrutiny of a standard comparable to supervision by competent national authorities.

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1. The first institution to start operating as a counterparty under these provisions will be the European Investment Bank (EIB) from 8 July 2009. See ECB press release of 7 May 2009. **2.** Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)

Both provisions came into force on 11 May 2009.

Update of the legal provisions governing the TARGET2 system

Guideline ECB/2009/9 of 7 May 2009 (OJ L of 19 May 2009) amended Guideline ECB/2007/2 of 26 April 2007 on TARGET2. Also, the *Resolution of 21 May 2009* (BOE of 3 June 2009) of the Banco de España Executive Commission, amending that of 20 July 2007, approved the general clauses on the harmonised conditions for participation in TARGET2 in order to adapt them to Guideline ECB/2009/10.

First, access to TARGET2 is allowed to certain credit institutions which, while not strictly credit institutions, are subject to scrutiny of a standard comparable to supervision by competent national authorities, within the meaning of Guideline ECB/2009/10 of 7 May 2009 referred to in the preceding section.

Second, the definition of "cross-system settlement"[3] is included in Annex IV "Settlement procedures for ancillary systems" and certain sections of this annex are updated, including those relating to relations between central banks, ancillary systems (AS), settlement banks, settlement procedures and payment instructions flowing between AS.

Both legal provisions came into force on 11 May 2009.

Monetary financial institutions: interest rate statistics

Regulation 290/2009 of the European Central Bank (ECB/2009/7) of 31 March 2009 (OJ L of 8 April 2009) amended Regulation 63/2002 (ECB/2001/18) concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations.

The new developments in this Regulation are as follows:

1. General breakdown of new loans, identifying separately the interest rates applied to and the volumes of those that are secured with collateral and/or guarantees.

2. Breakdown by size of new loans to non-financial corporations in order to provide further information on the financing of small and medium-sized enterprises (SMEs).

3. Breakdown by initial period of interest rate fixation for new loans with an increased number of period of fixation categories.

4. Separate reporting of interest rates charged on credit card debt.

5. Additional category of new loans to sole proprietors to provide further information on the financing of unincorporated businesses.

6. Additional reporting of new loans to non-financial corporations according to maturity.

7. Clarification and redefinition of revolving loans and overdrafts.

Lastly, the Regulation adopts clearer rules in respect of stratification and selection of reporting agents by the national central banks (NCBs) and specifies the right of the Governing Council to check such procedures,

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3. "Cross-system settlement" means the real-time settlement of debit instructions under which payments are executed from a settlement bank of one AS to a settlement bank of another AS using the same settlement procedure.

The Regulation came into force on 29 April 2009.

Amendment of the directive on settlement finality in payment and securities settlement systems and of the directive on financial collateral arrangements

Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 (OJ L of 10 June 2009) amending Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems and Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements as regards linked systems and credit claims.

The main change with respect to Directive 98/26/EC derives from the growing number of linkages between systems, which, at the time when Directive 98/26/EC was drafted, used to operate almost exclusively on a national and independent basis. The new directive defines the concept of an interoperable system and the responsibility of system operators. Thus, "interoperable systems" are defined as two or more systems whose system operators have entered into an arrangement with one another that involves cross-system execution of transfer orders.

The moment of entry into the interoperable systems shall be determined in the rules on each system. In order to limit systemic risk, national competent authorities or supervisors should ensure that the rules on the moment of entry into an interoperable system are coordinated insofar as possible and necessary in order to avoid legal uncertainty in the event of default of a participating system.

Member States may provide that the opening of insolvency proceedings against a participant or a system operator of an interoperable system shall not prevent funds or securities available on the settlement account of that participant from being used to fulfil that participant's obligations in the system or in an interoperable system on the business day of the opening of the insolvency proceedings. Member States may also provide that such a participant's credit facility connected to the system be used against available, existing collateral security to fulfil that participant's obligations in the system or in an interoperable system.

The new directive broadens the scope of Directive 2002/47/EC to include credit claims as an eligible type of financial collateral.[4] Member States may provide that the inclusion in a list of claims submitted in writing, or in a legally equivalent manner, to the collateral taker is sufficient to identify the credit claim and to evidence the provision of the claim provided as financial collateral against the debtor or third parties.[5]

To facilitate the use of credit claims, when they are provided as financial collateral, Member States shall not require that they be dependent on the performance of any formal act such as the registration or the notification of the debtor of the credit claim in question. Also, Member States shall ensure that debtors of the credit claims may validly waive, in writing or in a legally equivalent manner: 1) their rights of set-off vis-à-vis the creditors of the credit claim and vis-à-vis persons to whom the creditor assigned, pledged or otherwise mobilised the credit claim as collateral, and 2) their rights arising from banking secrecy rules that would otherwise prevent or restrict the ability of the creditor of the credit claim to provide information on the credit claim or the debtor for the purposes of using the credit claim as collateral.

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4. The directive defines credit claims as "pecuniary claims arising out of an agreement whereby a credit institution grants credit in the form of a loan". **5.** Member States may exclude from the scope of this Directive credit claims where the debtor is a consumer or a micro or small enterprise, save where the collateral taker or the collateral provider of such credit claims is a national central bank, the ECB, the Bank for International Settlements or a multilateral development bank.

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the directive by 30 December 2010 at the latest and shall apply those measures from 30 June 2011.

Amendment of the regime governing significant holdings in financial institutions

Amendment of the legal regime governing significant holdings in financial institutions

Law 5/2009 of 29 June 2009 (BOE of 30 June 2009) amended certain financial legislation[6] so as to reform the legal regime governing significant holdings in financial institutions (credit institutions, investment firms and insurance companies). It was enacted to transpose partially to Spanish law Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending certain EU directives[7] as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector. The implementing regulations of this law will be enacted later on.

The main new features of this Law are as follows: the design of a new, clearer assessment procedure with more appropriate time periods; the establishment of the criteria the analysis of which may be used by the financial supervisors' as the basis for opposing the proposed acquisitions; and the strengthening of cooperation between the supervisor of the acquirer and that of the acquiree during the assessment procedure.

Table 1 below summarises the main new developments in the Law.

From a quantitative standpoint, a holding is deemed to be significant when it reaches 10% or more of the institution's capital or voting rights (previously this percentage was 5%), although the qualitative criterion, whereby there is deemed to be a significant holding if a notable influence can be exercised in the acquired entity, remains in place.

A new obligation is established to notify the supervisor of holdings which, albeit not significant, mean that the threshold of 5% of capital or voting rights is reached or exceeded (this new obligation does not trigger the assessment procedure until the threshold of 10% is reached, but it enables supervisors to obtain information on holdings of this type.

The Law simplifies the various thresholds triggering the obligation to notify of increases or decreases in significant holdings: 20%, 30% or 50%, as compared with the previous ones of 10%, 15%, 20%, 25%, 33%, 40%, 50%, 66% and 75%.

A series of new features is introduced in the assessment process of the potential acquirer of the significant holding. A specific list has been drawn up of the strictly prudential criteria that supervisors[8] must take into account when appraising the potential acquirer's suitability either for acquiring a significant holding, or for exceeding the above-mentioned thresholds with its

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6. Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions, Law 24/1988 on the securities market and the consolidated text of the Private Insurance Law enacted in Legislative Royal Decree 6/2004 of 29 October 2004. **7.** Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance; Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC; Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance, amending Council Directives 73/239/EEC and 92/49/EEC and Directives 98/78/EC and 2002/83/EC of the European Parliament and of the Council; and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast). **8.** The supervisors are the Banco de España, the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds, according to the nature of the acquiree.

REFORM OF THE LEGAL REGIME GOVERNING SIGNIFICANT HOLDINGS IN FINANCIAL INSTITUTIONS TABLE 1

Previous regime (a)	Current regime (b)
Definition	
Quantitative limit: A significant holding is deemed to be one in which at least 5% of the capital or voting rights of an institution is held either directly or indirectly.	Quantitative limit: When at least 10% of the capital or of the voting rights of the institution is reached.
Quantitative limit: A significant holding is deemed to be one which, although not reaching the specified percentage, makes it possible to exercise a notable influence in the institution.	No change.
Notification of supervisor of increases or decreases in holdings	
No provision for notification of non-significant holdings.	When the threshold of 5% of the capital or voting rights (non-significant holding) is reached or exceeded. This new obligation does not trigger the assessment procedure until the holding reaches 10%.
When 5% (significant holding) is reached or exceeded and when there are the following increases or decreases in significant holdings: 10%, 15%, 20%, 25%, 33%, 40%, 50%, 66% and 75%.	When 10% (significant holding) is reached or exceeded and when there are the following increases or decreases in significant holdings: 20%, 30% or 50%.
Procedure for assessment of the acquirer of a significant holding	
Not envisaged.	An explicit list of prudential criteria is established which supervisors must take into account when appraising the suitability of the acquirer.
The supervisors have a maximum of three months to carry out their assessment. The assessment period may be interrupted without specifying how long the interruption will last.	The supervisors have a maximum of sixty working days to carry out their assessment. The running of the aforementioned assessment period may be interrupted only once for a maximum of 20 working days in the event that the supervisor requests additional information.
To be consulted with the supervisor of the acquirer.	Cooperation is strengthened between the supervisor of the acquirer and that of the acquiree, both within Spain and between supervisors in the various EU Member States.

SOURCES: BOE and Banco de España.

a. Law 26/1988 of 29 July 1988 (credit institutions), Law 24/1988 of 28 July 1988 (investment firms) and Legislative Royal Decree 6/2004 of 29 October 2004 (insurance companies).
b. Law 5/2009 of 29 June 2009.

new holding. The most important criteria are, *inter alia*, the following: the acquirer's reputation and financial soundness; the reputation of the persons who will direct the entity's business in the future; the entity's ability and financial soundness to fulfil applicable legal obligations, and that there are no reasonable grounds to suggest money laundering or terrorist financing.[9]

The supervisors may only oppose an acquisition or an increase of a significant holding on the basis of these criteria or if the information provided is incomplete.

Clearer and more transparent periods are established in the assessment process. Thus, the supervisors shall have a maximum of 60 working days in total (previously three months) to complete their assessment and to provide notification of such opposition, the system of positive administrative silence prevailing. This maximum period may only be interrupted once, if the

9. In order to obtain an appropriate assessment of this last criterion, the mandatory request for a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences is introduced.

supervisor requests additional information to appropriately assess the proposed acquisition. The process may be interrupted for this reason during the period between the date on which additional information is requested and the date it is received, with a maximum duration of twenty working days.[10] Upon completion of the procedure, the possibility has been introduced of the supervisor, at the request of the potential acquirer or *ex officio*, making public the reasons justifying its decision (whether or not it opposes the acquisition), provided that the information disclosed does not affect those who are not parties to the transaction.

Cooperation between the supervisor of the acquirer entity and that of the entity acquired within Spain and between supervisors of different Member States of the European Union is strengthened substantially. The main aim is for competent authorities to work in close collaboration when attempting to verify the suitability of a potential acquirer, be it an authorised entity in another Member State or a regulated entity in another sector of activity in Spain.

Lastly, Collective Investment Institutions Law 35/2003 of 4 November 2003 was amended to include the new regime for significant holdings in management companies.

The Law came into force on 1 July 2009.

Bank restructuring and the strengthening of credit institutions' capital

Royal Decree-Law 9/2009 of 26 June 2009 (BOE of 27 June 2009), on bank restructuring and the strengthening of credit institutions' capital ("the Royal Decree-Law") was published with the aim of strengthening solvency and the functioning of credit institutions which are in difficulty or whose medium-term viability is compromised.

The structure of the bank restructuring model included in the Royal Decree-Law is based on credit institutions' Deposit Guarantee Funds (DGFs) and the use of a new institution created for this purpose: the Fund for the Orderly Restructuring of Banks (FROB).

THE FUND FOR THE ORDERLY RESTRUCTURING OF BANKS (FROB)

The FROB's legal regime is similar to that of the DGFs,[11] and it basically has two functions: the management of credit institutions' restructuring processes and the strengthening of capital in certain merger processes. The Fund has been endowed with €9 bn, €2.25 bn will be contributed by the DGFs[12] and the remaining €6.75 bn will be charged to the State Budget. It may raise borrowed funds on securities and credit markets, with a guarantee of the State, for not more than €27 bn (three times the initial amount assigned). However, the Ministry of the Economy and Finance may authorise this limit to be exceeded after 1 January 2010, although under no circumstances may the FROB's borrowed funds represent more than €90 bn (10 times the initial amount assigned).

The FROB is governed and administered by a *steering committee* comprising eight members: five are proposed by the Banco de España (one of them, the Bank's Deputy-Governor, is Chair) and three correspond to each of the DGFs. All of them are appointed by the Ministry of the Economy and Finance and have a four-year renewable mandate. The grounds for their termination are the same as those for the members of the DGFs. Likewise, a representative of the National Audit Office, appointed by the Ministry of the Economy and Finance upon proposal by the Auditor General, will attend the meetings of the steering committee with the right to speak but not to vote. This committee will submit a four-monthly report about management

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10. It may be prolonged for up to 30 days in the cases determined by the Law. **11.** See Royal Decree 2606/1996 of 20 December 1996 on the Credit Institutions' Deposit Guarantee Fund. **12.** This amount will be distributed between the DGF for Banking Establishments, the DGF for Savings Banks and the DGF for Credit Co-operatives based on the deposits existing at the entities covered by each DGF at 2008 year-end as a percentage of the total deposits at credit institutions as of that date.

of the FROB to the Ministry of the Economy and Finance. As for parliamentary control, every three months, the State Secretary for Economic Affairs will appear before the Parliamentary Committee on Financial Affairs, to report on overall credit developments, the situation of the banking sector and the FROB's activities.

CREDIT INSTITUTIONS' RESTRUCTURING PROCESSES

A credit institution (or a consolidable group or subgroup of credit institutions) must undertake a restructuring process if it shows weaknesses in its economic and financial situation which might jeopardise its functioning. The process is basically designed in two phases: 1) finding a solution (an action plan) at the institution's initiative or *ex officio* by Banco de España and, if it were not viable, 2) commencing a restructuring process of the institution with the intervention of the FROB.

In the initial phase the institution must submit to the Banco de España, within one month, an *action plan* specifying the steps envisaged for overcoming the financial weakness which must ensure the institution's viability. The plan may envisage three steps: strengthening the institution's equity and solvency, its merger or takeover and the full or partial transfer of the business or of business units. If, one month after the action plan has been submitted, there has been no specific opinion given thereon, it will be deemed to have been approved, although the Banco de España may modify it as considered necessary.

The corresponding DGF[13] will support the plan submitted by the institution in question and adopt the preventive and reorganisation methods it deems suitable. Similarly, the FROB may grant financing, on an arm's-length basis, to the DGF so that it may provide financial support to the credit institution's action plans.

The second phase of the restructuring process involves the FROB and begins if the institution's situation of weaknesses continues and, specifically, if any of the following occurs: a) the credit institution affected did not submit the above-mentioned action plan or had not notified the Banco de España that it was impossible to find a viable solution to its situation; b) the plan submitted was not viable in the Banco de España's opinion, or it was subject to the involvement of a DGF in terms not accepted by the latter; c) the credit institution failed to meet the deadline or to fulfil the specific measures envisaged in the plan thus jeopardising the achievement of its objectives, and d) the credit institutions failed to fulfil any of the specific measures envisaged in one of the programmes referred to in Article 75 of Royal Decree 216/2008 of 15 February 2008 on the own funds of financial institutions, thus jeopardising the achievement of its objectives. In this phase, the institution's directors will be replaced by the Banco de España, which will appoint the FROB as provisional administrator. The latter must prepare a status report and submit a *restructuring plan* for approval by the Banco de España within a period of one month, which may be extended up a maximum of six months.

The aim of the restructuring plan is either to merge the institution or to fully or partially transfer the business through the global or partial assignment of assets and liabilities through procedures ensuring competition (among others, the auction system). While the restructuring plan is being prepared, the FROB could temporarily provide the financial support required in accordance with the principle of the most efficient use of public funds.

The restructuring plan will provide details of the FROB's support measures, which may include the following, among others:

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13. The DGF for banks, savings banks or credit co-operatives, according to the type of institution.

a) Financial support measures, which may comprise, among others, the granting of guarantees, loans under favourable conditions, subordinated debt, acquisition of any type of assets on the institution's balance sheet, subscription or acquisition of equity securities and any other financial support to facilitate mergers with or takeovers by other sound institutions or the full or partial transfer of the business to another institution by procedures ensuring competition.

b) Management measures which improve the institution's organisation, procedures and internal control systems.

Investments made by the FROB as a result of the implementation of a restructuring plan will not be subject to established legal restrictions or obligations that are also applicable to aid for which the DGFs are responsible.[14]

The acquisition of savings banks' shares or non-voting equity units by the FROB will require the elimination of the preferential subscription right of shareholders or holders of non-voting equity units when the decision to increase capital or to issue non-voting equity units is adopted. The FROB will also be entitled to representation at the General Assembly which is equivalent to its holding as a percentage of the issuing savings bank's equity and which will continue solely for the duration of its ownership of these securities but cannot be transferred to subsequent purchasers.

If the FROB subscribes capital contributions of credit co-operatives, its voting right at the co-operative's Assembly will be proportional to the amount of these contributions as a percentage of the credit co-operative's capital.

As for specific mergers of credit institutions due to takeovers, through the creation of a new credit institution or the full or partial spin-off of assets and liabilities, no administrative authorisation will be required in respect of credit, apart from the authorisations required by competition law.

Prior to approval of the plan, the Banco de España will request a report from the Ministry of the Economy and Finance (for banks) or from the competent bodies of the regions (Autonomous Communities) where the savings banks and the credit co-operatives involved are domiciled.

Strengthening of capital

In addition to its function regarding restructuring processes, the Royal Decree-Law envisages the possibility of the FROB supporting merger processes between credit institutions which are aimed at improving their medium-term efficiency. Accordingly, the FROB may acquire securities issued by credit institutions resident in Spain[15] which, although they are not in a situation requiring a restructuring process, need to strengthen their capital solely for the purpose of merger processes. The institutions involved in such processes must draw up a merger plan including, among other items, efficiency improvements, rationalisation of their administration and management and the restructuring of their production capacity to improve their future outlook. This plan must be approved by the Banco de España according to the principle of the most efficient use of public funds.

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14. Specifically, the FROB will not be subject to the following restrictions: by-law restrictions arising form the right to attend Shareholders' Meetings or the voting rights in respect of the shares acquired or subscribed by the FROB; the limitations arising from the holding of non-voting equity units established in Law 13/1985 of 25 May 1985; the limitations on the acquisitions of credit co-operatives' capital contributions by legal persons; those which the Law establishes in the eligibility of equity in respect of the securities acquired or subscribed by the FROB and those arising from the obligation to present a takeover bid pursuant to securities market regulations. **15.** They may be preference shares which can be converted into shares (banks); non-voting equity units (savings banks) or capital contributions (credit co-operatives).

The issuance of securities is considered exceptional and must be undertaken in conditions in which, in any event, the following are taken into consideration: the duration and the risk of the operation, the need to avoid the risk of distorting competition and to ensure that such an acquisition facilitates and encourages the implementation and fulfilment of the merger plan.

The issuers must undertake to repurchase them as soon as they can in the terms of the merger plan. If five years elapse from when the disbursement was made and the preferential holdings have not been repurchased by the institution, the FROB could request that they be converted into shares (banks), non-voting equity units (savings banks) or capital contributions (credit co-operatives). Nevertheless, convertibility at the initiative of the FROB will be envisaged in the issuance agreement if, before five years pass, the Banco de España were to consider that it was unlikely for them to be repurchased during that period.

The FROB will divest the securities subscribed through their repurchase by the issuer or sale to third parties. In the latter case, the transaction must be performed through procedures ensuring competition and within a period of no more than five years from the date the integration plan was fulfilled.

The Royal Decree-Law envisages specific mechanisms for following-up and monitoring the implementation of the integration plans. Thus, every three months, the entity designated by the institutions involved in the integration process or, if appropriate, the institution resulting from such process, will send a report to the Banco de España on the level of compliance with the measures envisaged in the integration plan that has been approved. If the integration plan could not be complied with initially, the institution may ask the FROB for a modification of the terms of the process which would include, among other aspects, an extension of the repurchase period by up to another two years. Ultimately, if it were not viable, the restructuring process described in the previous section would apply.

OTHER PROVISIONS

The Royal Decree-Law includes a provision on insolvency law whereby the competent court will not render judgement on petitions for an insolvency order referring to a credit institution with financial difficulties if it has submitted an action plan aimed at ensuring its viability to the Banco de España. Only the FROB will have the legal standing to petition for an insolvency order.

The Royal Decree-Law contains several final provisions, most notably the amendment to Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements for financial intermediaries which includes two important aspects: firstly, the FROB is added (as occurred with the DGF) to the institutions which may exceed the 5% limit on non-voting equity units issued by a savings bank in exceptionally serious situations. Furthermore, in these cases the limit on the volume of non-voting equity units in circulation, such that they may not exceed 50% of the savings bank's assets, will not be applicable either. Secondly, the power to agree to the issuance of non-voting equity units is extended to the provisional administrators appointed by the Banco de España in the cases of restructuring envisaged in this Royal Decree-Law.[16]

Finally, Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions was amended to include, as a very serious infringement, the failure by a credit institution's directors to send the action plan, envisaged in this Royal Decree-Law to guarantee the institution's viability, to the Banco de España.

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16. The General Assembly was specified as the competent body for agreeing to each issuance of non-voting equity units and it could delegate this power to the savings bank's Board of Directors.

The Royal Decree-Law came into force on 28 June 2009.

The accounting information of mutual guarantee companies

According to the prerogatives established in Royal Decree 2345/1996 of 8 November 1996[17] on administrative authorisation rules and solvency requirements for mutual guarantee companies (MGCs),[18] *Ministerial Order EHA/1327/2009 of 26 May 2009* (BOE of 28 May 2009), on special rules for the preparation, documentation and presentation of MGCs' accounting information was published to adapt them to the principles and criteria in the current accounting framework.[19] Similarly, the Order of 12 February 1998, which included the previous rules, was repealed.

Like its predecessor, the Order contains two sections: on the one hand, valuation rules, the presentation of public financial statements and confidential returns and the content of the notes to the financial statements, and, on the other, the accounting statements which must be prepared by the MGCs and sent to the Banco de España.

MEASUREMENT BASES AND CONTENT OF THE NOTES TO THE FINANCIAL STATEMENTS

The criteria are established for recording guarantees, technical provisions, coverage of specific credit risk exposures, assets acquired or awarded in payment of debts, capital and repayable funds received to cover credit risk.

Granting guarantees is the basic activity of these companies, and the recognition and measurement criteria are similar to those envisaged in accounting rules for credit institutions.[20] The financial guarantee contracts[21] will be measured initially at their fair value, which will be the commission or premium received plus the present value of the commissions or premiums which will be received, in the absence of evidence to the contrary. The value of the premiums not yet received will be recognised as a credit under assets. Subsequently, the value of these contracts not classified as doubtful, will be the amount initially recorded under liabilities less the amount taken to the income statement. The other guarantees will be treated in the same way for the purposes of measurement and presentation as the financial guarantees, although with certain specific features.

The technical provisions will comprise the amount set aside by the company and the non-refundable and similar contributions received to cover specific credit risk exposures and all its operations, the measurement criteria and accounting basis of which are detailed in the Order.

As for the coverage of specific risk exposures, the same criteria will be applied as those established in the accounting regulations of credit institutions for insolvency risk, with the specific refinements therein.

Assets acquired or awarded in payment of debts (foreclosed assets) are those which the MGC receives from its debtors for the full or partial settlement of their debts, irrespective of the way

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17. See "Regulación financiera: cuarto trimestre de 1996", Boletín Económico, January 1997, Banco de España, pp. 109 and 110. **18.** Under Article 4 of Royal Decree 2345/1996 MGCs will bring their accounting information into line with the principles of the Spanish General Chart of Accounts, with the adaptations established by the Order of the Ministry of the Economy and Finance. **19.** Law 16/2007 of 4 July 2007 on reform and adaptation of accounting-related corporate law for international harmonisation according to European Union law and Royal Decree 1514/2007 of 16 November 2007 approving the Spanish General Chart of Accounts. **20.** See Banco de España Circular CBE 6/2008, of 26 November 2008, amending CBE 4/2004, of 22 December 2004, on public and confidential financial reporting rules and formats. **21.** Financial guarantee contracts are contracts under which the issuer is required to make specific payments to reimburse the holder for the loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument. This concept includes guarantees directly or indirectly guaranteeing debts such as credits, loans, financial lease transactions and payment deferral of all manner of debts.

in which ownership is acquired. Foreclosed assets will be classified and presented on the balance sheet taking into consideration the purpose for which they are used.

Capital will solely comprise the contributions made by members when the MGC has an unconditional right to reject its repayment due to legal or bylaw prohibitions. The amount of the contributions which cannot be recorded as capital will be recorded as a financial liability.

The funds received to guarantee all operations, which are repayable to the individuals and institutions that have contributed them, if they are not necessary to cover such operations, will be recorded as bonds and deposits. These bonds and deposits will not be derecognised until they are returned to the parties that contributed them, such parties relinquish collection thereof from the guarantee company or they are used to remove the asset corresponding to the risk that they covered because it has been written off.

Lastly, in addition to the measurement bases which are detailed in the format created in the Spanish general chart of accounts, those specific to the operations of these companies should be indicated in the notes to financial statements.

PRESENTATION OF THE PUBLIC FINANCIAL STATEMENTS AND CONFIDENTIAL RETURNS

The MGCs will present their accounting information through their annual accounts, confidential returns and year-end financial statements.

The annual accounts will comprise the five financial statements included in the Spanish national chart of accounts: the balance sheet, income statement, statement of changes in equity (which comprises two parts: the statement of comprehensive income and the statement of changes in equity), the cash-flow statement and the notes to annual accounts. They will be sent to the Banco de España within 15 business days of their approval by the General Assembly and will be accompanied by the related audit report and other supplementary documents that are filed at the Mercantile Registry.

The confidential returns will comprise the confidential balance sheet, the confidential income statement, the coverage of credit risk exposures and the classification of the guarantees. Similarly, the year-end financial statements are the statement of comprehensive income, the statement of changes in equity and the cash-flow statement as of 31 December which are included in the annual accounts.

The Banco de España may also require MGCs in general, or particular ones, to provide all such information it may need to clarify and expand upon the data in the documents sent.

The Order came into force on 29 May 2009, although its criteria will be applied retroactively to the annual accounts for 2008 and to the statements that must be submitted at 2008 year-end. However, the deadline for sending the confidential returns and the statements for the year ending 31 December 2008 to the Banco de España has been extended from 31 March 2009 to 30 June 2009.

Mortgage market: amendment of rules

Royal Decree 716/2009 of 24 April 2009 (BOE of 2 May 2009), implements several aspects of Law 2/1981, of 25 March 1981, on mortgage market regulation and other mortgage and financial system rules, reformed by Law 41/2007 of 7 December 2007[22] ("the Royal Decree"). It

22. See the comments on Law 41/2007, of 7 December 2007, which amended Law 2/1981, of 25 March 1981, on mortgage market regulation and other mortgage and financial system rules, regulating reverse mortgages and dependency insurance, and establishing a specific tax regulation, in "Financial regulation: 2007 Q4", *Economic Bulletin,* January 2008, Banco de España, pp. 177-182.

replaces Royal Decree 685/1982 of 17 March 1982 which also implemented several aspects of Law 2/1981 and which is thus repealed.

The following sections detail the reforms introduced by the Royal Decree in the mortgage market. Table 2 compares, in summary form, the main elements envisaged in the Royal Decree with their treatment under Royal Decree 685/1982.

PARTICIPANT INSTITUTIONS IN THE MORTGAGE MARKET

Participant institutions in the Spanish mortgage market include, not only Spanish credit institutions, but also branches in Spain of credit institutions authorised in other EU Member States, whose capacity to issue collateralised mortgage bonds linked to loans and credits granted by them, secured by mortgages on property in Spain, is recognised de facto.

CONDITIONS OF MORTGAGE LOANS AND CREDITS

Regarding the conditions that mortgage loans and credits must meet to serve as a basis for the issue of mortgage market securities (covered bonds, bonds and collateralised mortgage bonds), the following new features are introduced:

The requirement relating to the purpose of mortgage loans and credits that may be used to secure issues of bonds and covered bonds is eliminated (see Table 2).

The conditions that mortgage loans and credits granted by credit institutions must meet to be eligible to serve as coverage for issues of mortgage securities are determined. These conditions include, in particular, a tighter ratio (reduced from 70% to 60%) between the loan and the appraisal value of the mortgaged asset (loan-to value ratio), save in the case of mortgage loans and credits for construction, refurbishment or purchase of housing, in which case the maximum LTV ratio remains at 80% as previously.

This figure may be raised to 95% if the mortgage loan is backed by a bank guarantee issued by a credit institution other than the creditor institution, or if it is covered by credit insurance. The credit institution will be solely responsible for payment of said guarantee or insurance; this payment may not, in any case, correspond, directly or indirectly, to the mortgagor.

The conditions that must be met by loans and credits secured by property in other countries of the European Union in order to be considered equivalent to the Spanish mortgage guarantee regime, and thus form part of the pool of collateral for mortgage securities issued in the Spanish market, are specified.

A number of adjustments are also made, to include in these regulations the latest new features contained in Ministerial Order ECO/805/2003 of 27 March 2003 on rules for the valuation of real estate and specific entitlements for certain financial purposes. Specifically, mortgaged properties must be valued by the appraisal services of the lending institution, or by institutions authorised therefor, before mortgage securities are issued. Furthermore, technical appraisal reports must be signed by specific professional experts, in accordance with the nature of the property appraised. Lastly, the Ministry of Economy and Finance is authorised to establish, inter alia, the appraisal criteria and the minimum content of the appraisal reports and corresponding certificates.

The mortgagor's obligation to provide additional collateral, in the event that the mortgaged asset depreciates in value by more than 20% relative to the initial appraisal, is maintained, but a new condition is added, namely that in the case of a mortgagor who is a natural person, the depreciation in value must have continued for one year before said person may be obliged to increase said collateral.

MODIFICATION OF MORTGAGE MARKET REGULATIONS

TABLE 2

Royal Decree 685/1982 of 17 March 1982	Royal Decree 716/2009 of 24 April 2009
Participant institutions in the mortgage market	
Credit institutions.	Credit institutions, and branches in Spain of credit institutions authorised in other EU Member States.
Conditions of mortgage loans and credits	
Purpose of mortgage loans: to finance construction, refurbishment and purchase of housing, urban development work and institutional building, construction of agricultural, tourism, industrial and commercial buildings, and any other work or activity.	Disappears.
The ratio between the mortgage loan and the appraisal value of the mortgaged asset (the LTV ratio) is 70%, save in the case of financing for construction, refurbishment or purchase of housing, when it may reach 80%.	No significant changes, save that the ratio between the mortgage loan and the appraisal value of the mortgaged asset (the LTV ratio) goes from 70% to 60%.
Not envisaged.	It may rise from 80% to 95% if the mortgage loan is backed by a bank guarantee issued by a credit institution other than the creditor institution, or if it is covered by credit insurance.
Not envisaged.	The conditions that loans and credits secured by property in other countries of the European Union must meet in order to form part of the pool of collateral for mortgage securities issued in the Spanish market are specified.
Provision of additional collateral in the event that the mortgaged asset depreciates in value by more than 20% relative to the initial appraisal.	Provision of additional collateral in the event that the mortgaged asset depreciates in value by more than 20% relative to the initial appraisal. However, if the mortgagor is a natural person, the depreciation in value must have continued for one year before said person may be obliged to increase the collateral provided.
Conditions of mortgage securities	
Guarantees for holders of mortgage securities: earmarking of mortgage loans and credits specified in a public deed, without prejudice to the issuer's unlimited liability.	Guarantees for holders of mortgage securities: in addition to those cited, substitute assets, similarly earmarked in a public deed, and the economic flows generated by financial derivatives linked to each issue, are added.
Requirement that issues of securities be published in the BOE and that a marginal note be made in the Property Register to earmark mortgage loans or credits to bond issues.	Disappears.
Not envisaged.	Regulation of the special accounting register of mortgage loans and credits, of the substitute assets backing covered and mortgage bonds, and of the financial derivatives linked to them.
Limits on issuance of mortgage bonds: ceiling of 90% of the outstanding capital of the earmarked credits.	Limits on issuance of mortgage bonds: the updated value of the mortgage bonds must be at least 2% lower than the updated value of the mortgage loans and credits earmarked to the issue.
Limits on issuance of covered bonds: ceiling of 90% of the sum of the outstanding capital of all the mortgage credits of the institution's pool that are eligible to act as coverage.	Limits on issuance of covered bonds: ceiling of 80% of the sum of the outstanding capital of all the eligible mortgage loans and credits of the institution's pool.
Fiscal and financial regime: mortgage market securities are exempt from transfer tax and stamp tax and are deemed appropriate for investment by certain regulated investment regime institutions.	No significant changes.
Secondary market: mortgage market securities may be transferred by any means permitted by law, and with no need for intervention by a public authenticating official or for notification to the mortgagor.	Secondary market: no change from previous regime. A new added feature is that they may be admitted to listing on regulated markets or in multilateral trading facilities.
Issuing institutions' transactions with own securities. Institutions may trade their own securities. The securities may be early redeemed, provided that at least a year has elapsed from the issuance date. The volume of own mortgage securities that may be held in portfolio, for an unlimited period, may not exceed 5% of the total issued.	Issuing institutions' transactions with own securities, similar to the previous regime. The securities may be early redeemed, even if less than a year has elapsed from the issuance date. The institutions may hold own mortgage securities in portfolio; in the case of issues distributed among the public, up to a maximum of 50% of each issue.

SOURCES: BOE and Banco de España.

CONDITIONS OF MORTGAGE SECURITIES

The regulations introduce a series of improvements, described below, enhancing investor protection and granting greater flexibility to institutions when it comes to designing the conditions of issue of mortgage securities.

The guarantees previously enjoyed by holders of these securities, owing to their being earmarked to mortgage loans and credits, are maintained. Moreover, substitute assets, similarly earmarked, are added, along with the economic flows generated by financial derivatives linked to each issue,[23] without prejudice to the issuer's unlimited liability, explicitly determined in the regulations.

The requirement that issues of securities be published in the BOE, and that a marginal note be made in the Property Register earmarking mortgage loans or credits to bond issues, are dispensed with.

The regulations on the special accounting register[24] to be kept by institutions granting mortgage loans and credits are implemented, along with those on the substitute assets backing covered and mortgage bonds and on the financial derivatives linked thereto. The main objectives of this register are to enhance legal protection in the event of insolvency proceedings, to provide greater transparency regarding the quality of the securities and to increase supervisory efficiency in this market.

The limits on the issuance of covered and mortgage bonds are tightened up (see Table 2) and several obligations are imposed on the issuing institutions to ensure that they take the necessary steps to prevent any imbalances between the flows from the pool of collateral and those necessary to meet the payments to the holders of covered and mortgage bonds.

Several clarifications are made in the collateralised mortgage bond regime. Thus, credit institutions issuing these bonds transfer all the risk of the part of the credit ceded, and each such bond represents a holding in a specific credit, rather than in a group of credits.

OTHER MATTERS

Regarding the fiscal and financial regime, as under the previous regulations, mortgage market securities are exempt from transfer tax and stamp tax and are deemed appropriate for investment by certain regulated investment regime institutions.

As for the secondary market, the securities may be transferred by any means permitted by law, and with no need for intervention by a public authenticating official or for notification to the mortgagor. A new feature is added, namely that they may be admitted to listing on regulated markets or in multilateral trading facilities, in accordance with the provisions of the Securities Market Law.[25]

Under the new regulations, issuing institutions may still operate with own mortgage securities, although the transparency requisites have been raised. The securities may be early redeemed, without a year having to have elapsed from the issuance date as envisaged in the previous regime. They may also be held in portfolio, the new feature being that, in the case of issues distributed among the public, the ceiling is raised from 5% to 50% of each issue.[26] Advance

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23. Envisaged in Law 2/1981 of 25 March 1981 amended by Law 41/2007 of 7 December 2007. The substitute assets backing issues of covered or mortgage bonds will do so up to the established limit (maximum of 5% or 10%, respectively, of the principal of each issue); they must be linked to a specific issue when each issue is made and identified in the special accounting register. **24.** Envisaged in Law 2/1981 of 25 March 1981 amended by Law 41/2007 of 7 December 2007. **25.** Securities Market Law 24/1988 of 28 July 1988, amended by Law 47/2007 of 19 December 2007. **26.** Under the previous regulations, the ceiling on the volume of own mortgage securities that these institutions could hold in portfolio, for an unlimited period, was 5% of the total issued.

notice must be given to the market of any acquisitions to be made for this purpose; moreover, this shall be considered significant information.

The supervisory regime of the mortgage securities market is updated, specifying the respective areas of competence of the Banco de España and the CNMV, to prevent any overlap in this respect. The Banco de España is responsible, inter alia, for control and inspection of the conditions required of mortgage loans and credits, and of the related collateral, and of all other assets that may be used as coverage for issues of mortgage securities, including control and inspection of the accounting register in which they must be recorded and of compliance with the rules on appraisal. In turn, the CNMV is responsible for supervision of the conditions required of public offerings of mortgage securities, and for aspects relating to the secondary market in the case of mortgage securities traded in official markets.

The additional provisions contain two key clarifications. First, they clarify the regime applicable to mortgage transfer certificates,[27] which are considered a transfer of credit, similarly to collateralised mortgage bonds, but which are not strictly defined as mortgage market securities, since there is no guarantee of minimum quality. They may be issued purely for placement among professional investors, or to be grouped in securitisation special purpose vehicles (SPVs); under no circumstances may they be prejudicial to the interests of the mortgagor.

Second, they make a number of adjustments to the mortgage loan subrogation regime envisaged in Law 2/1994 of 30 March 1994[28] on subrogation and novation of mortgage loans. Specifically, financial institutions that are willing to become subrogated must include the binding offer accepted by the mortgagor in the notice given to the creditor institution. In turn, the creditor institution exercising its right to render the subrogation null and void must appear, duly represented, before the Notary Public who gave the notice, indicating its binding decision to amend the conditions of the mortgage loan or credit with the mortgagor, to equal or better those of the binding offer. In addition, said institution must also, and to this effect, submit to the mortgagor, within ten business days, a binding offer, in writing, that effectively equals or betters the financial conditions of the other institution.

The Royal Decree came into force on 3 May 2009.

Securities market: notice of significant information

Ministerial Order EHA/1421/2009 of 1 June 2009 (BOE of 2 June 2009), implements Article 82 of Securities Market Law 24/1988 of 28 July 1988[29] on significant information.[30]

The Ministerial Order specifies certain aspects relating to notice of significant information that were pending implementation in Law 24/1988. Thus, the criteria are established for identifying facts, decisions or circumstances that warrant the description of significant information. In this respect, the CNMV is authorised to draw up an illustrative, but by no means exhaustive, list of the events that may be deemed to constitute significant information; this may be done by type

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27. Mortgage transfer certificates were regulated by Law 3/1994 of 14 April 1994 which adapts Spanish law on credit institutions to the Second Banking Coordination Directive. **28.** See "Financial regulation: 1994 Q2", *Boletín Económico,* July-August 1994, Banco de España, pp. 96-97. **29.** See "Financial regulation: 1988 Q3", *Boletín Económico,* October 1988, Banco de España, pp. 61-62. **30.** EU regulations on insider dealing and market abuse are contained in Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation, and in Commission Directive 2003/124/EC of 22 December 2003 on the definition and public disclosure of insider information and the definition of market manipulation, which were transposed into Spanish law by Financial System Reform Law 44/2002, of 22 November 2002; Royal Decree 1333/2005 of 11 November 2005 implementing Securities Market Law 24/1988 of 28 July 1988 on market abuse (amended by Royal Decree 364/2007 of 16 March 2007), and Ministerial Order ECO/3722/2003 of 26 December 2003 on the annual corporate governance report and other informative instruments of listed public limited companies and other entities.

of financial instrument. This list may include, inter alia, events connected with strategic agreements and mergers and acquisitions, information relating to the reporting entity's financial statements or those of its consolidated group, information on notices of call and official matters, and information on significant changes in factors connected with the activities of the reporting entity and its group.

The principles to be followed and conditions to be met by entities when they publish and report significant information are laid down, along with the requisites as regards the content of the notice issued and the conditions applicable in cases in which the significant information is connected with accounting, financial or operational projections, forecasts or estimates. The reporting entity must designate at least one interlocutor whom the CNMV may consult or from whom it may request information relating to dissemination of the significant information.

Lastly, some of the circumstances in which it is considered that an entity is failing to comply with the duty to publish and report significant information are described. These include, inter alia, cases in which significant information is disseminated at meetings with investors or shareholders or at presentations to analysts or to media professionals, but is not communicated, at the same time, to the CNMV.

The Ministerial Order came into force on 3 June 2009.

Collective investment institutions: half-yearly depositary reports

CNMV Circular 3/2009 of 25 March 2009 (BOE of 20 April 2009) on the content of the half-yearly reports on performance of the monitoring and supervisory function of CII depositaries.[31]

CII depositaries shall prepare half-yearly reports on the results of their monitoring and supervisory functions.[32] These reports are divided into four sections, plus a further section for any additional information, set out as annexes to the Circular. In the first four sections, depositaries shall report any incidents in the valuation of assets, any conciliation differences between securities and balances, any other incidents regarding net asset value and any non-compliance with legal limits and ratios, ether settled or pending settlement as at the last day of the corresponding half-year period. These reports shall be completed for each CII, save in the case of CIIs that are divided into investment compartments, in which case the information shall be provided for each such compartment.

The section on additional information shall include the depositaries' contact details, so that the CNMV has up-to-date information to facilitate its supervisory tasks. The half-yearly reports must be submitted online, using the CIFRADOC/CNMV service, prior to the last calendar day of the second month following the period to which the reports relate.

The Circular also includes two clarifications relating to the depositaries' monitoring and supervisory functions described in Ministerial Order EHA/596/2008 of 5 March 2008 which regulates certain aspects of the legal regime of CII depositaries. First, regarding verification of the accuracy, quality and sufficient nature of the periodic public information, this function shall only be understood to have been performed when depositaries have checked that the cash and

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31. Pursuant to the provisions of Royal Decree 1309/2005 of 4 November 2005 approving the implementing regulations of Collective Investment Institutions Law 35/2003 of 4 November 2003 authorising the CNMV to determine the content and format of the half-yearly reports that must be submitted by CII depositaries, along with details on the time and manner in which they must be sent. **32.** Without prejudice to their obligation to inform the CNMV, in writing and as promptly as possible, of any significant anomaly detected, in the performance of their monitoring and supervisory functions, in the management or administration of any CIIs (whether financial or real estate CIIs).

investment portfolios coincide with their internal records, and when they have checked the content of the significant events, the fees and commissions established and the information on transactions between the management company and the depositary.

Second, the scope of the concept of *significant anomalies* is adjusted. Thus, these shall include, among others, anomalies that might have a considerable impact on the net asset value of units of mutual funds and of shares of investment companies, along with certain specific acts or omissions described in detail in the Circular, provided they correspond to the depositaries' monitoring and supervisory functions.

The Circular came into force on 1 July 2009; the first information to be sent will be that relating to 2009 H2.

Mortgage loans and credits and other financial intermediation services provided by non-financial corporations

Law 2/2009 of 31 March 2009 (BOE of 1 April 2009) regulating mortgage loans and credits and other financial intermediation services provided by non-financial corporations to consumers, to enhance consumer protection.

The Law extends to natural and legal persons (hereinafter firms) that offer mortgage credit or loan agreements, other than credit institutions, obligations that were to date exclusive to the latter. In particular, it establishes a series of transparency rules and a specific legal regime applicable to all firms that conduct financial intermediation services, including credit or loan consolidation.

SCOPE OF APPLICATION

The Law shall apply to all firms other than credit institutions (as the latter are already subject to organisational and disciplinary rules on credit and are supervised by the Banco de España) that conduct the following professional activities with consumers:[33]

a) Granting of mortgage loans or credits under the deferred payment formula, of credit facilities or of any other equivalent means of credit, without prejudice to the specific regulations on certain products such as consumer credit or hire purchase.

b) Provision of financial intermediation services for loan or credit agreements for any purpose, including, where appropriate, making said agreements available to consumers for signing.

CONDITIONS TO BE MET BY FIRMS FOR EXERCISE OF THIS ACTIVITY

Before being inscribed in the official registers created for this purpose, firms must take on civil liability insurance or obtain a bank guarantee to cover any liabilities that may be incurred vis-à-vis consumers relating to any damages deriving from the provision of financial intermediation services or the granting of mortgage loans or credits.

Furthermore, prior to start-up of their activity, they must be inscribed in the register held in the Spanish region in which they have their registered office. Firms conducting these activities in Spain that have no registered office in the country shall be inscribed in the State Register to be created at the National Consumer Institute (INC).[34]

The State Register, which shall include the information supplied by the regional (autonomous) governments and the inscriptions of foreign firms, shall be accessible online, free of charge,

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33. Consumers are understood to be natural and legal persons acting, in the agreements to which the Law refers, independently of any business or professional capacity. **34.** The Law envisages creation of this Register, within the six months following its entry into force.

and shall contain, inter alia, data identifying the firms, information on the activity conducted and the geographical area covered, data identifying the insurance company with which the necessary civil liability policy is held or the credit institution supplying the necessary bank guarantee, along with all other details set out in the respective regulations.

GENERAL TRANSPARENCY OBLIGATIONS FOR FIRMS

The Law envisages a number of transparency obligations relating to the agreements signed and prices charged. In the case of the agreements, firms shall make the general contractual conditions used by them available to consumers, free of charge. This pre-contractual information shall also appear on their websites, if such websites exist, and shall be available in the premises open to the public or offices in which the firms provide their services. As regards prices, firms shall be free to set their fees and commission charges, conditions and expenses chargeable to consumers, within certain legal limits; these prices shall be set out in a prospectus to be sent by the firms to the registers in which they are inscribed prior to application thereof. Firms may not charge any amounts over and above those deriving from the corresponding rates. Moreover, the fees and commission charges and chargeable expenses shall correspond to services effectively rendered or expenses incurred. Fees and commission charges and expenses may only be charged for services firmly and expressly accepted or requested by consumers.

All premises open to the public shall have a permanent notice board, set in a clearly visible place, with all the information that must be made available to consumers, as envisaged in the Law.

In addition, the burden of proof of compliance with the obligations established in the Law shall lie with the firms providing the services. The Law also regulates access to procedures for settling disputes out of court and for injunctions, in the event of any unlawful conduct that might harm general or collective consumer interests.

Regarding the penalty regime, any failure to comply with their obligations constitutes a consumer offence, penalised by the corresponding authorities in accordance with the provisions of the respective regional legislation.

MORTGAGE LOANS AND CREDITS

In any marketing material and advertising that refer to the amount of loans or credit offered, to the interest rate or to any figures connected with the related cost, firms must include mention of the typical APR (annual percentage rate) and of all other aspects determined in the respective regional legislation.

In the case of marketing material that refers to loan or credit consolidation, clear, concise and visible information must be given on expenses of any kind that may be incurred. Moreover, any reference to cutting monthly repayments is prohibited if not accompanied by express mention of the increase in the amount of the capital outstanding and of the repayment period of the new loan or credit.

Furthermore, firms must provide consumers, free of charge, with an informative leaflet clearly indicating, at minimum, the expenses involved in preparing the consolidation, relating to aspects such as advisory, appraisal, verification of inscriptions in the Property Register and others that may be charged to the consumer even if the loan or credit is not granted.

The Law also sets out the information that firms must provide to consumers, free of charge and at least five days prior to agreements being signed. Firms are also obliged to make a binding loan or credit offer to consumers, or, as appropriate, to inform them that their loan or

credit application has been denied. These binding offers shall be valid for at least ten business days as from the date of delivery thereof.

Mortgage loan or credit agreements granted by firms shall comply with all the conditions envisaged in the Ministerial Order of 5 May 1994[35] on transparency of the financial conditions of mortgage loans, with all the specifications established therein.

FINANCIAL INTERMEDIATION ACTIVITY

As regards financial intermediation activity, the Law regulates the legal regime of transparency of the firms' financial intermediation agreements.[36]

In any marketing material and advertising that refer to interest rates or to figures connected with the cost of the loans or credits to be taken out using the financial intermediation services offered, the advertising must meet the conditions established in the legislation applicable to the loan or credit in question. Furthermore, firms must specify the range of services offered, indicating whether they operate exclusively with one or more credit institutions or as independent brokers. Any marketing material that refers to loan or credit consolidation must also indicate the expenses connected therewith.

The Law also specifies the information that firms must provide to consumers, free of charge and at least fifteen days prior to agreements being signed, on the firm itself, the service offered and the financial intermediation agreement. This prior information includes essential aspects, such as the existence of the right of withdrawal, within the fourteen calendar days following the date of formalisation of the agreement, with no need to give any reason and with no penalisation.

Independent brokers shall be obliged to select, from the products available on the market, those best suited to the needs expressed by consumers, presenting them with at least three binding offers from credit institutions and advising them on the legal and financial conditions of each such offer.

Lastly, a transitional regime is set up for adaptation to the conditions established in this Law as from its entry into force on 2 April 2009.

15.7.2009.

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35. See "Financial regulation: 1994 Q2", *Boletín Económico,* July-August 1994, Banco de España, pp. 96-97. **36.** But the Law does not address the legal regime of the agreements brokered. Thus, for example, consumer loans brokered will continue to be subject to the provisions of Consumer Credit Law 7/1995 of 23 March 1995.