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Introduction

In comparison with previous periods, relatively few new financial provisions were published in 2012 Q2.

In the area of financial institutions, four provisions should be highlighted: new measures to restructure balance sheets affected by the impairment of assets linked to the real estate sector; the implementation of legislation on electronic money institutions; the creation of new personal data files managed by the Banco de España; and the updating of the legislation on communication by Spanish residents of cross-border economic transactions and their external assets and financial liabilities.

In the securities markets, certain aspects of the rules on takeover bids were modified, and these rules were extended to other share capital companies. In addition, a law was published on mergers and divisions of share capital companies, to simplify the information and documentation obligations in relation to such transactions.

In the EU sphere, a regulation was published on risk-sharing instruments for certain Member States and various regulations delegated by the European Commission were published to supplement the law on credit rating agencies.

Finally, the financial and fiscal measures contained in the recently promulgated State budget law for 2012 are analysed.

The contents of this article are set out in Table 1.

Write-downs and sales of the financial sector's real estate assets

Royal Decree-Law 18/2012 of 11 May 2012 (BOE of 12 May 2012) on write-downs and sales of the financial sector's real estate assets, which builds on Royal Decree-Law 2/2012 of 3 February 2012, was published.[1]

There follows a brief summary of the most important provisions of this Royal Decree-Law.

NEW PROVISIONS

Royal Decree-Law 2/2012 of 3 February 2012 required credit institutions to create new provisions for their portfolio of loans and assets foreclosed or received in payment of debts relating to development land and to real estate construction or development existing as at 31 December 2011.[2] The bulk of the additional provisions required correspond to that part of the portfolio classified as troubled (doubtful, substandard and foreclosed assets).[3] For assets classified as standard exposures, other than "inappreciable risk", institutions had to set aside a one-off general provision equal to 7% of their outstanding amount as at 31 December 2011.[4]

1 See "Financial regulation: 2012 Q1", *Economic Bulletin,* April 2012, Banco de España, pp. 122-128.

2 This is a specific and extraordinary write-down of a particular portfolio of assets and, therefore, did not affect new loans for real estate development made after 31 December 2011, unless they refinance pre-existing loans.

3 To determine the impairment of assets classified as other than standard exposures, the rules contained in Annex I of this Royal Decree-Law were applicable.

4 These provisioning requirements must be complied with before 31 December 2012, except in the case of those institutions that in 2012 carry out integration processes, which will have 12 months from when they obtain the necessary authorisation to comply with the requirements.

Royal Decree-Law 18/2012 establishes certain additional requirements in relation to the impairment of loans linked to real estate activity classified as standard exposures, which must be fully complied with on a one-off basis, and which differ according to the type of loan involved (see Table 2).

When this Law comes into force, the compulsory provisions for mortgage-secured financing of real estate construction or development will be increased by 45 percentage points (pp) in the case of land (from 7% to 52%), by 22 pp in that of development in progress (from 7% to 29%) and by 7 pp in that of completed development (from 7% to 14%). In the case of unsecured real estate construction or development loans, the compulsory provisions will be increased by 45 pp in all of the above-mentioned cases (from 7% to 52%).

These new requirements, like the previous ones, must be complied with before 31 December 2012, except in the case of institutions that carry out integration processes during 2012, which will have 12 months from when such processes are authorised. These processes must involve a significant transformation of the institutions concerned, involve institutions that do not belong to the same group and comply with the following conditions:

1) They must be carried out through operations that entail structural modifications or the acquisition of institutions in which the Fund for the Orderly Restructuring of the Banking Sector (FROB) has a majority holding, or for which the latter has been appointed provisional administrator.

2) They will include measures tending to improve their corporate governance.

PROVISIONS FOR ASSETS CLASSIFIED AS STANDARD EXPOSURES RELATING TO LAND OR REAL-ESTATE CONSTRUCTION OR DEVELOPMENT

TABLE 2

Royal Decree Law 2/2012 of 3 February 2012	Royal Decree Law 18/2012 of 11 May 2012
A one-off general provision of 7% of their outstanding amount as at 31 December 2011.	In addition: — Mortgage-secured: 45% for land (up from 7% to 52%), 22% for development in progress (up from 7% to 29%) and 7% for completed development (up from 7% to 14%). — Unsecured: 45% for all cases (up from 7% to 52%).

SOURCES: BOE and Banco de España.

3) They must incorporate a plan for the divestment of assets related to real estate exposures, as well as commitments to increase lending to households and small and medium-sized enterprises.

For this purpose, credit institutions and consolidable groups of credit institutions had to submit a plan to the Banco de España, by 11 June 2012, detailing the measures they intended to adopt to comply with the new requirements.[5]

Those institutions that, as a consequence of these write-downs, have a capital or core capital shortfall according to the rules in force will have to capitalise themselves in the market or, failing that, request financial support from the FROB. This might consist in subscription for instruments convertible into shares (contingent convertible bonds, known as "CoCos") or contributions to share capital, irrespective of whether they participate in integration processes. Institutions that seek this support must submit a restructuring plan which, inter alia, must set out the support measures that the envisaged FROB intervention would include.[6]

ASSET MANAGEMENT COMPANIES

In order for real estate assets to be identified and sold, the Royal Decree-Law envisages the creation of share capital companies to which credit institutions must transfer all the real estate assets foreclosed or received in payment of debts relating to land or real estate construction or development, and other real estate assets foreclosed or received in payment of debts since 31 December 2011.

The transfers must be made at fair value and by the end of the period for setting aside the new provisions established in Royal Decree-Laws 2/2012 and 18/2012 (i.e. before 31 December 2012, unless integration processes are carried out). In the event of absence of and difficulty estimating a fair value, the value in the accounts of the institution contributing the asset may be used instead, taking into account the provisions that must be created for the assets pursuant to Royal Decree-Laws 2/2012 and 18/2012.

5 Credit institutions that have outstanding preference shares or mandatory convertible debt instruments, issued before the entry into force of this Royal Decree-Law or exchanged for shares or instruments so issued, may include in the plan an application to defer for a period of no more than 12 months payment of the remuneration envisaged, even though, as a consequence of the restructuring that they have had to carry out, they do not have sufficient distributable profits or reserves or there is a capital shortfall at the issuing or parent institution. The payment of the deferred remuneration may only be made when this period expires if sufficient distributable profits or reserves are available and there is no capital shortfall at the issuing or parent credit institution.

6 The issuing institutions must undertake to repurchase the securities subscribed by the FROB, as soon as they are in a position to do so, on the terms included in the integration plan. If the preference shares have not been repurchased by the institution within five years from their payment, or if the Banco de España considers before then that it is unlikely in view of the situation of the institution or its group, that they will be repurchased or redeemed within such period, the FROB may apply to convert them into shares or capital contributions in the issuer.

In the case of credit institutions in which the FROB has majority holdings or which are managed by a provisional administrator appointed by the FROB, the latter will decide if the credit institution should create such a company.

Where credit institutions have received financial support from the FROB, the exclusive corporate objects of the companies to which they transfer their assets will be the management and disposal, directly or indirectly, of such assets. In addition, they will be obliged to dispose each year of at least 5% of their assets to a third party other than the transferor credit institution or any other company in the same group. The directors of such companies must have proven experience of the management of real estate assets. Finally, these credit institutions will have a period of three years, from the entry into force of this Royal Decree-Law, to adopt and implement the necessary measures to ensure that the link of the asset management company to the institution is, at most, that of an associate.

TAXATION OF TRANSACTIONS TO TRANSFER ASSETS TO ASSET MANAGEMENT COMPANIES

The tax regime established for the transactions to transfer assets to these companies will be the one for mergers, divisions, asset transfers, security exchanges and change of registered office of a European company or a European cooperative from one Member State to another laid down in the consolidated text of the corporate income tax law, approved by Royal Legislative Decree 4/2004 of 5 March 2004,[7] in order to ensure fiscal neutrality for the transactions carried out when asset management companies are set up.

In order to stimulate the sale of real estate assets, certain tax incentives are established, subject to certain conditions. For example, 50% of the positive income deriving from the transfer of urban real estate assets acquired for valuable consideration between the entry into force of this Royal Decree-Law and 31 December 2012 is exempt from taxation. The capital gains obtained without a permanent establishment in Spain from the disposal of urban real estate acquired during that period are also 50% exempt.

Finally, the fees of notaries public and property registrars are reduced significantly for transfers of financial or real estate assets as a consequence of financial institutions' write-downs and restructuring transactions.

The Royal Decree-Law entered into force on 12 May 2012.

Electronic money institutions: implementation of new legislation

Royal Decree 778/2012 of 4 May 2012 (BOE of 5 May 2012) on the legal regime for electronic money institutions (ELMIs), implementing Law 21/2011 of 26 July 2011on electronic money,[8] which established a new regulatory framework for ELMIs and the issuance of electronic money, was published.[9]

This completes the transposition of Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of ELMIs amending Directives 2005/60/EC of 26 October 2005 and 2006/48/EC of 14 June 2006 and repealing Directive 2000/46/EC of 18 September 2000.[10]

7 See "Financial regulation: 2004 Q1", *Economic Bulletin,* April 2004, Banco de España, pp. 99-100.
8 See "Financial regulation: 2011 Q3", *Economic Bulletin,* October 2011, Banco de España, pp. 177-181.
9 The previous law was contained in Article 21 of Law 44/2002 of 22 November 2002 on measures to reform the financial system and in Royal Decree 322/2008 of 29 February 2008 on the legal regime for electronic money institutions, which is now repealed.
10 See "Financial regulation: 2009 Q4", *Economic Bulletin,* January 2010, Banco de España, pp. 155-158.

REGULATIONS GOVERNING ELECTRONIC MONEY INSTITUTIONS TABLE 3

Royal Decree 322/2008 of 29 February 2008	Royal Decree 778/2012 of 4 May 2012
Legal regime	
They have the status of credit institutions.	They lose the status of credit institutions and are classified as financial institutions.
A number of requirements must be met to set up an ELMI. These relate in particular to the suitability and repute of the directors, the establishment of mechanisms for good, sound and prudent internal management, an appropriate organisational structure, and effective procedures for the identification, management, control and communication of risks.	No significant changes.
Guarantee and solvency regime	
None envisaged.	ELMIs must use one of the two methods of guarantee established in Law 21/2011 of 26 July 2011 to safeguard the funds received from their users for issuing electronic money and, where applicable, executing payment transactions.
A minimum initial capital of €1 million is required, as well as ongoing own funds greater than or equal to 2% of the total amount of financial liabilities arising from outstanding electronic money issued or the average amount of such liabilities during the preceding six months, if higher.	The minimum initial capital is reduced to €350,000. This is supplemented by a minimum level of own funds, which depends on the provision of payment services not linked to the issuance of electronic money, and on the activity of issuing electronic money.
Investment restrictions: ELMIs are required to make a number of investments in a particular set of assets.	Lifted.
Activities	
The issuance of electronic money, and the provision of financial and non-financial services closely linked to the issuance of electronic money.	In addition to the foregoing, they may provide payment services, grant credit in connection with certain payment services, manage payment systems, provide operational and auxiliary services closely linked to these activities, and engage in any other economic activities distinct from the issuance of electronic money, in conformity with the applicable legislation.
Not specifically envisaged.	ELMIs may delegate to third parties or agents the performance of certain activities, such as the distribution and redemption of electronic money. However, they are not permitted to issue electronic money through agents.
Not envisaged.	The concept of hybrid ELMIs is introduced. These perform, in addition to the issuance of electronic money and the provision of payment services, some other economic activity.
Cross-border activity	
Cross-border activity is not specifically envisaged. However, a regime is established of consultation between supervisors prior to the authorisation of ELMIs controlled by financial institutions authorised in other EU Member States. In addition, where the persons that are going to control an ELMI are domiciled in third countries, authorisation may be refused, not only on the usual grounds, but also for reasons relating to the application of the principle of reciprocity.	Cross-border activity is extensively regulated, with the granting of the "European passport" based on the system of communication between supervisors.
Supervisory and penalty regime	
The Banco de España is responsible for controlling and inspecting these institutions, within the framework laid down by Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions.	No significant changes.

SOURCES: BOE and Banco de España.

Table 3 compares, in summary form, the main features of the Royal Decree with those of the previous legislation.

SCOPE

The scope coincides with that of Law 21/2011, which defines electronic money as any electronically or magnetically stored monetary value representing a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions as defined in Law 16/2009 of 13 November 2009 on payment services,[11] and which is accepted by a natural or legal person other than the electronic money issuer.

Excluded from the scope of application is monetary value stored on specific instruments designed to meet specific needs and with limited use, either because the holder may only

11 See "Financial regulation: 2009 Q4", *Economic Bulletin*, January 2010, Banco de España, pp. 150-155.

acquire goods or services in the premises of the issuer of these instruments, or because the instruments may only be used to acquire a limited range of goods or services, or when they are used for payment transactions executed using telecommunications, digital or IT devices when the goods or services acquired are delivered or used by means of such devices.

LEGAL REGIME FOR ELMIs

As anticipated by Law 21/2011, a legal regime is developed that is more appropriate for the risks that their activity may generate. ELMIs lose the status of credit institution, since they cannot accept deposits from the public or grant credit with the funds received from the public. However, they have the status of financial institutions.

For the authorisation and pursuit of the business of ELMIs, the procedure of Law 21/2011 is maintained, which was similar to that of the previous legislation: 1) authorisation and registration by the Ministry for Economic Affairs and Competitiveness, upon prior reports of the Banco de España and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences on those aspects within their areas of competence; 2) a minimum initial capital of €350,000 (as against €1 million previously); 3) repute and professionalism of the directors, and of the general managers or those holding similar positions in the institution; 4) appropriate corporate governance procedures, including a clear organisational structure, with well-defined, transparent and consistent lines of responsibility to ensure the institution is soundly and prudently managed; and 5) internal control and communication procedures to prevent and impede money laundering and the financing of terrorism.

As provided in Law 21/2011, ELMIs are permitted to engage in economic activities other than the issuance of electronic money, which was previously their sole activity.[12]

The name "electronic money institution" and its abbreviation "ELMI" may only be used by these institutions, which may include them in their company names. A reference to their legal status must be included in all documents that are executed or issued in the pursuit of the business of issuing electronic money or, where applicable, of providing payment services, or that have legal effects vis-à-vis third parties.

GUARANTEE AND SOLVENCY REGIME

The Royal Decree lays down certain requirements for guarantees and own funds, which are similar to those for payment institutions.

With regard to the former, ELMIs are required to use one of the two methods of guarantee established in Law 21/2011 of 26 July 2011 to safeguard the funds received from their users for issuing electronic money and, where applicable, executing payment transactions: 1) establishing a deposit in a separate account at a credit institution with the funds received from users or investing them in low-risk liquid assets, or 2) taking out an insurance policy or obtaining a comparable guarantee from a credit institution or insurance company, which must comply with certain conditions and may only be used with the express authorisation of the Banco de España.

The calculation method ELMIs must apply to determine their minimum capital requirements is also detailed. In general, it will be the sum of the following two amounts: 1) in the

12 These include: the provision of the payment services defined in Law 16/2009; the granting of credit in connection with certain payment services provided that certain conditions are met and subject to the limitation that this credit is not granted from funds received in exchange for electronic money; the provision of operational and auxiliary services closely linked to the issuance of electronic money and to the provision of payment services; payment systems management; and, in general, any other economic activities distinct from the issuance of electronic money, in conformity with applicable EU and national legislation.

event of provision of payment services not linked to the issuance of electronic money, the same amount as required of payment institutions, which is based on a weighting of the amount of the payment transactions executed by them during the previous year, and 2) with respect to the activity of issuance of electronic money, 2% of the average amount of electronic money in circulation.

In the event that an ELMI has a capital shortfall with respect to requirements, it must make this known to the Banco de España, along with a programme to return to compliance. An obligation is established in these cases to submit the application of results to the prior authorisation of the Banco de España.

CROSS-BORDER ACTIVITY

Spanish ELMIs, since they are not subject to regulatory exemptions,[13] are granted a "European passport", and therefore their intra-EU cross-border activity is subject to the system of communication between supervisors (analogous to that of credit institutions). The system of prior authorisation by the Banco de España remains in place where the authorisation encompasses third countries.

In this latter case, it should be noted that for the branch of a foreign ELMI, authorised or domiciled in a non-EU country, to be established in Spain, the same requirements will apply as for the creation of a Spanish ELMI, with the special features detailed in the Royal Decree. The authorisation may be refused, in addition to on the grounds indicated for Spanish ELMIs, on the basis of the principle of reciprocity.

Prior authorisation is also required when seeking to set up an ELMI in a non-EU country. This requirement is extended when seeking to acquire a qualifying holding in or take control of an ELMI that already exists in such a country.

AGENTS AND DELEGATION OF OPERATIONAL FUNCTIONS

ELMIs are allowed to use agents (i.e. natural or legal persons acting on their behalf) to distribute and redeem electronic money, and, where applicable, to provide payment services, but in no case may they issue electronic money through agents.

In order to delegate operational functions that are considered essential (the issuance of electronic money or the provision of payment services) ELMIs must inform the Banco de España in advance, providing detailed information on the characteristics of the delegation and the identity of the firm to which they propose to delegate. The Banco de España may, giving reasons, object to such delegation. In the case of other operational functions, notification will be sufficient.

HYBRID ELECTRONIC MONEY INSTITUTIONS

The Royal Decree introduces the concept of hybrid ELMIs, defined as those that perform, in addition to the issuance of electronic money and the provision of payment services, any other economic activity. Certain specific requirements to pursue their business will be applicable to the latter, in addition to the general requirements.

The Banco de España may require a hybrid ELMI to set up a separate ELMI, when the pursuit of other economic activities apart from the issuance of electronic money and the provision of payment services may affect their financial soundness or the capacity of the authorities to perform their supervisory functions.

13 In the transposition of Directive 2009/110/EC, the power granted to Member States in Article 9, to authorise Spanish ELMIs subject to regulatory exemptions was not used. Had this power been used Spanish ELMIs would not have qualified for the European passport.

OTHER ASPECTS OF THE ROYAL DECREE

Law 21/2011 and the Royal Decree discussed here lay down the supervisory and penalty regime applicable to ELMIs, which is basically that applicable to credit institutions with certain adaptations. The Banco de España is given supervisory functions in respect of ELMIs: control and inspection, cooperation with EU authorities, exercise of competences under the qualifying holding regime for these institutions, etc. All this is in line with the powers already exercised by the Banco de España in relation to credit institutions. The penalty regime applicable to them is, basically, that provided for in Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions.[14]

Also, the duty of professional secrecy for all persons who, in the performance of a professional activity for the Banco de España or as a result of the exchange of information with other authorities, have had knowledge of confidential data is regulated.

Finally, a transitional regime is introduced for ELMIs authorised under the previous legislation (Article 21 of Law 44/2002 of 22 November 2002,[15] and Royal Decree 322/2008 of 29 February 2008).[16] These ELMIs are not required to apply for fresh authorisation, but must evidence compliance with the requirements specified in Law 21/2011 of 26 July 2011 and in this Royal Decree, subject to certain qualifications.

The Royal Decree entered into force on 6 May 2012.

Personal data files managed by the Banco de España

CBE 3/2012 of 28 March 2012 (BOE of 7 April 2012) on the creation, modification and deletion of personal data files managed by the Banco de España was published. This involved the amendment of Circulars 2/2005 of 25 February 2005, 4/2008 of 31 October 2008 and 1/2011 of 26 January 2011.

From the standpoint of financial regulation, the most important changes are: 1) the creation of the files "Supervisory college members" and "Key public infrastructure, European System of Central Banks", the descriptions of which, as set out in the annex to this Circular, are incorporated into Annex 1 of CBE 2/2005 of 25 February 2005; and 2) the deletion of the file "foreign currency exchanges", the data of which are incorporated into the file "Cash transactions", which is modified by this Circular.

The Circular entered into force on 7 April 2012.

Updating of the regulations for cross-border economic transactions

CBE 4/2012 of 25 April 2012 (BOE of 4 May 2012) on rules for the reporting by residents in Spain of cross-border economic transactions and stocks of external financial assets and liabilities was published. This Circular repeals, as from 1 January 2014, Circulars 6/2000 of 31 October 2000 and 3/2006 of 28 July 2006, as well as certain sections of Circular 2/2001 of 18 July 2001.

The purpose of the Circular is to adapt the rules for reporting by residents to the Banco de España to the new regime for the declaration of cross-border economic transactions laid down in Royal Decree 1360/2011 of 7 October 2011,[17] which amends Royal Decree 1816/1991 of 20 December 1991 on cross-border economic transactions, and in Order EHA/2670/2011 of 7 October 2011, which amends the Order of 27 December 1991, which implements Royal Decree 1816/1991 of 20 December 1991.

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14 See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico,* October 1988, Banco de España, pp. 56-58.
15 See "Financial regulation: 2002 Q4", *Economic Bulletin*, January 2003, Banco de España, pp. 101-113.
16 See "Financial regulation: 2008 Q1", *Economic Bulletin*, April 2008, Banco de España, pp. 167-170.
17 See "Financial regulation: 2011 Q4", *Economic Bulletin*, January 2012, Banco de España, p. 135.

The scope of the Circular is natural and legal persons resident in Spain (other than suppliers of payment services) who carry out transactions with non-residents and operations involving cross-border receipts, payments and/or transfers, as well as changes in accounts or debit or credit financial positions, or who have external assets or liabilities.

Relative to the previous legislation, the fundamental change is that, as from the entry into force of this Circular, the information on operations must be provided by the residents involved by means of a direct declaration to the Banco de España. Under the previous procedure, it was also permissible for the suppliers of payment services to provide the information.

Also, new periodicities and deadlines are laid down for sending the information (which must be done online), which vary according to the amount of the transactions with non-residents and of the stocks of external assets and liabilities.[18]

— Monthly periodicity, if the amounts of the transactions during the immediately preceding year, or the stocks of assets and liabilities as at 31 December of the preceding year, are greater than or equal to €300 million.

— Quarterly periodicity, if the amounts of the transactions during the immediately preceding year, or the stocks of assets and liabilities as at 31 December of the preceding year, are greater than or equal to €100 million and less than €300 million.

— Annual periodicity, if the amounts of the transactions during the immediately preceding year, or the stocks of assets and liabilities as at 31 December of the preceding year, are less than €100 million. This declaration may be submitted in an abridged form, in the terms laid down by the Circular, where neither the amount of the balances nor that of the transactions exceeds €50 million. If €1 million is not exceeded, the declaration shall only be sent to the Banco de España on the express requirement of the latter, within a maximum period of two months from the date of the request.

Finally, residents who were obliged to supply the information required in accordance with Circulars 6/2000 of 31 October 2000, and/or 3/2006 of 28 July 2006, must continue to supply it and declare it up to and including that corresponding to 31 December 2013, without prejudice to the performance of the obligations established in this Circular.

The Circular will enter into force on 1 January 2013.

Changes to the rules on takeover bids and the law on share capital companies in relation to mergers and divisions

Law 1/2012 of 22 June 2012 (BOE of 23 June 2012) on simplification of reporting and documentation requirements in the case of mergers and divisions of share capital companies, which repeals Royal Decree-Law 9/2012 of 16 March 2012[19], was published.

18 Previously, for the financial loans and credits residents granted to non-residents, in whatever form, the obligation to send the information applied to those with an amount greater than or equal to €3 million, always before the first drawdown of funds on the loan or credit obtained. In the case of settlements of receipts and payments with non-residents, the obligation applied to those whose amount was greater than or equal to €600,000 within one month.

19 See "Financial regulation: 2012 Q1", *Economic Bulletin*, April 2012, Banco de España, p. 135.

The Law has the same objectives as the repealed Royal Decree-Law,[20] but it introduces a number of drafting improvements and also makes some amendments to Securities Market Law 24/1988 of 28 July 1988[21] in relation to takeover bids.

CHANGES TO THE RULES ON TAKEOVER BIDS

When takeover bids (mandatory[22] or voluntary[23]) are made, the bidder must submit a report of an independent expert on the valuation methods and criteria applied to determine the bid price[24] if, during the two years immediately preceding the bid announcement, any of the following circumstances have existed: a) reasonable evidence of manipulation of the market prices of the target securities, which would have been grounds for the opening of sanctioning proceedings by the CNMV, had the interested party been notified of the relevant charges; b) either market prices in general, or the market price of the company concerned, in particular, have been affected by exceptional circumstances, such as natural disasters, war, calamity or some other situation of force majeure, or c) the company concerned has been subject to expropriations, confiscations or some other similar action that could entail a significant change in its real net asset value.

The bid price may not be lower than the higher of the fair price established in the mandatory takeover bid and the price based on the methods contained in the report (with justification of their respective relevance). Also, if the bid is in the form of an exchange of securities, then an equivalent cash consideration or price, that is at least financially equivalent to the exchange, must be included at least as an alternative to the foregoing.

Some of the neutralisation measures that companies may adopt in the case of mandatory takeover bids are modified. [25] Specifically, the percentage that must be held by the bidder to avoid security-transfer or voting-right restrictions in shareholders' agreements is reduced from 75% to 70%. Also, the provisions of the articles of association that set, as a general rule, the maximum number of votes that may be exercised by a single shareholder, by companies belonging to the same group or by those acting in concert with the foregoing will not apply if, following a takeover bid, the bidder holds 70% or more of the capital with voting rights, unless it was not subject to equivalent neutralisation measures or it has not adopted them. Finally, the decision to apply this type of measure must be adopted by the shareholders in general meeting, subject to the quorum and majority requirements applicable to amendments to the articles of association of public limited companies.[26]

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20 That is, the transposition into Spanish law of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.

21 See "Regulación financiera: tercer trimester de 1988", *Boletín Económico,* October 1988, Banco de España, pp. 61-62.

22 Mandatory takeover bids must be made when an entity gains control of a listed company, which is presumed to occur when 30% or more of the voting rights have been directly or indirectly obtained, or when a smaller holding has been obtained and the bidder appoints, pursuant to the terms laid down in regulations, a number of directors that, combined, where applicable, with those that it would already have appointed, represents more than 50% of the members of the company's board of directors.

23 The takeover bid is voluntary when, without reaching the percentages stipulated for a mandatory takeover bid, an entity seeks to acquire shares in a listed company (or other securities that may entitle their holder to subscribe for or acquire shares), on a voluntary basis.

24 This report must include the average market value during a specific period, the realisable value of the company, the value of the consideration paid by the bidder for the same securities during the 12 months prior to the bid announcement, the company's underlying book value and other generally accepted objective valuation criteria that, in any case, safeguard the rights of the shareholders.

25 These measures seek to neutralise the possible defensive strategies adopted by the target company, consisting, for example, in voting restrictions in the articles of association or transfer and voting restrictions in shareholders' agreements.

26 To amend the articles of association, at a general meeting of shareholders held at first call, shareholders representing 50% of the subscribed capital with voting rights must be present. At second call, shareholders representing 25% of such capital will be sufficient. In the latter case, a favourable majority of two-thirds of the capital represented is required.

Law 1/2012 makes the amendments to the Securities Market Law applicable to all other share capital companies.

SIMPLIFICATION OF REPORTING AND DOCUMENTATION REQUIREMENTS IN THE CASE OF MERGERS AND DIVISIONS OF SHARE CAPITAL COMPANIES

As regards the rest of the Law, those aspects of Royal Decree-Law 9/2012 relating to the simplification of the reporting and documentation requirements in the case of mergers and divisions of share capital companies have been maintained, including notably: 1) the status of the website and electronic communications is enhanced, in order to facilitate the functioning of companies and enable greater cost savings, and having a website is made compulsory for listed companies; 2) the merger balance sheet may be replaced by the 6-monthly financial report in the case of listed public limited companies; 3) the right of creditors to object to the merger in respect of financial claims existing before the draft terms of merger are filed at the Mercantile Registry or, as the case may be, before the draft terms of merger are made available on the websites of the respective companies, is guaranteed; 4) simplification of the formalities in the event of a division due to the formation of new companies; 5) the establishment of new cases in which it is not necessary to submit an independent experts' report to value the non-monetary contributions in the formation or in capital increases of public limited companies; and 6) certain changes to the wording of the rules on equity holders' entitlement to be insulated against the claims of other creditors in the event of cross-border mergers and a change in the address of the registered office to a foreign one.

Finally, the possibility is established of calling general meetings by means of announcements published on the website of the company, when the latter has been created and duly registered. Also, the articles of association may establish publication mechanisms in addition to those envisaged in the Law and require the company to manage a system of electronic alerts to shareholders for the call announcements posted on the company's website.

The Law entered into force on 24 June 2012.

EU regulation on risk-sharing instruments for certain Member States

Regulation 423/2012 of the European Parliament and of the Council of 22 May 2012 (OJ L of 23 May 2012) amending Council Regulation 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund was published, and Regulation 1260/1999 was repealed.

The Regulation introduces certain provisions relating to risk-sharing instruments. A Member State seeking to benefit from a risk-sharing instrument should specify in a written request to the Commission, by 31 August 2013, why it considers that it meets one of the eligibility conditions established in the Regulation. In particular, only projects for which a favourable financing decision is taken either by the European Investment Bank (EIB) or by a national or international public-sector body or body governed by private law with a public-service mission, as the case may be, will be accepted as eligible for financing through an established risk-sharing instrument.

Cooperation agreements concluded by the Commission either with the EIB or with national or international public-sector bodies or bodies governed by private law with a public-service mission will establish a number of rules, in particular on: the total amount of the Union contribution and a schedule on how it will be made available; the trust account conditions to be set up by the contracted implementing body; the eligibility criteria for the use of the Union contribution; the details of the exact risk-sharing (including the leverage ratio) to be covered and the guarantees to be provided by the contracted implementing

body; the pricing of the risk-sharing instrument based on the risk margin and the coverage of all the administrative costs of the risk-sharing instrument; the application and approval procedure for the project proposals covered by the risk-sharing instrument; the period of availability of the risk-sharing instrument; and the reporting requirements.

The Commission should verify that the information submitted by the requesting Member State is correct and that the Member State request is justified, and should be empowered to adopt, by means of an implementing act, within four months of the Member State request, a decision on the terms and conditions of the participation of the requesting Member State in the risk-sharing instrument.

The Regulation entered into force on 23 May 2012.

Credit rating agencies: rules supplementing the EU regulation

Various Commission delegated regulations supplementing the legislation on credit rating agencies (CRAs) contained in Regulation 1060/2009 of the European Parliament and of the Council of 16 September 2009 were adopted.[27] Following is a brief summary.

TECHNICAL STANDARDS ON INFORMATION TO BE PROVIDED FOR THE REGISTRATION AND CERTIFICATION OF CRAs

Commission Delegated Regulation 449/2012 of 21 March 2012 (OJ L of 30 May 2012) completes Regulation 1060/2009 by laying down certain technical standards on information to be provided by CRAs to the European Securities and Markets Authority (ESMA) in their applications for registration and certification.

In their applications for registration, CRAs must submit to the ESMA abundant documentation specified in the Regulation, including most notably the following: 1) identification of each person who directly or indirectly holds 5% or more of their capital or voting rights or whose holding makes it possible to exercise a significant influence over their management; 2) internal corporate governance policies and the procedures and terms of reference which govern their senior management, including the administrative or supervisory board, its independent members and, where established, committees; 3) accreditation of the suitability and good repute of their senior managers; and 4) information regarding their policies and procedures with respect to the identification, management and disclosure of conflicts of interest and the rules on rating analysts and other persons directly involved in credit rating activities.

The documentation to be submitted by CRAs to the ESMA in their applications for certification is mostly the same as that required in applications for registration, with some additional documents such as: 1) information on the credit ratings which they issue or intend to issue; 2) indication of whether they currently hold, or expect to apply for, External Credit Assessment Institution (ECAI) status in one or more Member States and, if so, they have to identify the relevant Member State; and 3) the information set out in Annex XII regarding the systemic importance of their credit ratings and credit rating activities to the financial stability or integrity of the financial markets of one or more Member States.

The Delegated Regulation entered into force on 19 June 2012.

TECHNICAL STANDARDS APPLICABLE TO THE ASSESSMENT OF CREDIT RATING METHODS

Commission Delegated Regulation 447/2012 of 21 March 2012 (OJ L of 30 May 2012) supplements Regulation 1060/2009 by laying down regulatory technical standards for the assessment of compliance of credit rating methods.

27 See "Financial regulation: 2009 Q4", *Economic Bulletin,* January 2010, Banco de España, pp. 165 and 175.

CRAs must at all times be able to demonstrate to ESMA their compliance with the requirements set out in Regulation 1060/2009 relating to the use of credit rating methods.[28] Also, the ESMA must examine compliance with such requirements as the ESMA considers appropriate. Specifically, the ESMA must assess the process of developing, approving, using and reviewing credit rating methods. In determining the appropriate level of assessment, the ESMA shall consider whether a credit rating method has a demonstrable history of consistency and accuracy in predicting credit worthiness.

CRAs must use credit rating methods and their associated analytical models, key credit rating assumptions and criteria that are applied systematically in the formulation of all credit ratings in a given asset class or market segment. Also, they must periodically review their methods, models and key rating assumptions, such as mathematical or correlation assumptions, and any significant changes or modifications thereto as well as the appropriateness of those methods, models and key rating assumptions where they are used or intended to be used for the assessment of new financial instruments.

The Delegated Regulation entered into force on 19 June 2012.

REGULATORY TECHNICAL STANDARDS ON THE CONTENT AND FORMAT OF PERIODIC REPORTING

Commission Delegated Regulation 446/2012 of 21 March 2012 (OJ L of 30 May 2012) supplements Regulation 1060/2009 with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the ESMA by CRAs.

Reports submitted in accordance with this Delegated Regulation have to be submitted on a monthly basis and provide rating data relating to the preceding calendar month. CRAs that have fewer than 50 employees and that do not form part of a group of CRAs may submit, every two months, reports that provide rating data relating to the preceding two calendar months, unless the ESMA informs the CRA that it requires monthly reporting in view of the nature, complexity and range of issue of its credit ratings.

The content of the reports is specified in the annexes to the Delegated Regulation and has to be submitted in two files: 1) qualitative data reporting in accordance with the format specified in the Delegated Regulation annexes, particularly data on the rating scale, explaining the individual characteristics and meaning of each rating, and 2) reports on the rating data to be submitted to the ESMA for each action carried out, and for each credit rating concerned by that action.

Further, rules are set for the submission of information, particularly for reporting structure, format, method and period in respect of qualitative data and rating data which CRAs must submit to a central repository established by the ESMA. They also have to report both solicited and unsolicited ratings, specifying each of them.

The Delegated Regulation will enter into force on 30 November 2012.

TECHNICAL STANDARDS FOR PRESENTATION OF THE INFORMATION THAT CRAs HAVE TO REPORT TO A CENTRAL REPOSITORY ESTABLISHED BY THE ESMA

Commission Delegated Regulation 448/2012 of 21 March 2012 (OJ L of 30 May 2012) supplements Regulation 1060/2009 with regard to technical standards for the presentation of the information that CRAs have to make available in a central repository established by the ESMA.

Regulation 1060/2009 stipulated that CRAs had to make certain information on historical performance data available in the central repository established by the ESMA and that the

28 Article 8(3) specifies that CRAs must use rating methods that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.

ESMA would make that information available to the public, along with a summary of the main developments observed. Delegated Regulation 448/2012 now specifies how the information provided is to be presented, including structure, format, method and period of reporting.

The Delegated Regulation entered into force on 19 June 2012.

State budget for 2012

Law 2/2012 of 29 June 2012 (BOE of 30 June 2012) on the State budget for 2012 was promulgated. Notable from the standpoint of financial regulation were the following.

GOVERNMENT DEBT

The government is authorised to increase the outstanding State debt in 2011 by no more than €35,325 million with respect to the level at the beginning of the year (the limit for last year's budget was €43,626 million). This limit may be exceeded during the course of the year following authorisation from the Ministry of Economic Affairs and Competitiveness, and those cases in which it shall be automatically revised are laid down.

As regards government guarantees and the like, the overall limit is set at €217,043 million for guarantees given by the State and government agencies (the limit set in the previous budget was €59,900 million).

That amount is apportioned as follows: 1) €92,543 million to guarantee the economic obligations to the firm known as the "European Financial Stability Facility" arising from financial instrument issuance and from the arrangement of loan and credit transactions and of any other financing transactions by that firm;[29] 2) €55,000 million to guarantee the economic obligations arising from new bond issues by credit institutions resident in Spain with significant activity in the Spanish credit market;[30] €66,000 million to guarantee the economic obligations to the FROB arising from the transactions envisaged in Royal Decree-Law 9/2009 of 26 June 2009[31] on bank restructuring and strengthening of the capital of credit institutions; and 3) €3,000 million (the same amount as in the previous budget) to guarantee the fixed-income securities issued by securitisation special purpose vehicles, aimed at improving the financing of corporate productive activity.

FISCAL MEASURES

With regard to personal income tax, a supplementary levy on top of the 2012 and 2013 gross tax payable is provided for in Royal Decree-Law 20/2011 of 30 December 2011[32] on urgent budgetary, tax and financial measures to correct the budget deficit.

The rebates to compensate for the loss of tax benefits affecting certain taxpayers under the current personal income tax law, regulated by Law 35/2006 of 28 November 2006, remain in place. The first establishes for 2011 a tax credit for purchase of principal residence[33] for taxpayers who purchased their principal residence before 20 January 2006. The amount is equal to the difference between the tax credit resulting from application of

29 Pursuant to Royal Decree-Law 9/2010 of 28 May 2010 authorising Spanish general government to guarantee certain financing transactions within the framework of the European Financial Stabilisation Mechanism for euro area Member States.

30 The guarantee covers the issue principal and current interest. Should the guarantee be enforced, provided such enforcement is initiated within five calendar days from the maturity date of the guaranteed obligation, the State will pay compensation to the lawful holders of the guaranteed securities, without prejudice to the amounts to be paid under the guarantee.

31 See "Financial regulation: 2009 Q2", *Economic Bulletin*, July 2009, Banco de España, pp. 186-190.

32 See "Financial regulation: 2011 Q4", *Economic Bulletin,* January 2012, Banco de España, pp. 148-150.

33 Royal Decree-Law 20/2011 of 30 December 2011 on urgent budgetary, tax and financial measures to correct the budget deficit reinstated the tax credit for purchase of principal residence, without setting a taxpayer income limit (previously it could be imposed if the recipient's income was below €24,107.20).

the previous personal income tax legislation (Legislative Royal Decree 3/2004 of 5 March 2004),[34] in force until end-2006, and that under Law 35/2006.[35]

The second rebate will affect those receiving in 2011 certain income from capital arising over a period exceeding two years. On one hand, income from capital obtained from transfer to third persons of capital from financial instruments entered into prior to 20 January 2006 will qualify for a reduction of 40%, as it did under the previous personal income tax law. On the other, income received in the form of deferred capital arising from life and disability insurance policies taken out prior to 20 January 2006 will qualify for a 40% or 75% reduction, as envisaged under the previous personal income tax law.

For transfers of real estate not used in business activities, the updated acquisition cost adjustment coefficient of 1% remains in place in 2012 for the purpose of determining the capital gain or loss arising from the transfer of such real estate.

In corporate income tax, as a result of the regulation of withholdings or prepayments set out in Royal Decree-Law 20/2011 of 30 December 2011, the standard withholding rate applicable to income from the leasing or sub-leasing of urban real estate is raised from 19% to 21%. Also, the monetary adjustment coefficients applicable to transfers of fixed assets or of such assets classified as non-current assets held for sale, if they are real estate, are updated by 1%. Finally, the method for determining partial payments of corporate income tax in 2012 is regulated.

The tax on the income of non-residents is modified to adapt Spanish legislation to Union law. To do this, the exemption applicable to profits distributed by subsidiaries resident in Spain to their parents resident in another EU Member State is extended to all States forming part of the European Economic Area.[36]

Other financial measures relate to the legal interest rate and the late-payment interest rate, which are unchanged at 4% and 5%, respectively.

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34 See "Financial regulation: 2004 Q1", *Economic Bulletin,* April 2004, Banco de España, pp. 99 and 100.

35 During 2010 a tax credit may be taken, in general, for 15% of the amounts paid for the purchase or renovation of the principal residence, with a maximum of €9,015.18 per annum. In 2006, although the same tax credit was available, in general, when the purchase was made using borrowed funds, in the two years following the purchase the tax credit was for 25% of the first €4,507.59 and for 15% of the remainder up to €9,015.18. Subsequently, these percentages were 20% and 15%, respectively.

36 The European Economic Area is made up of the 27 EU countries plus Iceland, Liechtenstein and Norway.