FINANCIAL REGULATION: 2012 Q4

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Introduction

As has come to be the pattern in the final months of the year, a considerable number of financial provisions were published in 2012 Q4. This article aims to summarise them.

The European Central Bank (ECB) adopted four guidelines: one updating some of the eligibility criteria for the use of assets as collateral for Eurosystem monetary policy procedures and instruments; a second making temporary changes to the eligibility of new collateral assets in monetary policy operations; a third regulating the statistics on institutional sectors' holdings of securities issued by euro area residents; and a fourth defining the standards for the management of the centralised securities database.

Legislation has been published in several areas affecting credit institutions, including measures to restructure balance sheets affected by the impairment of assets in the property sector; regulations on the new framework for the restructuring and resolution of institutions, and other changes in the financial area; regulations on asset management companies and bank asset funds; the definition of the provisions that have to be set aside to meet minimum core capital requirements; and changes to public and confidential financial information reporting rules.

The regulations on the procedures whereby users of financial services can file complaints and claims or make enquiries to the relevant complaints services have also been published.

The regulations on cooperation agreements between investment funds specialising in government debt have been updated.

The new legislation to step up measures to combat and prevent fraud, and creating new obligations to disclose foreign assets and interests, also includes a number of points of relevance from the financial and fiscal point of view.

Two pieces of legislation were enacted in relation to the securities market: one to amend the regulations on the prospectus and transparency requirements for securities issues, and a second on greenhouse-gas emission allowance auctions.

Finally, a summary is given of the new financial and fiscal regulations in the 2013 State budget, in the Law on tax measures aimed at consolidating the public finances and stimulating economic activity, and the urgent measures to strengthen the protection of mortgage debtors.

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

European Central Bank: amending the guidelines on monetary policy instruments and procedures of the Eurosystem

Guideline ECB/201/25 of 26 November 2012 (OJEU of 18 November 2012), amending Guideline ECB/2011/14 of 20 September 2011[1] on monetary policy instruments and procedures of the Eurosystem.

1 See "Financial regulation: 2011 Q4," *Economic Bulletin,* January 2012, Banco de España, p. 113.

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The Guideline updates a number of points regarding eligibility criteria for collateral such as asset-backed securities and covered bonds, the performance monitoring data on credit assessment systems, and the calculation of financial penalties for non-compliance with counterparty obligations.

COMMON COLLATERAL ELIGIBILITY CRITERIA

The common requirements for marketable securities to be eligible for Eurosystem monetary policy operations have been revised, in particular as regards coupon definitions.

As before, these assets must be debt instruments having coupons that cannot yield a negative cash flow. Henceforth, these may be: 1) fixed, zero and multi-step coupons, i.e. instruments with a predefined coupon schedule and predefined coupon values; 2) flat floating coupons linked to only one index corresponding to a euro money market rate; 3) leveraged and deleveraged floating coupons linked to only one index corresponding to a euro money market rate, or linked to the yield of one euro area government bond that has a maturity of one year or less; or 4) flat inflation-floaters linked to euro area inflation indices, provided they contain no complex structures.[2]

Eligible coupons should have no issuer optionalities, i.e. they should not allow changes in the coupon definition during the life of the instrument that are contingent on an issuer's decision. Furthermore, any caps or floors must be fixed and pre-determined.

2 Under the previous rules only fixed, zero or floating coupons linked to a reference interest rate were allowed.

The following coupon structures are expressly excluded: floaters linked to foreign currency interest rates, commodity and equity indices and exchange rates; dual floaters and floaters linked to swap spreads or to another combination of indices, and any kind of ratchet and range accrual coupons, inverse floaters and coupons that depend on a credit rating.

ADDITIONAL ELIGIBILITY CRITERIA APPLICABLE TO ASSET-BACKED SECURITIES

The provision states that covered bonds are not considered asset-backed securities. The requirements that are to be met by cash flow generating assets backing the asset-backed securities are basically unchanged, although some new details have been added.

For asset-backed securities to become or to remain eligible as collateral for Eurosystem monetary policy operations, the Eurosystem requires comprehensive and standardised data on the pool of cash flow generating assets backing the asset-backed security to be submitted by the relevant parties. This data is to be submitted electronically in accordance with Appendix 8 of the Guideline. The appendix also sets out the data submission requirements, such as frequency, deadlines, etc.

In order to be eligible, an asset-backed security must be backed by cash flow generating assets which the Eurosystem considers to be homogeneous, i.e. that cash flow generating assets backing an asset-backed security consist of either residential mortgages, commercial real-estate mortgages, loans to small- and medium-sized enterprises, auto loans, consumer finance loans or leasing receivables.

Asset-backed securities not complying with these requirements will remain eligible only until 31 March 2014.

The Eurosystem reserves the right to request from any relevant third party, e.g. the issuer, the originator or the arranger, any clarification and/or legal confirmation that it considers necessary to assess the eligibility of any asset-backed securities and with regard to the reporting of loan-level data. Non-compliance with these requirements may result in the asset-backed security's ceasing to be eligible.

ADDITIONAL ELIGIBILITY CRITERIA APPLICABLE TO COVERED BONDS

As of 31 March 2013 covered bonds will be subject to a number of additional requirements. The cover pool for a covered bond may not contain asset-backed securities, with the exception of asset-backed securities which: 1) comply with the requirements laid down in Directives 2006/48/EC, of the European Parliament and the Council, of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions,[3] and 2006/49/EC, of the European Parliament and of the Council, 14 June 2006, on the capital adequacy of investment firms and credit institutions,[4] in respect of asset-backed securities in covered bonds; 2) are used as a technical tool to transfer mortgages or guaranteed real-estate loans from the originating entity into the cover pool; and 3) were originated by a member of the same consolidated group of which the issuer of the covered bonds is also a member or by an entity affiliated to the same central body to which the issuer of the covered bonds is also affiliated. Covered bonds not complying with the first two of these requirements will remain eligible only until 28 November 2014.

RULES ON THE USE OF ELIGIBLE ASSETS

Additional rules on use of eligible assets have been introduced, such that all marketable and non-marketable assets can be used in a cross-border context throughout the euro area. This means that all Eurosystem counterparties must be able to use eligible

3 See "Financial regulation: 2006 Q2," *Economic Bulletin,* July-August 2006, Banco de España, pp. 142-144.
4 See "Financial regulation: 2006 Q2," *Economic Bulletin,* July-August 2006, Banco de España, pp. 144-146.

assets through links with their domestic securities settlement systems (SSS) in the case of marketable assets or through other eligible arrangements to receive credit from the national central bank (NCB) of the Member State in which the counterparty is established.

Moreover, counterparties may not submit any asset-backed security as collateral if the counterparty (or any third party with which it has close links) provides a currency hedge for the asset-backed security or provides any form of liquidity support for 20% or more of the outstanding amount of that asset-backed security.

Certain obligations on counterparties submitting asset-backed securities which have close links to the originator of the underlying assets of these asset-backed securities have been introduced. The latter must inform the Eurosystem of any planned modification to that asset-backed security that could potentially have an impact on its credit quality, e.g. an alteration in the interest rate due on the notes, a change in the swap agreement, changes in the composition of underlying loans not provided for in the prospectus, or changes to the priority of payments. Moreover, at the time of the asset-backed security's submission, the counterparty must provide information on any modifications occurring in the preceding six months.

PERFORMANCE MONITORING OF CREDIT ASSESSMENT SYSTEMS

The Eurosystem's credit assessment framework (ECAF) has been updated to ensure that marketable and non-marketable assets fulfil the required credit standards. The ECAF performance monitoring process will therefore consist of an annual ex post comparison of: 1) the observed default rates for all eligible entities and instruments rated by the credit assessment system, where these entities and instruments are now grouped into static pools based on certain characteristics, such as credit rating, asset class, industry sector, or credit assessment model; and 2) the appropriate credit quality threshold of the Eurosystem given by the benchmark probability of default.

The two phases of the credit assessment system process have also been revised: The first phase of the process is the annual compilation by the credit assessment system provider of the list of entities and instruments (using the template supplied by the Eurosystem) with credit assessments that satisfy the Eurosystem credit quality threshold at the beginning of the monitoring period. In the second phase, the system provider updates the performance data for the entities and instruments on the list. This will be submitted to the Eurosystem, which reserves the right to request any additional information it may require.

FINANCIAL PENALTIES

The financial penalties for breach by counterparties of the rules on tendering operations, bilateral transactions, use of underlying assets, end-of-day procedures or access conditions for the marginal lending facility have been revised. Penalties were previously calculated by applying a fixed coefficient. This has been changed to a coefficient that varies according to the number of days, up to a maximum of seven, during which the counterparty was in breach of the rules, with a minimum penalty of €500.

The Eurosystem's national central banks (NCBs) are to send the ECB detailed information about the texts and means they propose in order to apply this Guideline. This information is to be received no later than 19 December 2013.

This Guideline came into force on 20 December 2012 and will be applicable as of 3 January 2013.

European Central Bank: temporary changes to the collateral eligibility criteria for monetary policy operations

Guideline ECB/2012/23 of 10 October 2012 (OJEU of 17 October 2012), amending Guideline ECB/2012/18 of 2 August 2012[5] on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral.

The new rules temporarily widen the criteria determining the eligibility of assets to be used as collateral in Eurosystem monetary policy operations so as to accept marketable debt instruments denominated in pounds sterling, yen or US dollars, provided they satisfy the following conditions: 1) they are issued and held/settled in the euro area; 2) the issuer is established in the European Economic Area (EEA);[6] and 3) they fulfil all the other eligibility criteria included in Annex I to Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem.[7]

The Eurosystem will apply a 16% valuation markdown on assets denominated in pounds sterling or US dollars, and 26% on assets denominated in yen.

The Guideline came into effect on 19 October and was applicable as of 9 November.

European Central Bank: statistics on securities portfolios

The ECB also published *Regulation 1011/2012 (ECB/2012/24) of 17 October 2012* (OJEU of 1 November 2012), concerning statistics on holdings of securities.

The European System of Central Banks (ESCB) needs to collect high quality statistical information on a security-by-security basis[8] regarding securities held by euro area institutional sectors, and securities issued by euro area residents and held by non-euro area institutional sectors. The aim is to provide the ECB with statistical information on the exposure of economic sectors in Eurosystem Member States to specific classes of securities and on the links between holders and issuers of securities in these economic sectors.

STATISTICAL REPORTING OBLIGATIONS

The actual reporting population will consist of monetary financial institutions (MFIs),[9] investment funds, financial vehicle corporations (FVCs), custodians[10] and heads of banking groups identified by the Governing Council as reporting groups[11] (hereinafter, 'actual reporting agents').

These agents will provide their respective NCBs with security-by-security data on the positions and financial transactions, or alternatively, the statistical information necessary to

5 This Guideline temporarily made certain new assets eligible as collateral in Eurosystem monetary policy operations. Specifically, it widened the range of asset-backed securities, loans and certain bank obligations guaranteed by a Member State. See "Financial regulation: 2012 Q3," *Economic Bulletin,* October 2012, Banco de España, pp. 1-5.

6 The EEA was created on 1 January 1994 following an agreement between European Union Member states and the European Free Trade Area (EFTA). Its creation allowed EFTA's countries to participate in the EU's internal market without being members of the EU. It comprises the 27 EU countries plus the following EFTA members: Iceland, Liechtenstein and Norway.

7 The ECB has established, maintains and publishes a list of eligible marketable assets. The eligibility criteria that are applied to determine the eligibility of other marketable assets are listed in section 6.2.1 of Annex I to Guideline ECB/2011/14.

8 'Security-by-security' data collection means the collection of data is broken down into individual securities.

9 MFIs include credit institutions (CIs) and money market funds (MMFs).

10 Custodians are entities undertaking the safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.

11 The Governing Council of the ECB may decide that a banking group is a reporting group if the banking group has consolidated balance sheet assets: 1) greater than 0.5% of the total consolidated balance sheet assets of the European Union banking groups, or 2) equal to or below the 0.5% threshold, in cases where the banking groups meet certain quantitative or qualitative criteria that make them important for the stability and functioning of the financial system in the euro area.

calculate the latter, with regard to their own securities holdings.[12] These data are to be reported on a quarterly or monthly basis in accordance with the instructions laid down by the relevant NCBs.

DEROGATIONS

NCBs may grant derogations to actual reporting agents when their total holding of securities with an ISIN code by resident investors has a value of €40 billion or less, provided that certain conditions are met in each case.

NCBs may exempt credit institutions from reporting requirements when the position these institutions hold is not more than 5% of the total value of securities held by credit institutions in the relevant euro area Member State. This threshold may be raised to 15% for the first two years. In the case of money market funds and financial vehicle corporations, this threshold may not exceed 2% of the total holdings of securities by such institutions in the relevant Member State.

The actual reporting agents may choose not to make use of derogations granted by the NCBs but to fulfil the full reporting requirements instead. In such cases, should the agents concerned subsequently wish to apply this derogation, the prior authorisation of the NCB will be required.

Holdings of securities are to be reported on a gross basis at nominal value, although market values may also be reported.

TIMELINESS

NCBs shall decide when they need to receive data from actual reporting agents so they are able to perform the necessary quality controls and meet the deadlines for NCBs to forward data to the ECB.

NCBs are to forward quarterly data to the ECB by close of business on the 70th calendar day following the end of the quarter.

There are two options for monthly data: 1) on a quarterly basis for the three months of the reference quarter, by close of business on the 63rd calendar day following the end of the quarter to which the data relate, or 2) on a monthly basis for each month of the reference quarter by close of business on the 63rd calendar day following the end of the month to which the data relate.

Finally, NCBs are to forward the information supplied by heads of banking groups according to the following timetable: 1) from 2013 to 2015, on the 70th calendar day following the end of the quarter to which the data relate; and 2) from 2016, on the 55th calendar day following the end of the quarter to which the data relate.

OTHER ASPECTS OF THE REGULATION

The regulation establishes the minimum information reporting requirements and provides for the verification and compulsory data gathering rights that may be exercised by the NCBs when the actual reporting agents do not fulfil the minimum reporting standards, without prejudice to the ECB's right to collect this information itself.

The first reporting pursuant to this Regulation will be that relating to the reference period December 2013. The Regulation entered into force on 21 November 2012.

12 The ISIN code is an international 12-character alpha-numerical identification code uniquely assigned to securities issues.

European Central Bank: Centralised Securities Database

The ECB published *Guideline ECB/2012/21 of 26 September 2012* (OJEU of 7 November 2012) on the data quality management framework for the Centralised Securities Database.

The Centralised Securities Database (CSDB) is a single information technology infrastructure, which is operated jointly by the members of the European System of Central Banks (ESCB), together with national central banks (NCBs) of Member States outside the Eurosystem that participate voluntarily.

Data are collected from various sources (particularly in the case of data regarding securities, issuers and prices) including NCBs, certain commercial data providers, government and other public domain sources. The CSDB system is able to reconcile partially inconsistent input data from different sources, and can detect incomplete or missing data. As far as possible, it automatically compounds input data from various overlapping sources into a complete and high quality single record.

SUBJECT MATTER AND SCOPE

The Guideline establishes a framework for data quality management (DQM)[13] in the CSDB, the aim of which is to ensure the completeness, accuracy and consistency of the CSDB's output data[14] by consistently applying rules on quality standards. Management of the CSDB also relies on data source management (DSM).[15]

DQM COMPETENT AUTHORITIES

The NCB of the euro area Member State in which a security issuer is resident will be competent for the DQM of the data concerning that issuer. The ECB will be competent for the DQM of data related to issuers resident outside the euro area, unless a non-euro area NCB has agreed to take responsibility for conducting DQM for data concerning issuers resident in its Member State.

DQM OBJECTIVES, METRICS AND THRESHOLDS

The CSDB's DQM framework must be applied to output data irrespective of their source. This framework includes: 1) DQM targets that represent indicators for assessing the quality of output feed data; 2) DQM metrics that identify and prioritise, for each respective DQM target, the output feed data that need to be verified; and 3) DQM thresholds that define the minimum level of verification that needs to be conducted in relation to a DQM target.

Since the CSDB is operated jointly by all ESCB members, they should all aim to follow the same DQM standards. Non-euro area NCBs are to design and implement all the measures that they deem appropriate in order to perform DQM in accordance with this Guideline.

DQM competent authorities are to verify the output feed data by applying DQM metrics in accordance with Annex I[16] and Annex II[17] of the Guideline.

ANNUAL QUALITY REPORT

Taking the views of the ESCB Statistics Committee into account, the Executive Board of the ECB will report annually to the Governing Council on the quality of the output feed

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13 DQM means ensuring, verifying and maintaining the quality of output feed data through the use and application of DQM targets, DQM metrics, DQM thresholds and the DQM workflow.

14 Output data are automatically derived in the CSDB by compounding input data into a complete, high quality single record.

15 DSM means identifying and correcting directly with a data provider any recurrent and/or structural mistakes in input data.

16 Annex I sets out the DQM targets, data fields and thresholds, i.e. the minimum verification effort that must be made in order to satisfy the DQM framework's requirements for a DQM target.

17 Annex II describes the data flows for different uses and the information fields of the output data included in the GCD framework.

data. Taking account of the views of the ESCB Statistics Committee, it may also make technical amendments to the Annexes to this Guideline, provided that they do not alter the objectives of the Guideline, or substantially impact the reporting burden on DQM competent authorities.

This Guideline came into force on 1 November 2012 and will be applicable as of 1 July 2013.

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

Law 8/2012 of 30 October 2012 on write-downs and sales of the financial sector's real-estate assets (hereinafter, the Law), was published in the State Official Gazette (BOE) on 31 October 2012.

This legislative instrument gives the provisions of Royal Decree-Law 18/2012, 11 May 2012[18] (hereby repealed) on write-downs and sales of the financial sector's real-estate assets, the status of a law. Among other things, this required additional provisions to those already established in Royal Decree-Law 2/2012 of 3 February 2012,[19] consolidating the financial sector in the wake of the impairment of its loans to the property business. It also clarifies a number of points regarding Royal Decree-Law 2/2012 to ensure consistency with Royal Decree-Law 18/2012, and the opportunity was taken to modify a number of financial regulations, as discussed below.

MEASURES TO CLEAN UP CREDIT INSTITUTIONS' BALANCE SHEETS

As initially envisaged in Royal Decree-Law 18/2012, the Law establishes new provisions for loans and assets foreclosed or received in payment of debts relating to the property business existing on 31 December 2011, corresponding to the business in Spain of credit institutions, and classed as standard exposures. These provisions are to be set aside on a one-off basis, and the amount will vary according to the different lending types (see Table 2).

Thus, in the case of mortgage lending for property construction or development, the percentage mandatory provision has been increased by 45 percentage points (pp) in the case of land (from 7% to 52%), 22 pp in that of property developments in progress (from 7% to 29%), and by 7 pp in that of completed property developments (rising from 7% to 14%). In the case of unsecured property 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 must be complied with by 31 December 2012. To this end, credit institutions and consolidated groups of credit institutions were required to submit a plan to the Banco de España by 11 June 2012, detailing the measures they intended to adopt in order to comply with the new requirements. Those institutions that had a capital or core capital shortfall as a consequence of these write-downs were required to specify in their plan the measures they envisaged in order to avoid incurring this deficit, and had a maximum of five months in which to implement this plan.

These new provisions were to be used solely to cover the subsequent reclassification of any of the loans as doubtful or substandard, or the receiving of assets from foreclosures or in payment of debts.

The Law now sets a new deadline of 31 December 2013 such that if the new provisions have not been fully applied for these purposes on that date, the remaining balance may be assigned to provisions for those assets decided by the Banco de España at the time.

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18 See "Financial regulation: 2012 Q2," *Economic Bulletin,* July-August 2012, Banco de España, pp. 107-110.
19 See "Financial regulation: 2012 Q1," *Economic Bulletin,* April 2012, Banco de España, pp. 132-135.

COVERAGE OF ASSETS CLASSED AS STANDARD RISK RELATING TO LAND, BUILDINGS AND PROPERTY DEVELOPMENTS

TABLE 2

Royal Decree-Law 2/2012, 3 February 2012	Law 8/2012, 30 October 2012
A one-off general provision of 7% is established against the outstanding balance on 31 December 2011	Further to the above, the following is added: With mortgage guarantee: 45% for land (rising from 7% to 52%; 22% for property developments in progress (rising from 7% to 29%), and 7% for completed developments (rising from 7% to 14%) For unsecured loans, the percentage will be 45% in all cases (from 7% to 52%).

SOURCE: BOE and Banco de España.

Finally, the Law authorises the Banco de España to modify the aforementioned provisions as of 31 December 2012 if it sees fit, in accordance with Article 48 of Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions.

CREDIT INSTITUTION INTEGRATION PROCESSES

As established by Royal Decree-Law 2/2012, credit institutions undergoing integration processes during the year entailing significant changes to institutions not belonging to a single group have 12 months from the time the necessary authorisation is granted to comply with the new provisioning requirements. This integration must be carried out through operations that entail structural modifications or the acquisition of institutions in which the FROB has a majority shareholding or for which the latter has been appointed as provisional administrator. They must also include measures aimed at improving corporate governance and incorporate a plan for the divestment of assets relating to real estate exposures, together with commitments to increase lending to households and small and medium-sized enterprises. Applications were to be submitted to the Treasury by 31 May 2012 (this requirement was not applicable to acquisitions of institutions in which the FROB had a majority shareholding). Consistent with the deadlines established by Royal Decree-Law 18/2012 of 11 May 2012, the Law extended this deadline to 30 June 2012.

ASSET MANAGEMENT COMPANIES

As envisaged in Royal Decree-Law 18/2012, Law 8/2012 provides for the creation of share capital companies to which credit institutions are to transfer properties received through foreclosures or in payment of debts relating to land, construction, and property development.

Companies created by credit institutions that have received financial support from the FROB will have the sole corporate purpose of managing and disposing, directly or indirectly, of the assets transferred to them. In the case of institutions in which the FROB has a majority shareholding, and in that of institutions for which the FROB has been appointed the provisional administrator, the FROB will decide whether or not the credit institution should set up an asset management company.

As Royal Decree-Law 18/2012 stipulates, transfers of ownership must take place at fair value and by the end of the period established for the new provisions to be set aside (scheduled for 31 December 2012, unless an integration process is underway). In the absence of a fair value, or in cases where it is difficult to estimate, the book value in the accounts of the institution transferring the asset may be used instead, taking into account the provisions that must be set aside for assets pursuant to Royal Decree-Law 2/2012 of 3 February 2012 and Article 1.1 of this Law.

Where credit institutions have received financial support from the FROB, 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 entity belonging to its group. Moreover, they will have a period of three years, from the entry into force of Royal Decree-Law 18/2012 (i.e. as of 12 May 2012) to adopt and implement the necessary measures to ensure that the link between the asset management company and the institution is, at most, that of an associated company.

Credit institutions must have databases with the information they need to manage the assets transferred to the company. The requirements with which these databases must comply have been set out by the Banco de España in its Circular *CBE 8/2012 of 21 December 2012* (BOE of 27 December 2012). The content of these databases, according to their type, is described in the annex to the Circular.

If the nature of the assets transferred to these companies is such that the information cannot comply with the stipulations of the annex, institutions are to create the necessary databases following consultation with the Banco de España such that the latter can assess the adequacy of the designed structures.

The design of the databases must allow assets to be grouped into homogenous classes to make them easier to transfer to asset management companies. The databases must be transferred using computer media and formats compatible with the company's systems. If several credit institutions, acting on their own account or through their subsidiaries, transfer assets to a single company, they must agree on a specification for the database format beforehand to avoid a proliferation of formats and media.

TAXATION OF ASSET TRANSFERS TO ASSET MANAGEMENT COMPANIES

As a result of the fiscal regime introduced by Royal Decree-Law 18/2012, these operations will be subject to the taxation rules established for mergers, divisions, asset transfers, and exchanges of securities laid down in the consolidated text of the corporate income tax law, approved by Legislative Royal Decree 4/2004 of 5 March 2004,[20] in order ensure the fiscal neutrality of the transactions involved in setting up an asset management company.

By the same token, transfers subsequent to the initial contributions of holdings during the company's creation and transfers of holdings of credit institutions affected by integration plans are exempt from VAT, transfer tax and stamp tax.

Moreover, 50% of the positive income deriving from the transfer of urban properties considered non-current assets or classed as non-current assets held for sale and which were purchased between 12 May 2012 (entry into force of Royal Decree-Law 18/2012) and 31 December 2012 is exempt from taxation. This same percentage exemption applies to capital gains from the sale of urban property acquired during this period.

Finally, the fees of notaries public and property registrars have been significantly reduced in the case of transfers of financial assets or real estate resulting from financial institutions' write-downs and restructuring operations.

PREFERENCE SHARES AND OTHER INSTRUMENTS IN CIRCULATION

The Law also introduces special treatment for preference shares under the terms of Royal Decree-Law 18/2012.

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

Thus, credit institutions facing equity capital difficulties as a result of applying the new provisions may include in their consolidation plan an application to defer for up to 12 months the envisaged remuneration on preference shares or mandatory convertible debt instruments in circulation before 12 May 2012 (date of entry into force of Royal Decree-Law 18/2012) or on instruments exchanged for the foregoing. Once this period has expired, deferred remuneration may only be paid if sufficient distributable profits or reserves are available and there is no capital shortfall at the parent credit institution.

The Law also empowers the government to stipulate under what circumstances institutions issuing preferred shares or subordinate bonds are to offer to exchange them for shares or subordinate bonds in the issuing institution or a member of its group, and the criteria for determining the percentage of the nominal value of the instruments to be exchanged.

AMENDMENT OF THE LEGISLATION CONCERNING LEGAL TENDER BANKNOTES AND COINS

The Law designates the Banco de España as the competent national authority for the purposes of Regulation 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation. In particular, the Banco de España will receive coins that, after a process of authentication, are suspected of being counterfeit, and euro coins not fit for circulation. Where applicable, it will perform detection tests on coin-sorting machines, sign the relevant bilateral agreements with coin-sorting machine manufacturers to allow tests to be carried out on manufacturers' premises, and draw up reports on detection tests. To perform these tasks, the Banco de España may enter into any agreements with third parties as it sees fit.

Law 13/1994 of 1 June 1994 of Autonomy of the Banco de España has also been amended to adapt the Banco de España's role in issuing and uttering banknotes to Council Regulation 1338/2001 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting. Specifically, the Banco de España may: 1) establish criteria and procedures for action in relation to the uttering, withdrawal, exchange, custody and recirculation of euro banknotes; 2) gather whatever information and documentation is necessary to promote the good conservation, quality and authenticity of the banknotes in circulation; 3) carry out on-site inspections with or without prior notice on the premises of economic entities and agents to verify their banknote processing machines and, in particular, their capacity to confirm banknote authenticity and fitness, the handling of verified euro banknotes, and the manual verification of authenticity and fitness, where applicable; 5) take samples of euro banknotes for verification on its own premises, and 6) require that an entity take corrective measures in the event of non-compliance with any applicable obligations.

The Banco de España may establish criteria and procedures for action in relation to the uttering, withdrawal, exchange, custody and recirculation of euro banknotes, and supervise compliance in order to promote the authenticity and quality of the euro banknotes in circulation.

Finally, the period for the exchange of banknotes and coins denominated in pesetas for banknotes and coins in euros, which is solely carried out by the Banco de España, has been limited. This period will end on 31 December 2020, after which time it will no longer be possible to exchange peseta banknotes and coins for euros.

RENEWAL AND DISMISSAL OF THE GOVERNING BODIES OF THE BANCO DE ESPAÑA

The rules concerning the renewal and dismissal of the governing bodies set out in Law 13/1994 of 1 June 1994[21] of Autonomy of the Banco de España have been amended.

21 See "Regulación Financiera: segundo trimestre de 1994", *Boletín Económico*, July-August 1994, Banco de España, pp. 86-92.

Specifically, the age limit at which the holders of the posts of governor, deputy governor and non ex-officio directors are to leave their offices, previously set at 70 years, has been eliminated.

EXCEPTIONAL REGIME FOR THE REMUNERATION OF MEMBERS THROUGH THE CREDIT COOPERATIVES' COMPULSORY RESERVE FUND

From 2012 to 2015 credit cooperatives may pay their members for their contributions from the surplus arising on the Compulsory Reserve Fund. This remuneration of these members' contributions may not put the institution in a position where it breaches the applicable regulations on equity and shall, without exception, require prior authorisation from the Banco de España.

Law 8/2012 and CBE 8/2012 came into force on 31 October 2012 and 28 December 2012, respectively.

RESTRUCTURING AND RESOLUTION OF CREDIT INSTITUTIONS: NEW FINANCIAL PROVISIONS AND OTHER CHANGES

Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions (hereinafter, the Law) was published in the BOE on 15 November 2012.

This legislative instrument raises the content of Royal Decree-Law 24/2012 of 31 August 2012[22] on restructuring and resolution of credit institutions (which it repeals) to the status of a Law, and introduces some significant new provisions on the regulation of asset management companies (AMCs), and the segregated assets of AMCs', which the Law terms "bank asset funds" (FABs). The Law also makes a number of changes of relevance to the financial sphere.

Table 3 shows the most significant modifications to the prevailing legislation brought about by Royal Decree-Law 24/2012. These changes are now included in Law 9/2012.

MAIN PROVISIONS OF ROYAL DECREE-LAW 24/2012 OF 31 AUGUST 2012, INCLUDED IN LAW 9/2012

Management of crises affecting credit institutions

Law 9/2012 incorporates the new legal framework introduced by the aforementioned Royal Decree-Law concerning the handling of institutions in difficulties, which is based on three levels of management:

1) Early action measures, envisaged for credit institutions that are viable but which are at risk of failing to meet the solvency, liquidity, organisational structure or internal control requirements, although they are in a position to return to compliance by their own means. In such cases, the institutions concerned are to submit an action plan approved by the Banco de España[23] specifying the actions envisaged to ensure the institution's long-term viability. Furthermore, a favourable report will be required from the FROB should the institution require public financial support.

   In parallel, the Banco de España, from the moment it is aware of the situation, may take certain early action measures. The steps envisaged include: 1) requiring the replacement of members of the board, or of the equivalent body, or of general managers and the like; 2) requiring the preparation of a programme to renegotiate or restructure the institution's debt with all or some of its creditors; 3) adopting any of the measures in the current law on regulation and discipline, in accordance with the provisions of Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions, and 4) exceptionally, in compliance with Spanish and EU law on competition and

22 See "Financial regulation: 2012 Q3," *Economic Bulletin,* October 2012, Banco de España, pp. 7-15.
23 A favourable report will also be required from the FROB should the institution require public financial support.

CREDIT INSTITUTION RESTRUCTURING AND RESOLUTION FRAMEWORK

TABLE 3

ROYAL DECREE-LAW 9/2009, 26 JUNE 2009	LAW 9/2012, OF 14 NOVEMBER 2012
Management of crises affecting credit institutions	
Not specifically envisaged.	Early action measures: provided for institutions that may be viable on the basis of their own funds, but which may require exceptional, temporary assistance, through contributions to share capital, purchase of ordinary shares or instruments convertible into shares, to be repaid within two years.
Restructuring processes: two phases are envisaged. The first, with the submission of the plan of action setting out the actions planned to overcome the situation of financial weakness. When the plan of action is insufficient, the restructuring process is initiated with the intervention of the FROB. Its objective is to support integration processes or the transfer of all or part of the banking business. The FROB can provide temporary financial support to the restructuring process.	Restructuring processes: envisaged for institutions displaying temporary weaknesses that may be overcome by means of public financial support, to be repaid within a five-year period, extendable by no more than two years. The restructuring instruments that the FROB may implement (individually or jointly) are two: 1) public financial support, and 2) the transfer of assets or liabilities to the Asset Management Company (AMC).
Not specifically envisaged.	Orderly resolution of institutions: applied to unviable credit institutions. The resolution instruments that may be adopted by the FROB (individually or jointly) are: 1) sale of the business or the institution; 2) transfer of assets or liabilities to a bridge bank; 3) transfer of assets or liabilities to the AMC, and 4) financial support for acquirers of the business, the bridge bank or the AMC.
Composition and powers of the FROB	
The FROB is governed by a Governing Committee with eight members: five proposed by the Banco de España and three of which correspond to the Deposit Guarantee Funds.	The Governing Committee is made up of representatives of the Ministry of Economic Affairs and Competitiveness, the Ministry of Finance and Public Administration (five members) and the Banco de España (four members). It will have a general manager with full executive powers.
It has a capital endowment financed from the State budget and the contributions of the Deposit Guarantee Fund. In addition, it may raise funds on the securities markets by issuing fixed-income securities, taking out loans, requesting the opening of credit facilities and conducting any other debt operation, although such funds may not amount to more than three times the value of the capital endowment existing from time to time. However, as from 1 January 2010, funding beyond this limit may be authorised, although external funds may in no event amount to more than ten times the capital endowment.	It has the capital endowments that may be financed from the State budget. In addition, to achieve its purposes, the FROB may raise funds by issuing fixed-income securities, taking out loans, requesting the opening of credit facilities and conducting any other debt operation. The external funds obtained must not exceed the limit established in the State budget.
The FROB basically has two functions: management of the restructuring processes (by means of financial support and management measures to improve the organisation and the procedural and internal control systems), and the strengthening of the capital of institutions with the exclusive purpose of carrying out integration processes.	The FROB manages credit institution restructuring and resolution processes with the instruments mentioned above.
Not envisaged.	In cases of restructuring or resolution of credit institutions that belong to international groups, the FROB will collaborate with the EU institutions, including the European Banking Authority, and with foreign authorities with the relevant responsibilities, and may conclude collaboration agreements and exchange information for the exercise of its powers.
Burden sharing system for the costs of institution restructuring or resolution	
Not envisaged.	The distribution of the costs of restructuring or resolution of institutions is addressed, and the mechanism established whereby the holders of hybrid capital instruments (preference shares, convertible bonds, subordinated bonds or any other subordinated financing obtained by the credit institution) may be obliged to assume part of the losses of an an institution in crisis.
Asset Management Company and SAREB	
Not envisaged.	Its purpose is to concentrate those assets considered to be troubled or that may damage the balance sheet of credit institutions or that are considered to reduce their viability, in order to remove them from institutions' balance sheets and allow them to be realised separately.

SOURCES: State Official Gazette (BOE) and Banco de España.

State aid, requiring recapitalisation measures through contributions of share capital, purchase of ordinary shares or instruments convertible into shares (known colloquially as "cocos"), in which the repurchase or repayment period does not exceed two years.

2) Restructuring measures, for institutions with temporary weaknesses able to be overcome through public financial support, which must be repaid within five years, with a maximum extension of two years. The institution must submit a restructuring plan setting out the planned measures to ensure its long-term viability, which must be approved by the Banco de España. This plan will include, in addition to the elements envisaged for action plans (mentioned in the previous section), the restructuring tools that the FROB is going to apply, of which there are basically two: 1) public financial support, and 2) the transfer of assets and liabilities to the AMC. These tools can be applied individually or jointly.

3) Orderly resolution of institutions will apply in the case of credit institutions that are non-viable[24] or which it is reasonably foreseeable will become non-viable in the near future. Once the resolution process has been instituted, provided that the FROB does not hold a controlling stake in the institution, the Banco de España may decide to replace the board or equivalent body of the institution, appointing the FROB as sole director. The latter will prepare a resolution plan for the institution or, where applicable, will determine whether it is appropriate to commence insolvency proceedings, which must be approved by the Banco de España, within the framework of its powers.

The resolution mechanisms available are: 1) sale of the institution's business;[25] 2) transfer of its assets or liabilities to a bridge bank;[26] 3) transfer of its assets or liabilities to the AMC; and 4) the financial support to the acquirers of the business, the bridge bank or the AMC when it is necessary to facilitate implementation of the above-mentioned tools and to minimise the use of public financial support. The FROB may adopt these measures individually or jointly.

Bridge banks will be administered and managed with a view to their sale, or to the sale of their assets or liabilities, when the conditions are appropriate and no later than five years from its incorporation or acquisition by the FROB. Such sale shall be carried out at arm's length by means of competitive, transparent and non-discriminatory procedures. In the event that the bridge bank is no longer operational, the FROB will proceed to wind it up,

24 A credit institution will be deemed non-viable when it is in any of the following situations: 1) the institution substantially fails to comply with its solvency requirements, or it is reasonably foreseeable that it will fail to do so in the near future; or 2) the institution's debt exceeds its assets or it is reasonably foreseeable that it will do so in the near future; or 3) the institution is unable, or it is reasonably foreseeable that it will become unable in the near future, to comply with its enforceable obligations on time. It is also non-viable if it is not reasonably foreseeable that the institution can redress the situation within a reasonable period of time by using its own resources, tapping the markets or receiving public financial support.

25 The sale of the institution's business involves transfer to an acquirer other than a bridge bank of the shares, non-voting equity units or contributions to share capital or, generally, instruments representing or convertible into the capital, or equivalent, of the institution, whoever their holders may be, or some or all of the assets or liabilities of the institution.

26 A bridge bank will be considered to be a credit institution (including, where applicable, the very institution in resolution) in which the FROB has a holding, whose object is to carry on all or part of the activities of the institution in resolution and to manage all or part of its assets and liabilities. The total value of the liabilities transferred to the bridge bank may not exceed the value of the assets transferred from the institution or from any other source, including those relating to the public financial support.

provided that the latter holds the majority of the bridge bank's share capital. The amount resulting from the winding-up will be paid to the institutions in resolution whose assets and liabilities have been transferred to the bridge bank.

Prior to the adoption of any restructuring or resolution measure, the FROB will determine the economic value of the institution or of the relevant assets and liabilities on the basis of the valuation reports commissioned from one or more independent experts. This valuation will be used whenever an institution is granted public financial support.

Strengthening of the powers of the FROB

The FROB is designated as being responsible for managing credit institution restructuring and resolution processes. It has available to it the funds assigned from the State budget. In addition, to fulfil its goals, the FROB may raise funds by issuing fixed-income securities, receiving loans, requesting the opening of credit facilities and through any other debt-incurrence transactions. The external funds obtained by the FROB, in whatever form, may not exceed the limit established in the State budget.[27]

In the exercise of its powers, and in particular in the event of restructuring or resolution of credit institutions that belong to international groups, the FROB will collaborate with the institutions of the European Union, including the European Banking Authority, and with foreign authorities with functions relating to supervision, restructuring or resolution of financial institutions.

Burden sharing system for the costs of institution restructuring or resolution

The Law incorporates the sharing of the costs of credit institution restructuring or resolution laid down in Royal Decree-Law 24/2012, establishing a mechanism to enable the holders of hybrid capital instruments (preference shares, convertible bonds, subordinated bonds or any other subordinated financing obtained by the credit institution) to be obliged to assume part of the losses of a troubled institution. Burden sharing will be managed in accordance with the EU law on State aid and the objectives and the principles established in Royal Decree-Law 24/2012 (to safeguard financial stability and minimise the use of public funds).

ASSET MANAGEMENT COMPANIES

The Law recapitulates the general framework for asset management companies (AMCs), intended as a means of facilitating credit institution restructuring, as envisaged in Royal Decree-Law 24/2012, while introducing a number of new features. The corresponding implementing regulations have recently been adopted, so this will be discussed more fully in the next section of this article.

Strengthening the protection of retail investors

The Law includes the restrictions established in Royal Decree-Law 24/2012 on the marketing of hybrid capital and subordinated debt instruments, aimed at protecting retail investors and increasing the transparency of the way these products are marketed. Thus, there must be a tranche of at least 50% for professional investors and the minimum investment will be €100,000 in the case of unlisted companies and €25,000 in that of listed companies.

Information on these financial instruments must include appropriate guidance and warnings about the risks associated with instruments or strategies of this kind. The Spanish National Securities Market Commission (CNMV) may require this information to be provided to investors before the acquisition of a product, highlighting in particular those products that are not appropriate for non-professional investors owing to their complexity. It may also require these warnings to be included in any advertising.

27 Law 2/2012 of 29 June 2012 on the 2012 State budget has been amended, so that the limit on external funds obtained by the FROB in 2012 will be €120 billion.

In the event that the service is provided, the contractual document must include, along with the customer's signature, a written statement by the investor, in such terms as the CNMV may determine, that he/she has been warned that the product is inappropriate for him/her or, alternatively, that the institution has not been able to assess his/her knowledge and experience in relation to the product or service offered or applied for, given that the information the customer has supplied is inadequate to do so, as may be the case.

New core capital requirements

As envisaged in Royal Decree-Law 24/2012, as of 1 January 2013, repealed by Law 9/2012, the regulatory core capital (*capital principal* in Spanish) requirements applicable to institutions and consolidated groups have been modified to align them with the EBA's definition of core capital. The Banco de España has also been given the power to issue precise provisions for the due execution of the minimum core capital requirements which were recently implemented through *CBE 7/2012 of 30 November 2012*, and which will be discussed more fully below.

Transfer of powers to the Banco de España

From 1 January 2013, the Banco de España is entrusted with powers in relation to the authorisation of the creation of credit institutions, the establishment in Spain of branches of credit institutions not authorised in an EU Member State, and the imposition of penalties for very serious infringements.[28] Previously, the authorisation of credit institutions and the imposition of penalties for very serious infringements were the competence of the Ministry of Economic Affairs and Competitiveness, upon a proposal from the Banco de España.

New functions of the bank deposit guarantee fund

Credit institution resolution support measures have been introduced, although the deposit guarantee fund (DGF) may not assume a financial cost that exceeds the total it would have disbursed had it opted, at the time the resolution process began, to pay the amounts guaranteed in the event of the institution's liquidation. The financial support measures that the DGF may implement can take the form of one or more of the following: 1) the granting of guarantees; 2) the extension of loans or credits; 3) the acquisition of assets or liabilities, which it may manage itself or through third parties; and 4) its participation in the resolution process.

Changes to the securities market legislation regarding the prospectus accompanying *securities issues*

Certain modifications have been made to the regulations on the prospectus to be published when securities are offered to the public or admitted to trading, pursuant to Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010, amending Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003. The implementing regulations for this new legislation were recently adopted and will be discussed below.

OTHER CHANGES TO FINANCIAL LEGISLATION INTRODUCED BY LAW 9/2012

Changes regarding the transformation of savings banks into special foundations

Further clarification has been given on the situations in which savings banks are required to convert into special foundations, envisaged in Royal Decree-Law 11/2010 of 9 July 2010 on savings banks' governing bodies and other aspects of their legal regime. Conversion is therefore envisaged when the savings bank ceases to exercise control over the commercial bank as defined in Article 42 of the Commercial Code[29] or, where although it

28 The penalties for very serious infringements are as follows: 1) a fine of up to 1% of equity or up to €1 million, whichever is the highest; 2) revocation of the authorisation of the institution. In the case of branches of credit institutions authorised in another EU Member State, the sanction of revocation of authorisation will be understood to be substituted by a prohibition on the undertaking of new business within Spanish territory, and 3) a public reprimand published in the State Official Gazette (BOE).

29 According to Article 42 of the Spanish Commercial Code, control shall be presumed to exist when a company, denoted the parent, has any of the following relationships with another company, denoted the subsidiary: 1) the parent holds a majority of the voting rights in the subsidiary; 2) the parent has the power to appoint or remove a majority of the members of the board of directors of the subsidiary; 3) through agreements with third parties, the parent can exercise a majority of the voting rights in the subsidiary; and 4) the parent has used its voting power to appoint most of the members of the board of directors of the subsidiary in office at the time the consolidated accounts were due to be prepared in the two immediately preceding accounting periods.

retains control, it reduces its holding such that it no longer exercises 25% of the commercial bank's voting rights.[30] This implies the loss of authorisation to conduct business as a credit institution, pursuant to the Banking Law of 31 December 1946.

A new scenario for the transformation of a savings bank into a special foundation has been added, namely that arising as a result of a credit institution's restructuring or resolution, provided that this is stipulated in the corresponding restructuring or resolution plans.

In both cases, the Law establishes that the transformation will take place within five months of the time the decisive event triggering the savings bank's dissolution took place. If this period elapses without the conversion's being completed, the institution's governing bodies will all be dissolved forthwith and the institution will be struck off the Banco de España's special register of credit institutions. A management committee will then be appointed and assigned the tutelage of the special foundation.

The management committee will approve the articles of association, appoint the trustees of the foundation, and, where applicable, define the regime for the immediate redemption of non-voting equity units. It will also adopt any measures and agreements necessary to complete the institution's conversion, in accordance with the applicable national and regional legislation.

Savings banks that are in any of the situations requiring them to convert into a special foundation this Law comes into force, irrespective of whether or not they have applied to give up authorisation to operate as a credit institution, shall have the remainder of the five month period since the scenario triggering the obligation to convert arose to do so.

Institutions that have been in any of the situations requiring their conversion longer than this five-month period will be automatically converted, their governing bodies dissolved, and they will be removed from the Banco de España's Special Register of Credit Institutions.

Granting of special credit for the recapitalisation of credit institutions

A special credit of €60 billion has been granted, within the budget of the Ministry of Economic Affairs and Competitiveness, to implement the European support programme of financial assistance for the recapitalisation of Spanish financial institutions.

This credit will be financed with loans to the Kingdom of Spain, in the form of cash or securities, granted by the European Financial Stability Facility (or the European Stability Mechanism, as applicable). Any credit remaining at the end of 2012 may be carried over to the following year.

CNMV: new powers

Pursuant to European Union law, the CNMV has been given powers to supervise and ensure compliance with the obligations envisaged in Regulation 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, together with those envisaged in Regulation 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. It has also been entrusted with the authorisation and supervision of the central counterparties established in Spain, and will be responsible for coordinating cooperation and information exchange with the European Commission, the European Securities and Markets Authority (ESMA), competent authorities in other

30 See Article 5 of Royal Decree-Law 11/2010 of 9 July 2010 on savings banks' governing bodies and other aspects of their legal regime (indirect exercise of savings banks' financial business).

Member States, the EBA, and, where applicable, NCBs belonging to the European System of Central Banks (ESCB).

The Law entered into force on 15 November.

Asset management companies

Law 9/2012 of 14 November 2012 (discussed above) sets out the general framework for asset management companies (AMCs) established in Royal Decree-Law 24/2012 of 31 August 2012, which are envisaged as tools for credit institution restructuring and resolution, and introduces some significant changes. The general legal framework applicable to AMCs, the regulations governing them, and other additional details were recently enacted in *Royal Decree 1559/2012 of 15 November 2012* (BOE of 16 November 2012).

GENERAL FRAMEWORK

AMCs' purpose is to concentrate those assets considered problematic or which might be detrimental to credit institutions' balance sheets or jeopardise their viability, by removing them from the balance sheet and allowing them to be independently managed.

The objectives AMCs are to pursue through their operations are: 1) to help consolidate the financial system by acquiring the relevant assets, such that simultaneous with their change of ownership there is an effective transfer of the risks associated with them; 2) to minimise public financial support; 3) to pay the debts and obligations incurred in the course of conducting their activities; 4) to minimise possible market distortions resulting from their activities; and 5) to dispose of the assets acquired in a way that optimises their value within the timescale for which they have been constituted.

Asset management companies regulated under Royal Decree Law 18/2012 of 11 May 2012 on the writing down and sale of the real estate assets of the financial sector, the regulations for which were given the status of law by Law 8/2012 of 30 October 2012, are not considered AMCs.[31]

TRANSFER OF ASSETS

The FROB may oblige a credit institution to transfer certain classes of assets on its balance sheet to an AMC, including those on the balance sheet of any entity over which the credit institution exercises control.

The FROB will define the classes of assets that are to be transferred according to certain (qualitative and quantitative) criteria, as set out in Royal Decree 1559/2012. Exceptionally, when justified by an unforeseen change of circumstances, new categories of assets considered detrimental to the viability of the credit institution may be included.

Value adjustment criteria

Before transferring assets, the credit institutions concerned must make the relevant value adjustments to each asset class. As a general rule, this may not be less than the provisions that would apply under the rules set out in the Banco de España circulars on credit institution's accounts, as described in more detail below.

The value of a listed asset will be its market value on the valuation date. In the case of unlisted assets, generally accepted valuation practices will be applied to estimate their

31 This law envisages the creation of companies for asset management to which credit institutions are to transfer all assets foreclosed or received in payment of debts relating to development land and to property construction or development. The sole corporate purpose of these companies, constituted by credit institutions that have received financial support from the FROB, will be the management and disposal, whether directly or indirectly, of the assets transferred to them. In the case of credit institutions majority owned by the FROB, the latter shall decide whether or not the credit institution should create such a company.

economic value.[32] If independent expert valuations are available, the institution must use them to determine the valuation adjustments.

When valuing real estate assets, the specific features that a buyer would take into account when deciding whether or not to buy the asset will be considered.[33] To estimate the assets' economic value, their ability to generate cash flows on the basis of their most likely[34] and financially sustainable[35] use should be considered.

The economic value of rented property will be obtained from projected effective future cash flows, considering the level of occupancy on the valuation date.

When valuing assets that may require additional investments prior to their marketing, such as property developments in progress, these additional investments will not be taken into account; instead, the value will be estimated based on the market's assessment of the assets at the time of valuation. If the properties are worth more than €3 million, institutions are to obtain their economic value based on the valuation of an independent expert with sufficient experience in the geographical area and with the class of assets in question.

The valuation of credit claims must reflect the expected loss over the total residual life of the claim. The value of assets secured with first priority real-estate collateral will be calculated based on the valuation of the asset in accordance with the above criteria, after discounting the expenses necessary to realise and sell off the collateral asset.

The economic valuation of instruments representing share capital that are listed on an organised market will be the market value at the time of the valuation. For unlisted instruments, in the case of companies in voluntary bankruptcy proceedings or declared bankrupt by the court, the economic value of their capital instruments will be deemed to be zero. For other companies, the economic value will be at most the value of the proportional part of the company's net book value. If the total value of the asset exceeds €10 million and the proportional part is worth more than €3 million, a specific valuation must be made by an independent expert.

Transfer value of assets

The Banco de España will determine the transfer value of the assets to be transferred to AMCs based on independent experts' valuations. The regulations describe the valuation methods that experts are to apply to each of the classes of assets to be transferred.

The Banco de España will subsequently adjust the transfer value taking the following criteria into account: 1) hedging of the risk against unfavourable price movements; 2) projected management, administration and maintenance costs, together with the financial costs associated with holding the assets due to be transferred; and 3) the prospects of the AMC's divesting the assets transferred to it. Once determined, the Banco de España will inform the FROB, which will issue a resolution, of which it will notify the institution, determining

32 The economic value is an estimate of the present value of an asset that the entity would obtain from a voluntary sale, maximising the use of data observable in the market, and minimising the non-observable data.

33 These include the geographical location, the available infrastructure, legal status, conditions of sale, current supply and demand for similar assets, most likely use, urban planning considerations, changes in the price of supplies, and demographic change.

34 The most likely use will be determined according to its legal status and market conditions, without necessarily coinciding with its urban classification at the time of its valuation.

35 The asset's use will be considered financially sustainable when it is able to generate cash flows with an adequate return in relation to the investment required.

the maximum delay and the conditions under which the assets included in each category are to be transferred to the AMC.

SANCTIONS AND SUPERVISION REGIME

The Banco de España will be responsible for the sanctions and supervision regime applicable to AMCs. It particular, it is to oversee: 1) compliance with their sole purpose, so as to avoid deviations that jeopardise the achievement of the goals legally established for them; 2) compliance with the specific requirements laid down for assets, and where applicable, liabilities that are to be transferred to AMCs, and 3) compliance with the rules regarding transparency and the constitution and composition of AMCs' governing and controlling bodies as envisaged in the applicable legislation, and those regarding the requirement for the commercial and professional probity of the members of their boards of directors.

In the exercise of these functions, the Banco de España may conduct inspections and make such checks as it sees fit, as well as commission any independent experts' reports it requires.

Sanctions shall be governed by the regime established in Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions, with the special provisions envisaged in the law. Infringements may be classed as either serious or very serious. A fine of up to 0.01% of the total assets managed by the AMC or €1 million, whichever is greater, will be applicable in the case of serious infringements. Sanctions may also be imposed on persons holding posts in the administration of the AMC, leading to their being barred from holding similar offices for up to five years.

When there are substantiated indications that an AMC is in an exceptionally serious situation jeopardising the fulfilment of the objectives entrusted to it by law, the Banco de España may decide on the provisional substitution of its governing body.

ASSET MANAGEMENT COMPANY FOR ASSETS RESULTING FROM BANK RESTRUCTURING (SAREB)

As envisaged in Royal Decree-Law 24/2012, the FROB has set up the Asset Management Company for Assets Resulting from Bank Restructuring (SAREB) with a view to its acquiring assets from institutions in which the FROB has a majority shareholding and those which, following an independent assessment of the capital needs and asset quality, the Banco de España considers warrant a restructuring or resolution process's being initiated.

Legal regime

The SAREB has been established for a limited period, which will be determined in its articles of association, and may not exceed 15 years. It has the sole purpose of the holding, management, and disposal, whether directly or indirectly, of assets transferred to it by credit institutions and those it may acquire in the future. In those cases where the SAREB pursues its corporate purpose indirectly, appropriate safeguards must be in place to avoid conflicts of interest.

The amount of the SAREB's initial capital and issue premium will be determined by the FROB according to its envisaged volume of business and operations, and the expected financial needs.

In addition to the FROB, other financial institutions such as credit institutions, insurance companies, investment firms, collective investment institutions (CIIs), pension funds (and their management companies), venture capital firms and funds, and mutual guarantee societies may also become shareholders.

Under no circumstances may the public shareholding[36] exceed 50% of the SAREB's capital.

The SAREB's governing bodies are to include a board of directors comprising between five and 15 members, all of whom must be persons of recognised business and professional probity and must have appropriate knowledge and experience to perform their duties. This requirement for probity and experience will also be applicable to the general manager and other similar posts in the entity.

At least a third of the members of the board of directors are to be independent directors, who will be appointed by the Appointments and Compensation Committee on the basis of their competence, experience and professional prestige. They may not serve for more than five years.

For its part, the SAREB must constitute the audit committee, the appointments and compensation committee,[37] and the following additional committees: management committee,[38] risk committee,[39] investment committee,[40] assets and liabilities committee,[41] and a committee monitoring compliance[42] with the SAREB's general objectives.

The monitoring committee must be set up and run with no increase in public sector staff costs. Its functions will include analysis of the SAREB's business plan and its possible deviations, and monitoring of the divestment and repayment plans for the debt guaranteed. It may also request any periodic information it deems necessary. To facilitate these tasks, the Banco de España, and where applicable the CNMV, will report on the main conclusions deriving from the performance of its supervisory functions.

The monitoring commission may propose to the Banco de España the provisional substitution of the SAREB's governing body, when, in the light of information received, it considers that it is in an exceptionally serious situation jeopardising the achievement of the objectives entrusted to it by law.

Transfer of assets

Credit institutions in which the FROB has a majority holding or that, in the opinion of the Banco de España, following an independent assessment of their capital needs and the quality of their assets, are going to require a restructuring or resolution process to be initiated, will be obliged to transfer the following set of assets to the SAREB:

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36 The public shareholding is understood to comprise the total direct and indirect shareholdings held by public institutional units, as defined in the European System of National Accounts.

37 This body will report on the general compensation and incentive programme for members of the board of directors and management of the SAREB, and will ensure compliance with the requirements for the exercise of the post of member of the board of directors.

38 The management committee's tasks will include assisting the board of directors on financial and operational management matters and its budgetary report and management functions, together with other tasks assigned to it by the SAREB's articles of association.

39 The risk committee's tasks will include supervising levels of risk, and if necessary proposing remedial action to respond to situations or actions that may lead to excessive levels of risk, and other functions assigned to it by the SAREB's articles of association.

40 Among other tasks assigned to it by the articles of association, the investment committee will be responsible for evaluating investment and divestment strategies and actions and proposing them the board of directors.

41 Among other functions assigned to it by the SAREB's articles of association, the assets and liabilities committee will have the task of advising the board of directors on any situation that may affect the company's balance sheet, and in particular those relating to its capital structure, financing and liquidity.

42 The monitoring commission will have four members, one appointed by the Ministry of Economic Affairs and Competitiveness, who will chair the commission and have the casting vote, one appointed by the Ministry of Economy and General Government; one appointed by the Banco de España, who will act as secretary, and one appointed by the CNMV. The Commission may also agree to representatives of other public institutions or national or international organisations attending its meetings as observers.

1) Immovable property obtained as a result of foreclosure or in payment of debts, whatever their origin, provided that they are included on the credit institution's balance sheet on 30 June 2012 and have a net book value, after value adjustments (applying the same criteria as specified above for AMCs), of more than €100,000.

2) Certain credit claims listed in Royal Decree 1559/2012, provided they are on credit institutions' balance sheets on 30 June 2012 or derive from refinancing at a later date, whose net book value, after value adjustments, is more than €250,000.

3) The aforementioned real estate assets and credit claims deriving from companies in the property sector, or their associated companies, over which the credit institution exercises control under the terms envisaged in Article 42 of the Commercial Code.

4) Instruments representing the share capital of companies in the property sector, or their associated companies, that allow the credit institution or any other entity in its group to exercise overall control or a significant influence over them, provided the FROB sees fit.

The FROB may also order the transfer of consumer or small-business loans or credits, loans guaranteed by residential mortgages or any other assets not included in the foregoing sub-sections, provided that these assets are particularly impaired or that their remaining on the balance sheet is considered detrimental to the viability of the institution. A prior report from the Banco de España will be required in order to establish that these circumstances arise.

Together with the foregoing assets, credit institutions must also supply databases of information necessary for the management of the assets, as required by the Banco de España in the annex to circular *CBE 8/2012, 21 December 2012*, mentioned above. Similarly, the databases must be supplied in a computer format compatible with the asset management companies' systems.

Finally, the value at which assets are transferred to the SAREB may not exceed €90 billion.

General obligations for transparency and the formulation of annual accounts

The SAREB must comply with the general obligations to formulate annual accounts as envisaged in Legislative Royal Decree 1/2010, of 2 July 2010, approving the consolidated text of the Law on Capital Corporations, with the proviso that it may not submit abridged accounts.

Additionally, it must furnish the general public, by whatever technical, computer or telematic means, with all the information legally required in relation to its annual accounts and activity report, without prejudice to shareholders' right to request this information in printed form.

Every six months the SAREB will prepare an "activity report" setting out the main details of its activity during the period in a systematic and readily comprehensible way, reporting on the degree of fulfilment of the targets set in its business plan and the reasons for any possible deviations from these targets. This report will be sent to the Banco de España and the monitoring commission, which may require that it be completed with any

additional information they consider necessary. The report will be made available to the public on the SAREB's website.

On an annual basis, an independent expert will prepare an "independent compliance report," which the SAREB is to forward to the Monitoring Commission and the Banco de España. The purpose of this report will be to assess the appropriateness of the SAREB's activities and strategies for the general purposes for which it was created, without prejudice to the supervisory powers assigned to the Banco de España.

Taxation

Transfers of assets, and where applicable, liabilities, and the granting of guarantees of any kind by the SAREB or entities it establishes in order to fulfil its corporate purpose, will be exempt from transfer tax and stamp tax, and the tax on the increase in urban land value.[43]

Moreover, tariff duties will not accrue on notaries' and registrars' formalities necessary when the SAREB is the party legally required to meet their cost.

BANK ASSET FUNDS (BAFs)

Royal Decree 1559/2012 implements the regulations on segregated assets initially envisaged in Royal Decree-Law 2472012,[44] which Law 9/2012 subsequently termed bank asset funds (BAFs).

Legal framework

BAFs will be established by public deed, the minimum content of which is stipulated in Royal Decree 1559/2012, and they are to be entered on a register held by the CNMV.

BAFs' initial assets may comprise both assets and, where applicable, liabilities, deriving from the SAREB. It will also be possible for the SAREB to transfer assets and, where applicable, liabilities to an existing BAF, provided the articles of association of the latter allow for this.

The BAFs' assets can be subdivided into different independent sub-funds, against which securities may be issued. The share of the BAF's assets assigned to each sub-fund will meet only the costs, expenses and obligations expressly attributable to this sub-fund. The creditors of a particular sub-fund may only enforce their credits against that sub-fund.

Securitisation management funds

The management and representation of BAFs will be confidential and will be entrusted solely to asset securitisation funds that adapt their legal regime to the special requirements of this legislation. In turn, the management company may delegate its tasks, notwithstanding its remaining responsible for this activity under the requirements of the legislation applicable to investment firms (IFs).

The callable capital required will be that envisaged for asset securitisation fund management companies.[45] This figure will be incremented by 0.02% of the total book value of the assets under the BAF's management above a threshold of €250 million. For this purpose, the eligible equity capital will be as established in the regulations applicable to IFs.

If the management company has a level of equity capital less than the minimum required, it is to submit a plan to the CNMV setting out how it intends to return to compliance and

43 The Law envisages that in the subsequent transfer of property the number of years over which the increase in value of the land is deemed to have taken place will not be uninterrupted by any transfers due to operations of this kind.

44 Royal Decree-Law 24/2012 provides that, in accordance with the terms of the regulations, groups of AMC assets and liabilities may be formed into separate blocks of assets, which may hold rights and obligations, although the lack a separate legal personality.

45 Asset securitisation management companies must have a share capital of at least €900,000.

the estimated timescale, which may not exceed three months. The CNMV may establish measures additional to those proposed by the entity.

The management company's remuneration will be calculated in accordance with procedures compatible with each FAB's investment and risk management policy. This policy must seek to avoid the emergence of incentives towards management contrary to the objectives established in these policies.

The management company may approve internal rules of conduct governing the activities of directors, executives, employees, representatives and persons or entities to which the company may delegate functions. It will include internal units verifying regulatory compliance, risk control and internal audit, which shall be duly separated from the operational units. These units are to have a size and structure consistent with the complexity and volume of the assets under management.

In addition, the regulations have been established for a special regime whereby securitisation management funds may be converted into BAF management companies. To do so, they need to obtain official approval of their application from the CNMV, by submitting a plan for the amendment of their articles of association to broaden their corporate purpose to include the representation and management of BAFs, together with a report explaining the changes involved in the adaptation.

The CNMV may require accreditation of compliance with any other feature of the legal framework for BAF management companies.

Finally, management companies will be subject to the CNMV's supervisory, inspection and sanction regime under the terms established in the regulations on asset securitisation funds, with the adaptations envisaged in this legislation.

Rules on the transfer of assets and liabilities

The transfer of assets to a BAF by the SAREB will be subject to the general rules established for AMCs, with certain specific details. Thus, the transfer of the assets will be full and unconditional, and for the total remaining period up until maturity, if any. Moreover, the transferor will not grant any guarantees to the BAF, nor insure in any other way the satisfactory outcome of the credit claims transferred or, in general, the value or quality of the assets or rights transferred.

The transfers of assets and liabilities will be formalised in a contractual document. In the case of the incorporation of assets and liabilities, the BAF management company will submit to the CNMV a document signed by the SAREB, which will set out the details and characteristics of these assets and liabilities.

Securities issues

Issues of securities by BAFs will be governed by the provisions of this legislation. The BAF's articles of association may envisage the creation of a syndicate holding securities issued by the BAF which will be governed by the provisions of the Law on Capital Companies, with certain adaptations.

These include the rule that the commissioner of the syndicate may only attend the general meeting of the shareholders of the management company with the right to speak but not vote during discussions affecting the BAF. Also, in the case of any delay in payment of the interest due or repayments of the capital, the commissioner may not propose to the board the suspension of any of the directors, or the enforcement of collateral obligations, as envisaged in the Law on Share Capital Companies.

Merger and division

A merger consists of one or more BAFs transferring all of their assets and liabilities to another existing or newly created BAF, resulting in the dissolution without liquidation of the BAF or BAFs. BAF management companies must jointly draw up merger plans, the minimum content of which is set out in Royal Decree 1559/2012. These plans must be published on the management company's website.

Division is an operation whereby one or more BAFs transfer a set of assets to another existing or newly created BAF.

Creditors will have the right to oppose these operations. However, the articles of association of the BAFs may allow a regime whereby this right is excluded or limited, provided that bodies representing creditors are envisaged that have mechanisms by which they can adopt collective decisions on these operations.

Reporting obligations

The management company must prepare and publish the following information on its website: 1) the articles of association and other public deeds issued subsequently in relation to each fund, and the documentation by which contributions of assets and liabilities are made; 2) the six-monthly report and annual report of each of the BAFs it manages;[46] and 3) any significant information relating to the transfers of assets and liabilities by the SAREB in order to ensure that all the circumstances affecting the securities issued by the BAF and their profitability are publicly known and that this information is up-to-date.

The management company must also inform the CNMV and creditors immediately of any particularly significant facts regarding the situation or progress of each BAF and any facts or events that may have a material effect on the securities issued and, where appropriate, the elements that make up their assets and liabilities.

The CNMV may gather additional any information from BAFs that it considers necessary in the exercise of its powers and may determine the content of this information and how it is to be forwarded.

The FROB may take on an exposure to the BAFs for a limited period, specifically until the SAREB is wound up.

Taxation of BAFs

The tax rules applicable to BAFs are set out in Law 9/2012 and cover two distinct phases: the first phase is the period in which the FROB is exposed to the BAFs; and the second when it ceases to be exposed to them.

In the first phase, BAFs will be liable for corporate income tax at a rate of 1%. After the winding up of the AMC, BAFs will be liable for tax at the normal rate. In both periods, the tax regime envisaged for collective investment institutions (CIIs) will be applicable.[47]

BAFs' investors will be subject to the tax rules applicable to shareholders or investors in collective investment institutions under Law 25/2003 of 4 November 2003 on CIIs,[48] establishing

46 The management company must publish an annual and six-monthly report on each BAF in order to ensure that all the circumstances that may potentially influence the institution's valuation and prospects and its compliance with the applicable legislation are publicly known and that this information is up-to-date

47 See Chapter V of Title VII of the consolidated tax of the Corporate Income Tax Law, enacted by Legislative Royal Decree 472004, 5 March 2004.

48 They will be considered the tax payer's property income, and thus income obtained from the sale of shares or investments or the reimbursement of the latter will be included in the taxpayer's taxable income along with profits distributed by the CII.

certain specific details applicable during the first phase. As established above for the SAREB's operations, the transfers of assets and liabilities by an AMC, or any entities it has set up to undertake its corporate purpose, and transfers between different BAFs, will be exempt from transfer tax and stamp tax, and the tax on the increase in value of urban land. Moreover, duties will not accrue on any necessary notaries' and registrars' formalities in those cases where the FAB is the party legally required to settle them.

Royal Decree 1559/2012 came into force on 17 November 2012.

Credit institutions: minimum core capital requirements

Banco de España Circular *CBE 7/2012 of 30 November 2012* (BOE 11 December 2012), addressed to credit institutions, on minimum core capital requirements.[49]

As envisaged in Royal Decree-Law 24/2012 of 31 August 2012 (repealed by Law 9/2012 of 14 November 2012), as of 1 January 2013 the core capital requirements that credit institutions or, where applicable, their consolidated groups[50] are to meet have been modified, unifying the two existing requirements[51] into one single requirement of 9% of total risk-weighted exposures.

These two pieces of legislation also modified the definition of core capital (*capital principal* in Spanish) to bring it into line with the definition of core capital the European Banking Authority used in its recapitalisation exercise, both in terms of the eligible items and the applicable deductions, as per Recommendation EBA/REC/2011/1, empowering the Banco de España to dictate the provisions necessary for its execution, which is the object of Circular 7/2012.[52]

EQUITY ITEMS ELIGIBLE AS CORE CAPITAL

The items making up credit institutions' core capital (*capital principal*) are:

1) Share capital (insofar as it has lower priority than all other types of credit in the case of bankruptcy and liquidation), excluding redeemable and non-voting shares, savings banks' initial capital and equity units, and contributions to the capital of credit cooperatives.

   The institution may not create any expectations at the time of issue that the share capital instrument will be repurchased, redeemed or repaid. The capital contribution to the absorption of the issuer's losses will be considered to be diminished when any of the holders are given any type of preference in the distribution of earnings or in liquidation. Neither the issuer nor any group

49 The concept of core capital, referred to a *capital principal* in Spanish, was introduced into Spanish legislation by Royal Decree-Law 2/2011 of 18 February 2011, to strengthen the financial system, in line with the new international capital standards defined by the "Basel III" accords, which will start to be applied in the European Union in 2013.

50 Branches in Spain of credit institutions authorised in other countries are excluded.

51 A general requirement of 8% and a requirement of 10% for institutions that have not placed at least 20% of the instruments representing their capital with third parties and which have a wholesale finance ratio of over 20%.

52 Law 9/2012 also amended the first transitional provision of Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the financial system as regards the strategy of compliance with capital requirements, such that those credit institutions or consolidated groups that do not have the required capital on 1 January 2013 must submit to the Banco de España within twenty working days the strategy and timetable for compliance to be achieved by 30 June 2013. These measures must be approved by the Banco de España, which may require any modifications or the inclusion of additional measures it sees fit to ensure compliance. Nevertheless, credit institutions or consolidated groups that expect to fail to meet these core capital requirements are to notify the Banco de España, which must approve the tentative compliance strategy and timetable submitted by the institution for the case in which this noncompliance is confirmed. After the expiry of the aforementioned periods, noncompliance with core capital requirements will be considered a serious or very serious infringement, pursuant to Law 26/1988 of 29 July 1988, on discipline and intervention in credit institutions.

company may insure or guarantee the disbursed amount or its remuneration, nor may this be the object of guarantees, commitments or any agreement that enhances, legally or economically, the preference of the potential collection right.

Eligible shares or securities will be excluded when held by the institution or any consolidated entity, whatever the portfolio to which they belong for accounting purposes, as will those which have been the object of any operation or commitment limiting their effectiveness as coverage for the institution or group's losses.[53]

2) Issue premiums disbursed in the subscription of ordinary shares or the instruments envisaged in the preceding sub-section.

3) Effective and express reserves, including the equity fund and savings bank and confederation of savings banks unit-holder reserve fund, and the elements and value adjustments classified as reserves by the regulations on the equity of credit institutions. In particular, effective and express reserves include those generated from profits, in the case of a credit balance, including the retained earnings account and any amounts that are not recognised on the profit and loss account, are to be recognised on the accounts, whatever their origin, in the "other reserves" account, pursuant to CBE 4/2004 of 22 December 2004,[54] on public and confidential financial reporting rules and formats.

   Provisional positive earnings accruing over the course of the accounting period can also be incorporated in the reserves, in accordance with certain criteria specified in the circular. In particular, there must be a formal decision by the institution's governing body based on accounts verified by external auditors and the provisional earnings must have been approved by the audit committee or equivalent body, and be free of foreseeable charges.

4) Shares representing minority interests in the form of ordinary shares in companies in the consolidated group, insofar as they are actually paid up, excluding the part attributed to them in the revaluation reserves and in the valuation adjustments included in the equity of the consolidated group.

5) Eligible instruments subscribed by the FROB, in accordance with its regulatory framework, which are also eligible as core capital under the applicable capital requirement rules.

53 In particular, the following are excluded: 1) futures purchased (net of futures sold, free of counterparty risk) and those sold to third parties with a return option open to a group entity, or a forward repurchase commitment by a group entity, and long positions in equity swaps on treasury shares and synthetic purchases of treasury shares, where the synthetic is understood to be the combination of a call option bought and a put option sold with the same strike price and expiration date. In such cases, the deduction will be effected at the value with which the underlying shares are registered on the accounts, without prejudice to the losses that changes in the price of the derivative may produce; 2) indirect positions in shares, contributions and other eligible securities such as the institution's equity, maintained through net positions in indices that include them; and 3) direct and indirect finance to third parties whose object is the purchase of shares, contributions or other eligible securities by the institution granting them or other entities in its consolidated group.

54 See "Financial regulation: 2004 Q4," *Economic Bulletin,* January 2005, Banco de España, pp. 3-7.

6) Instruments convertible into ordinary shares, savings banks' non-voting equity units or contributions to the capital of credit cooperatives, which the Banco de España classes as eligible as they comply with the requirements for their being included in the core capital calculation and because they meet the other conditions set by the EBA.[55]

The board of directors, or equivalent body, of the issuing credit institution may, at its discretion, cancel payment of remuneration for an unlimited period, whenever it sees fit, without accrual of the unpaid remuneration. This cancellation will be obligatory if the issuing credit institution, or its consolidated group or subgroup, is in breach of its equity capital requirements.

In any event, payment of this remuneration will be conditional upon the issuing credit institution's having profits or distributable reserves and its obtaining authorisation from the minister for Economic Affairs and Competitiveness, following a report from the Banco de España. The latter may demand cancellation of the payment of remuneration based on the financial situation and solvency of the issuing institution, or its consolidated group or subgroup. Contracts and issue prospectuses must state that discretional cancellation of the remuneration does not constitute an event of default.

Nevertheless, the payment of remuneration may be replaced, if so established in the issue conditions, by granting new ordinary shares in the issuing credit institution (or savings banks' equity units or contributions to the capital of credit cooperative), provided that this allows it to preserve its financial resources.

The contractual clauses of instruments convertible into equity must establish, among other points, mechanisms that ensure participation of their holders in the absorption of current or future losses, through their conversion into ordinary shares of the issuing credit institution in any of the following circumstances: 1) the institution has a common equity tier 1 ratio of less than 5.125%; 2) the institution has a core tier 1 ratio (according to the EBA/REC/2011/1 definition) of less than 7%; 3) its core capital ratio is less than 7%; 3) the Banco de España decides that the institution would not be viable without the conversion; or 4) the decision is made to inject public capital or other support without which the institution would not be viable.

The instruments will be perpetual, unless mandatory conversion on a specific date is foreseen. In the event that the contractual conditions envisage early redemption at the issuer's initiative, this may not take place within less than five years of the disbursement of the issue, must not affect the financial situation or solvency of the institution, and prior authorisation must be obtained from the Banco de España.

Moreover, the contractual clauses: 1) may not include incentives for early redemption, whether direct, such as increments in the associated interest rate, or indirect, such as envisaging higher remuneration when the credit quality of the issuer or its group companies deteriorates; 2) may not create any expectations that the call option will be exercised or that the issuer will be reimbursed in any other way; and 3) must state that default on payment of remuneration or the principal will not entitle the investor to commence bankruptcy proceedings or demand early redemption of the issue.

55 Convertible instruments will be excluded when held by the institution or any consolidated entity, as will those that have been the object of any operation or commitment limiting their effectiveness as coverage for the institution or group's losses.

DEDUCTIONS FROM EQUITY ITEMS ELIGIBLE AS CORE CAPITAL

The following amounts will be deducted from the sum of the above items:

1) Losses carried forward from previous years, which are recognised as the debit balance of the reserve account (accumulated losses), and losses on the current year, including the year's earnings (losses) attributed to minority shareholders, and the elements and valuation adjustments assimilated to negative results in accordance with the regulations on credit institutions' equity capital.

2) Intangible assets recognised in the total assets, including, where applicable, the goodwill from business mergers, consolidation or the application of the equity method. In the case of goodwill, the amount that is to be deducted will be the net book value of the associated deferred tax liabilities.

3) 50% of the value of certain assets, including, *inter alia*, the following:

   a) Holdings in financial institutions that may be consolidated in view of their business type, but which are not included in the consolidated group, where such holdings comprise more than 10% of the share capital of the investee entity.

   b) Holdings in insurance and reinsurance companies or in entities whose main business is that of a holding company for insurance undertakings, or which, directly or indirectly, hold 20% or more of the voting rights or capital of the investee entity.

   c) Subordinated finance or other securities computable as equity capital issued by investee entities as referred to in the two preceding sub-paragraphs and acquired by the entity or group owning the shareholding.

   d) Shareholdings of 10% or less of the capital of financial institutions that may be consolidated in view of their business type, but which are not included in the consolidated group, and subordinated finance or other securities eligible as equity capital issued by entities of this type, whether part-owned or not, and acquired by the entity or group holding the stake, to the extent that they exceed 10% of the positive items making up the core capital, net of negative earnings and intangible assets.

   e) The total securitisation exposure with a risk weighting of 1250% in accordance with the rules applicable to equity capital requirements, except when this amount has been included in the calculation of weighted risks for the calculation of equity requirements to cover securitised assets, whether held on the trading book or not.

PERIODIC INFORMATION ON CORE CAPITAL

Credit institutions will be obliged to send the Banco de España quarterly core capital statements and to comply with the requirements for these statements set out in the annex to the circular. These statements must be submitted by telematic means.

This circular comes into force on 1 January 2013, and institutions are required to prepare an exceptional core capital statement, considering the risk weighting of the assets held on 31 December 2012, pursuant to Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements for financial intermediaries, and in its implementing regulations. The deadline for submission of this statement is 28 February 2013.

Credit institutions: modifications to the rules on public and confidential financial information

Circular *CBE 6/2012 of 28 September 2012* was published in the BOE on 2 October 2012 and amends CBE 4/2004 of 22 December 2004, on public and confidential financial information, and standard formats of financial statements.

The circular's main purpose is to adapt CBE 4/2004 to the provisions of Royal Decree-Law 18/2012 of 11 May 2012, on the writing down and sale of the real-estate assets of the financial sector. It also addresses the inclusion of certain information relating to refinancing and restructuring operations, and geographical and sector risk concentration. Finally, in line with these changes, the Circular modifies the confidential statements currently in force and adds certain new ones.

The main new features are as follows:

INCREASED PROVISIONING OF REAL-ESTATE ASSETS

Under Royal Decree Law 18/2012 of 11 May 2012 (now repealed by Law 8/2012), new provisions were established for loans relating to development land and property constructions or developments corresponding to the business in Spain of credit institutions that, on 31 December 2011, were classed as standard exposures.[56]

MINIMUM TRANSPARENCY REQUIREMENTS FOR ASSETS FORECLOSED OR RECEIVED IN PAYMENT OF DEBT

Certain minimum transparency criteria have been established regarding assets foreclosed or received in payment of debts applicable to the information requirements on the relevant asset-management companies established or part-owned by the institution. Specifically, institutions are to draw up a list of the companies they have created or in which they are shareholders (stating their percentage interest in the capital of these companies), together with the following information: 1) accumulated volume, up to the date of the annual accounts, of the assets transferred to these companies; 2) book value on the date of the annual accounts of the financial assets received in exchange (distinguishing between debt and equity instruments); 3) volume of assets transferred and financial assets received in exchange in the accounting period and the impact of these transactions on the year's profit and loss statement; and 4) a description of the lines of finance granted, with an indication of their purpose, amount, financial terms and accounting classification.

INFORMATION ON REFINANCING, REFINANCED AND RESTRUCTURED OPERATIONS

Among the rules on the information that credit institutions are to disclose in their individual and consolidated annual accounts, the circular also addresses the inclusion of information regarding refinancing,[57] refinanced[58] and restructured operations,[59] and the concentration of exposures in sectors and geographical areas.

56 As mentioned above, for these types of finance the percentage coverage indicated below will be set aside on a one-off basis: in the case of mortgage lending for property construction or development, the percentage obligatory provision has been increased by 45 percentage points (pp) in the case of land (from 7% to 52%), 22 pp in that of property developments in progress (from 7% to 29%), and by 7 pp in that of completed property developments (rising from 7% to 14%). In the case of unsecured property construction or development loans, the mandatory provisions will be increased by 45 pp in all of the cases above (from 7% to 52%).

57 A refinancing operation is one which, irrespective of the holder or guarantees, is granted or used for economic or legal reasons relating to the holder's actual or foreseeable financial difficulties to cancel one or several operations granted by the same institution or other entities in its group, to the holder or other companies in its economic group, or whereby these operations are brought wholly or partially up to date on payments, in order facilitate their debt payment (capital and interest) because they are unable, or it is envisaged that they will become unable, to comply with their terms in due time and form.

58 A refinanced operation is one that is brought wholly or partly up to date on payment by means of a refinancing operation by the institution or another entity in its economic group.

59 A restructured operation is one in which, for economic or legal reasons relating to the holder's actual or foreseeable financial difficulties the financial terms are modified in order to facilitate payment of the debt (capital and interest) as the holder is unable, or likely to become unable, to comply with the terms in due form and time, even when this modification is envisaged in the contract. In any event, operations will be considered restructured when there is a haircut or new assets are received to reduce the debt, or in which there is a modification of the terms to extend the maturity period, vary the amortisation table to reduce instalments in the short term or reduce their frequency, or establish or extend the capital repayment and/or interest grace period, except when it can be shown that the conditions are modified for reasons other than the holder's financial difficulties and are analogous to those prevailing in the market at the time of the modification to operations granted to customers with a similar risk profile.

Specifically, entities are to disclose the gross amount of these operations with a breakdown of their classification as specially monitored, substandard or doubtful risks (distinguishing the secured part) and each of their respective credit risk hedges, broken down by counterparties and object. This breakdown will indicate the value of the operations in the period that have been classed as doubtful subsequent to their refinancing or restructuring.

Institutions that are authorised to use internal models to calculate their equity capital requirements to cover credit risk must state, in the breakdown by counterparties and purpose, the average probability of breach of these sets of operations on the reporting date of the financial statements.

Institutions are to include a short summary of their refinancing and restructuring policy, indicating the main characteristics of the refinancing and restructuring measures the institution uses for different types of loans and credit, and an explanation of the criteria it uses to assess the sustainability of the measures applied.

INFORMATION ON CUSTOMER FINANCING

The Circular also provides that institutions are to report their total loans and advances to customers, broken down by the sector to which borrowers belong and the purpose of the loan. Additionally, it requires that secured loans be distributed by tranches as a function of their loan to value ratio.

INFORMATION ON RISK CONCENTRATION

The Circular also establishes that institutions are to provide aggregate information about their risk concentration (including the book value of their assets and the nominal value of contingent risks), broken down by geographical area and segment of activity, and in turn, distributed between credit institutions, government, other financial institutions, non-financial corporations and individual businesspeople (distinguishing, according to purpose, between construction and property development, civil engineering construction, and other purposes) and other households and non-profit institutions serving households (distinguishing, according to purpose, between homes, consumption and other purposes).

OTHER CHANGES

Finally, in line with these changes, the Circular updates the current confidential statements and adds a number of new ones. It also introduces the changes necessary in the special accounting register of mortgage loans to support the new information needed for supervision purposes. Finally, certain changes have been made in the EMU statements, which respond to the euro area's statistical requirements, and which form the basis for the forwarding of this type of information to the ECB.

The Circular came into effect, with certain reservations, on 3 October 2012.

Complaints service: complaint submission procedure

Order *ECC/2502/2012 of 16 November 2012* (BOE of 22 November 2012) has been published, regulating the procedures for the filing of complaints with the Banco de España, CNMV, and the Directorate General for Insurance and Pension Funds (DGSFP) (hereinafter, the "complaints services").

The order sets out the procedures applicable to the submission of complaints, claims and enquiries to the complaints services in order to enhance their operational effectiveness, ensure effective application of the legislation defending users of financial services, and promote good practice in the financial sector.

The publication of this order fulfils the mandate granted by the eleventh final provision of Law 2/2011 of 4 March 2011 on sustainable economy,[60] continuing current practice, namely that complaints services continue to operate on the basis of a one-stop-shop, as described below.

ONE-STOP SHOP

Any complaint or claim may be submitted to any of the three complaints services, irrespective of its content. If the complaints service receiving the claim or complaint does not have the competency to proceed with it, it will forward the complaint to whichever complaints service is competent.

When, the content of a complaint, claim or enquiry is such that it corresponds to more than one complaints service, the case will be handled by the relevant service according to the legal nature of the institution against which the complaint has been made. This service will request reports from other complaints services concerning the matters corresponding to their areas of competency and integrate them into its final report.

Moreover, the complaints services may reach agreements with one another to organise the assistance needed in the exercise of their competencies so as to harmonise and improve practices in the exercise of these functions.

PARTIES ELIGIBLE TO FORMULATE COMPLAINTS, CLAIMS AND ENQUIRIES

The following are entitled to submit complaints,[61] claims[62] and enquiries:[63] 1) Spanish and foreign natural and legal persons, as users of financial services, provided they refer to their legally recognised rights and interests, or when they are making an enquiry regarding their rights concerning transparency and customer protection and the legal channels available for their exercise; 2) persons or entities acting in defence of the specific interests of their customers, investors, insurance policy holders, insureds, beneficiaries, injured third parties, or right-holders of any of the foregoing, together with pension plan members and beneficiaries; and 3) associations and organisations representing the legitimate collective interests of users of financial services, provided that such interests are affected, and that these entities are legally authorised to act in their defence and protection.

SUBMITTING COMPLAINTS AND CLAIMS

It will be necessary to demonstrate that a complaint has been made to the customer service department of customer ombudsman of the institution against which the complaint is made prior to the complaint or claim being admitted and processed.

Complaints and claims are to be submitted on a form[64] in either paper or electronic format that financial institutions are to make available to their users.

60 See “Financial regulation: 2011 Q1,” *Economic Bulletin,* April 2011, Banco de España, pp. 163-168.

61 These include complaints by users of financial services regarding delays, neglect or any other failing in the actions of financial institutions against which the complaint is filed.

62 These include claims made by users of financial services in relation to specific facts or acts or omissions by financial institutions where such claims are made with a view to obtaining compensation for the harm to the user’s interest or right, which the latter considers has been prejudiced by breaches on the part of the institution against which the complaint is made, the regulations on transparency and customer protection, or good practices in financial business.

63 Enquiries are considered to be requests for advice and information on questions of general interest concerning the rights of users of financial services as regards transparency and customer protection, or regarding the legal channels for the exercise of these rights.

64 This form must contain at least: 1) the complainant’s identity; 2) the identity of the institution against which the complaint is made; 3) the reason for the complaint or claim, with the express statement that it is not currently pending resolution or litigation before any administrative, arbitration or judicial bodies; and 4) accreditation that two months have elapsed since the claim or complaint was filed with the customer care department or service, or the office of the customer or member ombudsman, with no resolution being given, or that the application has been refused or declared inadmissible, in whole or in part.

The Order also sets out the cases and grounds for inadmissibility of complaints or claims to the complaints services.[65]

The complaints services may investigate, ex officio, conduct revealed in the case, even where this is not the object of the complaint, following a request for a statement from the institution.

A file on a claim must be closed with a report within not more than four months, that on a complaint within three months, both as of the time of submission of the claim or complaint to the competent complaints service. If this is not possible, the reasons for the delay must be expressly stated in the report. This report, which is to set out its reasons, must contain clear conclusions which specify whether the rules of transparency and protection have been infringed, and whether the institution has abided by financial sector good practice. It will not be binding and will not be considered an administrative act subject to appeal.

If the report finds against the institution against which the complaint was made, the institution must give express notice as to whether or not it accepts the report's arguments, and where applicable, provide documentary evidence of having corrected the situation referred to by the complainant within one month.

If the processing of complaint and claim files reveals data that may indicate punishable conduct, in particular where there are signs of serious or reiterated breach of transparency or customer protection rules, or signs of criminal conduct, infringements of tax, consumer, competition or other legislation, are detected, the complaints service may inform whatever department or body has competence to deal with the matter.

ENQUIRY PROCEDURE

As in the case of complaints and claims, enquiries may be submitted either on paper or in electronic form via the electronic registers provided by the complaints services.

Enquiries must state: 1) the identity of the person or entity to which the question refers; 2) the relevant background and circumstances; 3) doubts raised by the applicable legislation; and 4) other details or elements that may contribute to the competent complaints service's forming an opinion on the matter.

Enquiries must under no circumstances refer to a specific operation involving a specific entity, without prejudice to the possibility of submitting the corresponding complaint. Enquiries may not refer to the material conditions under which operations are carried out, provided that they comply with the standards of transparency and customer protection. Enquiries concerning the insurance of major risks are also excluded.

The competent complaints service will answer the question addressed to it, setting out in its conclusions the applicant's rights in relation to transparency and customer protection, and the legal channels available for their exercise.

65 These include: 1) when an attempt is made to process appeals or other actions for which administrative, arbitration or judicial bodies, or those pending litigation before such bodies as claims or complaints regulated under these procedures; 2) when disputes arise as to the economic value of the loss or damage that users of financial services may have suffered; 3) when enquiries regarding transparency and customer protection, or the legal channels available for their exercise, are articulated as complaints or claims, without prejudice to their being processed as an enquiry, of which the interested party will be informed; 4) when claims or complaints reiterate others already resolved and which have identical or substantially similar content and basis, with respect to the same subject and with the same object in terms of merits; and 5) when claims or complaints are submitted to the DGSEP complaints service in relation to major risks contracts, collective insurance or pension plans that articulate pension commitments of companies to their workers or their beneficiaries, that do not refer to the status of user of financial services of insurance companies or pension fund management entities.

The reply to the enquiry will be for information purposes only. It shall not be binding in relation to any persons, activities or scenarios envisaged in the enquiry.

This Order will come into force on 22 May 2013.

Cooperation agreements in relation to government debt investment funds: updating of regulations

Order ECC/2682/2012 of 5 December 2012 (BOE of 15 December 2012) modifying Order EHA/2688/2006 of 28 July 2006 on cooperation agreements regarding government debt investment funds (Fondtesoro).

The order expands the range of assets in which Fontesoros can invest, in order to widen their management companies' scope for action and make these products more attractive to investors.

Until now, it was mandatory for 70% of Fondtesoros' total exposure, or that of their sub-funds, to be in some form of government debt. This included bonds issued by Asset Securitisation Funds for Small and Medium-Sized Enterprises (FTPymes) which are backed by a government guarantee, up to the limit of 20% of the assets of the fund or sub-fund.

As of the entry into force of the order, this section has been expanded to cover FROB issues, issues by the Electricity Deficit Amortisation Fund (FADE), debt issued directly by the Official Credit Institute (ICO), credits from the Fund to Finance Payments to Suppliers (FFPP) when they are converted into bonds, and bonds issued by the asset securitisation fund for loans against officially protected homes (FTVPO) which has a guarantee from the ICO, given that they are of similar nature and creditworthiness. The upper limit on investments in all these assets has also been raised from 20% to 30% of the fund or sub-fund's assets.

The remaining 30% of the fund's or sub-fund's total exposure may be invested in other fixed-income securities other than government debt, traded on a regulated market and with a solvency rating not less than that of the Kingdom of Spain issued or endorsed by a credit rating agency[66] (formerly the credit rating was required to be A+, A1 or equivalent or higher), and in deposits in credit institutions that have been awarded at least this minimum rating and in money market instruments complying with this requirement, all denominated in euros. Investments which held the legally established rating at the time of acquisition but subsequently lost it will also remain eligible if the manager establishes that solvency levels are adequate following an analysis of the asset's credit risk, using appropriate methodologies and considering different indicators or parameters commonly used in the market.

As before, derivative financial instruments are permitted in order to ensure adequate hedging of the risk exposures in all or part of the portfolio, as an investment to manage the portfolio more effectively, or as a part of portfolio management to achieve a specific profitability goal, in accordance with the management objectives envisaged in the prospectus and the fund's regulations. The underlying financial instruments for these derivatives must be euro-denominated fixed-income securities or fixed-income indices and comply with the general regulations on investments of this type for collective investment institutions (CIIs).

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66 Ratings must be issued or endorsed by an agency established in the European Union and registered pursuant to Regulation 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, or in the case of ratings by entities established or financial instruments issued outside of the European Union or which have been issued by a rating agency established in a non-Member State of the European Union, which has obtained its rating based on the equivalence set out in the aforementioned regulation.

Finally, the content of the Fondtesoro prospectus has been adapted to the provisions of Law 35/2003, 4 November 2003, on CIIs,[67] amended by Law 31/2011, 4 October 2011,[68] regulating a new information instrument referred to as the document with basic data for investors which will include, at least, the investment criteria and system of investor remuneration.

Fondtesoros must conform to the provisions of this Order within six months of its date of publication. In the following three months, Fondtesoro management companies must adapt their prospectuses and documents with the basic data for investors regarding the Fondtesoros they manage.

The Order entered into force on 16 December 2012.

Changes to the regulations stepping up efforts to prevent and combat fraud

Law 7/2012 of 29 October 2012 amending the fiscal and budgetary legislation and adapting financial legislation to intensify measures to prevent and combat fraud was published in the BOE on 30 October 2012.

The most significant changes from the financial and fiscal point of view are the following:

Restrictions on cash payments

Payments in cash exceeding €2,500 (or the foreign currency equivalent) are, as a general rule, no longer allowed when either of the parties is acting in a business or professional capacity. However, this limit will be €15,000 (or the foreign currency equivalent) when the payer is a natural person who is able to demonstrate that he or she is not resident in Spain for tax purposes and is not acting in a business or professional capacity. This limitation will not be applicable to deposits and payments to and from credit institutions.

For the purposes of this calculation, the sum of all operations or payments into which the delivery of goods or services may have been divided will be taken.

Breach of this limitation will be sanctioned with a fine equivalent to 25% of the value of the cash payment.[69] Both the payer and the payee will be jointly liable for the infringement, such that the tax authorities may take action against either or both of them. If either of the parties voluntarily reports the infringement to the tax authorities within three months of the date of the payment the reporting party will not be liable for the sanction.

The infringement will be time barred five years after the date on which it took place.

FOREIGN ACCOUNTS, SECURITIES, AND PROPERTY ASSETS

The law establishes a new obligation on holders, beneficiaries or authorised signatories of foreign accounts or securities to declare these assets in the manner stipulated in the regulations. In particular, these declarable assets include: 1) accounts held abroad with banks and other credit institutions; 2) shares, assets or securities or other claims to share capital, equity or assets of any kind in institutions deposited or held abroad; 3) life and disability insurance and annuities or temporary income received as a result of a capital outlay in cash, movable or immovable property, contracted with entities established abroad; and 4) foreign immovable property and rights relating to it.

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67 See "Financial regulation: 2003 Q4," *Economic Bulletin,* January 2004, Banco de España, pp. 84-87.
68 See "Financial regulation: 2011 Q4," *Economic Bulletin,* January 2012, Banco de España, pp. 142-146.
69 The sanction will be compatible with other sanctions that may be applicable as a result of the commission of tax infringements or due to breach of the obligation to declare means of payment established in Law 20/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing.

Breach of this new obligation, failure to comply with it on time, or submitting false or incomplete data, will incur a fine of €5,000 per item or set of data omitted, with a minimum of €10,000.

When the declaration is submitted late, without a prior demand from the tax authorities, the sanction will be €100 per item or set of data,[70] with minimum fine of €1,500. Similarly, submission of the declaration in any form other than by electronic, computer and telematic means when it is mandatory to do so will be sanctioned.

AMENDMENT OF THE SECURITIES MARKET LAW

The general exemption from VAT, transfer tax and stamp tax has been maintained on changes of ownership of shares, whether traded on an official secondary market or not. As of this Law's entry into force, this exemption no longer applies to parties who have sought to conceal a change of ownership of immovable property behind a sale of company shares so as to avoid incurring taxes due on the transfer of immovable property. Such transactions will now be liable for the tax to which property sales are subject.

Unless proven otherwise, it will be assumed that an attempt has been made to avoid the corresponding tax on the change of ownership of immovable property in the following cases: 1) when control is obtained over an entity of which 50% or more of the assets are properties in Spain which are not associated with business or professional activities, or when, having obtained this control, the share in it is increased; 2) when control is obtained over another entity whose assets include securities permitting it to exercise control over another entity of which 50% or more of the assets are properties in Spain which are not associated with business or professional activities, or when, having obtained this control, the share in it is increased; and 3) when the securities transferred have been received as a result of contributions of immovable property made at the time of a company's incorporation or capital increase, provided that they are not associated with business or professional activities and that less than three years have elapsed between the time of contribution and transfer.

CHANGES TO THE GENERAL TAX LAW

A series of changes have been made to Law 58/2003 of 17 December 2003, General Tax Law, the main changes affecting the financial sphere are described below. These include, in particular, the new serious tax infringement (mentioned earlier in relation to the obligation to declare foreign assets), arising when self-assessments or information returns are submitted other than by electronic, computer or telematic means when it is mandatory to do so. This implies fixed sanctions in the case of self-assessments and variable sanctions depending on the number of items of data concerned in the case of information returns.

Thus, in the case of individual requirements or returns generally required in compliance with the obligation to furnish information, in the case of data not expressed in monetary amounts, the sanction will be €100 for each item or set of data, with a minimum of €1,500, in relation to a single person or entity when the declaration has been submitted other than by electronic, computer or telematic means when it is mandatory to do so. In the case of data expressed in terms of monetary amounts, the sanction will be 1% of the amount of the operations declared, subject to a minimum of €1,500. In particular, in the case of self-assessments, statements or documents relating to customs obligations, submitted other than by electronic, computer or telematic means when it is mandatory to do so, the sanction will be a fine of €1,500.

70 Either referring to each of the accounts or each asset item (immovable property or otherwise) considered individually according to its class.

Specific sanctions are also stipulated for tax infringements in the form of resistance, obstruction, or refusal to cooperate with actions by the tax authorities when the taxpayer is the object of inspection procedures, the sum of which will vary depending on whether the individuals or entities concerned conduct economic activities or not.

CHANGES TO DIRECT TAXATION

The treatment of unsubstantiated capital gains in relation to assets and interests not included in the information return on foreign assets and interests has been modified in the case of both personal income tax and corporate income tax to include these earnings in the general taxable income for the oldest tax period not time-barred and thus open to regularisation by the tax authorities.

In such cases a specific sanction of 150% of the gross taxable amount corresponding to the aforementioned unsubstantiated income will be incurred.

CHANGES IN INDIRECT TAXATION

A series of changes have been made affecting value added tax (VAT), particularly in the case of property transactions and situations where bankruptcy has been declared.

In relation to the former, two new cases have been defined regarding the transfer of immovable property in operations by business people or professionals. The first is that of exempt transfers (non-building land, and second and subsequent transfers of buildings) when the taxable person waives the exemption. The second is when the transfer of ownership takes place as a result of foreclosure of assets pledged as collateral. This scenario has been expressly extended to the case of dation in payment, where the acquirer undertakes to cancel the debt in exchange for the property securing it.

This aims to avoid the double loss to the public treasury from the non-payment of VAT income from the transferring entity and the VAT deduction by the acquirer.

In cases where there is a voluntary declaration of bankruptcy during a tax settlement period, there is an obligation to submit two returns and settlements: one in relation to taxable events prior to the declaration of bankruptcy and another for those subsequent to it, under the terms set out in the regulations. In the first of these returns the party in bankruptcy proceedings is obliged to apply the totality of the offsettable balances carried over from settlement periods prior to the declaration of bankruptcy.[71]

Finally, a new type of tax infringement has been defined, together with its corresponding sanctions, for the filing of incomplete or incorrect returns on certain operations assimilated to goods imports. The sanction implies a fine equivalent to 10% of the tax due in relation to operations omitted, or incorrectly or incompletely reported in the return and settlement.

The Law came into effect on 31 October 2012, except the restriction on cash transactions, which came into effect on 19 November 2012. The latter will be applicable to all payments made since that date, even when they relate to operations arranged prior to the restriction's being imposed.

Obligation to disclose foreign assets and interests, and other changes to tax law

Royal Decree 1558/2012 of 15 November 2012 (BOE on 24 November 2012), adapting the implementing regulations of Law 58/2003 of 17 December 2003, General Tax Law, to

71 Under the current regulations there is just one tax return and settlement. For this reason, the double return and payment has been established in order to determine whether given credits are in the bankruptcy proceedings or against the assets, given that VAT credits for taxable events prior to the declaration of bankruptcy must be classed as being included in the bankruptcy proceedings.

European Union and international regulations on mutual aid, establishes the obligation to declare foreign assets and interests, and modifies the regulations on mutual agreement procedures on direct taxation, approved by Royal Decree 1794/2008 of 3 November 2008.

CHANGES IN THE FINANCIAL AREA

The Royal Decree makes a number changes to the international disclosure requirements applicable to persons liable for tax[72] in relation to certain foreign assets and interests. In particular, it creates the obligation to declare accounts held with foreign financial institutions, securities, rights, insurance policies and income deposited, managed or obtained abroad, and immovable property or rights in respect thereof outside of Spain.

Obligation to report accounts with financial institutions located abroad

A declaration reporting accounts[73] held with financial institutions located abroad on 31 December each year is to be filed with the tax authorities. This obligation also extends to persons who have been account holders, representatives, authorised signatories or beneficiaries of such accounts, or who have had control over them, or who have been the beneficial owners at any time in the year to which the declaration refers.

The regulation describes the information that must be supplied to the tax authorities, which will include, among other details, the balance on 31 December and the average balance over the last quarter of the year.

This obligation shall not apply to: 1) public administrations, autonomous state agencies and other similar public law entities elsewhere in the public administration; 2) holders who have registered such accounts on an individualised and duly identified basis in their books; and 3) holders of accounts in foreign establishments of credit institutions resident in Spain, provided that such accounts have been declared in accordance with the legislation of the country in which the account is held.

There will also be no obligation to report accounts where neither the balance on 31 December nor the average balance in the last quarter of the year exceeds €50,000. If either of these thresholds is crossed, information must be supplied on all the accounts.

Reporting in subsequent years will only be obligatory when either of the relevant balances increases by more than €20,000 with respect to the preceding statement.

Obligation to report securities, rights, insurance policies and income deposited, managed or obtained abroad

In a similar way to the foregoing, an annual return must be sent to the tax authorities with information about the following types of assets and interests existing on 31 December of each year: 1) securities or rights representing an interest in any type of legal entity; 2) securities representing the assignment to third parties of equity capital; and 3) securities delivered for management or administration under any legal instrument, including trusts or blocks of assets that, although lacking legal personality, may be involved in economic transactions.

This disclosure requirement also applies to any person liable to tax who has been the holder or beneficial owner of such securities or rights at any time during the year to which

72 In particular: 1) natural and legal persons resident in Spain; 2) permanent establishments in Spain of non-resident persons and entities; and 3) unsettled estates, joint property and other entities without legal personality that constitute a separate financial or asset unit that is liable for separate taxation.

73 This obligation affects current accounts, savings accounts, time deposits, credit accounts and any other monetary accounts or deposits irrespective of the name or form they take, even if no interest is paid on them.

the declaration refers and who may have ceased to be so before the year end. In such cases, the information that is to be provided will be that corresponding to the date on which this cessation occurred.

The same exemptions have been established as in the case of accounts held abroad, including the minimum limits mentioned.

Disclosure requirement regarding foreign immovable property and interests therein

Similarly, owners of foreign immovable property or interests therein will be obliged to submit a report on their situation on 31 December of each year. The information return is to contain various details identifying the property, as specified in the legislation.

This disclosure requirement also extends to any person liable to tax that has been the holder or beneficial owner of the immovable property or interest at any time during the year to which the declaration refers and who may have ceased to be so by 31 December that year. In this case, the information return will also include the date and value of the transfer of ownership of the property or interest.

Similar exemptions and minimum thresholds as in the previous cases apply.

CHANGES IN TAXATION

This Royal Decree transposes into Spanish law Council Directive 2011/16/EU of 15 February 2011, on administrative cooperation in the field of taxation, and completes transposition of Council Directive 2010/24/EU of 16 March 2010, concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.[74]

The tax authorities have been given powers to request mutual assistance from other states and international or supranational bodies with a view to recovering foreign debts.

The rules applicable to the calculation of interest on late payment accruing on foreign claims are also defined. These are as follows:

1) When the debt is paid, the accrued interest will subsequently be settled, processed, and collected in accordance with the tax authorities' general settlement procedures.

2) In the case of the realisation of collateral or the seizure and sale of assets, late payment interest will be deducted from the remainder, if any, of the amount obtained from the sale or realisation after the debt has been recovered.

3) If cash, claims or monies in accounts are seized, this may be realised and the late payment interest retained at the time of seizure, if the available amount exceeds the debt pursued for collection.

Similarly, the Royal Decree regulates specific aspects of actions arising out of mutual assistance provided by the tax authorities or requested by it from other states, international or supranational entities, the purpose of which may include, *inter alia*, exchanging information and collecting claims and rights. In particular, it sets out the various purposes mutual assistance may have and the attribution of functions in this

74 This transposition was begun by Royal Decree-Law 20/2011, of 30 December 2011, on urgent budgetary, tax and financial measures to correct the budget deficit, which incorporated substantive aspects of this topic requiring regulation by law.

area. In turn, to provide legal certainty to the requested authority and greater flexibility to the mutual assistance process, full validity and effectiveness will be given to requests for assistance under these regulations, without the need for them to recognised or substituted in Spain.

It also establishes a series of common provisions on the application of taxes deriving from all aspects of mutual assistance, i.e. the exchange of information in order to settle taxes, assistance collecting claims, and in general, any other matter that may be established in international regulations.

In turn, it establishes procedures for the forwarding of data supplied by another state or international or supranational entity in the context of mutual assistance, and regulates internal cooperation and liaison between different administrative bodies in one or more areas of government which is necessary in order to comply with the regulations on the various forms of assistance.

Finally, the regulations on mutual agreement procedures on direct taxation, approved by Royal Decree 1794/2008 of 3 November 2008 have been modified in order to clarify their manner of application. In particular, it has been established that such proceedings will require a separate settlement for each tax period affected. Nevertheless, it is also envisaged that a single act may be issued which could include all the settlements deriving from the mutual agreement procedure.

The Royal Decree came into force on 1 January 2013, except the amendments regarding mutual agreement procedures relating to direct taxation, which will be applied to any agreements finalised after 25 November 2013.

Securities market: amendment of the legislation on the prospectus and transparency requirements for securities issues

With the aim of transposing Directive 2010/73/EU of 24 November 2010 of the European Parliament and of the Council into Spanish law, Royal Decree-Law 24/2012 on restructuring and resolution of credit institutions, repealed by *Law 9/2012 of 14 November 2012* (discussed above), amended Law 24/1988 of 28 July 1988[75] on the Securities Market, in relation to the prospectus and transparency requirements for securities issues.

The corresponding regulations have recently been implemented in *Royal Decree 1698/2012 21 December 2012* (BOE of 31 December 2012), which introduces a series of amendments to Royal Decree 1310/2005 of 4 November 2005,[76] partially implementing Law 24/1988 on the admission to trading of securities on official secondary markets, public offerings and the prospectus required for such purposes, and in Royal Decree 1362/2007 of 19 October 2007,[77] implementing Law 24/1988, in relation to the transparency requirements for information on issues of securities admitted to trading in an official secondary market or another regulated market of the European Union.

This piece of legislation has two goals: firstly, to reduce the administrative burden associated with the publication of a prospectus to accompany a public offer of shares and their admission to trading on regulated markets in the European Union. It also aims to modernise and improve certain aspects of the rules applicable to prospectuses.

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75 See “Regulación Financiera: tercer trimestre de 1988”, *Boletín Económico*, October 1988, Banco de España, pp. 61-62.
76 See “Financial regulation: 2005 Q4,” *Economic Bulletin,* January 2006, Banco de España, pp. 119-123.
77 See “Financial regulation: 2007 Q4,” *Economic Bulletin,* January 2008, Banco de España, pp. 191-193.

CHANGES TO THE PROSPECTUS WHEN SECURITIES ARE ADMITTED TO TRADING

Changes have been made to the format and content of the prospectus summary in order to adapt it to the European standard. The summary should therefore provide basic information that, in conjunction with the rest of the prospectus, helps investors determine whether or not to invest in the securities offered.

To this end, "basic information" is defined as being that essential and properly structured information that investors need in order to understand the nature of the inherent risks of the issuer, the guarantor and the securities which are being offered or are due to be admitted to trading on a regulated market.

Depending on the offering and the securities concerned, this basic information will include: 1) a short description of the essential characteristics and risks associated with the issuer and possible guarantors, including the assets, liabilities, and financial situation; 2) a short description of the essential characteristics and risks associated with the securities investment in question, including the rights inherent in the securities; 3) the general terms of the offering, including estimated expenses passed on to the investor by the issuer or offeror; 4) information about the admission to trading; and 5) the reasons for the offering and the purpose to which the income raised will be put.

A wider range of scenarios is envisaged in which civil liability may be claimed, such that it now includes cases where the prospectus summary, when read in conjunction with other parts of the prospectus, fails to provide all the basic information allowing investors to make informed decisions, or is insufficient to allow the securities to be compared with other investment products.

The thresholds above which different levels of legal requirements apply have also been updated. Thus, in the case of issues of non-participatory securities the minimum denomination per unit above which it will not be mandatory to include a summary of the prospectus or translate it into Spanish has been raised from €50,000 to €100,000.

To ensure that investors have better access to information, the rules on the registration and publication of the prospectus have been changed to make it mandatory to publish it electronically on the issuer's website, as well as in print.

Furthermore, to reduce the administrative burden involved in the publication of a prospectus accompanying issues or the admission to trading of securities on regulated markets in the European Union, the obligation to submit additional documents has been lifted in certain cases, and a series of technical improvements relating to the cross-border validity of prospectuses and the issue of promissory notes have been introduced.

Finally, to improve the level of legal certainty, the prospectus will now be valid for 12 months from the date of its approval, rather than the validity period's being calculated from the publication date.

CHANGES TO THE PROSPECTUS FOR THE PUBLIC OFFER FOR SALE OR SUBSCRIPTION

In relation to prospectuses accompanying public offers for sale or subscription of shares, the same regulations apply –with certain specific features– as to prospectuses issued when shares are admitted to trading. These include clarification of the right of investors who have agreed to acquire or subscribe securities to withdraw their acceptance before publication of the prospectus supplement, if any, provided that the new factor, error or inaccuracy motivating the publication of this supplement occurs before the final closure of the offer to the public and the delivery of the securities.

This right may be exercised within a period not less than two working days from the publication of the supplement, which must expressly state the final date on which investors may withdraw their acceptance.

Other new features affect the modification of the thresholds below which an operation will not be considered a public offer for sale or subscription of securities, and therefore not incur the obligation to publish a prospectus.[78] Under the new legislation the following are considered offers of securities:

1) Those aimed solely at qualified investors (which remain unchanged, although the definition of a qualified investor has been updated[79]).

2) Those aimed at less than 150 natural or legal persons per Member State (previously 100 natural or legal persons), excluding qualified investors.

3) Those aimed at investors purchasing a minimum value of €100,000 of securities each (previously €50,000 per investor) in each individual offer.

4) Offerings of which the nominal unit value is at least €100,000 (previously €50,000).

5) Offerings for which the total amount in the European Union is less than €5 million (previously, €2.5 million), this limit being calculated over a period of twelve months.

Nevertheless, any subsequent resale of securities that were previously the object of one or more of the types of offer mentioned here will be considered a separate offer and the definition of a public offer will be applied to decide whether this resale can be classed as a public offer of shares for sale or not. It is now specified that if this resale takes place through financial intermediaries, no further prospectus will be required when there is already a valid prospectus available and the issuer or person responsible for preparing it has authorised its use in writing.

The situations in which it is not mandatory to publish a prospectus to accompany a public offer for sale or subscription of securities have been updated. These include the exemption of securities offered to or due to be allocated to directors or employees by their employer or a group company, provided that these securities were of the same class as others already admitted to trading on an official secondary market or another regulated market in the European Union and that a document was available containing information on the number and nature of the securities and the reasons for and details of the offer.

Henceforth, this exemption will be extended to all undertakings established in the European Union, when a document is available containing information on the number and nature of the securities and the reasons for and details of the offering, and those established

78 A public offer for sale or subscription of securities is any communication to persons in any form or by any means that presents sufficient information on the terms of the offer and the securities offered as to allow an investor to decide whether or not to acquire or subscribe to these securities.

79 Qualified investors are considered to be persons or entities listed as professional customers under the Securities Market Law (financial institutions, public administrations and international organisations, certain business people who individually reach the specified levels of turnover in their annual accounts, and other customers applying in advance to be treated as qualified investors and expressly renouncing their treatment as retail customers).

outside of the European Union whose securities are admitted to trading on a regulated market or the market of a third country, provided a series of requirements are met. These include the requirement that the European Commission has adopted a decision on the equivalence of the legislation and supervision of the third country in which the market is located, under the terms established in Directive 2003/71/EC of 4 November 2003.

Debt securities issued on a continuous basis by credit institutions are also exempt from the requirement to publish a prospectus when the total amount offered in the European Union is less than €75 million (the previous limit was €50 million). This limit will be calculated over a twelve-month period, provided that the securities: 1) are not subordinated, convertible or exchangeable; 2) do not entitle the holder to subscribe or acquire other types of securities; and 3) are not linked to an underlying security on which their value or price depends.

NEW TRANSPARENCY REQUIREMENTS CONCERNING ISSUER INFORMATION

The second series of amendments affects Royal Decree 1362/2007 of 19 October 2007 regulating the requirements on the content, publication and dissemination of regulated information about issuers of securities admitted to trading on an official secondary market or any other regulated market in the European Union when Spain is the Member State of origin. This defines the cases in which Spain is considered the Member State of origin for the purposes of the application of the aforementioned Royal Decree.

The thresholds for the language in which the regulated information is to be published have also been updated.[80] Specifically, regulated information may be published, at the discretion of the issuer or person applying for admission to trading of the securities, either in the customary language of international finance, or a language accepted by the CNMV and the competent authorities of the hosting Member States when the securities concerned have a denomination per unit of €100,000 or more (previously €50,000) or in the case of bonds denominated in a currency other than the euro, equivalent to €100,000 (previously €50,000) on the issue date, and are admitted to trading on one or more official secondary markets or regulated markets.

Finally, certain modifications have been introduced in the information requirements for issuers of shares and debt securities admitted to trading on an official secondary market in Spain or another regulated market in the European Union.

The Royal Decree came into force on 1 January 2013.

Securities market: auctioning of greenhouse gas emission allowances

Law 11/2012 of 19 December 2012 (BOE of 20 November 2012) on urgent measures relating to the environment (hereinafter, the Law). The Law includes transposition into Spanish legislation of the provisions of Commission Regulation 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances, amended by Commission Regulation 1210/2011 of 23 November 2011.

This regulation establishes that a total volume of 120 million greenhouse gas emission allowances should be auctioned in the European Union as a whole in 2012, of which 10.2

80 The regulated information includes: 1) periodic information from issuers (the annual financial report, which will include the audited annual accounts and management report, and other information obligations established by Law 24/1988 on the Securities Market; 2) those regarding significant shareholdings and operations of issuers on their treasury stock; 3) those regarding the total number of voting shares and capital at the end of each calendar month in which there has been an increase or decrease, as a result of changes in the total number of voting rights regarding significant shareholders; and 4) relevant information, i.e. such information as might reasonably influence an investor to buy or sell certain financial instruments and therefore might have a material impact on their price in a secondary market.

million have been allocated to Spain. Member States are also encouraged to adopt the necessary measures to supervise financial institutions taking part in auctions either on their own account or on behalf of customers and impose sanctions on any found to be involved in abusive market practices or insider trading.

To this effect the Law amends Law 24/1988 of 28 July 1988 on the Securities Market to define the financial institutions that can participate in these auctions and grant the CNMV supervisory, inspection and sanctioning powers in relation to the aforementioned misconduct.

Under the Law investment firms and credit institutions authorised to provide investment services may submit bids to greenhouse gas emission allowance auctions on their customers' behalf, as well as conduct the activities envisaged in Law 24/1988.[81]

Market abuse and insider trading will be considered very serious infringements, to which the penalty system established in the Securities Market Law will apply. The CNMV has also been given a duty of cooperation in relation to this type of operation with other competent authorities in the European Union, auction platforms and the auction supervisory authority.

The Law came into force on 21 December 2012.

State Budget for 2013

As is usual in December, *Law 17/2012 of 27 December 2012* on the 2013 State Budget, was published in the BOE on 28 December 2012.

The main sections of relevance from the fiscal and financial regulatory viewpoint are:

AMENDMENT OF LAW 13/1994 OF 1 JUNE 1994, ON AUTONOMY OF THE BANCO DE ESPAÑA

As of 1 January 2013 the Banco de España is to apply equivalent measures to its staff as those generally applicable to public sector employees, and may not, under any circumstances, decide on compensation increases that, overall, represent an increase in the total wage bill exceeding that set for the public sector.

STATE DEBT

The Ministry of Economic Affairs and Competitiveness has been authorised to increase the outstanding balance of state debt in 2013 by up to €71,021 million on its level at the start of the year (€35,325 million was the limit set in the previous budget). This limit may be exceeded over the course of the year upon authorisation of the Ministry of Economic Affairs and Competitiveness, with a series of predetermined situations in which it is automatically reviewed.

As established by Royal Decree-Law 24/2012 of 31 August 2012 on restructuring and resolution of credit institutions, repealed by Law 9/2012 of 14 November 2012, during the 2013 budgetary period the FROB's external resources may not exceed €120 billion.

In the case of government guarantees, the limit on the total guarantees granted by the State and other public bodies has been set at a maximum of €161,044 million (the limit set in the previous budget was €217,043 million). Within this sum the following amounts have

81 The investment services envisaged in Law 24/1988 on the Securities Market are the following: 1) receiving and forwarding customers' orders regarding one or more financial instruments; 2) executing these orders on behalf of customers; 3) proprietary trading; 4) individualised discretional investment portfolio management in accordance with customer mandates; 5) placement of financial instruments, whether or not they are based on a firm commitment; 6) underwriting an issue or placement of financial instruments; 7) advice on investments; 8) management of multilateral trading systems; and 9) certain auxiliary services.

been earmarked: 1) €65 billion for guarantees against economic obligations deriving from issues by the SAREB; 2) €92,543 million to guarantee callable economic obligations of the "European Financial Stabilisation Facility"; and 3) €3 billion (the same amount as envisaged in the previous budget) to guarantee the fixed income securities issued by asset-securitisation funds, aimed at improving the financing of productive entrepreneurial activity.

AMENDMENT TO THE LEGISLATION ON PENSION SCHEMES AND FUNDS

Legislative Royal Decree 1/2002 of 29 November 2002[82] approving the consolidated text of the Law regulating pension schemes and funds to clarify the financial rules on pension schemes.

Previously, the situations in which benefits could be claimed from pension schemes included retirement in accordance with the rules of the corresponding social security fund. If the member of the pension scheme was not eligible for retirement, the contingency would be considered to arise at the ordinary retirement age set by the general social security regime. As of the entry into force of this Law, it is expressly stated that if the scheme member is not eligible for retirement under the social security regime, the contingency is understood to arise when he or she reaches 65 years of age.

This age has also been set for scheme members not eligible for a retirement pension in the case of contributions they wish subsequently to make to their pension plan, which may only be devoted to the contingencies of death and long-term care (previously the ordinary retirement age established in the general social security regime was taken as the cut-off date).

CHANGES IN TAXATION

Compensation is maintained for loss of fiscal benefits affecting the recipients of certain income from capital produced over a period of more than two years in 2012, as was the case in the Income Tax Law, approved by Legislative Royal Decree 3/2004 of 5 March 2004. Firstly, income from capital obtained from the sale to third parties of equity capital from financial instruments contracted prior to 20 January 2006 will be eligible for a reduction of 40%. Secondly, income from yields in the form of deferred capital from life or disability insurance contracted before 20 January 2006 will be eligible for a reduction of 40% or 75%, as envisaged in the legislation cited above.

Tax relief on the purchase of the taxpayer's primary residence has been eliminated in the case of properties acquired prior to 20 January 2006. This relief was equivalent to the difference between the deduction resulting from applying the previous income tax legislation (set out in Legislative royal decree 3/2004 of 5 March 2004) which was in force until the end of 2006, and that obtained under Law 35/2006, 28 November 2006.

In the case of changes of ownership of immovable property not used for business purposes, the updating of the value correction coefficients by 1% for the purposes of determining the capital gain or loss realised with the sale of the property has been maintained in 2013.

In the case of corporate income tax, the monetary correction coefficients applicable to the transfer of ownership of fixed asset items or when these items comprise immovable property classed as non-current assets held for sale, has been updated by 1%. Finally, the regulation defines the way certain fractioned tax payments will be calculated in 2013.

82 See "Financial regulation: 2002 Q4," *Economic Bulletin,* January 2003, Banco de España, p. 14.

A number of technical changes have been made to VAT, basically to bring Spain's regulations into line with European Union legislation and case law.

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

Tax measures to consolidate the public finances and stimulate economic activity

Law 16/2012 of 27 December 2012 (BOE of 28 December 2012), adopting various tax measures aimed at consolidating the public finances and stimulating economic activity, came into force on 1 January 2013.

From the fiscal and financial regulatory viewpoint the following sections stand out:

TAX ON DEPOSITS WITH CREDIT INSTITUTIONS

A tax on deposits with credit institutions has been created, under which the taxpayers are Spanish credit institutions and branches in Spain of foreign credit institutions. The tax base will be the arithmetic mean of the final balance at the end of each calendar quarter during the taxable period, corresponding to the "Customer deposits" liabilities item on credit institutions' confidential balance sheet, included in the individual financial statements, net of certain value adjustments set out in the regulation.

The gross tax payable will be the result of applying a tax rate of 0% to the tax base. Tax payers are obliged to submit a self-assessment and advance payment in July of each year, corresponding to the current tax period, calculated at 50% of the resulting amount. No filing will be required when the gross tax payable is zero euros.

The state budget law may modify the tax rate and advance payment.

SPECIAL TAX RULES APPLICABLE TO CREDIT INSTITUTION RESTRUCTURING AND RESOLUTION OPERATIONS

An additional corporate income tax provision has been introduced allowing the special tax regime for mergers, divisions, contributions of shares and share swaps to be applied as of 15 November 2012 to the transfer of business, assets or liabilities to other credit institutions by credit institutions carrying out credit institution restructuring or resolution plans under the bank restructuring legislation.

CHANGES TO THE LEGISLATION ON LISTED REAL-ESTATE INVESTMENT COMPANIES (SOCIMI)

Real-estate investment companies ("SOCIMI" by their Spanish acronym) are permitted under their corporate purpose to hold a stake in the capital of other entities whose purpose is the purchase of urban property for lease, complying with the investment requirements established in their regulations, but no longer needs to comply with external finance requirements, this limitation now having been repealed.[83] SOCIMIs' minimum share capital has also been reduced from €15 to €5 million.

In terms of their investment requirements, it is stipulated that at least 80% of each year's income, excluding that deriving from the sale of shares and immovable property, should derive from the lease of property, held in accordance with the entity's corporate purpose, to persons or entities over which it does not have any controlling relationship, as defined in Article 42 of the Commercial Code (no such requirement existed previously). Moreover, the length of time SOCIMIs must own the immovable property they promote has been shortened from seven years to three.

Finally, the requirement to guarantee appropriate diversification of property investments has been eliminated (SOCIMIs' assets were previously required to include at least three

83 External finance was not permitted to exceed 70% of the entity's assets.

properties, with the proviso that no individual property could represent more than 40% of their assets at the time of acquisition).

Moreover, SOCIMIs' shares are eligible for admission to trading on a multilateral trading system in Spain or any other Member State of the European Union or European Economic Area (EEA),[84] or a regulated market in any country or territory with which there is effective exchange of tax information in an uninterrupted manner throughout the tax period. It also requires that SOCIMIs' shares be registered.

The new legislation introduces a series of changes to the special tax rules applicable to SOCIMIs. The corporate income tax rate applicable will be 0% (this was previously 19%). In the event of non-compliance with the requirement to retain ownership of their immovable property for required minimum of three years, SOCIMIs will be liable for corporate income tax at the standard rate.

Under the new regulations SOCIMIs will be liable to a special tax of 19% on the gross dividends or share of profits distributed to shareholders owning 5% or more of their share capital when these shareholder dividends are tax exempt or taxed at a rate of less than 10%. This condition will not be applicable when the shareholder receiving the dividend is itself a SOCIMI. Previously, dividends distributed by the company were not subject to withholdings or advance payments, whatever the nature of the shareholder receiving the dividend.

As regards the tax rules applicable to shareholders, the deduction to avoid internal double taxation will not be applicable to dividends distributed from profits or reserves to which the tax rules for SOCIMIs have been applied when the recipient is liable for corporate income tax or non-residents' income tax. If the taxable person is liable for personal income tax, the exemption applicable to dividends established by Law 35/2006 of 28 November 2006 on Personal Income Tax,[85] will not apply.

Shareholders with a stake of 5% or more of the entity's share capital who receive dividends or a share of profits taxed at a rate of 10% or higher are obliged to inform the entity within ten days from the day after the dividends are paid.

OTHER TAXES

Various measures have been adopted regarding personal income tax:

1) The tax relief for homeowners' investments in their primary residence has been eliminated. Nevertheless, a transitional regime has been put in place whereby certain taxpayers can continue to benefit from tax relief in the following cases: 1) taxable persons purchasing their primary residence or having paid sums for its construction prior to 1 January 2013; 2) taxable persons having paid sums for work to refurbish or expand their primary residence

84 The EEA was created on 1 January 1994 by an agreement between the Member States of the European Union (EU) and the European Free-Trade Area (EFTA). Its creation allowed EFTA's countries to take part in the EU's internal market without being members of the EU. It comprises the 27 EU countries plus the following EFTA members: Iceland, Liechtenstein and Norway.

85 This tax treatment differs from that under the previous legislation. In the case of dividends distributed from earnings or reserves in years in which the special tax rules have applied, if the recipient is liable for personal income tax or income tax for non-residents with no permanent establishment in Spain, the dividend will be considered exempt from this tax. If the recipient is liable to corporate income tax or income tax for non-residents with no permanent establishment in Spain, the income to be included in the tax base will be the result of multiplying the income from the dividends received as registered on the accounts by 100/81. The deduction established to avoid double taxation will not be applicable to this income. In this case, 19% (or the taxable person's tax rate, if lower) may be deducted from the income included in the tax base.

prior to 1 January 2013, provided that this work is completed by 1 January 2017; and 3) taxable persons who have paid sums for work and installations to adapt their primary residence for disabled persons prior to 1 January 2013, provided that this work is completed by 1 January 2017.

However, in order to be eligible for these transitional tax credits, taxpayers are required to have obtained tax relief on their home in 2012 or in previous years, unless they were not able to do so previously because the amount invested was below the exemption threshold for reinvestment or the effective bases of deductions from previous homes.

2) A special tax of 20% has been established on lottery prizes of more than €2,500 from the national or regional lotteries, and lotteries of the ONCE (Spanish association for the blind), the Spanish Red Cross and other analogous European entities. These prizes were formerly exempt. In particular, the special tax will accrue on the part of the prize that exceeds this threshold and, as a general rule, a withholding or advance payment is to be made when the prize is paid. This withholding will release the prize-winner from the obligation to file a self-assessment in relation to the winnings. This tax also applies to persons liable to non-residents' income tax.

3) Gains or losses arising from changes of ownership of asset items will be taxed at the rate applicable to savings only when the asset has been held for more than a year (this restriction did not previously apply). Consequently, gains or losses produced from the sale of assets held for less than a year will be included in the general tax base.

4) The limit on the losses that can be offset against income or imputed earnings has been reduced from 25% to 10%.

5) The tax treatment of expenses and investments to train employees in the use of new information and communications technologies (as applied during the period 2007-2012) has been extended through 2013.

6) As in the case of corporate income tax, the tax credit for maintaining or creating jobs in 2013 has been retained. This consists of applying a tax rate of 20% rather than 25% for taxable persons who exercise economic activities and whose net overall turnover is less than €5 million and have an average headcount of less than 25.

In relation to corporation tax:

1) The right of companies other than small businesses to deduct depreciation of tangible and intangible fixed assets and property investments has been limited. Thus, only 70% of the book depreciation of tax deductible tangible and intangible fixed assets and property investments may be deducted from the tax base in 2013 and 2014. The non-tax deductible part will be depreciated on a straight-line basis over ten years or the useful life of the asset item starting in the first tax period beginning in 2015.

2) Regulations have been passed on the updating balance sheets of taxable subjects liable to corporate income tax, personal income tax for persons engaged in eco-

nomic activities, and income tax for non-residents' without no permanent establishment in Spain. The following will be updatable: 1) tangible fixed assets and property investments in Spain and abroad (in the case of non-residents' income tax for non-residents with a permanent establishment in Spain, updatable items are limited to those associated with their establishment); 2) tangible fixed assets and property investments acquired under financial leasing arrangements in which the exercise of the purchase option is binding; and 3) assets corresponding to concession agreements registered as intangible assets by the concessionary company.

The update must refer to all the eligible items and their corresponding amortisations, except in the case of immovable property, with respect to which independent updating may be opted for on a case-by-case basis (in a way that distinguishes between the value of the land and that of the building).

3) The specific criteria permitting application of the special tax rules applicable to the leasing of homes have been made more flexible. Thus, the requirement regarding the built area of each dwelling (previously limited to not more than 135 square metres) has been eliminated; the number of homes leased or offered for lease by the entity in each tax period has been reduced from ten to eight, and the time they must be rented out has been reduced from seven years to three.

One significant change regarding VAT is that in the case of instalment transactions it is sufficient to start collection proceedings for one of the instalments for it to be considered uncollectible and the tax base may be reduced by the corresponding proportion for the unpaid instalment or instalments. Similarly, a series of technical changes have been made to clarify the position in the case of rectification of invoices whose recipients are not acting in a business or professional capacity, such that, when they subsequently pay all or part of the consideration, the recipient is not liable to the treasury for the tax that is deemed to be included in the payment made.

The temporary reinstatement of wealth tax in 2011 and 2012 by Royal Decree-Law 13/2011 of 16 September 2011 has been extended into 2013.

Finally, an exemption from transfer tax and stamp tax now applies to preventive annotations ordered ex officio by the judicial or administrative authorities concerning a valuable right or interest.

The Law came into force on 29 December 2012.

Urgent measures to strengthen the protection of mortgage debtors

Royal Decree-Law 27/2012 of 15 November 2012 (BOE of 16 November 2012), on urgent measures to strengthen the protection of mortgage debtors has two main objectives: to put in place a two-year moratorium on evictions of vulnerable families from their primary residence, and to create a stock of social housing.

SUSPENSION OF EVICTIONS OF PARTICULARLY VULNERABLE GROUPS FROM THEIR PRIMARY RESIDENCE

As mentioned, for a period of two years from the entry into force of the law, evictions of families considered to be particularly vulnerable for any of the reasons enumerated below will not be permitted. Moreover, for this purpose, the home must have been awarded to the creditor, or person acting on the latter's behalf, during the mortgage foreclosure proceedings, and other financial circumstances must also apply.

The special vulnerability is deemed to exist in the case of:

1) Large families.

2) One-parent families with two dependent children.

3) Any family with children aged under three.

4) Households in which one of the members has a disability of more than 33%, requires long-term care, or suffers from an illness causing accredited permanent incapacity for work.

5) Households in which the mortgage debtor is unemployed and has exhausted his or her unemployment benefits.

6) Households in which one or more people living in the same home and are related to the mortgage holder or his or her spouse by a blood relationship of up to the third degree of kinship or affinity, and are accredited as permanently or temporarily disabled, requiring long-term care, or are seriously ill, preventing them from taking up employment.

7) Households in which there is a victim of gender violence, when they are at risk of eviction from their primary residence.

In addition to the cases set out above, at least one of the following financial circumstances must apply:

1) That the household's total income including that of all its members is not more than three times the public revenue index (IPREM).

2) That in the four years prior to the time of the application the household has suffered a significant alteration in its economic circumstances, in terms of the effort required to access housing.[86]

3) That the mortgage payments are more than 50% of the household's combined net income.

4) That the loan is a mortgage on the borrower's sole residence and was granted for the purpose of its acquisition.

SOCIAL HOUSING FUND

The Law urges the government to promote, jointly with the financial sector, a stock of social housing owned by credit institutions aimed at meeting the needs of people who, finding themselves in the circumstances described above, have been evicted from their primary residence as a result of default on their mortgage. The scheme aims to offer them rented accommodation at a cost proportional to their income.

The Royal Decree came into force on 16 November 2012.

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86 Significant alteration in economic circumstances is understood to mean that the burden of the mortgage represents as a share of family income has been multiplied by a factor of at least 1.5.