3 REGULATORY CHANGES IN PRUDENTIAL SUPERVISION

This chapter describes the most significant legal changes made, from a prudential supervision standpoint, in 2010 in the regulation of the activity of CIs and other financial intermediaries and auxiliaries subject to supervision by the Banco de España. It deals with organisational and disciplinary rules, omitting other regulatory changes of a more technical nature that only affect the internal organisation of institutions or their operations. It also omits rules which refer to the mere exercise of competences by supervisory authorities. The changes are grouped by subject matter.

Although this chapter has traditionally described community and national provisions separately, that distinction has not been drawn this year since the only significant community rule was Directive 2010/76/EU.[1] Based on this Directive's objectives and subject matter, it has been included in section 3.1 below which covers the solvency of CIs. In this respect, it should be recalled that the Basel III Accord published in December 2010 by the Basel Committee on Banking Supervision to strengthen the capital requirements of CIs has not had any regulatory implications in 2010 in the EU or in Spain.

3.1 Solvency of credit institutions

3.1.1 AMENDMENTS TO COMMUNITY LAW

As mentioned above, the only significant regulatory change at EU-level was Directive 2010/76/EU and it was the first amendment to Directive 2006/48/EC[2] following the financial crisis. The basic objective of this Directive is to improve the treatment of certain aspects in the area of the solvency of CIs which had performed worse during the crisis.

Thus, within the framework of the Financial Stability Board Principles for Sound Compensation Practices and as part of the internal corporate governance requirements for CIs according to the solvency regulations,[3] under the Directive CIs must establish and maintain suitable remuneration policies which are compatible with the effective management of the risks to which they are exposed in their business.

In these policies, the performance-based components of remuneration should be aligned with long-term results (between three and five years), should take into account the outstanding risks associated with performance and actual payment should be spread over the business cycle of each institution (40 % to 60 % of variable remuneration should be deferred over an appropriate period of time). These policies should be made public, including, albeit on an aggregate basis, the resulting amounts. The competent authorities, in order to correct shortcomings in remuneration policies, may impose on institutions qualitative measures (including, freezing the variable parts of remuneration), and quantitative measures (the possible requirement to hold additional own funds, for example).

Secondly, the Directive strengthens the capital requirements of CIs through the review of risk assessment methods and procedures, essentially, for market operations involving financial instruments. For instance, as for settlement risk, the same capital requirements are

1 Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 (OJ L of 14 December 2010) amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for resecuritisations, and the supervisory review of remuneration policies.

2 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 30 June 2006). Directive 2010/76/EU is known as CRD 3.

3 See Section 2.4.1 Compensation policy of credit institutions in the 2009 Banking Supervision Report.

now required for the non-trading book as for the trading book. There are two main changes in relation to position risk. On one hand, a capital requirements calculation regime for specific risk, similar to that for the non-trading book, is set up for securitisations, which were treated in the trading book as fixed-income instruments until now. On the other, in relation to the use of internal models, new capital requirements are introduced for default risk, price risk in the correlation trading portfolio and incremental risk in case of defaults. As for credit risk, the Directive introduces the concept of resecuritisation (a securitisation where the risk associated with an underlying pool of exposures is tranched and at least one of the underlying exposures is a securitisation position), and due diligence is required with regard to the underlying securitisations and the ultimate underlying assets.

Finally, the Directive enhances the transparency obligations of CIs, not only in relation to securitisation positions and remuneration policy as discussed above, but also in general in order to achieve full disclosure of institutions' risk profiles.

3.1.2 CHANGES IN SPANISH REGULATIONS ON OWN FUNDS

In order to transpose Directives 2009/27/EC[4] and 2009/83/EC[5], which address several technical issues of Directive 2006/48/EC, CBE 9/2010[6] was published in December. This Circular introduced several amendments to CBE 3/2008,[7] in relation to many aspects, also of a technical nature, including: the calculation of capital requirements for credit risk and mitigation of this risk; the treatment of securitisations and credit derivatives; the treatment of counterparty and trading book risk; the calculation of the floors in risk-weighted exposures for equities in the banking book; market disclosure obligations and liquidity risk.

Certain conditions are established for securitisations (based on the originator entity's overall share in the risk tranches), which must be fulfilled so as to presume that there has been a significant transfer of risk to third parties. If they are not fulfilled, the originator entity must show to the Banco de España, within the terms of the Circular, that the aforementioned transfer has taken place. Furthermore, capital requirements for liquidity facilities are strengthened.

The Circular introduces certain technical improvements arising from past experience which mainly relate to the criteria applicable to the exemption from individual requirements for subsidiary or parent entities of consolidatable groups of CIs, on one hand, and to the rules for weighting tangible assets received as dation in payment, on the other. Also, having regard to the criteria established in the guides issued by the CEBS, it eliminates the exemption of 1 % applied to date to the deduction of own shares. In order to avoid excessive fluctuations in eligible capital, following the practice of most EU countries, CIs now have the option of not including in their capital the changes in value of debt instruments that are recorded at fair value under available-for-sale financial assets.

That said, the main exceptional feature of Circular 9/2010 is that it includes as an annex "Guidelines supplementing the rules contained in the Circular" which establish a number

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4 Commission Directive 2009/27/EC of 7 April 2009 amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (OJ L of 8 April 2009).

5 Commission Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (OJ L of 28 July 2009).

6 Banco de España Circular 9/2010 of 22 December 2010 to credit institutions amending Circular 3/2008 of 22 May to credit institutions on the determination and control of minimum own funds (BOE of 30 December 2010).

7 Banco de España Circular 3/2008 of 22 May 2008 to credit institutions on the determination and control of minimum own funds (BOE of 10 June 2008).

of provisions on liquidity risk, which replicate those in Directive 2009/111/EC,[8] tending to strengthen the organisation and internal control of institutions and risk management. This annex, which is legally non-binding and groundbreaking in the area of regulation, is justified because it is impossible to fully regulate these issues, which are considered essential for ensuring the soundness of CIs, until Directive 2009/111/EC has been transposed into Spanish law.

3.2 Legal regime of supervised institutions

Royal Decree-Law 6/2010[9] urgently addressed the reform of certain aspects of the Spanish productive system in order to boost the growth of the Spanish economy along with job creation. As for the financial system, as part of a wide-ranging set of measures tending to strengthen the financial soundness of CIs, this Royal Decree-Law essentially covers two aspects.

3.2.1 INSTITUTIONAL PROTECTION SCHEMES AND THE OPERATION OF THE FROB

Firstly, it clarifies the legal regime for institutional protection schemes (IPSs) to be considered consolidatable groups. Thus, the IPSs are defined as contractual agreements between CIs, whereby a central institution responsible for compliance with regulatory requirements on a consolidated basis, determines the policies, business strategies and risk management methods of participating institutions. This central institution may be one of the institutions composing the IPS or another CI which is an investee of all of them. The contractual agreement must contain a mutual commitment on the solvency of the constituent institutions of at least 40 % of regulatory capital at each CI. It must also include a mutual commitment on liquidity and envisage the pooling of at least 40 % of the profits of each institution. The agreement shall have a minimum term of ten years, plus at least two years' notice should an institution want to leave the IPS, and shall include a system of penalties for withdrawal from the IPS.

Subsequently, Royal Decree-Law 11/2010 (referred to in Section 3.2.2 below), added that prior to any of the constituent CIs leaving the IPS, the Banco de España will assess the individual viability of the institution intending to withdraw from the IPS and the viability of the IPS itself and that of the other institutions should said institution actually exit the scheme. This Royal Decree-Law clarified, additionally, that where the institutions composing the IPS are savings banks, the central institution must be a public limited company and at least 50 % of its shares must be owned by the constituent savings banks.

Secondly, Royal Decree-Law 6/2010 introduces several amendments to the FROB's operating regime, basically to reduce the periods for taking action to address weaknesses in the economic and financial situation of institutions which may affect their viability. Further, it adds as a new instance for the restructuring of a CI with the intervention of the FROB, the occurrence of circumstances which, in the Banco de España's judgement, are such that the institution will not foreseeably find a viable remedy without the FROB's support. It also specifies that the equity units and preference shares subscribed by the FROB will not have to be quoted on an organised secondary market and that this should not prejudice their eligibility as own funds.

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8 Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management. The transposition of this Directive, which is known as CRD 2, is currently before Parliament.

9 Royal Decree-Law 6/2010 of 9 April 2010 on measures to promote economic recovery and employment (BOE of 13 April 2010) validated by Parliamentary Resolution of 20 April 2010.

3.2.2 RESTRUCTURING OF SAVINGS BANKS AND WRITE-DOWNS

In the context of the international financial crisis Royal Decree-Law 11/2010,[10] made further progress towards the target of improving the financial soundness of savings banks, essentially in three ways: by making it easier for them to have access to core capital, by promoting the professionalisation of their governing bodies and adjusting their capacity, either through new forms of engaging in their financial activity or through merger and integration processes.

The improvement in access to core capital was mainly addressed through the reform of the legal regime for equity units to make them more attractive to potential investors. The central plank of the reform is granting voting rights to unit-holders, who will now have a number of votes at the General Assembly based on the ratio of their equity units to the total net equity of the savings bank (as previously, this ratio may not exceed 50 %). The unit-holders may, likewise, appoint members of the Board of Directors and of the Control Committee in accordance with the aforementioned ratio, and they will have rights to information and to challenge resolutions that are characteristic of the shareholders of public limited companies.

Additionally, the maximum limit on ownership of equity units (which previously stood at 5 % of all equity units issued) was abolished; however, holdings will be subject to the regime for significant holdings in CIs. Similarly, it is envisaged, on one hand, that if the equity units are offered to the public in general, listing in organised secondary markets is compulsory and, on the other, that if the issuer savings bank joins an IPS, the equity units may be acquired without any type of limitation by the central institution of the IPS.

In order to improve the professionalisation of the savings bank governing bodies, the Royal Decree-Law clarifies and gives greater importance to the requirements that must be fulfilled by their members, mainly as regards the commercial and professional integrity required, accredited experience, the appointment process and the incompatibilities regime (particularly with political posts). At the same time it introduces the necessary means to adapt the governing bodies of savings banks to cases in which financial activity is performed indirectly by a bank and to the new legal regime of the equity units. Furthermore, the representation of general government in the governing bodies is reduced to 40 % from the previous limit of 50 %. In addition, the groups that may be members of the governing bodies now include institutions which represent collective interests in the savings bank's territory or are well established there, up to a ceiling of 10 % of the voting rights in each body.

The supplementary measures to improve the management of savings banks are that the operating rules of the Compensation and Appointments Committee are reformed to include the function of ensuring that the requirements for directors, committee members and the general manager are complied with, and that the new Welfare Projects Committee is regulated in order to guarantee that the savings bank's welfare projects are performed properly. Also, savings banks must publish annually a corporate governance report similar to that published by savings banks which have issued marketable securities.

Lastly, Royal Decree-Law 11/2010 permits savings banks to indirectly engage in their financial activity via a bank to which they contribute their entire business, either on their own or together with other savings banks through a jointly controlled credit institution

10 Royal Decree-Law 11/2010 of 9 July 2010 on the governing bodies and other aspects of the legal regime for savings banks (BOE of 13 July 2010) validated by Parliamentary Resolution of 21 July 2010.

within the framework of an ISP. If the savings banks reduce their holding to less than 50 % of the institution's voting rights, they must forfeit their credit institution status and become special foundations which focus on performing their welfare projects, through the management of their investment portfolio which essentially comprises shares of the credit institution.

3.2.3 REGIME GOVERNING QUALIFYING HOLDINGS IN CIs

Within the framework of the reform of the regime of qualifying holdings in Europe which was promoted by Directive 2007/44/CE,[11] Law 5/2009 and Royal Decree 1817/2009[12] clarified the procedures and evaluation criteria applicable for the prudential assessment of acquisitions of such holdings, at the same time as they empowered the Banco de España to prepare and publish a list of the information which, in the case of holdings in CIs, potential acquirers should provide in order to assess the effects of the proposed acquisition on the stability of the institution and of the markets in which it operates. CBE 5/2010[13] used this power and published the aforementioned list.

Since the European regulation on the regime governing qualifying holdings is identical for CIs, investment firms and insurance companies, and given that in Spain the regulatory framework for these institutions is similar, the preparation of the Circular was coordinated in full with the CNMV and the DGSPF (Directorate General of Insurance and Pension Funds), at the same time as it took into account the guides for prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, prepared jointly by CEBS, CESR and CEIOPS. Furthermore, in application of the principle of proportionality, the Circular establishes different requirements for the information to be sent to the Banco de España based on whether the potential acquirer is a CI or another financial institution supervised by another EU authority and on the complexity or nature of the operation.

The information to be provided comprises two parts. The first part is general and includes the identification of the potential acquirer (its professional activity, net worth situation, any relevant links, etc.) and a description of the operation, its purpose and financing. The second part requires further information based on the level of the desired holding and, in particular, when the intention is to take control of the institution.

3.2.4 LEGAL REGIME FOR PAYMENT INSTITUTIONS

In implementation of Law 16/2009,[14] which transposed Directive 2007/64/EC[15] into Spanish law, Royal Decree 712/2010[16] defined the legal regime for payment institutions (PIs),

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11 Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 21 September 2007).

12 Law 5/2009 of 29 June 2009 amending the Securities Market Law 24/1988 of 28 July 1988, Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions and the consolidated text of the Private Insurance Law, enacted in Legislative Royal Decree 6/2004 of 29 October 2004, for the reform of the regime for qualifying holdings in investment firms, credit institutions and insurance corporations (BOE of 30 June 2009) and Royal Decree 1817/2009 of 27 November 2009 amending Royal Decree 1245/1995 of 14 July 1995 on the creation of banks, cross-border activity and other matters relating to the legal regime of credit institutions and Royal Decree 692/1996 of 26 April 1996 on the legal regime of specialised credit institutions (BOE of 7 December 2009). See section 3.2.1.b of the 2009 Report on Banking Supervision in Spain.

13 Banco de España Circular 5/2010 of 28 September 2010 to credit institutions on the information that the potential acquirer must send in the notification referred to by Article 57.1 of Law 26/1988 of 29 July 1988 (BOE of 11 October 2010).

14 Law 16/2009 of 13 November 2009 on payment services (BOE of 14 November 2009).

15 Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 5 December 2007).

16 Royal Decree 712/2010 of 28 May 2010 on the legal regime governing payment services and payment institutions (BOE of 29 May 2010).

which together with credit institutions are the only institutions authorised to provide payment services. Most of this legal regime is similar to that of other institutions supervised by the Banco de España although it has some characteristic features.

PIs are not required to have a specific legal form other than one governed by mercantile law, either due to the nature of their purpose or due to the way in which they were formed. Different minimum initial capital is envisaged ranging from €20,000 to €125,000 based on the payment services that the PIs intend to provide. In relation to minimum own funds, although the Royal Decree establishes a default calculation method, it envisages the possibility that the Banco de España, on its own initiative, after consulting the PI or at the PI's request, may authorise the use of one of the two alternative methods provided for in the Royal Decree.

Law 16/2009 established two methods for safeguarding the funds received from payment service users or through another payment service provider, the characteristics of which are implemented through the Royal Decree. The latter also defines the operational restrictions imposed on the payment accounts through which PIs provide their services in order to ensure that the funds received by the PIs from payment service users do not constitute cash deposits or other reimbursable funds. Thus, in addition to the prohibition of earning interest, comes the requirement that the opening of the payment account must be linked to the prior existence of a payment order or to the simultaneous processing of a payment order. Likewise, the payment account must be associated with a cash deposit account opened by its holder at a CI, to which the balance of the payment account will be transferred should there be no movement in it in the last year. Furthermore, payment accounts may only have a debit balance as a result of the provision of payment services initiated by the payee of such services and not as a result of operations initiated directly by the payer holding the payment account. In any event, these debit balances must be replenished within a maximum period of one month and they must not amount to more than €600 at any time.

In relation to the cross-border provision of payment services, the Royal Decree specifically gives the same treatment to EU agent networks of PIs as their branches. Furthermore, PI agents are not subject to the principle of exclusivity and, consequently, may act simultaneously as the agent of more than one PI.

Lastly, the Royal Decree defines the provisions specifically applicable to PIs whose corporate purpose is not solely the provision of payment services, which are referred to as hybrid PIs. Such provisions range from the authorisation to the supervision of hybrid PIs and include their accounting requirements and operating rules with the two-fold purpose of adapting the requirements which are characteristic of IPs to the pursuit of other eligible business activities and to achieve a sufficient level of separation between these activities and the responsibilities acquired in the provision of payment services.

3.3 Operational framework

Royal Decree 628/2010[17] completed the transposition into Spanish law of Directive 2009/14/EC,[18] which introduced several changes to deposit guarantee schemes in the EU.

3.3.1 DEPOSIT GUARANTEE FUND

17 Royal Decree 628/2010 of 14 May 2010 amending Royal Decree 2606/1996 of 20 December 1996 on credit institution deposit guarantee funds and Royal Decree 948/2001 of 3 August 2001 on investor compensation schemes (BOE of 3 June 2010).

18 Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 13 March 2009).

These changes included raising the minimum coverage level to €100,000, which had already been implemented in Spain through Royal Decree 1642/2008[19] that has been repealed. Consequently, on this occasion only the period available to the Banco de España for declaring a CI incapable of paying its deposits was amended, by reducing it to five working days, along with the payout delay for guarantee funds which was also reduced to twenty working days and is extendible by ten working days on extraordinary grounds.

Similarly, the obligation to conduct stress tests and to cooperate with other Member States is introduced for deposit guarantee funds. The obligation for member institutions to provide their customers with information on the functioning of the deposit guarantee fund is strengthened. Additionally, the Royal Decree introduced several changes and technical improvements in order to reinforce the legal certainty of the regime applicable to guarantee funds.

3.3.2 ADVERTISING OF BANKING SERVICES AND PRODUCTS

The regulation and control of banking services and products was changed significantly in 2010 as a result of the publication of Ministerial Order EHA/1718/2010[20] and, subsequently, of CBE 6/2010[21] which implements it. This new regulation, also applicable to PIs as regards the advertising of payment services,[22] replaces the previous regime of prior authorisation by the Banco de España of the advertising of CIs referring to the cost or yield of their products of services, with a new regime which is more uniform with that of other Spanish and European financial institutions. See Box 2.1. "Advertising of banking services and products" in Section 2.3.1 of the previous chapter.

3.3.3 TRANSPARENCY OF PAYMENT SERVICES

Ministerial Order EHA/1608/2010[23] completed the transposition to Spanish legislation of European regulations on payment services and specified the general obligations of transparency and information for customers which are applicable to payment services in the case of "single" transactions and in that of transactions subject to framework contracts. Additionally, it established the special provisions applicable to payment instruments of small amount and the distance marketing of payment services.

Thus, the Ministerial Order details the information that the payment service provider must furnish to the payment service user both as the payer or, if appropriate, as the payee of the transaction. This information (basically, the maximum execution period and the detail of the expenses to be paid) must be provided in a form which is readily accessible for the user and, in the case of the payer, prior to the latter being contractually bound to the service payment provider. Furthermore, this information should be completed by the payment service provider, once the payment order has been received, indicating, inter alia, the amount of the order and the date on which it was received.

Where the provision of payment services is envisaged to be ongoing, the prior information obligations are transferred to the framework contract which will apply to them. In this case the information will refer to the general aspects that will regulate the provision of payment services, such as the form of consent for transactions, communication mechanisms, the form of modifying or terminating the contract, etc. Additionally, for each payment transaction made, the holder of the framework contract, either as payer or payee,

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19 See section 3.2.3 in the 2008 Banking Supervision in Spain Report.

20 Ministerial Order EHA/1718/2010 of 11 June 2010 on regulation and control of advertising for banking services and products (BOE of 29 June 2010). See section 2.3.1.

21 Banco de España Circular 6/2010 of 28 September 2010 to credit and payment institutions on the advertising of banking services and products (BOE of 11 October 2010).

22 Except as regards the obligation to have a commercial communication policy.

23 Ministerial Order EHA/1608/2010 of 14 June 2010 on transparency of conditions and information requirements for payment services (BOE of 18 June 2010).

shall be provided with information similar to that envisaged for single payment transactions.

In accordance with the changes introduced by the Ministerial Order, CIs are no longer obliged to include in their brochures of fee and commission charges, those relating to payment services and the valuation standards applicable to their lending and deposit transactions. Currency-exchange bureaux licensed to make cross-border money transfers are no longer subject to prepare and submit to the Banco de España the general conditions which will apply to the transfers they perform.

3.3.4 ACCOUNTING AND STATISTICAL REGIME OF CIs

The accounting regime of CIs was revised significantly in 2010 through three circulars: CBE 2/2010[24], CBE 3/2010[25] and CBE 8/2010.[26] Whereas the last two circulars are more closely linked to accounting techniques, the first one focuses on the submission of statistical information.

Thus, the fundamental aim of CBE 2/2010 was the modification of the euro area statistical requirements (EMU statements) envisaged in Circular 4/2004 in order to comply with the ECB's new statistical requirements.[27] These requirements mainly involve more detailed breakdowns for certain assets and liabilities and more information on loan securitisations and other loan transfers.

However, in order to reduce the excessive administrative burden which may be imposed by the increased reporting requirements on smaller institutions, the Circular envisages various exemptions for institutions whose total assets are below the threshold of €1.5 billion.

The Circular also makes minor changes to Circular 4/2004 to attend to other information needs, basically of a statistical nature, at the same time as it amplifies the information of the special accounting register of mortgage transactions.

These accounting changes are supplemented by those introduced by CBE 1/2010[28] concerning statistics on interest rates, also as a result of the new ECB requirements.[29] The purpose of these modifications is to provide more detailed breakdowns in the information supplied and new data about certain loans (in particular, those which are collateralised or non-collateralised, those extended to sole proprietors and those in the form of revolving loans, overdrafts and extended credit card credit).

3.3.5 MORTGAGE MARKET

CBE 7/2010,[30] which completed the mortgage market reform that began in 2007, was published at the end of 2010 in order to determine the more technical aspects of the aforementioned reform. Thus, the Circular sets the ratio that must be observed between the

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24 Banco de España Circular 2/2010 of 27 January 2010 to credit institutions amending Circular 4/2004 of 22 December 2004 on public and confidential financial reporting rules and formats (BOE of 5 February 2010).

25 Banco de España Circular 3/2010 of 29 June 2010 to credit institutions amending Circular 4/2004 of 22 December 2004 on public and confidential financial reporting rules and formats (BOE of 13 July 2010).

26 Banco de España Circular 8/2010 of 30 November 2010 to credit institutions amending Circular 4/2004 of 22 December 2004 on public and confidential financial reporting rules and formats (BOE of 30 December 2010).

27 Published in Regulation (EC) No. 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (Recast) (ECB/2008/32) (OJ L of 20 January 2010).

28 Banco de España Circular 1/2010 of 27 January 2010 to credit institutions concerning statistics on interest rates applied to deposits and loans vis-à-vis households and non-financial corporations (BOE of 5 February 2010).

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

30 Banco de España Circular 7/2010 of 30 November 2010 to credit institutions which develops certain aspects of the mortgage market (BOE of 6 December 2010). See Section 2.4.2.

Although Circular 4/2004 marked a far-reaching change in the accounting regulation of credit institutions, the fact is that it did not introduce substantial modifications to the provisioning of credit risk. Thus, the practice continued in Annex IX of offering institutions sound guidelines which oriented them about minimum provisioning levels and which guaranteed the coverage of all estimated losses associated with the loan portfolio.

The revision of Circular 3/2010 approved by the Banco de España refined the methodology for estimating asset impairment to take into account the conditions under which credit risk develops and to reflect appropriately the actual asset impairment and its transmission to the market through the financial information published by institutions.

The revision was three-pronged:

i) As regards *credit policies, methods and procedures,* essential issues related to credit policies that the Banco de España expects to find together with common problems in the reviews of supervised institutions' financial information were addressed such as the insufficient generation of cash flow by borrowers, excessive reliance on the collateral provided and rather unrealistic financial restructuring plans.

ii) As for the *estimation of impairment losses on debt instruments,* the different schedules were merged into one single schedule, which guarantees the full provisioning of the credit risk once 12 months have elapsed from their classification as doubtful. When the collateral is real estate property, this provisioning is applied to the amount of the outstanding risk which exceeds the value of the collateral. In turn, the value of the collateral is calculated on the basis of the lower of cost per public deed or appraised value, and by applying certain haircuts to reflect both the heterogeneity of the collateral and the different possibilities of realising it.

iii) With respect to *real estate assets received in payment of debt,* and given the absence of specific provisions, a new section IV was added. Its purpose in this connection was clear: to promote solutions to recover rapidly the financing extended and to continue with institutions' regular activity.

Finally, this revision of Annex IX was not applied retrospectively, and its initial quantitative impact began to be recognised in the results for 2010 Q3.

amount of the mortgage loan and the appraised value of the real estate, for the purposes of issuing mortgage-backed securities which are also guaranteed by a CI. To the same end, it specifies the guidelines to be followed in order to check whether the guarantees granted over real estate located in other EU countries can be considered equivalent to those granted over real estate located in Spain.

Additionally, the Circular determines the essential data of the special accounting register of mortgage loans which must be included in the annual accounts of the issuer institution and specifies the minimum content of the note in the annual report in which the board of directors or equivalent body of the CI must expressly refer to the policies and procedures established in relation to its activities in the mortgage market.

3.3.6 AGENTS OF CIs

Due to the amendment introduced by Law 47/2007 in the regulation of agents of investment firms,[31] CBE 4/2010[32] revised the regulation on the agents of CIs for two purposes. Firstly, it introduced the obligation for CIs to report to the Banco de España, for their subsequent publication, the individuals or legal entities appointed, to undertake professionally, on a regular basis, and in the name of and for the account of the CIs, the promotion and marketing of operations and services inherent to their activity as a CI, including investment services.[33] This communication should be made as at each calendar half.

31 Law 47/2007 of 19 December 2007 amending the Securities Market Law 24/1988 of 28 July 1988 (BOE of 20 December 2007) expressly granted the status of agent to individuals appointed for the promotion and marketing of investment services.

32 Banco de España Circular 4/2010 of 30 July 2010 to credit institutions on agents of credit institutions and the agreements entered into for the regular provision of financial services (BOE of 4 August 2010).

33 The regulations in force to date (Banco de España Circular 6/2002 of 20 December 2002 to credit institutions relating to information on agents of credit institutions and agreements for regular provision of financial services, which has been repealed) only obliged CIs to report on individuals to whom they had granted powers of attorney so that the latter may regularly act on their behalf, vis-à-vis customers, in the negotiation and execution of operations that are typical of the business of credit institutions.

The last phase of the IASB's project on rules on business combinations and consolidation culminated with the amendments to IAS 27 on consolidated and separate financial statements, and IFRS 3 on business combinations. When regulations (EC) 494/2009 and 495/2009 adopted those amendments for the European Union, it became necessary to adapt the Accounting Circular and, to do so, the Banco de España approved Circular 8/2010.

This Circular includes most notably the following changes:

i) As regards the *taking of control in stages:*

   a) Goodwill is calculated on the date on which control is obtained for all of the acquirer's investment in the acquiree.

   b) The equity interest acquired by the acquirer prior to the date of taking control must be measured at fair value as at said date and the changes recognised in profit or loss. Furthermore, any revaluations accumulated in equity must be recognised in profit or loss.

   c) The goodwill represents the goodwill acquired and that arising as a result of revaluations of previous equity interests.

ii) *Acquisition costs* must be recorded as expenses when incurred, instead of being capitalised.

iii) *Contingent liabilities and contingent consideration* are recognised in the balance sheet, such recognition not being conditional upon the probability of them occurring.

iv) *Transactions with non-controlling interests* are deemed to be transactions in own shares.

v) In the event of *loss of control* of a group entity, the equity items arising from its assets and liabilities are recognised in profit or loss, and the retained investment is recorded at fair value at the date of loss of control.

vi) Lastly, changes are made to the *information in the notes to financial statements,* which essentially increase its level of detail.

In any event, the rules on business combinations and consolidation adopted by the European Union in the initial stage had already served as aid in the drafting of the text of Circular 4/2004. Consequently, the amendments introduced by Circular 8/2008 focused on very specific issues. However, taking advantage of the opportunity offered by the adaptation, it was decided to reorganise the subject matter, and, for reasons of form rather than of substance, the rules affected were practically redrafted in full.

Secondly, the Circular specifies more clearly the agreements and agents subject to the reporting requirement, particularly in the case of those agents which belong to the commercial network of other supervised institutions, that are already subject to their own control and transparency regime. It clarifies, in addition, various matters relating to the appointment and control of agents, mainly referring to their professional skills, the scope of exclusivity in the agent relationship and the optional nature (as regards the organisational and disciplinary regulations) of the notarisation of the granting of powers.

3.3.7 PROVISION OF INVESTMENT SERVICES

Although the Ministerial Order EHA/1665/2010[34] was primarily aimed at investment firms, it also regulated many relevant aspects for the purposes of this chapter. On one hand, it transferred to the CNMV the verification and making public of standard contracts and fee and commission charges relating to transactions and services performed on the public debt book-entry market, which previously was a competence of the Banco de España. On the other, it changed the procedures for the submission of the fees/commissions relating to other investment services, so that the CIs providing these services must now send them directly to the CNMV, instead of submitting them, as they did previously, through the Banco de España.

34 Ministerial Order EHA/1665/2010 of 11 June 2010 implementing Articles 71 and 76 of Royal Decree 217/2008 of 15 February 2008 on the legal regime of investment firms and of other investment services entities in respect of fees/commissions and standard contracts (BOE of 23 June 2010).