2.1 Solvency of credit institutions

The regulatory changes relating to CI solvency focus on strengthening the solvency of national CIs through the establishment of tighter common equity tier 1 capital requirements along the same lines as the new international capital standards set in the so-called "Basel III accord".[1] The pivotal legal provision in setting stricter capital requirements was Royal Decree-Law 2/2011 (see Report on Banking Supervision in Spain 2011), which, for that purpose, introduced the notion of *capital principal,*[2] the definition of which was modified one year later.

2.1.1 MORE RIGOROUS CAPITAL REQUIREMENTS

Law 9/2012[3] amended the *capital principal* requirements to be met by consolidable groups of credit institutions and by institutions not forming part of a consolidable group established by Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the financial system. Specifically, the then-current requirements of 8 % generally and of 10 % for institutions with difficult access to the capital markets which resort predominately to wholesale funding, were transformed by the amendment into a single requirement of 9 % to be complied with from 1 January 2013. However, the change affects not only the required level, but also the meaning, of *capital principal.* Thus it was redefined to bring it into line, in respect of both eligible items and deductions, with the definition used by the European Banking Authority for the recapitalisation exercise, in accordance with Recommendation EBA/REC/2011/1.

The twentieth final provision of Law 9/2012 empowered the Banco de España to lay down the provisions required to duly implement the minimum *capital principal* requirements regime envisaged in Royal Decree-Law 2/2011, in accordance with the amendments in this respect made by the seventh final provision of said Law. For this purpose, the Banco de España approved Circular 7/2012, which implements this regime in accordance with the powers conferred on it.

To this end, the Circular lists the eligible instruments to be included in the definition of *capital principal,* as well as how they are to be calculated and the issue requirements, particularly those for mandatory convertible debt instruments. All this was done within the framework of the instruments and issue conditions specified in the aforementioned Recommendation of the European Banking Authority for application in the recapitalisation processes conducted.

Circular 7/2012 also determines how risk-weighted exposures can be adjusted so that the capital requirement for each risk exposure does not exceed the value of that exposure and so as to ensure consistency between the value of the exposures and the components of *capital principal.*

Lastly, CBE 7/2012[4] establishes how and how often institutions have to make declarations of compliance with the *capital principal* ratio, for which purpose a form is included as an annex.

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1 The decisions adopted by the Basel Committee on Banking Supervision on the overall design of measures to reform the regulation of capital and liquidity, in September 2010.
2 In line with the so-called common equity tier 1 defined in Basel III, although with certain differences.
3 Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution [BOE (Spanish Official State Gazette) of 15 November 2012].
4 Circular 7/2012 of 30 November 2012 of the Banco de España to credit institutions on minimum capital principal (core capital) requirements (BOE of 11 December 2012).

Capital principal is defined as comprising: share capital [(in the case of savings banks, initial capital *(fondos fundacionales)* and non-voting equity units *(cuotas participativas),* and in that of credit cooperatives, capital contributions)], excluding non-voting redeemable shares; paid-in share premiums; effective express reserves; minority shareholdings in the form of ordinary shares of consolidable group companies; eligible instruments subscribed by the FROB within the framework of its regulatory regime and instruments convertible into ordinary shares; and non-voting equity units of savings banks or contributions to capital of credit cooperatives which the Banco de España classifies as regulatory capital because they meet the requirements for qualifying as tier 1 capital and they meet the other issue conditions set by the European Banking Authority. The following must be deducted from these items: losses (including those attributed to minority interests), intangible assets and 50 % of certain assets, particularly those which may give rise to double counting of capital within the financial system.

The Law provides that the Banco de España may require compliance with a higher level of *capital principal,* depending on the results of stress tests on the overall system.

Also, the Banco de España, in the framework of the supervisory review of capital adequacy (Pillar 2), may require the aforementioned institutions or groups to hold an additional surplus of *capital principal.*

Moreover, consolidable groups of credit institutions, and credit institutions not forming part of a consolidable group of credit institutions subject to *capital principal* requirements, may not, without prior authorisation from the Banco de España, reduce the components of *capital principal* below the figure as at 31 December 2012 if that reduction were to result from the distribution, reimbursement or remuneration of *capital principal* components or from any other action intended to alleviate the commitment of the holders of the respective instruments to the issuer.

2.2 Legal regime of supervised institutions

2.2.1 LAW 9/2012 OF 14 NOVEMBER 2012 ON CREDIT INSTITUTION RESTRUCTURING AND RESOLUTION[5]

The enactment of Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution ("the Law") is in line with the programme of assistance to Spain for recapitalising its financial sector. This programme was agreed by Spain with the European authorities through the signature of the Memorandum of Understanding of 20 July 2012. The basic purpose of the Law is to set in place a credit institution restructuring and resolution regime as an essential tool for credit institution crisis management, and, to this end, it strengthens the intervention powers of the Fund for the Orderly Restructuring of the Banking Sector ("the FROB, by its Spanish abbreviation). Moreover, it includes voluntary and mandatory management exercises of hybrid capital instruments and subordinated instruments for those institutions for which a restructuring or resolution procedure has been initiated. Finally, it provides for the formation of an asset management company to be entrusted with managing the problem assets which credit institutions have to transfer to it. This Law repeals Royal Decree-Law 24/2012 of 31 August 2012 on credit institution restructuring and resolution, from which it stems, and amends various pieces of financial legislation.

a. Management of crisis situations at credit institutions

The Law provides for three types of crisis management actions applicable to credit institutions depending on their degree of distress.

First, "early intervention" measures are envisaged for credit institutions which do not, or are reasonably likely not to, meet requirements on solvency, liquidity, organisational struc-

5 BOE of 15 November 2012.

ture or internal control, but are in a position to redress this situation by their own means or through exceptional financial support.

These early intervention measures form part of the supervisory functions of the Banco de España, which, from the time it becomes aware that a credit institution is in the situation described above, may take the appropriate early intervention measures, including most notably that of requiring the removal and replacement of members of the institution's board of directors or equivalent body and, exceptionally, that of requiring the recapitalisation of the institution through the issuance of instruments convertible into shares or contributions to share capital.

Furthermore, institutions are required to draw up an action plan for relieving any capital shortfalls and ensuring their viability, which must be approved by the Banco de España. If the institution needs public financial support, approval of the plan will require a favourable report from the FROB.

The Law requires institutions to submit periodically a report on the extent of compliance with the action plan and regulates the finalisation of this situation, either due to the achievement of its aims or, conversely, to the distress of the institution or inviability or non-fulfilment of its plan, triggering a restructuring or resolution process.

Second, "restructuring" applies when a credit institution requires public financial support to ensure its viability and objective factors make it reasonably foreseeable that such support will be repaid or recovered within the periods envisaged for each instrument or when, in the judgement of the Banco de España, the resolution of an institution would be seriously detrimental to the stability of the financial system.

The institution must submit a restructuring plan specifying the measures envisaged to ensure its long-term viability. This plan must be approved by the Banco de España and include, in addition to the elements envisaged for action plans, the restructuring instruments to be implemented by the FROB, of which there are basically two: public financial support and transfer of assets and liabilities to an asset management company.

On a quarterly basis, the institution must send to the Banco de España and, in this case, also to the FROB, a report on the degree of compliance with the restructuring plan and on its liquidity position. At the same time, the Banco de España has to inform the FROB of the decisions it adopts, including that of opening a resolution process if the institution's situation of distress so warrants.

Lastly, "resolution" applies when a credit institution is non-viable or is expected to become so in the near future, and for reasons of public interest and financial stability it is necessary to avoid winding-up proceedings. The resolution procedure will also be applied if, in the presence of such public interest, the restructuring phase has failed.

The Banco de España may, before the resolution process is opened, adopt certain measures to reduce or eliminate any obstacles which may arise during the resolution process. Those measures include requiring the institution to divest certain assets or limit its exposures, or requiring changes in the legal or operating structure of the institution or its group.

The Law provides that, after the resolution process is initiated, the Banco de España may replace the board or equivalent body of the institution, designating the FROB as

sole director, unless it is not necessary for ensuring the process of resolution proceeds properly.

The FROB has to draw up a resolution plan for the institution or, where appropriate, determine whether the initiation of an insolvency proceeding is called for. In this latter case, the FROB must immediately inform the Banco de España, the Minister of Economic Affairs and Competitiveness and the Deposit Guarantee Fund for Credit Institutions.

The Law establishes different specific resolution instruments, which may be adopted individually or jointly, such as: sale of the institution's business; transfer of assets or liabilities to a bridge bank; transfer of assets or liabilities to an asset management company; and financial support to the acquirers of the business, the bridge bank or the asset management company.

b. Financial support instruments

The Law envisages the financial support instruments which may be granted to credit institutions, including: the provision of guarantees; the granting of loans or credit lines; the acquisition of assets or liabilities, whose management may be assumed by the FROB or commissioned to a third party; and the subscription or purchase of recapitalisation instruments, through the purchase of ordinary shares or contributions to share capital or of instruments convertible into ordinary shares or contributions to share capital.

c. Hybrid capital and subordinated debt instrument management exercises

There are various provisions on hybrid capital and subordinated debt instrument management exercises which clarify who has to finance bank restructuring and resolution measures. The underlying principle is that shareholders and creditors should bear any restructuring or resolution expenses before the taxpayer, under the self-evident principle of liability and risk-taking. The purpose here is to minimise as much as possible the cost of restructuring for the taxpayer, as stipulated by European legislation on state aid.

Consequently, provision is made for voluntary hybrid capital instrument management exercises (e.g. offers of exchange for equity or offers to buy back securities, reduction in the face value of debt and early redemption at other than face value) and for compulsory exercises imposed by the FROB (e.g. deferment, suspension or elimination of rights, obligations or conditions of issues, the obligation to repurchase the securities involved or any other instrument management action that the institution may have adopted voluntarily) which will affect both preference shares and subordinated debt. The application of these actions and the instruments used to do so shall be decided by the FROB as permitted by the Law, having regard to the suitability of such application.

d. Asset management company

The Law provides that the FROB may order an institution in a situation calling for restructuring or resolution to transfer its "problem" assets to an asset management company. For this purpose a special transfer regime is established under which the consent of third parties and compliance with procedural requirements for changing company structure are not needed. Notably, under this special regime asset transfers may not be rescinded under the asset clawback actions provided for in insolvency law and the acquiring company is not obliged to make a takeover bid.

Also, the Banco de España is responsible for supervising compliance with the sole corporate purpose of these companies and for overseeing compliance with the specific requirements set for the assets and, where applicable, liabilities to be transferred to the asset management company. The implementing regulations of the legal regime governing the organisation and operation of these asset management companies, and the powers of the FROB

and the Banco de España in relation thereto, are set out in Royal Decree 1559/2012 of 15 November 2012 establishing the legal regime of asset management companies, discussed in Section 2.2.2 below.

e. Legal regime governing the FROB

The FROB is responsible for managing the processes of credit institution restructuring and resolution. For this purpose, the Law strengthens the powers of the FROB, endowing it with certain commercial and administrative powers for applying the instruments and measures envisaged in this Law.

The FROB is responsible for exercising the powers granted under commercial law to the board or equivalent body of the institution, or to the shareholders, as the case may be, or to the general meeting or assembly where such meeting or assembly obstructs or rejects restructuring or resolution, or where so required for reasons of special urgency.

Noteworthy among the FROB's administrative powers are that it can: order the transfer of equity instruments or securities convertible into them, and of the assets and liabilities of the institution; make capital increases or reductions, and issue or redeem bonds, with the authority to disapply pre-emption rights; implement hybrid capital and subordinated debt instrument management exercises; and order the transfer of securities deposited at an institution to another institution.

The administrative acts ordered by the FROB to implement the measures and instruments envisaged in the Law are enforceable and therefore directly applicable with no need to comply with any formality or requirement established by law or contractually. The public interest element in restructuring and resolution processes, which aims to safeguard the stability of the financial system, justifies the executive nature of these resolution measures.

The voting powers which, under the previous legislation, credit institutions held as representatives of the Credit Institution Deposit Guarantee Fund have been abolished, and the post of general manager, who will exercise the executive powers of the FROB, has been created. Also, rules have been set on cooperation and coordination between the FROB and other competent Spanish or international authorities, such rules being similar to those already in place for institutions such as the Banco de España.

f. Amendment of financial regulations

Lastly, the Law amends various pieces of financial legislation, in line with the provisions of Royal Decree-Law 24/2012. Some of these amendments affect credit institution solvency and reorganisation regulations and are described elsewhere in this Report. The other amendments include most notably, but are not limited to, the following:

- Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions: (i) the failure to send to the Banco de España the action or restructuring plans referred to in Law 9/2012 is deemed to be a very serious infringement, (ii) the powers of the Banco de España to impose penalties are strengthened and, in addition, from 1 January 2013 it is endowed with the power to authorise the creation of credit institutions and the establishment in Spain of branches of credit institutions not licensed in the EU, (iii) it becomes compulsory for credit institutions to prepare and keep up-to-date a general viability plan which has to be approved by the Banco de España and (iv) the reasons for provisionally replacing the board or equivalent body of credit institutions are broadened to include the situations envisaged in Law 9/2012.

– Royal Decree-Law 16/2011 of 14 October 2011 creating the Credit Institution Deposit Guarantee Fund: (i) the purpose and function of the fund is limited to guaranteeing deposits at credit institutions, and its function of strengthening the solvency and functioning of credit institutions is abolished; and (ii) the fund is empowered to take measures to support the resolution of credit institutions. Also, the system of additional contributions established by Royal Decree 771/2011 in Royal Decree 2606/1996 of 20 December 1996 is abolished.

– Royal Decree-Law 11/2010 of 9 July 2010 on governing bodies and other aspects of the legal regime of savings banks: amendment of the legal regime for transforming into special foundations those savings banks which pursue their financial activity indirectly through a bank. Specifically, the reasons for transformation include the restructuring or resolution of the savings bank in question and the loss of control or reduction of its holding in the bank below 25 % of the voting rights. Also, a time limit of five months is set for carrying out the transformation, after which, pursuant to the Law, all the savings bank's governing bodies must be dissolved and it must be removed from the Banco de España's register of credit institutions. A management committee has to be appointed to adopt any resolutions necessary to implement the transformation. Lastly, a transitional provision is also included to regulate the regime applicable to institutions which, at the time of this Law's coming into force, are in any of the situations legally requiring their transformation into a special foundation.

2.2.2 ROYAL DECREE 1559/2012 OF 15 NOVEMBER 2012 ESTABLISHING THE LEGAL REGIME GOVERNING ASSET MANAGEMENT COMPANIES[6]

As noted in the preceding section, the transfer of assets and liabilities to an asset management company is one of the restructuring and resolution tools envisaged in Law 9/2012, which addresses the regulation of these companies from two different perspectives: a general one, applicable to the asset management companies which may be created in the future if there are new processes of credit institution resolution and restructuring, and a specific one, for the resolution and restructuring process currently under way in Spain.

The general regulatory framework is set out in Chapter VI of Law 9/2012, which addresses the legal nature of these companies (which must be public limited companies) and their supervision and sanctions regime, leaving it to the implementing regulations to determine matters relating to their organisational structure and their corporate governance obligations. That chapter also sets out the criteria to be taken into account for defining the asset and liability categories to be transferred to these asset management companies (e.g. activity to which they relate, age in the balance sheet, accounting classification, etc.).

The specific regulatory framework referred to above is set out in the seventh to tenth additional provisions of Law 9/2012, which govern the creation of the Asset Management Company for Assets Resulting from Bank Restructuring ("Sareb" by its Spanish abbreviation), to which must be transferred the assets and liabilities arising from the current restructuring process. Those provisions also determine the assets and liabilities to be transferred to the Sareb and the institutions obliged to do so, and empower the Sareb to organise them into blocks of segregated assets bereft of separate legal personality.

Royal Decree 1559/2012 undertakes, from the aforementioned dual perspective, the required implementation of the provisions contained in Law 9/2012. Specifically, it sets out the organisation and operation regime governing asset management companies, along

6 BOE of 16 November 2012.

with the powers of the FROB and the Banco de España in relation to these companies, and completes the legal regime of the Sareb by specifying matters relating to its incorporation, share capital, shareholder structure, governing bodies, obligatory committees (audit committee, compensation and appointments committee, etc.), general requirements for transparency and preparing annual accounts, compulsory reports (i.e. activity report and independent compliance report), monitoring committee and the regime governing the segregated assets known as "Bank Asset Funds" (BAFs)".

2.2.3 MINISTERIAL ORDER ECC/1762/2012 OF 3 AUGUST 2012 IMPLEMENTING ARTICLE 5 OF ROYAL DECREE-LAW 2/2012 OF 3 FEBRUARY 2012 ON BALANCE SHEET CLEAN-UP OF THE FINANCIAL SECTOR AS REGARDS REMUNERATION IN INSTITUTIONS WHICH RECEIVE PUBLIC FINANCIAL SUPPORT FOR REORGANISATION OR RESTRUCTURING[7]

Article 5 of Royal Decree-Law 2/2012 of 3 February 2012 on balance sheet clean-up of the financial sector and Ministerial Order ECC/1762/2012 of 3 August 2012 regulate the remuneration regime of the senior officers of credit institutions receiving public financial support for reorganisation or restructuring.[8] This regime is supplemented by the provisions of Law 3/2012 of 6 July 2012 on urgent measures to reform the labour market.

The scope of application of the Ministerial Order is limited to the directors and senior managers of credit institutions which have received public aid.

The upper limits on compensation are set on the basis of the FROB's holding in these institutions. In institutions majority held by the FROB, the directors and managers may not receive variable remuneration. Additionally, non-executive members of the board or equivalent body may not receive total annual gross fixed remuneration of more than €50,000. Executive chairmen, managing directors and similar officers may not receive a total annual gross fixed remuneration of more than €300,000.

In institutions not majority owned by the FROB but receiving financial assistance from it, non-executive members of the board or equivalent body may not receive total annual gross fixed remuneration of more than €100,000. Executive chairmen, managing directors and similar officers may not receive a total annual gross fixed remuneration of more than €500,000.[9] In both cases, annual variable remuneration may not exceed 60 % of annual gross fixed remuneration and the receipt of this remuneration must be deferred by three years from its accrual date, and is conditional on whether the results achieved, in comparison with those targeted in the plan, justify such payment. However, if the managers have been hired after or at the same time as the financial support from the FROB is received, the variable remuneration may amount to as much as 100 % of the annual gross fixed remuneration, provided that prior approval is given by the Banco de España, which in all cases must authorise the amount, accrual and payment of any variable remuneration of directors and managers.

To calculate the limits stated above, all compensation received from the various institutions belonging to the same group as the institution majority-owned or supported by the FROB must be taken into account, as also must be any remuneration, allowances, compensation or similar amounts that the managers and directors may receive from institutions in which they hold any office for or on behalf of the institution majority-owned or supported by the FROB.

Finally, the seventh additional provision of Law 3/2012 of 6 July 2012 prohibits credit institutions fully or partially owned or financially supported by the FROB from making sever-

7 BOE of 8 August 2012.

8 Apart from those considered here, there are special rules for integration/merger of institutions and for divestment.

9 The original wording specified the amount of €600,000, later reduced to €500,000 by Law 9/2012 of 14 November 2012.

ance payments in excess of the lower of the following amounts: a) twice the maximum levels resulting, respectively, from the annual gross fixed amounts stated above for executive chairmen, managing directors and managers; or b) twice the stipulated fixed annual remuneration.

2.2.4. ROYAL DECREE 778/2012 OF 4 MAY 2012 ON THE LEGAL REGIME FOR ELECTRONIC MONEY INSTITUTIONS[10]

This Royal Decree implements Law 21/2011 of 26 July 2011 on electronic money and completes the transposition of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

From an operating standpoint, electronic money institutions can be considered to be payment service providers which, in addition, can issue electronic money. Consequently, the legal regime of these institutions is based on that of payment institutions, to which are added the specific prudential requirements relating to the issuance of electronic money.

As with payment institutions, electronic money institutions are not required to have any particular legal form other than being a company, by virtue of either their corporate purpose or of how they were formed. They must have share capital of at least €350,000 and their own funds requirements are set on the basis of the activity pursued. Thus, the own funds requirements for electronic money issuance are 2 % of the average outstanding electronic money during the six months preceding the calculation date. If the institution also provides payment services not related to the issuance of electronic money, it will have to hold additional own funds, the calculation procedure and amount of which are the same as for payment institutions.[11]

The Royal Decree specifies the safe low-risk liquid assets in which, as a safeguard, the funds received from customers have to be invested, both for electronic money issuance and for any payment services provided. It also specifies the requirements to be met by the indemnity insurance or the comparable guarantee which, as an alternative, may be arranged by the institution as a means of safeguarding customers' funds. However, unlike with payment institutions, this alternative is not left open to the decision of the institution, but rather has to be previously authorised by the Banco de España at the request of the institution.

Regarding the pursuit of cross-border activities of electronic money institutions, the Royal Decree makes the same legal provisions as for payment institutions. This is not surprising if it is taken into account that electronic money institutions enjoy European passports to engage in the EU-wide issuance of electronic money and provision of payment services on either a joint or a separate basis. The only special consideration arises from the capacity of electronic money institutions to distribute and redeem electronic money through natural or legal persons acting in their name. The Royal Decree makes this intermediation subject to the same procedures as apply to the cross-border provision of the remaining services. Consequently, both cross-border distribution networks and those in charge of them are subject to the requirement of prior registration at the Banco de España.

As could not be otherwise, the regime applicable to the agents of electronic money institutions is identical to that for payment institutions, although it should be noted that electronic money institutions may not issue electronic money through agents (they may only

10 BOE of 5 May 2012.

11 See Section 3.2.4 of the Report on Banking Supervision for 2010.

distribute and redeem it though natural or legal persons authorised to do so). Also, the payment accounts which electronic money institutions may keep to provide payment services are subject to the same limitations and conditions as those established in this respect in Royal Decree 712/2010 of 28 May 2010 on the legal regime governing payment services and payment institutions.

Finally, the Royal Decree sets out the provisions specifically applicable to electronic money institutions which do not have the sole corporate purpose of issuing electronic money or providing payment and ancillary services, but rather also engage in some other economic activity. The specific stipulations of the Royal Decree for these institutions, which it refers to as hybrid electronic money institutions, are similar to those established for hybrid payment institutions in the aforementioned Royal Decree 712/2010, the only special feature being that to the provision of payment services is now added the issuance of electronic money.

2.3 Operational framework

2.3.1 IMPROVEMENT OF THE PROTECTION OF MORTGAGORS

a. Royal Decree-Law 6/2012 of 9 March 2012 on urgent measures to protect mortgagors without funds[12]

In view of the exceptional circumstances deriving from the long economic and financial crisis currently prevailing, in 2012 the Spanish government promulgated two pieces of legislation basically intended to enable people with a mortgage loan to purchase their principle residence to meet their obligations despite the adverse circumstances.

This Royal Decree-Law establishes diverse measures to allow mortgage debt to be restructured and to enable mortgage foreclosures to be made more flexible for debtors in extreme situations. These mechanisms are effected through a code of good practices which is voluntary for credit institutions or any other institution professionally engaging in the business of mortgage lending.

The measures set out in the Royal Decree-Law apply to current loans secured by a real-estate mortgage on the only house owned by the mortgagor that were granted to purchase it, where the debtor has exceeded the so-called "exclusion threshold". This threshold is defined in terms of certain economic criteria which must be documentarily evidenced by the debtor to the credit institution.

In all real-estate mortgage loan agreements in which the debtor has exceeded the exclusion threshold, the maximum penalty interest is the result of adding to the interest under the loan a rate of 2.5 % on the outstanding loan principal. In addition, the Royal Decree-Law sets stricter requirements for the out-of-court foreclosure on real-estate assets provided for in Article 129 of the Mortgage Law, and certain rental assistance for tenants affected by mortgage foreclosure processes after 1 January 2012.

The code of good practices for viable restructuring of debts secured by a mortgage on principle residence envisages the following measures: (i) as measures prior to mortgage foreclosure, various forms of debt restructuring (principal repayment grace period, lengthening of the repayment period, reduction of the interest rate); (ii) as supplementary measures, the acquittance of the outstanding principal; and (iii) as measures to replace the mortgage foreclosure when neither restructuring nor acquittance is viable, the possible dation in payment of the principle residence, with the consequent total settlement of the mortgage debt and the option that the debtor may remain in the house as a tenant for up to two years.

12 BOE of 10 March 2012. Validated by parliamentary resolution of 29 March 2012.

Finally, the Royal Decree-Law includes tax measures to reduce the tax cost entailed by the transactions envisaged in the code of good practices.

b. Royal Decree-Law 27/2012 of 15 November 2012 on urgent measures to strengthen the protection of mortgagors[13]

The basic purpose of this Royal Decree-Law, which came into force on 16 November 2012, is to suspend immediately for two years the eviction from their principle residence of families at particular risk of exclusion. Specifically, the suspension of evictions requires that the principle residence of persons who are considered to be particularly vulnerable for any of the reasons specified in the Royal Decree-Law (i.e. large family, single-parent family with two dependent children, household unit in which the mortgagor is unemployed and has exhausted his or her unemployment benefits, etc.) and who meet the economic requirements specified therein, has been awarded to the creditor (or to a person acting on the creditor's behalf) in a court or out-of-court mortgage foreclosure process initiated as a result of default on the mortgage loan granted for purchase of that house, which must be the only one owned by the debtor. All these circumstances must be documentarily evidenced by the debtor in the mortgage foreclosure process before the eviction is carried out.

The sole additional provision of the Royal Decree-Law entrusts the government with promoting, in concert with the financial sector, the creation of a social housing fund for the purpose of renting out houses which still belong to credit institutions, on affordable terms to people who have been evicted from their principle residence due to mortgage loan default, are particularly vulnerable and meet the economic requirements specified in the Royal Decree-Law.

2.3.2 ORDER ECC/2502/2012 OF 16 NOVEMBER 2012 REGULATING THE PROCEDURES FOR THE FILING OF COMPLAINTS WITH THE CLAIMS SERVICES OF THE BANCO DE ESPAÑA, THE CNMV, AND THE DIRECTORATE GENERAL FOR INSURANCE AND PENSION FUNDS[14]

The purpose of this Order, which regulates the processing of complaints, claims and enquiries lodged with the claims services (as Alternative Dispute Resolution schemes) of the relevant Spanish supervisory authorities, is to improve the effectiveness of these services in protecting the rights of customers in their respective areas of activity.

Pursuant to this Order, complaints[15] claims[16] and enquiries[17] may be submitted by: (i) Spanish and foreign natural and legal persons, as users of financial services; (ii) 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 (iii) 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.

As in the past, a complaint or claim will only be admitted and processed if the customer demonstrates that it has previously been made to the customer service department or customer ombudsman of the institution against which the complaint is made. The Order

13 BOE of 16 November 2012. Validated by parliamentary resolution of 29 November 2012.
14 BOE of 22 November 2012.
15 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.
16 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.
17 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.

also sets out the cases and grounds for inadmissibility of complaints or claims to the claims services.

Although the respective services remain separate, they continue to operate as a "one-stop shop", so claims or complaints can be submitted indistinctly to any of them. The service chosen by the customer will be responsible for sending the claim or complaint to the one competent to resolve it. Claims must be processed within a maximum of four months and complaints must be resolved within three months, counting from the time of submission of the claim or complaint to the competent service.

The final step in processing a claim or complaint will be a reasoned report setting out clear conclusions specifying whether the rules of transparency and protection have been infringed, and whether the institution has abided by financial sector good practice. Nevertheless, the report will continue to be non-binding and will not be considered an administrative act subject to appeal. However, 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.

Enquiries cannot refer to a specific transaction involving a specific institution. In its decision, the competent claims service must set out the applicant's rights in relation to transparency and customer protection, and the legal channels available for their exercise. The reply to the enquiry will be for information purposes only. It will not be binding in relation to any persons, activities or scenarios envisaged in the enquiry.

2.3.3 BANCO DE ESPAÑA CIRCULAR CBE 5/2012 OF 27 JUNE 2012 TO CREDIT INSTITUTIONS AND PAYMENT SERVICES PROVIDERS ON TRANSPARENCY OF BANKING SERVICES AND RESPONSIBLE LENDING[18]

This Circular, which implements, in an orderly manner consistent with best market practices, the mandates contained in Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and customer protection in banking services, replaces the long-lived Circular CBE 8/1990 of 7 September 1990 to credit institutions on transaction transparency and customer protection.

The new Circular, which sets out the implementing rules of the new specific framework for transparency and customer protection in banking services, is described in detail in Box 1.1 of this Report.

2.3.4 ROYAL DECREE-LAW 2/2012 AND CIRCULAR 2/2012 OF 29 FEBRUARY 2012 AMENDING CIRCULAR 4/2004

In 2012 several regulations were approved on the restructuring of credit institutions' balance sheets affected by the impairment of their real estate-related assets. They were promulgated to rebuild the credibility of the Spanish banking system and restore confidence in it. Royal Decree-Law 2/2012 (RDL 2/2012) of 3 February 2012 on balance sheet clean-up of the financial sector required provisions to be recorded by 31 December 2012[19] for foreclosed real-estate development and construction loans and assets relating to credit institutions' business in Spain as at 31 December 2011.

Consequently, the Banco de España approved Circular 2/2012 of 29 February 2012 amending Circular 4/2004. Its main objective was to incorporate the measures in RDL 2/2012 by requiring the following minimum provisions:

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18 BOE of 6 July 2012.

19 The institutions which undertook integration processes in 2012 will have 12 months from the authorisation of the integration operation.

i) 7 % of loans to the real-estate sector classified as standard for accounting purposes.

ii) 60 % of loans classed as doubtful or substandard granted for financing land, unless the development was in progress, in which case provisioning of 50 %[20] was required.

iii) 25 % of real estate development loans for all manner of assets, if completed, classified as doubtful for accounting purposes, and 20 % of those classified as substandard (24 % if uncollateralised).

Additionally, RDL 2/2012 raised, as a general criterion, the minimum provisioning required to 40 % for real estate assets received in satisfaction of debt and held on the balance sheet for more than 36 months. In particular, for the assets received consisting of completed construction or real estate developments and of individuals' dwellings not constituting the borrowers' principal residence, the minimum provisioning rate applicable was set at 25 %. This rises to 30 % for those on the balance sheet more than 12 months but not more than 24 months; to 40 % for those held more than 24 but not more than 36 months; and to 50 % for those held more than 36 months. As for assets received which comprise land for real estate development or construction, irrespective of how long they have been on the balance sheet, the minimum provisioning was set at 60 %, being lowered to 50 % where the construction or development was in progress.

2.3.5 ROYAL DECREE-LAW 18/2012 AND CIRCULAR 6/2012 OF 28 SEPTEMBER 2012

Subsequently, Royal Decree-Law 18/2012[21] of 11 May 2012 on write-down and sale of financial sector real estate assets increased the write-downs required under RDL 2/2012 for real estate loans classified as standard for accounting purposes as at 31 December 2011 and established additional provisioning of 45 % for loans collateralised by land, of 22 % for loans collateralised by developments in progress, of 7 % for loans collateralised by completed developments and of 45 % for loans without collateral.

As a result of Royal Decree-Law 18/2012, the Banco de España approved Circular 6/2012 of 28 September 2012 which, aside from this change in provisioning rules, required the following disclosures in credit institutions' individual and consolidated financial statements: information on refinancing and restructuring transations, information on sectoral and geographical risk concentration, and information on the assets foreclosed or received in satisfaction of debt that are transferred to specifically created companies or investees for the management of such assets.

Additionally, Circular 6/2012 creates the obligation for institutions to have a policy approved by the Board of Directors on loan refinancing, restructuring, rollover or renegotiation. The definitions of these terms are included in the Circular, which addresses the requirements they must meet for this purpose, as well as the application of certain criteria in relation to these transactions. It is specified that these measures must be used appropriately and their use should not distort the appropriate recognition of default risk and the immediate recording of amounts deemed uncollectible.

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20 Should the loan for the development in process be classified as substandard, the minimum provision required is reduced to 24 %.

21 Royal Decree-Law 18/2012 was passed through Parliament as Law 8/2012 of 30 October 2012 on write-down and sale of financial sector real estate assets.