2 REGULATORY CHANGES IN PRUDENTIAL SUPERVISION

2.1 Solvency of credit institutions

The regulatory changes relating to CI solvency in 2013 were marked by the approval of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 and by Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013.[1]

The Regulation entered into force and has been applied since 1 January 2014, except for certain questions that have a special application calendar. Meanwhile, the Directive entered into force on 17 July 2013, although the application of various questions will be in accordance with a staggered timetable that ends in 2019.

This legislation has introduced into European banking regulation the capital and liquidity requirements adopted by the Basel Committee on Banking Supervision that are known as Basel III. The Regulation lays down uniform rules that institutions must comply with in relation to: 1) own funds requirements relating to elements of credit risk, market risk, operational risk and settlement risk; 2) requirements limiting large exposures; 3) liquidity requirements relating to entirely quantifiable, uniform and standardised elements of liquidity risk; 4) establishment of the leverage ratio, and 5) reporting and public disclosure requirements.

Royal Decree-Law 14/2013 of 29 November 2013 (BOE of 30 November 2013) on urgent measures for the adaptation of Spanish law to EU law in relation to the supervision and solvency of financial institutions partially incorporated this Directive into Spanish law. It entered into force on 1 December 2013, although some of its provisions will be enforceable from 1 January 2014 and others from 30 June 2014.

This Royal Decree-Law made certain amendments to Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements for financial intermediaries to adapt it to EU law with effect from 1 January 2014. Thus, credit institutions, whether or not they form part of a consolidable group, must at all times maintain a sufficient volume of own funds relative to their investments and risks, in accordance with the provisions of Regulation (EU) No. 575/2013. Also, they must specifically have sound, effective and comprehensive strategies and procedures to assess and constantly maintain the amounts, types and distribution of internal capital they consider appropriate to cover the nature and level of risks. Such strategies and procedures will periodically be subject to internal review so as to ensure they continue to be comprehensive and commensurate with the complexity of the activities of the credit institution concerned.

At the same time, this law repeals the core capital requirement, regulated in Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the financial system. However, a transitional period up to 31 December 2014 is established, with the aim of reducing the effects that this repeal may have.

---

1 Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 (OJ L of 27 June 2013) on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (OJ L of 27 June 2013) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

The objective is twofold: first, to make the obligations in relation to capital requirements envisaged in Regulation (EU) No. 575/2013 compatible with those assumed by Spain in the Memorandum of Understanding (MoU), signed within the framework of the programme of assistance for the recapitalisation of the financial sector, agreed by the Eurogroup; second, to ensure that the Banco de España is authorised to avoid on prudential grounds any reduction in own funds arising from the mere approval of the new solvency regulations.

Also, the recast text of the Corporate Income Tax Law, approved by Royal Legislative Decree 4/2004 of 5 March 2004, was amended so that certain deferred tax assets do not have to be deducted from common equity tier 1 capital.

Thus, for tax periods commencing on or after 1 January 2014, deferred tax assets corresponding to impairment charges for loans or other assets arising from the possible insolvency of debtors not linked to the taxpayer, as well as those arising from transfers or contributions to social insurance systems or, as the case may be, early retirement, will be converted into a claim enforceable against the tax authorities if any of the following circumstances arise:

1 The taxpayer records an accounting loss in its annual accounts, which have been audited and approved by the relevant body. In this case, the amount of the deferred tax assets will be obtained by applying to their total amount the percentage that the accounting loss represents with respect to the sum of capital and reserves.

2 The institution is subject to a winding up order or a judicial declaration of insolvency.

The conversion of deferred tax assets into a claim enforceable against the tax authorities allows the taxpayer to request payment of the claim by the tax authorities or to set it off against other state tax debts which the taxpayer itself has generated since the conversion.

Deferred tax assets may be exchanged for government securities, when the period for offsetting tax losses provided for in corporate income tax regulations has expired, i.e. 18 years from when such assets are recorded in the accounts.

2.2 Legal regime of supervised institutions

2.2.1 ROYAL DECREE-LAW 14/2013, OF 29 NOVEMBER 2013

As mentioned in Section 2.1 above, Royal Decree-Law 14/2013 of 29 November 2013 (BOE of 30 November 2013) on urgent measures for the adaptation of Spanish law to EU law in relation to the supervision and solvency of financial institutions (the "Royal Decree-Law") introduced regulatory changes that were essential to ensure that the new European legislation (CRR/CRD IV) on banking organisation and discipline is operational from the date of entry into force of the Royal Decree-Law.

The basic objectives of the Royal Decree-Law are: first, to incorporate directly into Spanish law Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013, which has applied since 1 January 2014, extending the supervisory functions of the Banco de España and of the National Securities Market Commission (considered competent authorities within the scope of their respective competencies) and adapting them to the new powers laid down in EU law; second, as indicated in Section 2.1 above, to partially transpose Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, which had to be incorporated into Spanish law by the same date. Apart from addressing the questions relating to the solvency of institutions discussed above, the

Royal Decree-Law establishes a set of provisions relating to the supervision and corporate governance of credit institutions and also amends the law on restructuring and resolution of such institutions.

Among the amendments introduced into Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements for financial intermediaries that have not been discussed, the revision of the functions of the Banco de España, in its capacity as the authority responsible for the supervision of credit institutions and their consolidable groups, is notable. Specifically, the list of subjects on which the Banco de España may draw up technical guidelines for supervised institutions and groups on the appropriate compliance with supervisory rules is completed. In addition, the Banco de España may adopt as its own, develop, supplement or adapt the guidelines approved in this area by competent international banking regulation and supervision bodies or committees.

At the same time, certain changes were made in relation to the infringement of solvency rules. Previously, the Banco de España could adopt a number of measures when a credit institution or a consolidable group of credit institutions failed to comply with minimum own funds requirements or with rules relating to the organisational structure or internal control of the institution. Under the new legislation, the Banco de España may also adopt these measures when it has data providing grounds to presume that a failure of compliance will occur within the following twelve months. The Banco de España may also adopt other supplementary measures, such as: requiring credit institutions to abandon activities that pose excessive risks to the soundness of the institution; requiring credit institutions and their groups to use their net profit to strengthen their capital; prohibiting or restricting the distribution of dividends or interest to shareholders, members or holders of additional tier 1 capital instruments; imposing additional reporting obligations, including reporting on the capital and liquidity situation; or imposing specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities.

Under the previous legislation, the Banco de España could oblige credit institutions and their groups to hold own funds in excess of the minimum requirements. The Royal Decree-Law has now specified those cases in which such measures must be introduced, which include the following: 1) when the institution does not have sound, efficient and comprehensive strategies and procedures to assess and maintain adequate internal capital to cover its risks, and to identify and manage large exposures; 2) when there are risks or risk elements not covered by the own funds requirements; 3) when the application of other measures would by itself probably not be enough to sufficiently improve the systems, procedures, mechanisms and strategies within an appropriate period, and 4) when a failure to comply with the requirements for the use of internal models is detected that may give rise to insufficient own funds requirements.

A new section has been included in Law 13/1985 containing a number of measures relating to the corporate governance of credit institutions, which enter into force on 30 June 2014. In particular, the remuneration of categories of employees whose professional activities significantly impact the risk profile of the institution, its group, parent company or subsidiaries is limited, so that, as a general rule, the variable component does not exceed 100% of the fixed component. However, the shareholders in general meeting may approve an increase in the former component to up to 200% of the latter one, provided they do so by a qualified majority, as the Law specifies. Subsequently, the board of directors or equivalent body has to notify the Banco de España of such decision, and the latter must in turn notify the European Banking Authority (EBA). Meanwhile, the Banco de España may au-

thorise institutions to apply a notional discount rate, in accordance with the guideline published by the EBA, to 25% of the total variable remuneration, provided that it is paid by means of instruments deferred for five or more years. The Banco de España may establish a lower maximum percentage.

Notable among the changes introduced into Royal Legislative Decree 1298/1986 of 28 June 1986, which adapts the law relating to credit institutions to the law of the European Economic Community, is the fact that specialised credit institutions have been deprived of their credit institution status. However, until specific legislation on them is approved they will remain subject to the legal regime applicable to them prior to the entry into force of this Royal Decree-Law and will thus retain their credit institution status for this purpose.

The other change to the above-mentioned Royal Legislative Decree affects the regulation of the regime for collaboration in relation to information and professional secrecy. It provides that the Banco de España, in the exercise of its supervisory functions, may publish the results of the stress tests performed in accordance with Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority, or transmit the result of such tests to the EBA, for the latter to publish them.

Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions has been amended in order to authorise the Fund for the Orderly Restructuring of the Banking Sector (FROB) to increase its own funds by capitalising loans, credits or any other debt transaction in which central government is a creditor. Also the management of its cash operations, which was previously the exclusive responsibility of the Banco de España, is made more flexible.

The provision that established a time limit of 31 December 2013 for the application of Chapter VII of this law, on the management of hybrid capital instruments and subordinated debt, is eliminated. As a result, mechanisms for the absorption of losses arising from the restructuring or resolution of a credit institution by its shareholders and subordinated creditors are permanently valid in the Spanish legal system. Thus, the instruments needed to distribute the losses of an institution in accordance with the principle, specified in the Law itself, of correct assumption of risks and minimal use of public funds, in line with the most advanced international law and in accordance with EU regulations on competition and state aid, are maintained.

Finally, in relation to the asset transfer regime, claims transferred to Sareb (asset management company for assets arising from bank restructuring) will not be classified as subordinated in the event of the debtor's insolvency, unless they were classified as subordinated prior to the transfer, in which case they would retain this classification. From the entry into force of the law, this creditor position of Sareb is extended in winding up proceedings to those who acquire its claims in any way, except in the event that the acquirer has any of the grounds for subordination provided for in the Insolvency Law.

Law 13/1994 of 1 June 1994 on Autonomy of the Banco de España has also been amended, to authorise the latter to answer consultations on the exercise of their executive competences in relation to the supervision and inspection of institutions. The answers to such consultations will be informative in nature for the interest parties, no appeal lying against them. However, they will have binding effects for the bodies of the Banco de España charged with exercising the powers to which the consultation refers, provided there is no change in the circumstances, questions of facts and other data contained in them.

Finally, the identifier of legal entities, which is envisaged in Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, is regulated for the first time in Spain. From the start of 2014, central counterparties and trade repositories will identify the parties to a derivatives contract (for the purpose of its recording by trade repositories) by a code known as an entity identifier. In Spain, their issuance and management is the responsibility of the Mercantile Registry, and, should EU law or any general provision foresee other uses for the identifying code, the Mercantile Registry will also perform these functions with respect to such uses.

2.2.2 LAW 26/2013, OF 27 DECEMBER 2013

Law 26/2013 of 27 December 2013 (BOE of 28 December 2013) on savings banks and bank foundations (the "Law") sets out the new legal regime for savings banks, specifying their objects and the scope of their activities, as well as their corporate governance arrangements. It also develops the regulation of bank foundations, a new entity in the Spanish legal system, whose main function is to manage the welfare projects of savings banks and their holdings in the latter. The Law provides that savings banks must be transformed into bank foundations when their volume, at the consolidated group level, measured either in terms of the value of their total assets or their share of the relevant regional market for deposits, exceeds certain levels. The Law repeals, inter alia, Law 31/1985 of 2 August 1985 on the governing bodies of savings banks and Royal Decree-Law 11/2010 of 9 July 2010 on governing bodies and other aspects of the legal regime for savings banks, except as regards the tax regime for institutional protection schemes.

The objects of the activity of savings banks, as credit institutions with the nature of foundations with social purposes, must be focused principally on the collection of repayable funds and the provision of banking and investment services to retail customers and SMEs. They may not perform their activities outside the boundaries of their region *(comunidad autónoma),* unless the area within which they carry out their activities is confined to a maximum of ten provinces that border onto each other. The welfare projects of savings banks may be for the benefit of their employees, depositors, and groups in need, and may have other public interest purposes within the territory in which they are established.

The Law seeks to make the governing bodies of savings banks more professional, basically by reducing the representation of government bodies and public law entities and corporations in them, as well as by imposing integrity, experience and good governance requirements on all members of the board of directors (instead of only on a majority of their members, as previously), including general managers or similar officers, those responsible for internal control functions and those performing other key functions for the day-to-day activity of savings banks. In short, the members of the board of directors and equivalent officers are required to comply with similar requirements to those already applicable to banks.

In relation to the governing bodies, the general assembly, the board of directors, the control, investment, remuneration and appointments and welfare committees are all maintained by the Law, but the general manager ceases to be a member of such bodies. The number of members of the general assembly will depend on the economic size of the savings bank. There is a notable increase in the number of general assembly members appointed by depositors (who may henceforth be no fewer than 50%) and a corresponding reduction in the number of those appointed by government bodies and public law entities and corporations, where applicable (who in total may not exceed 25%). In addition, savings banks must provide the Banco de España with an annual report specifying the meas-

ures adopted to ensure that the general assembly members chosen to represent the depositors are independent. This report will be prepared by the control committee and submitted to the general assembly.

The board of directors is the body charged with the administration and financial management, as well as with the management of the welfare projects of the savings bank, in order to achieve its purposes. Apart from imposing integrity, experience and good governance requirements on all the members of the board of directors, the Law requires that the majority of them be independent (in contrast to the previous law, which did not mention independence, but did specify that there had to be representatives of the municipal corporations, the depositors, the founding persons or entities and the personnel of the savings bank). Appointments to the board of directors require a favourable report from the remuneration and appointments committee, which must take into account the domestic and international corporate governance practices and standards of credit institutions. In addition, and among other restrictions imposed on them, general assembly members may not be independent members of the board of directors.

The Law also requires exclusive dedication by the executive chairman of the board of directors to the duties of the post. Consequently, the office of executive chairman is incompatible with any public or private remunerated activity, except the administration of personal wealth and those activities carried out as a representative of the savings bank. Finally, the Law no longer regulates the rights of non-voting equity unit holders to be represented on the general assembly or on the board of directors or the control committee. This is a consequence of the new regime established for non-voting equity unit holders: within six months from the entry into force of the Law, those savings banks that have issued non-voting equity units in the past must submit for approval to the Banco de España a specific plan for their redemption. After this deadline, they may not continue to consider non-voting equity units as part of their own funds.

As under the previous legislation, savings banks are required to publish annually a report on corporate governance, which will be submitted to the National Securities Market Commission (CNMV), the Banco de España and to the competent regional government bodies. The Law now requires, in addition, the preparation of an annual report on the remuneration of the members of the board of directors and of the control committee, which will include, inter alia: 1) complete information on the approved remuneration policy of the institution for the current year, and, where applicable, that envisaged for future years; 2) an overall summary of how the remuneration policy was applied during the year, and the details of the remuneration accruing to each director and control committee member; and 3) the amount of the fixed components, variable remuneration items and the performance criteria selected for their design. The Minister for Economic Affairs and Competitiveness or, with his/her express authorisation, the CNMV, is empowered to determine the content and structure of such reports.

The Law introduces into the Spanish legal system a new legal entity known as “bank foundations”. These are entities that hold a stake in a credit institution that, directly or indirectly, corresponds to at least 10% of the institution’s capital or voting rights, or that enables the holder to appoint or replace one or more of the members of its board of directors. Bank foundations must have a social purpose, and their main activity must focus on attending to and developing their welfare projects and on the appropriate management of their stake in the credit institution. They are subject, in a supplementary manner, to the

general legislation on foundations (Law 50/2002 of 26 December 2002 on foundations and its implementing regulations) or to the applicable regional legislation.

The governing bodies of bank foundations will be the board of trustees and its delegated committees, the general manager, and any other body delegated or empowered thereby that is provided for in the statutes, in accordance with the general law on foundations.

The board of trustees is the most senior governing and representative body of a bank foundation. Its task is to comply with the purposes of the foundation and to administer diligently the foundation's assets and rights. The control regime for bank foundations will be the responsibility of the Foundation Commission, which will monitor the legality of the creation and operation of bank foundations, without prejudice to the functions of the Banco de España. The number of members of the board of trustees will be as determined by the foundation's statutes, but in no event more than fifteen, in accordance with a principle of proportionality to the volume of its assets. The trustees, who must be eminent natural or legal persons in the area of activity of the welfare projects of the banking foundation, have to exercise their functions for the exclusive benefit of the interests of the latter and in compliance with its social function.

The number of trustees representing government bodies and public law entities and corporations may not exceed 25%. The trustees must satisfy the requirements for business and professional integrity, and for specific knowledge and experience, and they are subject to a regime of incompatibilities similar to that established for the governing bodies of savings banks. Also, the post of trustee will be incompatible with the performance of equivalent duties in the bank in which the banking foundation has a shareholding, or in other entities controlled by the bank's group.

The board of trustees will appoint a Chairman from among its members, who will be the most senior representative of the banking foundation. The general manager will be appointed by the board of trustees and will attend its meetings with the right to speak but not to vote. The post of general manager will be incompatible with membership of the board of trustees and subject to the same requirements and incompatibilities established for the trustees.

With regard to foundations' holdings in credit institutions, the Law establishes additional requirements for two different cases. The first is when a stake in a credit institution is held by a banking foundation, or by two or more acting in concert, that is greater than or equal to 30%, or that gives control, according to the terms of the Commercial Code, over the institution. The foundation(s) concerned are required to prepare a management protocol for the holding, setting out the basic criteria for the management of the strategic holding, the relationship between the board of trustees and the governing bodies of the credit institution, the criteria for conducting operations between the banking foundation(s) and the credit institution and how potential conflicts of interest are to be prevented. This protocol must be made public andwill be subject to the prior approval of the Banco de España, which will define its minimum content. Every year foundations are also required to submit for approval to the Banco de España a financial plan detailing how the potential capital requirements of the credit institution are to be met and the basic criteria of the foundation's strategy for investing in financial institutions.

The second case refers to a stake held by a foundation (or foundations) in a credit institution that is greater than or equal to 50% or that gives control, according to the terms of the

Commercial Code, over the latter. In such a situation, the financial plan must also include, inter alia, an investment diversification and risk management plan, and the funding of a reserve, to be invested in highly liquid and highly rated financial assets, to cover the potential own funds requirements of the credit institution that cannot be covered by other funds and may jeopardise compliance with its solvency obligations. For this purpose the financial plan will contain a schedule of minimum transfers to be made to the reserve fund until the target volume (which will be determined by the Banco de España on the basis of a number of factors specified in the Law) is reached.

The Banco de España will specify the minimum content of the financial plan, in accordance with the criteria laid down in the Law. If the banking foundation fails to prepare the financial plan or, in the opinion of the Banco de España, the plan is insufficient to ensure the credit institution is soundly and prudently managed, the Banco de España may require the foundation to prepare a plan for the divestment of its holding, so that it ceases to have control over the credit institution. The Banco de España is also vested with powers to monitor compliance with the rules relating to the holdings of foundations in the capital of credit institutions. In particular, it may carry out such inspections and checks as it may consider appropriate in the exercise of its functions, and require bank foundations to provide all such information as may be necessary to perform its functions.

Bank foundations are required to publish annually a corporate governance report, the minimum content of which is detailed in the Law. They will be taxed under the general corporate income tax regime, the special tax regime provided for in Law 49/2002 of 23 December 2002 on the tax regime for non-profit institutions and tax incentives for patronage not being applicable to them. However, certain modifications are introduced into the consolidated text of the Corporate Income Tax Law approved by Royal Legislative Decree 4/2004 of 5 March 2004, to reflect certain special tax features of bank foundations.

The Law lays down various cases in which savings banks must be transformed into bank foundations. First of all, when they hold a stake in a credit institution equal to at least 10% of the capital or of the voting rights of the institution, or they are able to appoint or replace one or more members of the board of directors. On grounds of size, the transformation must take place in the following two cases: when the value of the total consolidated assets of the savings bank, according to the latest audited balance sheet, exceeds €10 billion, or when it has a share of more than 35% of the market for deposits in the territory within which it carries out its activities. From the moment at which either of these two cases is identified the savings bank will be transformed, within six months, into a bank or ordinary foundation, as applicable, and must transfer all the assets assigned to its financial activity to another credit institution in exchange for shares in the latter, with loss of authorisation to act as a credit institution. However, the Law provides that the savings bank may return to a situation in which it is not required to be transformed by means of the application of a return plan, authorised for the purpose by the Banco de España, which must contain a description of the actions envisaged for the savings bank to return to such situation within a period of no more than three months. Similarly, savings banks that have been exercising their financial activity indirectly through a bank will have to be transformed into a bank or ordinary foundation, as applicable, within one year. Upon expiry of the periods provided for above without the transformation having been completed, savings banks will automatically be transformed into foundations, all their bodies will be dissolved and they will be removed from the special register of credit institutions of the Banco de España.

Finally, in addition to savings banks, the Spanish Confederation of Savings Banks (CECA by its Spanish initials) will be made up of the bank foundations and credit institutions that may join, and will continue to have the same functions and purposes that it currently has. However, within six months from the entry into force of the Law, the CECA will submit to the Ministry of Economic Affairs and Competitiveness, for its authorisation, a proposal to adapt its statutes to its new legal regime. Upon the entry into force of these statutes it will lose its credit institution status, without prejudice to the fact that it may provide its services through a bank in which it has a stake, in the terms established in its statutes.

2.2.3 MINISTERIAL ORDER ECC/461/2013, OF 20 MARCH 2013

Ministerial Order ECC/461/2013 of 20 March 2013 (BOE of 23 March 2013) setting out the content and structure of the annual corporate governance report, the annual remuneration report and other information mechanisms for public listed companies, savings banks and other entities issuing securities admitted to trading on official securities markets (the "Order"), has included in one single text the rules, hitherto dispersed, on information relating to the corporate governance and remuneration of the institutions referred to in its title.

In relation to savings banks the most important change is that the obligation to draw up a corporate governance report and a report on the remuneration of the members of the board of directors and of the control committee now extends to all of them (previously these reports were only required of savings banks that had issued securities admitted to trading on official securities markets). Apart from that, the arrangements that existed previously, both for savings banks and for public listed companies and other entities issuing securities admitted to trading on official securities markets, as regards the annual corporate governance report, have been maintained, although the minimum content of such report has been expanded.

The Order implements the provisions of Law 24/1988 of 28 July 1988 on the securities market (as amended by Law 2/2011 of 4 March 2011 on sustainable economy) relating to the obligation imposed on public listed companies to prepare, along with a corporate governance report, an annual report on the remuneration of their directors, with complete, clear and comprehensible information on the remuneration policy of the company approved by the board of directors for the current year, as well as, where applicable, that envisaged for future years. The report must also include an overall summary of how the remuneration policy was applied during the year, and the details of the remuneration accruing to each director. Likewise, all savings banks must also prepare an annual report on the remuneration of the members of the board of directors and of the control committee, which must provide complete, clear and comprehensible information on the remuneration policy of the institution, with the same content and structure as the Order specifies for the reports of public listed companies.

The corporate governance report and the remuneration report must be communicated as significant events to the CNMV, which will publish them on its website. They must be made available to shareholders, in the case of companies, and to the members of the general assembly, in the case of savings banks, and must also be accessible on-line at their respective websites. Finally, it should be pointed out that exercising the powers vested in it by the Order, the National Securities Market Commission published Circulars 4/2013 and 5/2013, both of 12 June 2013, establishing (i) the formats of the annual report on remuneration of the directors of public listed companies and of the members of the board of directors and the control committee of savings banks that issue securities admitted to trading on official securities markets, and (ii) the formats of the annual corporate govern-

ance report of public listed companies, of savings banks and of other entities that issue securities admitted to trading on official securities markets.

2.2.4 ROYAL DECREE 256/2013, OF 12 APRIL 2013

In relation to the corporate governance of credit institutions, Royal Decree 256/2013 of 12 April 2013 (BOE of 13 April 2013) incorporating into the law on credit institutions the criteria of the European Banking Authority of 22 November 2012 on the assessment of the suitability of the members of the management body and key function holders (the "Royal Decree"), adapts Spanish regulation, so as to introduce substantive changes in three areas relating to the assessment of the suitability of persons who effectively direct the activity of institutions: their business and professional integrity, their knowledge and experience, and their capacity for good governance.

First, the Royal Decree sets out in detail the requirements for business and professional integrity, and adequate knowledge and experience to perform their functions, applicable to all members of the board of directors, to general managers or similar officers, and to persons responsible for internal control functions and holding other key posts for the day-to-day performance of the activity of the institution and, if applicable, of its parent entity.

The power to assess whether the business and professional integrity requirements are met is given to the Banco de España, which must take a wide range of criteria into account, essentially hinging on three circumstances: 1) the track record of the officer concerned in relation to the regulatory and supervisory authorities, especially his/her personal solvency and compliance history and past professional activity; 2) convictions for offences or misdemeanours and sanctions for the commission of administrative infringements, and 3) the existence of relevant and well-founded criminal or administrative investigations in relation to economic or financial offences. For these purposes, the Banco de España may establish a committee of independent experts, to provide reports for assessment procedures when the person concerned has been convicted of offences or misdemeanours. The knowledge and experience required is the appropriate level and kind of training, especially in banking and financial services, and practical experience gained from previous occupations over a sufficiently long period. Both academic knowledge and previous experience in other institutions or firms in the performance of similar tasks to those that are to be performed will be taken into account for this purpose.

Second, capacity to practise good governance is a requirement that is applicable, in addition to the requirements mentioned above, solely to the members of the board of directors. The Royal Decree requires the suitability of the members of the board of directors as a whole to be assessed, taking into account the individual profile of each director, so as to strengthen its independence and autonomy as the institution's senior management body. The members of the board of directors must be capable of practising good governance of the institution, a circumstance that will be assessed taking into account both the existence of potential conflicts of interest that may give rise to undue influence by third parties and the capacity to dedicate sufficient time to the relevant duties.

In order to comply with all the above, credit institutions must have, commensurate with the nature, scale and complexity of their activities, appropriate units and internal procedures for the selection and on-going assessment of their directors and of those persons holding internal control functions or key posts for the day-to-day performance of banking activity. Once these key posts have been indentified, an up-to-date list of the persons who hold them, the suitability assessments and the supporting documentation must be made available to the Banco de España.

Meanwhile, the Banco de España (which will continue to manage the register of senior officers of banks) will set up and maintain a register of directors and general managers of parent institutions that are not credit institutions, investment firms or insurance or reinsurance undertakings of Spanish banks, in which their directors, managers and similar officers must be entered. For this purpose, such persons must specifically declare, in the document substantiating their acceptance of the post, that they satisfy the integrity requirements and, where applicable, those of professionalism and capacity to practise good governance, and that they are not subject to any restriction or incompatibility established in rules applicable to them. This same declaration must be made by the directors and general managers or similar officers of credit institutions for their inclusion in the register of senior officers.

It is important to note that the Royal Decree has extended the application of these requirements for business integrity, knowledge and professional experience. Previously they only applied to banks, savings banks, credit cooperatives and specialised credit institutions, but now they apply to most of the entities supervised by the Banco de España, including electronic money institutions, payment institutions, appraisal companies, currency-exchange bureaux and mixed financial holding companies.

2.3 Operational framework

2.3.1 LAW 1/2013, OF 14 MAY 2013

Law 1/2013 of 14 May 2013 (BOE of 15 May 2013) on measures to strengthen the protection of mortgagors, debt restructuring and rented social housing (the "Law") follows up the diverse mortgagor support mechanisms introduced in the previous year. The Law makes the requirements established by Royal Decree-Law 27/2012 of 15 November 2012 on urgent measures to strengthen the protection of mortgagors more flexible, so that the two-year moratorium can be applied to repossessions in mortgage foreclosure proceedings; it widens the scope of application of Royal Decree-Law 6/2012 of 9 March 2012 on urgent measures to protect mortgagors with no means of support, and also introduces an important reform of the mortgage market, amending, inter alia, the Mortgage Law (the consolidated text approved by a decree of 8 February 1946), Law 2/1981 of 25 March 1981 on mortgage market regulation, and Law 1/2000 of 7 January 2000 on civil procedure. These reforms were subsequently completed by those made by Law 8/2013 of 26 June 2013 on urban rehabilitation, regeneration and renewal and by Royal Decree-Law 7/2013 of 28 June 2013 on urgent tax, budgetary and research, development and innovation-promoting measures.

The law provides, first, for an immediate two-year suspension of evictions of especially vulnerable families. This measure will, exceptionally and temporarily, affect all judicial foreclosure proceedings and extrajudicial sales that vest title to the principal residence of persons belonging to certain groups in the creditor. Cases of special vulnerability are defined in accordance with a number of socio-economic criteria similar to those laid down in Royal Decree-Law 27/2012 of 15 November 2012, although their scope is wider.

Royal Decree-Law 6/2012 (which established various measures conducive to the restructuring of the mortgage debts of persons who are having great difficulty paying their debts) is also amended in order to widen its scope, which is no longer confined to mortgage-secured loan or credit agreements when the mortgagor is on the "exclusion threshold", but extends to sureties who mortgage their principal residence, on the same terms as those established for the principal debtor mortgagor. Also, the cases and circumstances in which the debtor is considered to be on the "exclusion threshold" are updated, and the penalty interest rates applicable to all mortgage credit or loan agreements are moderated from the moment the debtor substantiates to the institution that he/she is on the "exclusion threshold", decreasing from 2.5% to 2% of the outstanding loan principal.

Among the above-mentioned amendments that the Law has introduced into mortgage market regulation is making it compulsory to record in residential mortgage deeds whether or not the mortgaged residence is a principal residence. In the absence of evidence to the contrary, it will be presumed at the time of the foreclosure order that the property is a principal residence if that is what is stated in the deed. Also, the deed will be required to include, along with the signature of the customer, a written statement by the borrower, in such terms as may be determined by the Banco de España, declaring that he/she has been appropriately informed of the possible risks arising from the agreement, especially in the following cases: 1) when the variability of the interest rate is limited by a floor and ceiling, such that the rate can rise by more than it can fall; 2) when an instrument to cover the interest rate risk is purchased at the same time, or else 3) when the loan is granted in one or more foreign currencies.

Interest for late payment of loans or credits for the acquisition of a principal residence, secured by mortgages thereover, is limited to a maximum of three times the legal interest rate and may only accrue on the outstanding principal. The capitalisation of such interest is expressly prohibited. Also the repayment period of mortgage-secured loans or credits to finance the acquisition, construction or rehabilitation of a principal residence is limited, since it may not exceed 30 years in the event that it is planned to refinance them by issuing the securities referred to by Law 2/1981 of 25 March 1981 on the mortgage market.

The measures to ensure the independence of appraisal companies with respect to credit institutions are strengthened, in particular in the case of those which derive at least 10% of their total revenues from a credit institution or a group of credit institutions (previously this figure was 25%). In addition, appraisal companies are required to have internal rules of conduct establishing a regime of incompatibilities for their managers and directors. These measures also apply to the appraisal services of credit institutions. The rules regarding prior notification of the Banco de España in the event of acquisition or retention of a qualifying holding[2] in an appraisal company remain in effect, and credit institutions are expressly prohibited from directly or indirectly acquiring or retaining such holdings, as are all natural or legal persons associated with the marketing, ownership, exploitation or financing of property appraised by such companies.

The Law also includes amendments to Law 1/2000 of 7 January 2000 on civil procedure, to ensure that mortgage foreclosure is carried out in such a way that the mortgagor's rights and interests are adequately protected and, more broadly, to speed up foreclosure proceedings and make them more flexible.

Finally, the government is mandated to promote, in conjunction with the financial sector, the creation of a stock of social housing owned by credit institutions to meet the needs of persons who have been evicted from their principal residence as a result of defaulting on their mortgage[3]. The purpose of this stock of social housing will be to facilitate the access of such persons to rental agreements with rents that are affordable given their level of income. The Law calls on the Banco de España (i) to publish, within two months of its ap-

2 A qualifying holding in an appraisal company is understood to be one that directly or indirectly amounts to at least 10% of the capital or voting rights of the company, and also one that, although below the percentage indicated, gives a notable influence over the company.

3 A similar mandate was included in Royal Decree-Law 27/2012 of 15 November 2012 on urgent measures to strengthen the protection of mortgagors.

proval, the Mortgage Loan Access Guide referred to by Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and protection of bank customers, and (ii) to submit to the government, within three months, a report analysing possible measures to take, with the ultimate aim of ensuring financial stability and the correct functioning of the mortgage market, to strengthen the independence of the activity of appraisal companies and the quality of their property valuations. As a result, the Banco de España published on 15 July 2013 the Mortgage Loan Access Guide (available on the website of the Banco de España), and a few days later sent to the government a report on measures to take to strengthen the independence of the activity of appraisal companies and the quality of their property valuations.

2.3.2 ROYAL DECREE-LAW 6/2013, OF 22 MARCH 2013

The purpose of Royal Decree-Law 6/2013 of 22 March 2013 (BOE of 23 March 2013) on protection of the holders of certain savings and investment products and other financial measures (the "Royal Decree-Law") is to establish mechanisms to monitor certain incidents and to speed up the resolution of disputes (principally by means of arbitrage) that may arise from the marketing of hybrid capital instruments (generally preference shares) and subordinated debt. Further, to offer liquidity to the shares received in exchange for such instruments by the holders of the latter, the Credit Institution Deposit Guarantee Fund is given sufficient legal capacity to create market mechanisms that provide an alternative of liquidity for these shares. Finally, in order to strengthen the assets of the Credit Institution Deposit Guarantee Fund (FGD), the annual contribution payable by the member institutions is increased on an exceptional, one-off basis.

First, a committee is set up, as a collegiate body attached to the Ministry of Economic Affairs and Competitiveness, to monitor hybrid capital instruments and subordinated debt. This committee, among other functions, is charged with (i) analysing the factors that have led to the presentation of judicial and extrajudicial claims by the holders of this type of financial products against credit institutions in which the Fund for the Orderly Restructuring of the Banking Sector (FROB) has a stake, (ii) submitting to Parliament a quarterly report relating on the basic aspects of these claims, and (iii) making proposals to the competent authorities, in order to improve the protection of acquirers of this type of products. In addition, the committee will determine the basic criteria to be used by institutions in which the FROB has a stake to offer arbitration of the disputes that arise in relation with the above-mentioned instruments to their customers, in order that they may be adequately compensated for the financial loss incurred. Further, it will specify the criteria to designate those customers whose claims, in view of their particular personal or family circumstances, should receive priority treatment from institutions in which the FROB has a stake.

The Royal Decree-Law also establishes a mechanism to provide liquidity for shares received in exchange for the above-mentioned instruments by the holders of the latter. For this purpose, the functions of the FGD are expanded to enable it to subscribe for or acquire shares or subordinated debt instruments issued by Sareb (asset management company for assets arising from bank restructuring), and it is also authorised to subscribe for or acquire ordinary shares not listed on any regulated market that are issued by credit institutions that transfer assets to Sareb and that arise from the conversion of hybrid capital instruments and subordinated debt. The FGD will give priority to acquiring the shares of those customers of the institution that are in an especially difficult situation given their personal and family circumstances, according to the criteria determined by the Committee. The above-mentioned instruments will be acquired at a price that does not exceed their market value and in accordance with EU law on state aid.

In order to ensure that the FGD remains financially sound, a further one-off contribution by its members equal to 3‰ of eligible deposits as at 31 December 2012 is established. This contribution will be made in two stages: first, 40% of the total increase will be paid within 20 business days from 31 December 2013; and second, the remaining 60% will be paid within seven years from 1 January 2014, in accordance with the payment schedule set by the Management Committee.

In addition to certain amendments to Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions, the Royal Decree-Law also gives a new function to the customer service departments and ombudsmen of the financial institutions referred to by Ministerial Order ECO/734/2004 of 11 March 2004 on customer service departments and ombudsmen of financial institutions: from the entry into force of the Royal Decree-Law, these services must also process claims relating to the commitments made by credit institutions in relation to the creation of a stock of social housing owned by them, for persons who have been evicted from their principal residence as a result of defaulting on their mortgage[4]. Finally, Law 44/2002 of 22 November 2002 on financial system reform measures is amended to allow different reporting thresholds to be established, in accordance with the different purposes (supervision or data register) of the Banco de España's central credit register (CCR). This reform is a result of the commitment acquired by Spain under the Memorandum of Understanding of 20 July 2012, entered into to obtain European financial assistance for the recapitalisation of credit institutions.

2.3.3 LAW 14/2013, OF 27 SEPTEMBER 2013

Law 14/2013 of 27 September 2013 (BOE of 28 September 2013) on support for entrepreneurs and their internationalisation (the "Law") has made a number of significant changes in the financial sphere, including a notable increase in the minimum share capital of mutual guarantee companies (MGCs), from €1.8 million to €10 million, which will apply from 28 June 2014. Also, MGCs' eligible own funds, calculated in accordance with the definition that may be established by the Banco de España, must amount to at least €15 million.

The Law has established a transitional regime for the period until certain official reference indices or interest rates, provided for in Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and protection of bank customers, have completely disappeared. Specifically, on 1 November 2013 the Banco de España ceased publishing on its website the following official indices applicable to mortgage loans and credits: 1) the average interest rate on mortgage loans over three years for the purchase of unsubsidised housing granted by commercial banks; 2) the average interest rate on mortgage loans over three years for the purchase of unsubsidised housing granted by savings banks, and 3) the savings bank reference lending rate.

These three reference rates must be replaced, with effect from the next revision of the applicable rate, by the replacement rate or index stipulated in the agreement. In the absence of such a rate or index, the reference rate must be replaced by the official interest rate known as the average interest rate on mortgage loans at over three years for purchasing unsubsidised housing granted by credit institutions in Spain, after the application of a differential equal to the arithmetic mean of the differences between this rate and the replaced rate, calculated with the data available for the period from the date of execution of the agreement up to the date on which the rate is actually replaced. This rate replacement will entail the automatic novation of the agreement, without any alteration or loss of rank of the

4 See the reference to this stock of social housing in the previous section.

registered mortgage. Moreover, the parties to the agreement will have no right to amendment, unilateral alteration or termination of the loan or credit as a consequence of the replacement of the reference rate.

In addition, the Law updates the regulatory framework for *cédulas de internacionalización* (internationalisation covered bonds)[5] and regulates a new instrument called *bonos de internacionalización* (internationalisation bonds), in order to enhance the flexibility of issuance of securities collateralised by loans linked to internationalisation. The list of assets eligible as collateral is expanded and is also made applicable to internationalisation bonds.

Thus, the principal and interest of internationalisation covered bonds will be specially secured by all the credits and loans linked to the financing of agreements for the export of goods and services or to the internationalisation of firms that meet certain requirements, which include, inter alia, having a high credit quality, along with the existence of other circumstances, such as that such credits or loans have been granted to government bodies or to public sector entities, within or outside the European Union, or to multilateral development banks or international organisations, or that, irrespective of the borrower, are guaranteed by such bodies.

In the case of internationalisation bonds, their principal and interest will be secured by those credits and loans that, meeting the requirements indicated for internationalisation covered bonds, are assigned to each issue in a public deed, and also by those other loans or credits, likewise assigned in the same deed, granted to firms and linked to the financing of agreements to export Spanish or non-Spanish goods and services or the internationalisation of firms resident in Spain or in other countries, provided that they receive a risk weight of no more than 50%, for the purposes of the calculation of the own funds requirements for credit risk laid down in the solvency rules for credit institutions. Also included in this latter category are ICO (Official Credit Institute) loans to financial institutions, within the framework of its intermediation facilities for internationalisation, provided they receive the same risk weight.

The total amount of internationalisation covered bonds issued by a credit institution may not exceed 70% of the amount of its outstanding loans and credits that comply with the above-mentioned requirements and that have not been pledged as collateral for internationalisation bonds. Meanwhile, the present value of the internationalisation bonds must be at least 2% lower than the present value of the pledged loans and credits.

The certificates representing internationalisation covered bonds and bonds will be transferable by any means admissible in law, without the need for a public authenticating official or notification of the debtor. When the certificates are made out to a named party, they may be transferred by a declaration in writing on the certificate itself. In the case of bearer certificates, their holder will be presumed to be the last recipient of interest payments.

Finally, it should be noted that the fourteenth additional provision of the Law brings forward the application in Spain of the provisions of Article 501 of Regulation (EU) No. 575/2013, by including for the purposes of the calculation of credit institutions' own

5 Internationalisation covered bonds were introduced into Spanish law by Royal Decree-Law 20/2012, of 13 July 2012, on measures to ensure budgetary stability and to foster competitiveness.

funds and core capital requirements, the so-called correction factor of 0.7619, by which the credit-risk weighted exposures to SMEs must be multiplied.

2.3.4 CHANGES TO THE REGULATIONS ON THE CENTRAL CREDIT REGISTER

The regulations governing the Central Credit Register (CCR) have been updated in order to improve the quality of the data stored, basically by extending the compulsory reporting requirements of reporting entities and expanding their interconnections. For this purpose, it was necessary, firstly, to make certain amendments to Law 44/2002 of 22 November 2002 which were implemented through Royal Decree-Law 6/2013 of 22 March 2013 on protection of the holders of certain savings and investment products and other financial measures[6]. These changes are basically intended to clearly distinguish between the data required exclusively for compliance with the reporting requirements stipulated by the Banco de España in the exercise of its supervisory and inspection tasks and other functions legally assigned to it, and those other data which are reported so as to provide them to the reporting entities in order to better perform their activity.

Subsequently, the regulations were implemented through Ministerial Order ECC/747/2013 of 25 April 2013 (BOE of 6 May 2013), amending Ministerial Order ECO/697/2004 of 11 March 2004 on the Central Credit Register, and Banco de España Circular 1/2013 of 24 May 2013 (BOE of 31 May 2013), amending Circular 4/2004 of 22 December 2004 to credit institutions on public and confidential financial reporting rules and formats, and furthermore, repealing Banco de España Circular 3/1995 of 25 September 1995, which had hitherto regulated the CCR.

The main changes introduced by the Ministerial Order and the Circular in the way the CCR operates in comparison with the previous regulations can be summarised, basically, as follows:

- Exposures must be reported on a transaction-by-transaction basis (except for certain transactions), in units of euro, and, generally, there is no minimum reporting threshold. Until now, exposures were reported on an aggregate basis by type of transaction in thousands of euro and with a threshold of €6,000 for resident counterparties and €300,000 for non-residents. Furthermore, for each transaction all the parties involved are to be identified, indicating the nature of their involvement, the amount of the exposure which relates to them and all the related parties.

- A more detailed breakdown is introduced for the major product types which are currently reported (commercial credit, financial credit, etc.), in order to better identify the characteristics and exposures of the various transactions. Similarly, new data are requested, such as those relating to the interest rates and the dates of execution, maturity, default and settlement of principal and interest.

- In order to minimise the administrative burden this substantial increase in the amount of information to be reported to the CCR entails, the data have been subdivided into basic and dynamic data. The basic data are those which only need to be reported once, unless they are subsequently amended, as they do not normally change over time, whereas the dynamic data have to be reported periodically (i.e. monthly, quarterly or half-yearly, depending on their nature).

6 See Section 2.3.2 above.

– Various reporting modules have been established so that, through them, the system is to link transactions with counterparties, indicating the nature of their involvement (direct exposure counterparty, guarantor, party subsidising the principal or interest, etc.). To facilitate data control and management, all transactions are to be identified with a code, which will remain unchanged throughout their lifetime.

– The information about the collateral received is increased, since instead of simply reporting the type of guarantee or collateral received, detailed information on each asset received as collateral is provided. These data are particularly exhaustive in the case of property mortgages.

– Credit institutions are required to state each month, as well as the exposures on transactions existing at the end of each month (broken down into principal, ordinary interest, interest on arrears and claimable expenses), the reasons why loan exposures have decreased (such as cash payments, refinancing, foreclosure of assets, etc.) and, where applicable, the amount of the reduction that is due to each of these reasons.

– Information must be provided on the traceability of transactions. Restructured, refinanced, renegotiated, subrogated and segregated transactions have to be identified. Any links they may have to any originating transactions for which details were previously reported to the CCR must also be stated.

– A connection is established between the related transactions of various entities, since transactions secured by other CCR reporting entities are to be linked to transactions reported by the guarantor. Additionally, the beneficiary of the guarantee must furnish the guarantor with details of the guaranteed transactions through the CCR.

– In the case of the transfer of loans to third parties in which management is retained, the transferring entity is to continue reporting transferred exposures as previously, but must also identify the assignee, and both the exposure it continues to assume and that taken on by the assignee.

– Accounting and own funds information are to be submitted for each transaction in which entities continue to assume risks, stating the credit rating, specific provisions, risk-weighted exposure, probability of default, etc.

The obliged entities which must report to the CCR are as follows: the Official Credit Institute ("ICO" by its Spanish acronym), banks, savings banks, credit cooperatives, specialised credit institutions and the branches in Spain of foreign credit institutions; mutual guarantee companies and reguarantee companies; Sareb (the asset management company for assets arising from bank restructuring), the Banco de España, the Credit Institution Deposit Guarantee Fund ("FGDEC" by its Spanish acronym) and the Sociedad Anónima Estatal de Caución Agraria (SAECA). The obligation covers all of the business of Spanish entities, including that performed by their branches abroad and that of special purpose vehicles included in their consolidable group where they are resident in Spain. The branches in Spain of foreign credit institutions are to report only the operations of their offices in Spain to the CCR.

Exposures reportable to the CCR are those arising from transactions in the form of loans, debt securities, financial guarantees, loan commitments, other commitments entailing credit risk and the lending of securities; the scope of each of these terms is clarified in the Circular. Reportable exposures are to be classified, depending on the manner of the counterparties' involvement, in direct exposures (with the first counterparty) and indirect exposures (with guarantors and other persons liable for the risk in the event of a default by the direct exposure counterparty). As mentioned above, as a general rule the exposures must be reported on an itemised basis, namely, transaction by transaction. However, the following exposures are to be reported on an aggregate basis: term loans (provided they are consumer loans, their amount at the beginning of the transaction does not exceed €3,000 and their original maturity is 12 months or less), credit card debt, current account overdrafts, pension or salary advances or other call loans.

As for the use and transfer of CCR data, the CCR is to submit to the reporting entities the following information:

a) Each month the CCR is to send each reporting entity consolidated information from the whole system on its borrowers that have a cumulative exposure with another reporting entity of €9,000 or more at month-end (previously this threshold was set at €6,000).

b) Upon request, the CCR is to provide information about any counterparty, not reported by the requesting reporting entity, which has applied for a risk-based transaction or which is the obligor or guarantor in the bills of exchange or credit instruments that the entity has been requested to acquire or trade. As regards the information supplied to reporting entities, as of the entry into force of the legislation, when reporting entities request data on a potential customer, the CCR is to provide two reports: one with the data from the most recent monthly report, and as a new feature, a report with the data reported six months previously. It is also stipulated that reporting entities may only process the information supplied to them by the CCR for the purposes of assessing the risk associated with the transactions motivating the application for the report and they may not use the data for any other purposes.

The Banco de España is to provide data from the CCR to public organisations or entities which perform similar functions in a Member State of the European Union, as well as to reporting entities or members of the former in the terms of the agreements or memorandums of understanding entered into in accordance with Article 63 of Law 44/2002.

Lastly, Banco de España Circular 5/2013 of 30 October 2013 (BOE of 9 November 2013), amending Circular 4/2004 of 22 December 2004 on public and confidential financial reporting rules and formats and Circular 1/2013 of 24 May 2013 on the Central Credit Register, includes some further changes. Its rationale is, on one hand, to require information from entities about lending to small companies and microfirms, in order to evaluate lending policy in relation to this type of firms, and, on the other, to request certain information on the collateral received by entities to make it easier to weight such collateral for the purposes of estimating regulatory capital needs. Also, the deadline for sending the former information to the new CCR is extended slightly, since introducing this change has been complex and it has coincided with the restructuring processes of some institutions.

2.3.5 OTHER REGULATORY CHANGES WHICH AFFECT THE OPERATIONAL FRAMEWORK OF ENTITIES SUPERVISED BY THE BANCO DE ESPAÑA

Ministerial Order ECC/159/2013 of 6 February 2013 (BOE of 8 February 2013) modified the additional assumptions for calculating the annual percentage rate (APR), included in part II of Annex I of Law 16/2011 of 24 June 2011 on consumer credit agreements.

a. Ministerial Order ECC/159/2013, of 6 February 2013

The Member States' experience of implementation of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC had underlined that these additional assumptions were not sufficient to calculate the APR uniformly and that, furthermore, they are not adapted any more to the commercial situation at the market. Consequently, the Commission adopted Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions which can be referred to, if necessary, for the calculation of the APR. Therefore, what Ministerial Order ECC/159/2013 has done is to transpose this Directive literally.

b. Banco de España Circular 4/2013, of 27 September 2013

Banco de España Circular 4/2013 of 27 September 2013 (BOE of 12 October 2013), amending Circular 3/2008 of 22 May 2008 to credit institutions on the determination and control of minimum regulatory capital, has extended the definition of small and medium-sized enterprise (SME) to bring it into line with the prevailing concept in the European Union contained in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. This change means that a higher number of credit institutions' exposures may be classified under the category of retail exposures, a category which enjoys favourable treatment in the calculation of risk-weighted exposures.