

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Royal Decree-law enacting urgent measures to repair the damage caused by volcanic eruptions and facilitate the economic and social rehabilitation of La Palma (Royal Decree-law 20/2021, published in the Official State Journal on October 6th, 2021)

Royal Decree-law 20/2021 aims to adopt, with immediate effect, a raft of aid and support measures for those affected by the volcanic eruptions on La Palma, address their consequences and boost the area's economic, social, labour and environmental reconstruction. In the financial arena, the following measures stand out:

I. Suspension of interest and principal payment obligations –moratoria– on mortgaged and unmortgaged loans and credit facilities.

The legislation suspends interest and principal payment obligations on loans and credit facilities, irrespective of whether the borrowers are current on those payments, with or without mortgage collateral, granted to natural and legal persons affected by the seismic movements and volcanic eruptions that have been affecting La Palma since September 19th, 2021. It is a legally mandated deferral with an initial duration of six months, extendible by a further six months.

Borrowers must substantiate their entitlement to the benefits by providing the required supporting documentation. If the lender confirms at a later stage that the requirements were not effectively met, the moratorium may be annulled, and the bank may seek damages.

The moratorium applies automatically from when the application is presented and once

granted, the lender is required to notify the Bank of Spain.

Any non-debtor guarantors, bondsmen or pledgors to which the suspension of debt service obligations under credit agreements, with or without mortgage collateral, apply may demand, during the term of the suspension, that the lender seek the assets of the main borrower before claiming their guarantees, even if they had expressly waived the benefit of execution under the terms of contract.

During the term of effectiveness of the suspension, the lender may not demand payment of any loan instalments, principal or interest, nor may it accrue any interest. Nor may the lender seek prepayment.

Effectiveness of the suspension does not require an agreement between the parties. When a loan whose servicing is suspended is secured by a property, the suspension must be raised to public deed and registered with the property registry. In addition, registration of the extension of the initial maturity will have full effect *vis-à-vis* any registered intermediate creditors even if the latter have not provided their express consent to the deferral.

Guarantees securing loans whose servicing is suspended, including pledges, deposits and sureties, shall remain intact *vis-à-vis* third parties without requiring the consent of pledgors or guarantors.

It is up to the Bank of Spain to supervise compliance by the banks affected by the new legal requirements, to which end the latter will have to send the former a monthly report with accumulated figures for the deferrals granted, their amount and the list of beneficiaries.

Lenders are unilaterally required to raise the suspension acknowledgement to public

deed and bring about the official recording of the policy or public deed in which acknowledgement of the suspension is documented.

Application of the suspension of mortgage debt during the six-month period contemplated will not be bound by the provisions of Spanish Law 5/2019 (of March 15th, 2019) governing real estate credit agreements.

II. Exceptional access to vested pension plan rights.

- The legislation establishes the exceptional instances in which pension plan beneficiaries may avail of their vested rights, during a period of nine months from effectiveness of the Royal Decree-law.
- The ceiling on drawdown per holder is the result of apportioning the annual rate of IPREM (acronym in Spanish for the public income index) for 12 payments in force for 2021, multiplied by three, over a maximum period of six months from the date of effectiveness of the Royal Decree-law.
- The reimbursement must be made by the management company within a deadline of seven working days from when the holder presents all the required supporting documentation. That deadline can be extended to 30 working days in the case of employer-sponsored pension plans.
- The above provision similarly applies to policy holders with assured savings plans, company savings plans and friendly society savings products.

Royal Decree-law rolling over the social protection measures for cases of social and economic vulnerability (Royal Decree-law 21/2021, published in the *Official State Journal* on October 27th, 2021)

Royal Decree-law 21/2021 extends several social protection measures given that, despite the nascent economic recovery, the most vulnerable remain at risk of social exclusion. The most noteworthy measures include:

- Extension until February 28th, 2022, of the measures allowing the suspension of home eviction and foreclosure proceedings for vulnerable persons and the possibility of compensating landlords and owners. Application of the extraordinary 6-month term extension has also been extended to contracts falling due between October 31st, 2021, and February 28th, 2022, without altering the existing terms and conditions, unless the parties have already come to another agreement.
- Landlords and owners can apply for compensation until March 31st, 2022.
- The possibility of applying for a rent moratorium or partial forgiveness, when the landlord is an established lessor or a public entity, has been extended until February 28th, 2022, on the terms stipulated in Royal Decree-law 11/2020.
- The home tenancy agreements entitled to the extraordinary six-month extension have been extended until February 28th, 2022, on the same terms and conditions as are already in force.
- The legislation updates the deadlines for the procedure for presenting, processing and ruling on applications filed by landlords or housing owners affected by Royal Decree 401/2021.

CNMV Circular on statistical reporting requirements for European Union money market funds (CNMV Circular 2/2021, published in the *Official State Journal* on October 8th, 2021)

The purpose of CNMV Circular 2/2021 is to introduce the changes outlined in the EMU1, EMU2, EMU3 and EMU4 statements in order to comply with Regulation (EU) 2021/379 of the European Central Bank, of January 22nd, 2021, on the balance sheet items of credit institutions and of the monetary financial institutions sector, and to repeal CNMV Circulars 2/1998, 1/2007 and 4/2014 and their subsequent amendments.

The changes made to the statements introduce new disclosure and breakdown requirements for the various headings. The new Circular is effective for annual periods beginning on or after January 1st, 2022.

CNMV Circular amending: (i) Circular 4/2013, of June 12th, 2013, stipulating the content requirements for annual reports on the remuneration of directors of listed public companies and the members of the boards of directors and control committees of savings banks that issue securities admitted to trading on official securities exchanges; and, (ii) Circular 5/2013, of June 12th, 2013, stipulating the content requirements for the annual corporate governance reports of listed public companies, savings banks and other entities that issue securities admitted to trading on official securities exchanges (Circular CNMV 3/2021, published in the *Official State Journal* on October 9th, 2021)

Circular 3/2021 makes the following changes to the contents of the annual director remuneration report:

- Entities must report on any deviation from the procedure for applying their remuneration policies, including any temporary exceptions in application thereof on account of exceptional circumstances.
- Entities must include an explanation of how the remuneration accrued and vested during the reporting period contributes to their sustainable and long-term performance.
- A new section has been added to introduce comparisons between the annual amounts accrued and the year-on-year changes sustained during the last five years in the remuneration of each director, in the reporting entity's consolidated earnings and in the average remuneration of entities' (parents and their subsidiaries) non-director employees, expressed on a full-time equivalent basis.

The Circular also introduces changes to the annual corporate governance report as follows:

- It introduces the "double voting share" loyalty concept. Reporting entities must indicate whether the concept is contemplated in their bylaws, itemising the number of voting rights and number of significant shareholder votes that correspond to the additional votes awarded in exchange for their loyalty.
- Related-party transactions are further regulated in terms of definitions and criteria.
- Disclosures are required about the positions directors hold at other entities, regardless of whether those entities are listed, and reporting entities must also report on the other remunerated activities of their directors.
- The Circular repeals the obligation that entities other than public limited companies that issue securities traded on organised exchanges publish annual corporate governance reports.