

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)

Law 12/2022 regulating occupational pension schemes (published in the Official State Journal on July 1st, 2022)

Law 12/2022, which took effect the day after its publication, creates a new product –publicly sponsored occupational pension plans– and establishes their legal regime. They are backed by the Ministry of Inclusion, Social Security and Migration through its Sponsorship and Oversight Committee. They can take the form of “simplified” occupational pension plans (see below) or defined contribution retirement plans.

The new plans will have the following characteristics:

- The title –public open occupational pension plans– and the related acronym (FPEPP in Spanish) will be restricted to the funds set up under the scope of this piece of legislation.
- They will be open in nature with respect to their investment processes.
- The Sponsorship and Oversight Committee will act as the public sponsoring entity and take the form of a collegiate body under the Ministry of Inclusion, Social Security and Migration, specifically made up of nine members from the General State Administration. Its duties will include incorporation, dissolution, selection of management and depositary institutions, formulation and approval of investments strategies and ongoing oversight of performance.
- A single Special Control Committee will be created for all plans set up and will be tasked with their supervision. That committee will be made up of 13 people, appointed by the

Sponsorship and Oversight Committee, with proven experience, knowledge and supervisory and managerial capabilities.

- The assets must be invested exclusively in the interests of the unitholders and beneficiaries, factoring in investment return, risk and social impact considerations. All such plans will share the core aspects of their investment strategies, which will be framed by guidelines with respect to the use of derivatives, specific investment security, profitability, diversification, dispersion and congruence criteria and financial risk management considerations, among other aspects.
- The funds will be managed by a management institution with the help of a depositary institution, which must meet a series of requirements. In exchange for the performance of their duties, those entities will receive a fee within the limit established in the pension funds’ management rules, which may not exceed the legally-stipulated ceiling.
- There will be a common digital platform for all management and depositary institutions in order to enable and facilitate interoperability, process standardisation and quality, transaction agility, monitoring and supervision, fund reporting processes and access to information for companies, investors and beneficiaries.

Law 12/2022 creates the concept of a “simplified” occupational pension plan especially designed for use by SMEs and the self-employed. Such plans can be arranged by the following entities:

- Companies covered by sector-wide collective bargaining agreements.

- Public administrations and public corporations.
- Associations, federations, confederations or unions of associations of self-employed workers or independent contractors, trade unions, professional associations and related mutual societies that complement social security.
- Cooperative societies and worker-owned firms as per an agreement between their governing bodies and their workers' representative bodies.

The creation, formalization and integration of simplified pension plans will take the form of resolutions taken at the corresponding negotiating tables or at the agreement of the firms sponsoring the plans for the self-employed/independent contractors or for the work partners of cooperative societies or worker-owned firms. Simplified plans must take the form of defined contribution retirement plans and may not be transferred to other pension plans until the end of the calendar year after entry into effect of Law 12/2022.

The new legislation additionally contemplates the following:

- Total maximum annual contributions by companies to the pension plans regulated under the new law may not exceed 1,500 euros. However, that figure may increase by 8,500 euros if made by the employer or by the employee in an amount no more than total employer contributions; or by 4,250 euros if derived from contributions to self-employed workers' simplified occupational pension funds or contributions made by business owners. Under no circumstances may the maximum contribution to these plans exceed 8,500 euros per annum.
- The legislation ushers in tax measures that affect personal income tax (the maximum deduction increases to up to 10,000 euros, 1,500 for individual plans and 8,500 for occupational plans), corporate income tax and taxation on financial transactions.

Royal Decree-law 11/2022 implementing measures in response to the consequences of the war in Ukraine and addressing situations of vulnerability (published in the *Official State Journal* on June 26th, 2022)

Royal Decree-law 11/2022 took effect the day after its publication. Among other measures, it notably amends Royal Decree-law 24/2021 in respect of covered bonds, mainly in relation to the scope of application and regime governing property appraisals at the time of adding loans to a cover pool.

Royal Decree-law 24/2021 applies exclusively to covered bonds issued by credit institutions operating in Spain (including the country's official credit institute, ICO) and covered bonds issued outside of Spain by credit institutions duly authorised in Spain.

With respect to the regime governing the appraisal of collateral assets, the "current valuation" concept has been revised to include in the cover pool of covered bonds issued prior to effectiveness of the first book of Royal Decree-law 24/2021, *i.e.*, July 8th, 2022. Specifically, and exclusively in such cases, the current valuation to be used will be the benchmark valuation being used as per the Accounting Circular, which may not exceed the amount obtained from the last full appraisal conducted in conjunction with the loan grant.

Issuers are also obliged to inform their investors as to how they have complied with their valuation requirements in respect of the properties securing the allocated mortgage bonds.

The new legislation permits the use of the appraisal conducted at the time the loan was arranged so long as it took place during the six months prior to adding the mortgage to the cover pool. If the appraisal took place before that cut-off, the appraisal completed at the time of the loan's arrangement can be used as the current valuation so long as the issuer can verify the absence of indications of significant impairment.

As for the rules on substitution assets for “other covered bonds”, the new legislation requires such assets to comply with the requirements stipulated in Article 6 of Directive (EU) 2019/2162.

The other pieces of legislation amended via Royal Decree-law 11/2022 can be summed up as follows:

- Royal Decree-law 11/2020: the suspension of eviction proceedings and foreclosures (in the instances and in the manner already stipulated) has been extended to December 31st, 2022.
- Royal Decree-law 37/2020: landlords affected by the extraordinary suspension of the procedures in place for recovering their leased or occupied dwellings are entitled to financial compensation which they have until January 31st, 2023, to apply for.
- Royal Decree 401/2021: extension of the deadlines concerning the procedure for awarding compensation for property owners and lessors to align them with those stipulated in Royal Decree-laws 11/2020 and 37/2020.

Organic Law 9/2022 setting the rules for facilitating the use of financial information and other measures designed to prevent, detect, investigate or process criminal offences (published in the *Official State Journal* on July 29th, 2022)

This law, which took effect one month after its publication, rounds out the regime governing access to financial information and the exchange of information in efforts to fight money laundering and the financing of terrorism and expands the scope of the prevention, detection, investigation and processing of serious criminal offences. To that end, it establishes measures designed to facilitate: (i) access to financial information and to the information contained in the so-called Financial Ownership File and its use by the competent authorities in order to prevent, detect, investigate or process serious criminal offences; and, (ii) access to the information

in the hands of the competent authorities by SEPBLAC, the acronym in Spanish for the Executive Branch of the Commission for the Prevention of Money Laundering and Monetary Infractions, in its capacity as the Financial Intelligence Unit for the prevention and thwarting of money laundering, related underlying offences and the financing of terrorism.

The most noteworthy financial measures include:

- The competent authorities may access and consult, directly and immediately, the information contained in the Financial Ownership File whenever deemed necessary in order to carry out their remit and fulfil their duty to prevent, detect, investigate or process a serious offence or to support a criminal investigation in relation to a serious offence, including the identification, tracing and freezing of the assets related with such investigation.
- Only persons who are specifically designated and authorised to do so, on a case by case basis, may access and consult the Financial Ownership File and any such consultations must be channelled exclusively through the access points set up by the competent authorities.
- SEPBLAC is required to cooperate with the competent authorities and respond to requests for financial information in its possession, as well as to financial analyses already conducted. Likewise, the Spanish competent authorities can exchange the financial information or reports obtained from SEPBLAC with a designated competent authority in order to receive that information from another European Union member state, upon request, depending on the case's circumstances, and at any rate aimed at preventing, detecting and combatting money laundering, related underlying crimes and the financing of terrorism.
- SEPBLAC is required to keep a record of each time the competent authorities access and consult the Financial Ownership File.

In addition, the competent authorities and SEPBLAC must keep a record of information requests.

Lastly, the new law amends Law 10/2010 with respect to access to the Financial Ownership File.

CNMV Circular 3/2022 on the prospectus for collective investment schemes and the registration of the key investor document (published in the *Official State Journal* on August 4th, 2022)

This Circular, due to take effect on January 1st, 2023, will replace CNMV Circular 2/2013 in order to adapt Spanish legislation on the prospectus for collective investment schemes (CISs) and the registration of the key investor document (KID) for Directive (EU) 1286/2014 (PRIIPs), and Directive 2009/65/EC (UCITS).

The contents of Circular 3/2022 largely coincide with those of Circular 2/2013, albeit introducing a series of modifications, notable among which:

- Eliminating the regulations regarding the contents, format and events triggering the update of the KID as those aspects are already regulated in the PRIIPs Regulation. The Circular addresses aspects related with the format, content and presentation of the prospectus and its updates, as well as the manner in which both the prospectus and the KID has to be sent to the CNMV for registration.
- Eliminating certain prospectus content requirements that are not required by the UCITS Directive and that are already included in the KID, such as the current expense indicator, the performance scenarios for structured products and the synthetic risk indicator. The new legislation therefore simplifies the prospectus, avoids reiteration and brings it in line with the prospectus requirements in other neighbouring countries.
- Eliminating or modifying certain “essential elements” and introducing one new one,

stipulating that the essential elements take effect at the time of prospectus registration.

The UCITS depositary is required to verify the accuracy, quality and sufficiency of the information contained in the prospectus and the KID and to endorse submission of the prospectus to the CNMV.

Lastly, the new wording also refers to the manner in which prospectus contents related with UCITS sustainability reporting obligations under European legislation must be submitted.