

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)

Act transposing the Directive on alternative dispute resolution for consumers into Spanish legislation (Act 7/2017, published in the *Official Gazette* on November 4th)

Act 7/2017 transposes the Directive on alternative dispute resolution (commonly known as ADR) which guarantees the existence of alternative dispute resolution entities complying with the requirements established under EU law. The goal of the act is to enable consumers to access dispute resolution mechanisms in an agile and low-cost way.

The scope of Act 7/2017 is restricted to domestic or cross-border disputes **between a consumer and a trader, which arise from sales or service contracts** arranged in person, electronically or via telephone, as well as disputes concerning unfair business practices which have resulted in a failure to comply with codes of conduct by the trader.

It also establishes **harmonisation requirements for the quality of ADR entities**. The Act establishes that the competent authorities for accrediting ADR entities in the financial sector are the Bank of Spain, the National Securities Market Commission (CNMV) and the General Insurance and Pension Funds Directorate of the Ministry of Economy, Industry and Competitiveness.

The main aspects referred to in the Act are as follows:

- **Requirements** are established on the entities responsible for carrying out the management of alternative resolution, who may request accreditation from the

relevant competent authority. If they meet the requirements, they will form part of a list put together by the Spanish Agency of Consumer, Food Security and Nutrition who will also notify the European Commission, which will include them on a unified list of accredited entities in the European Union.

- Accredited entities must **publish on their website** the type of disputes within their competence, their cost, as well as other associated elements.
- The individuals responsible for resolving disputes must act **independently and impartially and demonstrate knowledge** of consumer protection issues.
- Resolution procedures will be **free of charge** to consumers and may be binding or otherwise depending on whether rules have been established regarding compulsory approval.
- The **resolution period is 90 calendar days** from presentation of the claim or from the date shown on a durable medium from which the full documentation necessary to process the procedure was received.
- The decision, proposal or minutes of the amicable agreement which **conclude the procedure** must be duly substantiated and communicated to the parties in writing or via any other durable medium.

The first additional provision to the Act establishes that for the binding or non-binding resolution of consumer disputes in the **financial sector, a single entity will be created by law with competences in this area**. This law will make it compulsory for financial institutions to participate in

procedures before this ADR entity for their areas of activity.

In addition, the Civil Procedure Act, the General Act for the Protection of Consumers and Users and the Royal Decree governing the Consumer Arbitration System are amended to adapt them to the new obligations and requirements set out in the new Act.

Bank of Spain Circular amending the various regulatory options contained in CRR[1] (BoS Circular 3/2017, published in the Official Gazette on November 2nd)

The BoS Circular 3/2017 amends the BoS Circular 2/2014, restricted to less significant credit institutions, to align its content with the stipulations in the ECB's Regulation on the exercise of options and discretions available in Union law (ECB/2016/4) applicable to significant credit institutions, making **use of the authorisation given to the Bank of Spain by Royal Decree law 14/2013** of November 29th containing urgent measures to adapt Spanish legislation to European Union regulation on the supervision and solvency of financial institutions, **in order to make use of the options attributed to national competent authorities in the Capital Requirements Regulation (CRR).**

The highlights of the planned modifications are as follow:

- Inclusion of definitions contained in CRR and the Capital Requirements Directive (CRD IV).
- Amendment of percentages applying to the deduction of different headings from own funds.
- Almost complete elimination of the chapter regarding the Bank of Spain's use of transitory regulatory options foreseen by CRR.

This Circular will take effect from January 1st, 2018, except for some provisions which will apply from January 2019.

CNMV Circular amending the Circular on information on foreign collective investment institutions (CNMV Circular 2/2017, published in the Official Gazette on November 7th)

The purpose of the Circular is to **expand the level of information that the supervisor receives from foreign collective investment institutions sold in Spain.**

The **amendment to CNMV Circular 2/2011** on information on foreign collective investment institutions entered into the CNMV's Register, introduces **changes to the statistical statements sent to the CNMV**, improving surveillance of the selling, development and characteristics of this market segment.

Also included within its **subjective scope are non-harmonised collective investment institutions**, which are required to submit the template contained in the Appendix of Circular 2/2011 to the CNMV (statistical statement A01). This information must be submitted online on a quarterly basis to the CNMV within a **maximum period of two months from the last calendar day of the quarter to which the submitted information relates.** It contains new fields and details which will help the CNMV acquire a more general perspective on the commercial activity of these entities within the national territory.

The Circular stipulates that, where the seller has delegated the **submission of the information to a designated individual**, this person will have the obligation to send this information in accordance with the amended Appendix to Circular 2/2011.

The Circular will enter into force from January 1st, 2018, and the first set of information meeting the new requirements will relate to the first quarter of 2018.

Notes

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26th, 2013, on prudential requirements for credit institutions and investment firms.