

# Recent key developments in the area of Spanish financial regulation

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## **Spanish Royal Decree-law amending the Code of Commerce, Corporate Enterprises Act and Audit Act with respect to non-financial and diversity disclosures (RDL 18/2017, published in Spain's Official State Gazette on November 25<sup>th</sup>, 2017)**

This piece of legislation, which took effect the day after its publication, essentially transposes **Directive 2014/95/EU** on disclosure of non-financial and diversity information by certain large undertakings and groups.

It will have the effect of amending the above-listed laws; the following aspects stand out:

- **Public-interest entities that issue consolidated financial statements** are now obliged to include in their consolidated management reports a **consolidated non-financial statement** when the following conditions are met:
  - an **average number of employees** at the group companies during the financial year of **500 or more**; and
  - at two consecutive year-ends, **at least two of the following circumstances** have been met: total consolidated assets of over 20 million euros; consolidated revenue for the year of over 40 million euros; and/or an average headcount during the year of more than 250 people.
- This new non-financial statement must include the information to the extent necessary for an understanding of the group's development, performance, position and the **impact of its activity**, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including a description of the related policies.
- The obligation to formulate the consolidated non-financial statement **shall be deemed discharged if the enterprise issues a separate report** in which it indicates that the relevant information is part of the management report and which includes the required disclosures and is subject to the **same approval, filing and publication criteria** as the management report.
- Similar obligations are contemplated for **corporate enterprises** considered of public interest.
- The stipulated contents of the **annual corporate governance report** are amended to include a description of the undertaking's **diversity policy** applied in relation to the board of directors and the requirement, should an entity not have one, to provide a reasoned explanation as to why not.
- As for the **audit report**, it is not compulsory to include an opinion on the consistency between the management report and financial statements for the same financial year and on whether the contents and presentation of the management report meets the undertaking's regulatory obligations with respect to the non-financial statement.

The changes introduced by this Royal Decree-law apply in financial years beginning **on or after January 1<sup>st</sup>, 2017**.

## **Spanish Royal Decree-law on payment accounts with basic features, payment account switching and the comparability of fees (Royal Decree-law 19/2017, published in Spain's Official State Gazette on November 25<sup>th</sup>, 2017)**

Royal Decree-law 19/2017 partially transposes Directive 2014/92/EU [1] (PAD) in Spanish law. It will enter into force the day after its full publication in the *Official State Gazette*.

The goal of this legislation is to **boost a single internal market in the retail banking sector** and give effect to the objectives of the EU Directive it transposes, specifically regulating:

- The right for customers or potential customers to **open and use payment accounts with basic features**;
- The **transparency and comparability of the fees** charged to customers or potential customers for payment accounts;
- The **switching of payment accounts** within Spain and facilitation of cross-border payment account opening for customers or potential customers.

### **■ Payment accounts with basic features**

Credit institutions offering payment accounts shall be obliged to offer payment accounts with basic features to potential customers who: (i) reside legally in the European Union, including those with no fixed address; (ii) are seeking asylum; (iii) are not granted a residence permit but whose expulsion is impossible for legal or factual reasons.

The Royal Decree-law stipulates the reasons for entitlement to **refuse** access to such accounts and the grounds for **unilateral termination** of the framework contract.

Payment accounts with basic features **must offer the following services**: (i) the opening, operating and closing of a payment account; (ii) the deposit of funds; (iii) cash

withdrawals; and (iv) direct debits, payment transactions through a direct debit of pre-paid card and transfers, including online payments.

The **fees charged** for those services shall be negotiated freely between the parties although the Spanish Ministry of Economy, Industry and Competitiveness is empowered to set ceilings for these fees.

This same ministry is charged with specifying the **general information on payment accounts with basic features** regarding the measures credit institutions must take to ensure awareness about the availability of these accounts, the procedures for getting access to one and the alternative dispute resolution procedures.

**Access to one of these accounts shall not condition the ability to purchase other services** or acquire shares or similar securities.

### **■ Switching payment accounts**

Payment service providers are obliged to facilitate an effective and speedy payment account switching service. At the request of their customers, payment service providers must accordingly facilitate the account switch, providing certain information in the process.

This Royal Decree-law stipulates the switching procedure payment service providers must follow, including time limits for its provision.

### **■ Comparability of fees**

Payment service providers must provide customers or potential customers, free of charge, and in good time before entering into a contract for a payment account with a consumer, a **fee information document** containing the standardised terms in the final list of the most representative services linked to a payment account and the corresponding fee for each service.

As for **fee comparison websites**, the Bank of Spain must provide a website which

consumers can use, free of charge, to compare fees charged by payment service providers for at least the most representative services linked to a payment account. The law also provides for the creation of other such websites by operators other than the Bank of Spain.

**Royal Decree-law on urgent measures for adapting Spanish legislation for EU regulations on securities markets (Royal Decree-law 21/2017, published in Spain's Official State Gazette on December 30<sup>th</sup>, 2017)**

Royal Decree-law 21/2017 partially transposes Directive 2014/65/EU on markets in financial instruments (hereinafter, MiFID II) with the overriding goal of transposing the **provisions regarding trading venues** whose immediate effectiveness is necessary for the due functioning of the affected financial institutions and investment service firms and of the trading hubs themselves. It took effect on January 3<sup>rd</sup>, 2018.

The following aspects stand out:

- It stipulates the authorisation and organisational requirements for **regulated markets**, as well as the functions and responsibilities of the **bodies that govern** those markets.
- It regulates the creation of multilateral trading facilities (**MTFs**) and organised trading facilities (**OTFs**), which will have to first obtain a permit from and agree to be supervised by the Spanish securities market regulator, the CNMV; these platforms will be managed by a governing body subject to a series of requirements.
- The term “**SME growth market**” is introduced so that the CNMV can register MTFs that meet certain requirements, at the request of their management bodies, including the requirement that at least 50% of the issuers whose securities are admitted to trading on the MTF be SMEs.
- The maximum penalty for very serious **infringements** is raised to the higher of 5 million euros or 10% of total annual

revenue and for serious **infringements** to the higher of 2.5 million euros or 5% of annual revenue.

- The **CNMV is named as the competent authority** with respect to the powers of authorisation, supervision, inspection and imposition of penalties contemplated in MiFIR and MiFID II, notwithstanding the remit of the Autonomous Communities with respect to purely regional securities markets.
- The Stock Exchanges of Madrid, Barcelona, Bilbao and Valencia, including the Electronic Trading Platform (SIBE for its acronym in Spanish) and the other regulated markets in existence at the date of effectiveness of the Royal Decree-law **are deemed automatically authorised**.
- The legislation has the effect of **repealing and amending** certain articles of Spain's Securities Market Act, which are now covered in the new Royal Decree-law.

- The Government is empowered to issue the implementing regulations needed to enact the provisions of the Royal Decree-law.

The **full transposition of MiFID II** into Spanish law requires a far-reaching overhaul of the consolidated text of the Securities Market Act which is currently in the **bill drafting** stage.

**Bank of Spain Circular on public and confidential financial reporting requirements and financial statement templates (Bank of Spain Circular 4/2017, published in Spain's Official State Gazette on December 6<sup>th</sup>, 2017)**

Circular 4/2017 adapts the accounting regime of Spanish credit institutions to the changes in the European accounting system resulting from the adoption of IFRS 15 and IFRS 9, which are applicable as of January 1<sup>st</sup>, 2018.

The main novelties introduced by Circular 4/2017, which repeals Circular 4/2004, are the amendments derived from **IFRS 9** in respect of the following:

- The financial asset impairment model changes from an incurred loss to an **expected loss** model.
- It introduces changes to the portfolios into which **financial assets are classified** for measurement purposes.
- It regulates **accounting hedges**.

The amendments deriving from the adoption of **IFRS 15** in turn imply a new **revenue recognition model**, based on: (i) identification of the performance obligations in each contract; (ii) determination of the transaction price; (iii) allocation of the price to the identified performance obligations; and, (iv) the recognition of revenue when control over the assets is transferred or as that transfer takes place, depending on whether this takes place at once or over time, respectively.

As for the Annexes to the Circular, changes are made to the **public financial statements (Annexes 1, 2 and 3)** of the Circular) and to the **confidential statements (Annexes 4, 5 and 6)** leaving **unchanged** the amendments made to **Annex IX** by virtue of Circular 4/2016 in respect of credit risk management, the classification of transactions, provisioning for individual and collective exposures and the measurement of foreclosed assets. However, the **alternative solutions** to the development of internal methodologies by the banks in order to collectively estimate provisions (the new expected loss model and back-testing against internal estimates) have been updated to factor in the Bank of Spain's most recent data and experience.

As for the **first-time application of the Circular to the banks' annual financial statements**, the transitional arrangement stipulates the **retrospective application** of the new financial instrument recognition and measurement rules (other than with respect to accounting hedges), fee and revenue recognition rules, subject to certain simplifications, and the **prospective application** (with the odd exception) of the hedge accounting rules, the new requirements regarding the derecognition of tangible assets and non-current assets held for sale and

any other items not specifically covered in transitional provision one.

The **first set of public and confidential statements** which must be presented to the Bank of Spain using the new criteria are those corresponding to **January 31<sup>st</sup>, 2018**. Exceptionally, the deadline for their presentation will coincide (except for the individual confidential statement known as the FI 103) with the **deadline for presenting the statements corresponding to February 28<sup>th</sup>, 2018**. Elsewhere, the financial disclosures corresponding to **2017** will continue to be prepared using the criteria stipulated in Bank of Spain Circular 4/2004.

## Notes

- [1] Directive 2014/92/EU of the European Parliament and of the Council of July 23<sup>rd</sup>, 2014, on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.