

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 1/2022 amending Law 9/2012, Law 11/2015 and Royal Decree 1559/2012 (published in the Official State Journal on January 19th, 2022)

The purpose of Royal Decree-law 1/2022 is to modify the legal regime governing SAREB, the entity that manages the assets derived from banking sector restructuring, and eliminate the limits on the State's shareholding in it, opening the door for a possible increased public ownership interest. It also adjusts SAREB's supervisory and audit regime and how delivery of its objectives is monitored, leaving intact the current supervisory and penalty regime attributed to the Bank of Spain.

In addition, it regulates the procedure under which the fund for orderly bank restructuring, FROB for its acronym in Spanish, can acquire additional interests in SAREB, with the ultimate aim of taking control of that entity. The idea is for the FROB to be able to take a majority shareholding in SAREB without the latter becoming a state corporation.

Royal Decree-law 1/2021 took effect the day after its publication.

Royal Decree-law 2/2022 taking urgent measures and extending certain existing measures to address situations of social and economic vulnerability (published in the Official State Journal on February 23rd, 2022)

Among other matters, Royal Decree-law 2/2022 extends the term of certain of the housing protection measures introduced by Royal Decree-law 11/2020 adopting complementary urgent measures in the social and economic arenas to mitigate the impact of COVID-19. Specifically, it extends the

suspension of home eviction and foreclosure proceedings in the circumstances and following the procedures already contemplated until September 30th, 2022 and extends the deadline for applying for the landlord or lessor compensation contemplated in Royal Decree-law 37/2020, on urgent measures for addressing circumstances of social and economy vulnerability in the areas of housing and transport, until October 31st, 2022.

In keeping with those changes, the deadlines contemplated in Royal Decree 401/2021, which outlines the procedure for awarding that compensation, have likewise been extended until October 31st, 2022.

Royal Decree-law 2/2022 took effect the day after its publication.

Bank of Spain Circular 6/2021 amending the Circular 4/2019 (published in the Official State Journal on December 29th, 2021)

The overriding purpose of this new Circular is to update Circular 4/2017, commonly known as the Accounting Circular, as follows:

- Introducing the changes in the International Financial Reporting Standards adopted by the European Union as a result of Regulation (EU) 2021/25, which amends IAS 39 and IFRSs 4, 7, 9 & 16, in response to interbank offered rate reform.
- Making adjustments to the treatment of forborne exposures outlined in Annex 9 to keep it aligned with the FINREP treatment following modification of Commission Implementing Regulation (EU) 2021/451.
- Eliminating certain provisions of Annex 9 in relation to transaction origination whose

content is already addressed in the EBA Guidelines on loan origination and monitoring (EBA/GL/2020/06) which the Bank of Spain has taken on board in respect of less significant credit institutions and specialised lending institutions and are used by the ECB for the significant banks under the latter's direct supervision.

- Updating the alternative solutions for collective estimation of credit risk loss allowances and the haircuts applied to assets forborne or received in lieu of payment.
- Updating the Economic and Monetary Union (EMU) statistical data requirements in keeping with the changes introduced in Regulation (EU) 2021/379 of the European Central Bank, requiring new information with respect to additional data requirements and modifying certain existing data requirements and definitions.
- Simplifying the confidential financial statement submission requirements applicable to the branches of foreign credit institutions with operations in Spain that are headquartered in a European Economic Area Member State.

In addition, introducing *ad hoc* changes to the individual confidential financial statements required under the Accounting Circular in order to introduce new data requirements to verify standard compliance, gather statistical information and make technical adjustments and corrections.

Circular 6/2021 also modifies Circular 4/2019 so as to eliminate the provision regarding forecasts for prudential supervision purposes as it was referenced to the "Granting of transactions" section of Annex 9 of the Accounting Circular, which has been eliminated.

In terms of the staggered entry into effect of Circular 6/2021, note the following:

- The new confidential financial statement submission requirements applicable to the

branches of foreign credit institutions with operations in Spain that are headquartered in a European Economic Area Member State will apply for the first time to data as of January 31st, 2022.

- The changes to the separate confidential financial statements will apply for the first time to data as of January 31st, 2022, for those reported monthly, as of March 31st, 2022, for those submitted quarterly, as of June 30th, 2022, for those sent twice-yearly and as of December 31st, 2022, for the annual statements.
- The updated EMU statistical data requirements will apply for the first time to data as of January 31st, 2022, for those reported monthly and as of March 31st, 2022, for those submitted quarterly.
- The new criteria for reclassifying forborne exposures out of non-performing will apply from December 31st, 2021. However, the banks can choose to apply the new criteria from June 30th, 2021.
- The new schedules with alternative solutions for collective estimation of credit risk loss allowances and the haircuts applied to assets forborne or received in lieu of payment will apply from June 30th, 2022.

Bank of Spain Circular 1/2022 for specialised lending institutions in respect of liquidity, prudential requirements and reporting obligations, amending Circulars 1/2009 and 3/2019 (published in the Official State Journal on February 3rd, 2022)

The purpose of Circular 1/2022 is to round out the solvency regulations applicable to specialised lending institutions ("SLIs") and adapt their reporting requirements. Specifically:

1. With respect to liquidity:

- The Circular introduces liquidity requirements inspired by the CRR

liquidity coverage ratio (LCR), including a buffer in three categories of liquidity akin to those required of banks, with minimum composition requirements for each category of liquidity, which have been adapted for how SLIs operate.

- That buffer may not fall below 10% of gross outflows in general (25% for banks), or below 5% (0% or 10%, depending on the circumstances, for banks) if certain circumstances are met in terms of the liquidity risk profile of the SLI's activities and the composition of their balance sheets.
- The same treatment as applies to banks is applied to SLIs that can calculate the volume and probability of liquidity outflows associated with certain products and services.
- A real forecast for operating expenses associated with the SLI's activities is added to the ratio denominator in the event of grave financial instability. Those outflows are assigned an outflow rate of 100%.
- Outflow rates of between 0% and 50% are assigned to maturities of group borrowings so long as there are firm commitments to roll the financing over or it can be demonstrated that they are refinanced consistently over time, even in situations of grave financial instability.
- The Circular sets out the circumstances in which an asset is considered liquid.
- It likewise establishes the criteria for valuing the assets comprising the liquidity buffer.
- It introduces the regime applicable in the event of non-compliance with the liquid asset eligibility criteria, the alternative liquidity treatment approaches, the rules regarding liquidity inflows and outflows and the minimum buffer requirement.

- The disclosure requirements introduced are similar to those required of banks.
- Lastly, the Circular introduces a new reporting statement for hybrid SLIs that must be submitted annually to reflect the sum of their capital requirements under payment service activities.

2. With respect to capital adequacy:

- The Circular establishes the circumstances in which SLIs have to prepare the yearly internal capital adequacy assessment report (ICAAP). The Bank of Spain will carry out the review and supervisory assessment.
- The SLIs' solvency framework has been rounded out to adapt their reporting requirements for their type of activity, business model, size and relevant importance.
- The Circular regulates their reporting requirements in the area of solvency and the rules for adapting the general information required of the banks for the specific circumstances of SLIs.
- It determines the frequency with which they must provide the Bank of Spain with information regarding the following:
 - own funds, capital requirements, large exposures, leverage and non-performance loans;
 - own funds of hybrid SLIs;
 - liquidity buffer;
 - sources of financing structure;
 - balance sheet interest rate risk; and,
 - remuneration.

3. The Circular introduces the possibility of requiring the provision of a guarantee covering all of the activities of SLIs controlled by foreign persons by means of

a surety insurance policy, joint guarantee, pledge of cash or securities admitted to trading on a secondary market or issued by the central government of a member state or guarantees of similar quality that the Bank of Spain may deem eligible in each set of circumstances.

Lastly, the new Circular amends Circular 1/2009 to reduce the threshold for having to report shareholders that do not qualify as financial institutions from 2.5% to 1% in the case of SLIs and it amends Circular 3/2019 to stipulate that credit institutions that evaluate the materiality of credit obligations past due consider that when an obligation is past its due date by more than 90 days consecutively it is in default.

Circular 1/2022 will take effect three months after its publication.