

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 5/2023 in support of the impact of the war and other situations of vulnerability (published in the *Official State Journal* on 29 June 2023)

This Royal Decree-law introduces the following changes in the financial arena:

I. Structural changes in corporations

It transposes Directive (EU) 2019/2121, known as the Mobility Directive, in order to regulate structural changes, both domestic and crossborder, in limited liability companies taking the form of conversions, mergers, divisions or the universal transfer of assets and liabilities. It also repeals Law 3/2009 (3 April 2009) on structural changes in corporations.

It introduces provisions regarding limitations and exclusions applicable to the various regulated structural change transactions, common provisions applicable to all structural changes and specific provisions for each different type of structural change.

This new regime likewise applies to conversion, merger, division and universal transfer of asset and liability transactions between credit institutions, without prejudice to those entities' specific legislation.

As for corporate enterprises, it amends Royal Legislative Decree 1/2010 in order to eliminate the international transfer of a company's registered office (now known as a crossborder conversion) from the powers reserved to shareholders in general meeting and foster shareholder and creditor protection.

II. Covered bonds

Elsewhere, it amends the covered bond regulatory framework enacted via Royal Decree-law 24/2021 as follows:

- The overcollateralisation requirement;
- The rules for valuing the assets comprising the cover pool;
- The rules for managing the addition and removal of loans to/from the pool;
- Loan restructuring authorisation by the cover pool monitor whenever required by a mandatory regulation;
- The procedure to be followed by the special administrator in the event that the liabilities in the covered bond programme are lower than the assets;
- Clarification with respect to the cover pool monitor registration regime; and,
- The penalty regime related with the activities undertaken by the external cover pool monitor.

III. Right to be forgotten

A provision has been added to Spain's General Consumers and Users Defence Act (Royal Legislative Decree 1/2007) to annul clauses that exclude one of the parties to a contract on account of having HIV/AIDS or other health conditions. It likewise annuls clauses that exclude one of the parties for having had cancer prior to entering into the contract or legal arrangement five years after the end of treatment without subsequent relapse.

Irrespective of the sector and prior to execution of the consumer agreement, a consumer may not be asked to provide cancer-related information from five years after the end of treatment without subsequent relapse.

Elsewhere, Law 50/1980 (8 October 1980), on insurance contracts, specifies that people taking out life insurance policies are not obliged to disclose whether they or the insured parties have had cancer from five years after the end of treatment without subsequent relapse and prohibits all contracting discrimination or restrictions on such grounds. Lastly, it is forbidden to discriminate on grounds of having HIV/AIDS or having survived cancer or other health conditions.

IV. Evictions and repossessions

The legislation extends some of the protective measures in situations of housing vulnerability that were introduced via Royal Decree-law 11/2020. Specifically, it extends the suspension on eviction and repossession procedures (in the instances and following the steps already established) until 31 December 2023 and the scope for landlords and property owners to apply for the compensation contemplated in Royal Decree-law 37/2020 until 31 January 2024.

V. Credit cooperatives

It clarifies the regime applicable to credit cooperatives such that: (i) members whose reimbursement has been refused by the cooperative's government body will not have preference in the entity's bankruptcy or liquidation or in the allocation of its corporate assets or in the dividend payment order, and, (ii) the mandatory reserve fund set up by the cooperative can assume losses in full.

It sets out the regime for amending credit cooperatives' bylaws and limits members' right of separation.

VI. Regular home purchase support measures

Approval of surety lines for a period of up to 15 years with partial coverage by the state for a maximum amount of up to 2.5 billion euros for youths up to the age of 35 and families with minors in their care that take out mortgages with financial institutions for the purchase of their first house for regular and permanent residence.

VII. Other changes

- Law 10/2010 (AML/CTF): regulates access to and use of the Central Beneficial Owners Register.
- Law 10/2014 (on the structuring, supervision and capital adequacy of credit institutions): adds one year to the deadline for ruling on penalty proceedings applicable to credit institutions.
- Royal Legislative-Decree 1/2020 (Spain's bankruptcy act): addition of structural modifications to agreement proposals.
- Royal Decree law 20/2021: introduction of a new window, until 31 July 2023, for applying for the moratorium on principal and interest payment obligations for secured and unsecured loans or credit extended to people affected by the seismic movements and volcanoes affecting La Palma Island.

VIII. Effectiveness

This new piece of legislation took effect the day after its publication with the exception of the provisions transposing the European Mobility Directive, which took effect one month after its publication, and the provisions applicable to accessing and using the Beneficial Owners Register, which will take effect in conjunction with the implementing regulations.

Royal Decree 668/2023 amending the pension plan and fund regulations to foster occupational pension schemes (published in the Official State Journal on 20 July 2023)

This piece of legislation amends the pension plan and fund regulations enacted via Royal Decree 304/2004 and completes implementation of Law 12/2022 (30 June 2022) regulating occupational pension schemes.

The key developments are:

- Open-ended pension funds. Pension fund classification has been simplified into two categories: occupational pension schemes and open-ended pension funds. The idea behind the latter is to channel investment of assets of other pension plans in the same category as the open-ended fund, together with the investment of the assets of the plan and any affiliated pension plan(s). It also regulates the particulars for changes made subsequent to the creation and inscription of open-ended publicly sponsored occupational pension schemes and itemises the conflicts of interest applicable to the members of the Special Monitoring Committee.
- Simplified occupational pension schemes. The new legislation regulates aspects such as their merger into occupational pension funds, who shall be considered sponsors and investors, the related specifications, the terms for mobilising investor and beneficiary rights and the control committee's functions.
- It also regulates the transformation of previously existing occupational pension schemes or other company retirement and savings plans into a simplified occupational pension scheme and the timeline for adapting to the corresponding requirements (12 months from ratification of the transformation resolution), as well as the transformation of affiliated pension plans.
- It sets up the Common Digital Platform by way of digital tool for the provision of general information about the publicly sponsored occupational pension scheme (FPEPP for its acronym in Spanish) system to any person or entity, along with confidential information for investors, beneficiaries, sponsors, special control committees and monitoring committees. The security policy and technical aspects will be determined at a later point in time.
- It lists the information to be provided by monitoring and special control committees.
- It provides for the outsourcing of the administrative activities of the manager to the pension fund depository.
- It qualifies that the general limit on management and depository fees will apply jointly when the pension fund or pension plan invests in private equity firms or closed-end collective investment undertakings that belong to the same financial group as the manager. In the event they do not form part of the same group, management companies may charge a fee on those investments up to a maximum limit, in addition to the general limit, of 0.55% of the value of the capital accounts to which they are to be charged.
- It specifies which management expenses can be passed on to the pension funds and which cannot.
- Occupational pension scheme sponsors must inform the management company about which investors are earning 60,000 euros or less at the time of making their first contribution for the year and subsequently if there are any changes with respect to that limit.
- Contribution regime:
 - The legislation clarifies that contributions made by natural or legal persons that are part of sponsorship programmes or campaigns on behalf of their investor clients will be considered direct

contributions to individual plans by the investors, which will be granted title to the contributions made.

- In the event that in a given year contributions to an occupational scheme coincide with contributions by self-employed professionals to simplified occupational pension schemes, the contributions made by the self-employed professionals to the simplified scheme must be withdrawn first.
- Changes have been made to the flexible retirement, active retirement and partial retirement regime with respect to pension plan contributions.
- The legislation contemplates three-yearly reviews of defined contribution pension plans that are part of a pension fund with over 25 million euros of assets under management.
- It stipulates that an occupational pension scheme will not be discriminatory when all of the staff employed by the sponsor are included or eligible for inclusion in the scheme and that sponsors can only require one month's employment for eligibility (down from the previous two years). Individual pension plans sponsored exclusively for beneficiaries will not be considered discriminatory.
- With respect to control committees, the new legislation: (i) modifies the frequency of occupational pension scheme committee meetings (to at least twice a year); (ii) permits the sponsoring or control committee of jointly managed pension plans to designate representatives of the most important employer and union associations as members of the control committee; and, (iii) designates the pension funds to which a plan's capital account must be transferred if the FPEPP's managed assets not reach the minimum threshold.
- With respect to pension fund investments, the changes introduced affect: (i) the investments considered eligible;

(ii) the diversification, dispersion and consistency criteria; (iii) the contents of the investment policy principles statement, the rules for any changes and their communication to the depositary; (iv) investor diversification and dispersion limits in relation to the investing fund's assets and in the private equity investment; and, (v) sustainability factors.

■ Other changes:

- For occupational pension scheme purposes, board directors and administrators that contribute to the social security under the ordinary regime are considered employees.
- Co-proprietors in pensions schemes sponsored by a community of property and partners in civil society organisations included in the social security's self-employed contribution regime are also deemed investors.
- The minimum term of employment required for joining an occupational pension scheme has been reduced from two years to one month with entitlement for employment of less than one month or as soon as employment at the sponsor starts permitted under any occupational scheme.

This Royal Decree took effect the day after its publication except for the obligation regarding the frequency of pension plan control committee meetings, which will take effect in the following year.

Royal Decree 609/2023 creating the Central Beneficial Owners Register (published in the *Official State Journal* on 12 July 2023)

This Royal Decree finalises transposition of Directive (EU) 2018/843 (amending Directive (EU) 2015/849 (AMLD)) and writes into Spanish law the contents of the European Court of Justice's Judgement on the matters addressed in the Joined Cases C 37/20 and C 601/20 with respect to that Directive. It took effect on 19 September.

The purpose of this legislation is to create the so-called Central Beneficial Owner Register as a single nationwide, electronic and centralised register designed to gather and provide certain information about the beneficial owners of all Spanish legal persons and unincorporated entities or structures whose effective management headquarters or core business is located in Spain or which are administered or managed by natural or legal persons resident or established in Spain.

This new Register will centralise the beneficial ownership information available in: (i) the Registers of Foundations, Associations, Cooperatives and Agricultural Processing Companies and any others that may contain information regarding the legal persons or entities on record; (ii) the beneficial owner database managed by the General Counsel of Notaries; and (iii) the Commercial Registry managed by the Spanish Association of property and company registrars.

The foundations, associations and in general all legal persons, trusts and other legal arrangements having a structure or functions similar to a trust that have not reported their beneficial owners via one of the above registers or another equivalent register have one month at most to electronically report their beneficial ownership to the new Register and subsequently update any changes in ownership structures. An annual declaration must in any event be made every month of January and in the event there have been no changes in beneficial ownership, the entities must file a statement confirming that fact.

Registers with powers to collect beneficial ownership information must make the technological adjustments needed to have sent or otherwise provided the Central Register with its first full submission of the beneficial ownership data pertaining to them within a maximum period of nine months. After that first dispatch, additions and other changes to their databases must be updated in the Central Register daily. Until the first data upload is completed and while the access fees and their form of payment is approved, the current beneficial

ownership reporting process will remain in place. The obligation to report beneficial ownership does not extend to funds but does apply to their management companies.

In short, the key characteristics of the new Register are:

- Information to be provided. A list of the data pertaining to the beneficial owners reported electronically and separately by the governing bodies of the legal person to the Register for inscription.
- Access. The information will be accessible, free of charge and with no restrictions to the competent AML/CTF authorities in Spain and other EU Member States, to notaries, to registrars and to their centralised prevention bodies. Other bound parties and persons or organisations with a legitimate interest must pay the stipulated fee to access the Register.

Access will be electronic only and require prior identification of the applicant, certification of the capacity in which access is being applied for and proof of legitimate interest justifying access to the Register's contents.
- Safe-keeping. Register information will be updated and archived for a period of 10 years after discontinuation of beneficial ownership. If the information provided comes into conflict with other information, the most relevant data principle will apply on the basis of either its date or reliability.
- Management. The Ministry of Justice is tasked with management of the Register, controlling access to its information contents and ensuring interconnection with the central European platform.

Lastly, Royal Decree 609/2023 amends Royal Decree 304/2014 in order to introduce the obligation to identify and verify beneficial ownership using the Central Beneficial Owner Register.