

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 implementing the Law on recovery and resolution of credit institutions and investment firms (Royal Decree 1012/2015, published in the Official State Gazette (BOE) on November 7th, 2015)

Royal Decree 1012/2015 completes the transposition of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive [BRRD]) and introduces the regulatory provisions envisaged in Law 11/2015. It also amends Royal Decree 2606/1996 of December 20th, 1996, on deposit guarantee funds for credit institutions in order to complete the transposition of Directive 2014/49/EU on deposit guarantee schemes.

➤ General provisions

■ In order to ensure **proportionality**, supervisors and competent resolution authorities are to take into account a **series of circumstances affecting the institution** when establishing or applying the obligations and requirements under Law 11/2015 and when using the various tools at their disposal. The criteria the supervisor and preventive resolution authority are to take into account when determining the **simplified**

requirements and obligations for compliance with the preparatory measures are also set out.

■ The RD also provides that prior to the adoption of any resolution measures, an **institution will be valued** by an **independent expert** appointed by the FROB to value its assets and liabilities.

➤ Planning of recovery and early intervention

■ The RD sets out the minimum content of the **recovery plans** that institutions are to prepare on a preventive basis. These plans will be at the level of individual institutions, if the relevant supervisor so requires, or if the credit institution is subject to **direct supervision by the ECB**. The relevant supervisor will **evaluate the recovery plans** within six months of their submission.

■ The RD specifies the requirements applicable to **intragroup financial assistance** agreements that institutions and their integrated subsidiaries under consolidated supervision may sign to cover the event of any of them finding itself subject to early intervention.

■ It establishes the rules for the coordination of early intervention measures **between supervisors** and regulates the appointment, dismissal, powers and functions of the **provisional administrator**.

➤ Preventive phase of resolution and the resolution process

- The RD describes the content of the resolution plan and the additional content of the group resolution plans.
- It specifies the points the preventive resolution authority will examine when conducting a **resolvability assessment** of institutions and groups.
- It describes the **reporting requirements**, the **FROB's information requirements**, and the rules on the operation of **resolution tools**.
- In the case of resolution of cross-border groups, it establishes the general principles regarding the adoption of decisions involving more than one Member State, and determines the composition and powers of the **colleges of resolution authorities**. It also sets out the rules governing **agreements with non-EU countries**.

➤ FROB (executive resolution authority) and the National Resolution Fund

- The RD defines the rules necessary to implement the National Resolution Fund:
 - It defines its **level of financial resources**.
 - The FROB will determine yearly, no later than May 1st of each year, the **total contribution** that obliged institutions as a whole are required to make to the National Resolution Fund and the ordinary contributions each institution is to pay during the year. Contributions will be set according to each institution's **risk profile**.
 - The annual amount of **extraordinary contributions** may not be more than three times the annual amount of the ordinary contributions.
- It establishes the regime for loans between EU Member States' financing mechanisms or their **pooling** in the case of group resolutions.

- It determines the procedures for the use of deposit guarantee schemes in the context of resolution.

- It establishes the management, settlement and collection of the fees for the activities of the FROB as the resolution authority.

➤ Amendment of Royal Decree 2606/1996 of December 20th, 1996, on the Deposit Guarantee Fund for credit institutions

- Implementation of the **two compartments** created by Law 11/2015, one to cover deposits and the other to cover securities.
- The Management Committee will determine the annual contributions by entities belonging to the Deposit Guarantee Fund (DGF).
- The period over which the DGF is to reimburse depositors is to be progressively shortened.
- The rules for the DGF's cooperation with deposit guarantee schemes in other Member States are defined.
- Credit institutions will make available to their actual and potential depositors and investors the information they need to identify the deposit guarantee fund to which the institution belongs through their offices or on their websites. The information sheet in the annex called the '**depositor information sheet**' will be used for this purpose.
- The basis of calculation for contributions is limited to covered deposits (less than 100,000 euros).
- The Bank of Spain will subject the DGF to **stress tests** to determine its capacity to meet its payment obligations under situations of stress.
- Nominative **certificates of deposit** issued prior to July 2nd, 2014, will be considered covered deposits until their initial expiry date.

- Institutions must inform depositors whose **deposits cease to be covered** after July 3rd, 2015, within two months of the entry into force of the Royal Decree.

Bank of Spain Circular on certain aspects of the Annual Corporate Governance Report and Annual Remuneration Report of savings banks that do not issue shares admitted to trading and on banking foundations' obligations arising out of their holdings in credit institutions (Circular 6/2015, published in the BOE, November 20th, 2015)

Circular 6/2015 emanates from the legislative mandate conferred upon the Bank of Spain by Law 26/2013 and Royal Decree 877/2015.

As regards **savings banks**, the Circular incorporates:

- **The model and instructions for completing the Annual Corporate Governance Report**, which is to explain the structure of the institution's governance system and how it operates in practice.
- **The model and instructions for completing the Annual Remuneration Report** for members of the board of directors and control committee, which is to set out the institution's remuneration policy as approved for the reference financial year.
- These reports must be submitted to the Bank of Spain in the first four months of the year following that to which the report refers, and may not be submitted later than the date on which the convening of the annual assembly is publicly announced.

As regards **banking foundations**, the Circular implements:

- The content of the **management protocol** that banking foundations with a joint or individual holding of 30% or more of the shares of a credit institution (or exercising control over it) are to prepare.
- This **protocol must be sent to the Bank of Spain within two months** of the creation of the banking foundation.
- The Bank of Spain will have one month in which to assess its content.
- The content of the **financial plan** that banking foundations with a holding of 30% or more of the shares of a credit institution (or exercising control over it) are to prepare. This **plan must be sent to the Bank of Spain within three months** of the creation of the banking foundation and subsequently **updated annually**.
- Banking foundations holding 50% or more of the capital of a credit institution (or exercising control over it) must prepare and submit a **strengthened financial plan**.
- The following items must be added to the content of the standard financial plan:
 - An **investment diversification and risk-management plan**, including undertakings that the investment, unless in highly liquid, highly solvent assets, shall not exceed the following thresholds: 10% of the foundation's equity in assets issued by a single counterparty; or 40% of the foundation's equity in assets issued by firms in the same business sector, as defined by the National Classification of Economic Activities, excluding the banking sector.
 - **Reserve fund**: comprising the foundation's equity (the year's positive surplus, available reserves, and the foundation's endowment) which is to be invested in highly liquid, high quality assets pursuant to Articles 197 and

198 of the Capital Requirements Regulation (CRR).

Until the fund is fully constituted, it will be obligatory for the credit institution to pay at least 50% of the cash dividends it receives into it.

The value of the financial instruments in which the reserve fund invests must be adjusted to reflect changes in liquidity and estimated loss of value that might occur should it be necessary to sell or swap them prior to their contribution to the investee credit institution. This adjustment shall be made by applying value reductions of between 0% and 33%, depending on the type of instrument.

The financial instruments in which the reserve fund invests may be owned directly by the banking foundation or kept on the balance sheet of a holding institution.

The assets in which the reserve fund invests may not include:

- a) Direct or indirect holdings in credit institutions.
- b) Assets issued by the investee credit institution, with the exception of deposits.
- c) Investments in collective investment institutions whose investment policy establishes minimum investments of 25% of their holdings in credit institutions.

Additionally, any financing received from the investee credit institution or any of the companies in its group shall be deducted.

The banking foundation shall make use of the reserve fund to meet any solvency needs of the investee credit institution that cannot be met with other resources.

It will not be necessary to set aside a reserve fund if the investment diversification plan includes a **divestment programme that brings the shareholding in the credit institution to**

below 50%, and in any event less than that enabling control over the institution, within not more than five years. The Bank of Spain is to be informed of any failure to comply with the divestment program. The Bank of Spain may require in this case that the banking foundation submit a strengthened financial plan, including the constitution of the reserve fund, within twenty days.

- The criteria for **foundations acting in concert** are established, where this includes all types of express or tacit shareholders' agreements, whether verbal or in writing, which although allowing occasional dissenting votes, imply the adoption of common basic criteria for the management of the institution.
- In the case of concerted action, a **single management protocol and a single financial plan** must be prepared and these must be approved by the boards of trustees of each of the foundations.
- Divestment from the investee institution must be in the proportion set out in the financial plan of the banking foundations concerned, or if no agreement can be reached, in proportion to each foundation's percentage holding in the investee institution.
- **Collaboration with the single supervisory mechanism.** If the credit institution part-owned by one or more banking foundations is deemed to be a significant institution, the Bank of Spain may inform the supervision team responsible of any fact regarding the banking foundation that may affect the sound and prudent management of the credit institution.
- **Updating the management protocol.** Banking foundations that are obliged to prepare a management protocol shall have three months as of the entry into force of this Circular to adapt their protocol to the minimum content it establishes and send it to the Bank of Spain for approval.

- **Updating the financial plan or strengthened financial plan.** Banking foundations that are obliged to submit a financial plan shall have three months as of the entry into force of this Circular to update their existing plan and send it to the Bank of Spain for approval.
- Within one month of the Circular's coming into force, banking foundations must accredit to the Bank of Spain that they comply with the restrictions concerning the **simultaneous holding of offices on the board of trustees of the banking foundation and the board of the investee credit institution.**

Ministerial Order defining the content, structure, and publication requirements for the Annual Corporate Governance Report, and establishing accounting obligations for banking foundations (Order ECC/2575/2015, published in the BOE on December 4th, 2015)

This Order has a dual purpose: firstly, to determine the minimum content, structure and publication requirements of banking foundations' annual corporate governance reports; and, secondly, to implement the rules and models with which these foundations' accounts are to comply by authorising the Bank of Spain to specify the regime.

I. Annual Corporate Governance Report

➤ General points

- Banking foundations are to publish an **Annual Corporate Governance Report** with information about the financial year immediately preceding that in which the report is submitted to the 'protectorate'. This report is to have the format established in the **annex to the Order.**
- The banking foundation's **board of trustees** is the body responsible for preparing, submitting, and publishing the content of the Annual Report.

The board of trustees will approve it and send it to the competent protectorate within four months of the end of the financial year. It is to be accompanied by a certificate issued by the secretary and endorsed by the chairman.

- The Annual Report **must be published within ten days** of its being sent to the protectorate in a visible manner on the banking foundation's web site and must remain available on the site for at least five years.
- **Banking foundations constituted in 2014 must approve and send an annual report on their activity in the 2014 financial year prior to December 31st, 2015.**

➤ Contents

The Annual Corporate Governance Report must have the minimum content provided for in the Order, which is:

- Structure, composition and functioning of the governing bodies.
- Appointments policy.
- Policy for investments in the investee credit institution.
- Other investments.
- Remuneration and reimbursable expenses.
- Related-party transactions.
- Conflicts of interest policy.
- Community welfare activities.

II. Financial information standards and models

The Order establishes the standards and models for banking foundations' financial information, stipulating that they must comply with the

General Accounting Plan, with the specifications subsequently established by the Bank of Spain.

The aforementioned financial information may be:

- a) **Public**, such as information for third parties to give a true and fair view of the net value, financial situation, and changes in equity during the financial year, along with the activity performed, in accordance with the legal provisions.
- b) **Confidential**, such as information supplied to the Bank of Spain in order for it to be able to perform its tasks pursuant to Article 46 of Law 26/2013 and in the solvency regulations and for the preparation of monetary, financial and economic statistics.

Bank of Spain Circular on information to determine the basis of calculation of the contributions to the Deposit Guarantee Fund for Credit Institutions (Circular 8/2015, published in the BOE on December 24th, 2015)

Circular 8/2015 will be applicable to institutions and branches belonging to the Deposit Guarantee Fund (DGF) pursuant to Royal Decree 2606/1996.

As regards the **information that has to be submitted**:

- Institutions and branches that belong to the DGF are to submit quarterly to the Bank of Spain a statement with “information for the determination of the basis of calculation of contributions to the Deposit Guarantee Fund” with data referring to the end of the relevant quarter.
- Each quarter the Bank of Spain will send the DGF for credit institutions the information from the statements received from each DGF member institution and branch necessary for

compliance with its obligations, together with the aggregate data.

- The data must be submitted to the Bank of Spain telematically.

For the purposes of calculating the **basis for determining contributions to the DGF**, institutions are to apply the following valuation criteria:

- a) Money deposits will be valued at their nominal or principal value plus any interest accruing on the date to which the data refer, as defined in the Accounting Circular. In the case of hybrid or structured deposits, the principal will be the amount disbursed by the counterparties before separating out the implicit derivatives.
- b) Securities and other guaranteed financial instruments, including those transferred temporarily under repurchase agreements that remain registered with the transferring institution, will be valued at their quoted market price on the last trading day of the quarter to which the data refer. Securities or financial instruments not traded on a secondary market will be valued at fair value, unless this cannot be estimated reliably, in which case they will be valued at nominal value or reimbursement value, whichever is more appropriate to the type of instrument concerned, as defined in the Accounting Circular.

Institutions and branches belonging to the DGF must keep **information on deposits received** available to the Bank of Spain at all times.