

# Recent key developments in the area of Spanish financial regulation

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## **Bank of Spain Circular on the definition of the materiality threshold for past due credit obligations (Bank of Spain Circular 3/2019, published in the *Official State Journal* on November 1<sup>st</sup>, 2019)**

The ECB adopted Regulation (EU) No. 2018/1845 on the exercise of the discretion conferred in the Capital Requirements Regulation for defining the threshold for assessing the materiality of credit obligations past due with respect to *significant credit institutions* on November 21<sup>st</sup>, 2018. As there were no provisions regarding the definition of this threshold for Spain's *less significant* credit institutions, the Bank of Spain has defined them in this Circular, reflecting the thresholds set by the ECB.

The Circular stipulates that less significant institutions shall assess the materiality of their past due credit obligations against the following *threshold*, which is comprised of two components:

- a) A limit in terms of the *sum of all amounts past due* owed by the obligor to the credit institution, its parent undertaking or any of its subsidiaries, equal to:
  - EUR 100, or the equivalent amount in the pertinent national currency, for *retail exposures*;
  - EUR 500, or the equivalent amount in the pertinent national currency, for *exposures other than retail exposures*.
- b) A limit in terms of the *amount of the credit obligation past due* in relation to the total amount of on-balance sheet exposures

to that obligor for the credit institution, its parent undertaking or any of its subsidiaries, excluding equity exposures, *equal to 1%*.

In the case of credit institutions that apply the definition of default *at the level of an individual credit facility*, the threshold shall apply at the level of the individual credit facility granted to the obligor.

A default is deemed to have occurred when both of the limits set out under points a) and b) above are exceeded for *90 consecutive days*.

Credit institutions shall apply this threshold *from December 31<sup>st</sup>, 2020*, at the latest and they were required to notify the Bank of Spain, before December 31<sup>st</sup>, 2019, of when precisely they intend to start to apply it.

The Circular took effect on the twentieth day after its publication in the official state journal.

## **Bank of Spain Circular for financial credit establishments on public and confidential financial reporting requirements and financial statement templates (Bank of Spain Circular 4/2019, published in Spain's *Official State Journal* on December 6<sup>th</sup>, 2019)**

The Circular constitutes the accounting regime for financial credit establishments (*establecimientos financieros de crédito* or EFCs for their acronym in Spanish) and their consolidated groups and determines: (i) the documents they must publish; and, (ii) the recognition, measurement, presentation

and disclosure criteria applicable to the preparation of their annual financial statements and public and confidential financial statement templates.

To draw up the regime, the Bank of Spain used the Accounting Circular (Circular 4/2017), the accounting regime applicable to credit institutions, as its reference. It set analogous criteria and maintained consistency with the accounting framework in place prior to 2014, which is when the EFCs ceased to be classified as credit institutions. It also upholds the spirit of convergence with international accounting standards.

In broad terms, the Circular regulates the following:

- **Public financial disclosures:** It determines the documents EFCs must publish (annual financial statements, management report and auditor's report) and the general requirements for the contents of their separate and consolidated annual financial statements. EFCs must also publish separate and consolidated financial statements as per their public templates with the required frequency.

As for the applicable recognition, measurement, presentation and disclosure rules for the annual financial statements and accompanying notes, the Circular cross-references the Accounting Circular.

- **Confidential financial information:** The Circular specifies the contents of the confidential statements (separate, consolidated and those required for EMU statistical purposes) in terms of templates, disclosures, frequency and submission deadlines.
- With respect to *internal accounting and management control* requirements and the *presentation of financial information to the Bank of Spain*, it again cross-references the Accounting Circular.

The Circular took effect on January 1<sup>st</sup>, 2020.

### **CNMV Circular amending the Circular 1/2017 on liquidity contracts (CNMV Circular 2/2019, published in the Official State Journal on December 10<sup>th</sup>, 2019)**

The changes made by Circular 2/2019 to Circular 1/2017 respond to demands from securities market participants for access to liquidity contracts for a larger universe of issuers, particularly those whose shares are less liquid, and also to *fine-tune certain restrictions on broker-dealer trading during auctions*.

More specifically, the amendments imply the following:

- A *new limit* has been set for contracts arranged by issuers whose shares are not traded in a liquid market but are traded on a regulated market via the fixing system or on a multilateral trading facility. The securities market regulator –the CNMV– has also been empowered to authorise the application of the limit to contracts arranged by issuers whose shares are traded on a regulated market via the regular trading system. Issuers can ask the CNMV to apply the limit, attaching a report from the company that manages the corresponding regulated market substantiating the conclusion that the stock is highly illiquid despite not being included in the fixing trading system.
- The new text eliminates the restriction on financial intermediaries executing a liquidity contract from buying and selling shares during an *auction*, obliging those present on both sides of the order book to make the arrangements necessary to prevent self-execution.

The Circular will take effect three months after its publication.

### **Royal Decree on the legal regime governing payment services and payment institutions (Royal Decree 736/2019, published in the Official State Journal on December 24<sup>th</sup>, 2019)**

Royal Decree 736/2019 lends continuity to the *transposition of the payment services*

*Directive* (PSD2), which had been partially transposed via Royal Decree-Law 19/2018 (of November 23<sup>rd</sup>, 2018) on payment services and other urgent financial matters. To that end, it implements the following:

- The *legal regime governing payment institutions*, mainly regulating the incorporation of this type of firm and the key aspects of its operations such as authorisation, bylaw amendments, diversification of activities and structural modifications involving a payment institution.
- With respect to the Bank of Spain's power to authorise the *creation of payment institutions*, it stipulates the details of the procedure, specific considerations for certain payment service providers and the entities subject to certain exceptions.
- It regulates the *cross-border activities* of payment institutions by establishing the manner in which payment institutions authorised in another Member State must proceed in Spain. To that end, it establishes a procedure for the sharing of information between each Member State's supervisory authorities.
- As for the use of *agents* by payment institutions, it requires the players to send the Bank of Spain certain *information* about their agents and requires their inscription in the Bank of Spain's so-called *Special Register*. It similarly regulates the specifics to be borne in mind when agents are going to operate in other European Union Member States.
- It also implements disclosure obligations with respect to *functions that are outsourced*.
- It sets the requirements in terms of *guarantees, own funds* which must be met by payment institutions as well as requirements on *user protection* to be met by payment providers.
- It sets out the specifics of the legal regime regarding the so-called *hybrid payment*

*institutions*, which offer other services in addition to regulated payment services.

- It addresses the *penalty regime* for payment providers *and reporting requirements* in terms of the capital structure and the rules of conduct applicable to payment institutions.
- *It repeals Royal Decree 712/2010* (of May 28<sup>th</sup>, 2010) the outgoing legal regime governing payment services and institutions.

The Royal Decree took effect the day after its publication, with the exception of certain provisions, which will take effect later.

#### **Ministry of the Economy Order on payment service transparency rules and information requirements (Order ECE/1263/2019, published in the Official State Journal on December 30<sup>th</sup>, 2019)**

Ministerial Order 1263/2019 implements article 29 of Royal Decree-Law 19/2018 with respect to the determination of the *information requirements applicable to single payment transactions* and the *requirements applicable to framework contracts and the transactions associated therewith*. It also addresses *coordination vis-à-vis certain provisions in Ministerial Order EHA/2899/2011*, on banking service transparency and customer protection, insofar as both govern similar situations.

It regulates the obligations applicable to traditional payment service providers as well as those specific to the new payment service providers (account information and payment initiation service providers).

The Order is binding upon provider and user, insofar as the user is a *consumer* or a *micro-enterprise*. When other classes of users are involved, they may negotiate with the payment service provider for a full or partial waiver of this Order.

In broad terms, the Order implements the following:

- The aspects specific to single payment transactions and framework contracts and the information that must be provided with respect to the *currency in which transactions are denominated*, the rate of exchange, fees and commissions and applicable charges.
- The information that must be provided to the payer regarding *additional charges or price discounts* for the use of a specific payment instrument, before the payment transaction is initiated.
- The information requirement exemptions for *low value* payments (individual payment transactions not exceeding EUR 30 or which either have a spending limit of EUR 150 or store funds which do not exceed EUR 150 at any time).
- The information obligations applicable to payment service providers in *single payment transactions*. They include: (i) prior general information and conditions of such transactions; (ii) information for the payer after receipt of the payment order; (iii) information for the payee after execution of the single payment transaction; and, (iv) information for the payer and payee after initiation of a payment order through a *payment initiation service provider*.
- Information requirements in respect of *framework contracts*. The Order establishes the general information that must be provided before the payment service user is bound by any contract and before the execution of specific transactions, as well other specific obligations to the payer and the payee.
- The conditions necessary for a payment service provider to *modify or terminate a framework contract*.
- It empowers the Bank of Spain to specify the accounting regime applicable to payment institutions.
- As for the *distance marketing* of payment services, it stipulates that certain articles

of the new Order shall apply rather than the corresponding articles of Spanish Law 22/2007 (of July 11<sup>th</sup>, 2007) on the distance marketing of consumer financial services.

Lastly, it repeals and replaces *EHA/1608/2010* (of June 14<sup>th</sup>, 2010) on payment service transparency and information requirements.

The Order takes effect on July 1<sup>st</sup>, 2020.