

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 creating the Committee for monitoring, control and assessment of floor clauses, amending the Royal Decree regulating the reserve funds of certain banking foundations (Royal Decree 536/2017, published in the Official Gazette (BOE) on May 27th)

The Royal Decree regulates the **structure** of the monitoring, control and assessment Committee, the **functions** that it will carry out and the **reporting obligations** applicable to banks. Specifically:

- The Committee is attached to the Ministry of Economy, Industry and Competitiveness and has the status of a **representative collegiate body** prescribed by Law 40/2015 of October 1st of the Public Sector Legal Regime.
- It will be formed of the following members: (i) the Deputy Governor of the Bank of Spain, who will chair the Committee, (ii) the Technical Secretary General of the Ministry of Economy, Industry and Competitiveness; and, (iii) representatives of the Ministry of Justice, the Ministry of Health, Social Services and Equality, the Council of Consumers and Users, the Council of Spanish Lawyers, the General Council of the Judiciary and Spanish Mortgage Association. The Committee will have a Secretary appointed by the Bank of Spain.

- The Committee will take responsibility for **gathering and assessing information submitted to it by the Bank of Spain or banks and will publish a report on a semi-annual basis** assessing the degree of compliance with Royal Decree-law 1/2017. This report must be submitted by the chairman of the Committee to the Economy, Industry and Competitiveness Committee of the Congress of Deputies.

- **Banks will submit the required information** – via the Bank of Spain – to the Committee on a monthly and individualised basis, which will include the following: (i) number of requests received, (ii) amount corresponding to the requests received; and, (iii) the number and amount of the different compensatory measures offering cash reimbursement to consumers. A distinction will be made between agreed and non-agreed requests.

- Furthermore, banks will report on the **system implemented** to guarantee prior communication to consumers of the presence of floor clauses in their mortgage, especially in relation to **vulnerable people** (article 3.1 of Royal Decree-law 6/2012 of March 9th on urgent protection measures for mortgage debtors without income).

It also **amends Royal Decree 887/2015** of October 2nd, which regulates the reserve fund that certain bank foundations are required to create, doing so in the following ways:

- **The target volume for the reserve fund must be met within a maximum period of 8 years** from entry into force of the Bank of Spain Circular implementing Royal Decree 877/2015, or from the date at which the banking foundation acquires control or a stake of over 50% in the investee bank, if the latter events take place subsequently.
- **The banking foundation may request an extension from the Bank of Spain of up to one additional year**, if because of developments in the economic-financial situation of the investee bank or during the course of market conditions, the banking foundation gives notice that it is unable to reach the target volume for the reserve fund in the maximum period of eight years.
- Banking foundations **must allocate at least 30% of distributed cash dividends received from investee banks to the fund**, until the reserve fund reaches its minimum target size.
- Banking foundations will be able to **update their financial plan in a period of three months from the entry into force** of Royal Decree 536/2017.

Royal Decree-law transposing European Union Directives in the financial, commercial and health areas and on the movement of workers (Royal Decree-law 9/2017, published in the BOE on May 27th)

In relation to the **financial system**, the Royal Decree-law 9/2017 amends the following regulations:

- **Law 41/1999 of November 12th on payments systems and securities settlement.** The Royal Decree modifies (i) **the definition of finality and irreversibility** of transfer orders, so that such orders are resolved consistent with the protocols set out in the pan-European securities

payments system (**TARGET2-Securities**), as well as (ii) the effects of **insolvency procedures on collateral**, aimed at finalising adaptation of the Spanish legal system to Regulation EU No 648/2012 (**EMIR**).

- **Consolidated text of the Securities Market Law** (Royal Legislative Decree 4/2015). In order to complete the transposition of Directive 2013/50/EU of the European Parliament and of the Council of October 22nd, 2013, to the Spanish legal system, the Royal Decree-law amends the consolidated text of the Securities Market Law. It does so by adding to the National Securities Market Commission's (CNMV) existing powers of supervision and oversight, the possibility to suspend as a precaution the execution of voting rights associated with the purchase of shares until there is proof of compliance with reporting obligations related to the acquisition of significant holdings, when initiating or processing sanctions proceedings.

Other notable regulations modified by Royal Decree-law 9/2017 are as follows:

- **Law 15/2007 of July 3rd on Protection of Competition.** The Royal Decree transposes Directive 2014/104/EU of the European Parliament and Council of November 26th, 2014, which sets out certain regulations governing, under national law, harmful actions resulting from the infraction of Member State and European Union competition law.
- **Law 1/2000 of January 7th on Civil Procedure.** This regulation is also amended as a result of the transposition of Directive 2014/104/EU.
- **Consolidated text of the General Law for the Protection of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007 of November 16th.** The amendments ensure the correct transposition of Directive 2011/83/EU focusing on necessary protections for consumers in their interactions with entrepreneurs. Specifically,

regarding the ways in which entrepreneurs must refund payments received from the consumer in the case of cancellation, guaranteeing that this does not involve any expenditures because of cancellation of the contract.

CNMV Circular on liquidity contracts (Circular 1/2017, published in the BOE on May 10th)

The Circular specifies the rules on permitted operations for issuers, establishing various mechanisms to strengthen market confidence. This Circular replaces Circular 3/2007, ensuring compliance with the Market Abuse Regulation (MAR) (Regulation EU No 596/2014 of the European Parliament and Council of April 16th, 2014, on market abuse) and introducing improvements in relation to liquidity contracts.

Until now, the CNMV had accepted a single market practice regulated by Circular 3/2007 of the CNMV, but national regulations have had to adapt following the publication of MAR. Specifically, MAR provides a general ban on manipulation or attempted market manipulation by any individual, though the ban will not apply if the transaction, order or conduct is supported by a legitimate motive and is consistent with the concept of “accepted market practices”.

MAR compliance requires the introduction of improvements in the setting of liquidity contracts, especially in regard to accepted market practices.

The main changes in relation to the Circular it replaces are based on the following aspects:

- **broadening of the scope of application** of market practices to multilateral trading systems;
- the setting of a **volume limit associated with average daily trading volumes** which may be executed within the framework of the liquidity contract, and will vary depending on

whether the shares forming the subject of the contract are liquid or illiquid in accordance with MiFIR;

- the inclusion of a **maximum amount of resources** that may be allocated to the performance of the liquidity contract;
- the requirement that the **financial intermediary** executing the market practice **be a member of the trading venue**;
- the need to maintain a long-term **balance between purchase and sales volumes** within the framework of the liquidity contract;
- conditions for the **introduction or amendment of orders during auction phases**, primarily relating to the price and volume of orders;
- conditions for undertaking **block trades or other bilaterally traded transactions**, formalised in accordance with existing legislation, such that they will only be allowed where the given order is at the request of a third party distinct from the issuer of the shares and the financial intermediary acting on their behalf;
- the conditions applying to transactions taking place under the liquidity contract for shares traded in the **fixing modality**;
- the **assumptions under which the liquidity contract must be suspended**.

The Circular attaches a **template liquidity contract** which includes explanatory clauses aimed at helping financial intermediaries and share issuers to correctly interpret the regulation.

The Circular **will enter into force two months after publication in the BOE**, thereafter requiring issuing companies wishing to undertake their operations in accordance with the new liquidity contract configuration to enter into a new contract and submit it to the CNMV prior to coming into force.