

## **Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions (Boletín Oficial del Estado of 27 June 2014)**

*Updated version including amendments by the following provisions:*

- *Royal Decree-law 22/2018, of 14 of December.*
- *Royal Decree-law 19/2018, of 22 of December.*
- *Law 11/2015, of 18 June 2015, on the resolution of credit institutions and investment firms.*
- *Law 5/2015, of 27 April.*

### **PREAMBLE**

I

The financial sector and, in particular, the banking industry play a pivotal economic role, operating as the most powerful channel for transforming saving into financing for households, firms and general government. Access to this credit under competitive conditions, both in terms of cost and of volume, is a vital prerequisite for the growth of the economy and is, therefore, inextricably linked to job and national wealth creation. At the same time, risk and uncertainty are part and parcel of banking activity. The cyclical trends inherent in economies, financial corporations' natural appetite for business models that prioritise short-term profit optimisation, the unpredictable pace of financial innovation and the growing global interrelatedness of financial institutions and markets may lead these institutions and economies as a whole into difficult situations, with serious consequences for the overall functioning of the economic system. These consequences are occasionally on such a scale as to require public financial support, thereby removing the financial sector from the general and automatic market rule of individual bankruptcy and survival of the fittest. For the foregoing reasons it is thus for the legal system to articulate, with a depth of intervention greater than that used in other areas of economic activity, the regulation needed so as better to pre-empt and manage financial risks and, at the same time, to promote the most favourable conditions of financing for the economy. The ultimate fundamental of all financial legislation may be said to be the need to ensure stability and the efficient functioning of financial markets in order to safeguard the agents involved, particularly customers and investors, and, ultimately, to provide economies with optimal but prudent financing conditions in order to boost their long-term prosperity.

In short, banking activity should be subject to rules that reconcile the necessary capacity of credit institutions to pursue their ends in the context of a market economy with the proper regulation and discipline of those aspects that may, as has occurred on previous occasions, seriously harm the economy.

These considerations, resulting from long-dated experience and from successive crises, were taken into account by the legislator from the moment at which financial activity took a central position in the economy, and provided the impetus for the creation of the Spanish system of regulation and supervision of credit institutions. The first regulations on the Spanish banking sector, which until that point was unfettered by public interference, were the 1854 Law on Banks of Issue and Law on Credit Companies. But the real inaugural legislation of a comprehensive framework for prudential regulation was the 1921 Banking Regulation Law, known as the Cambó Law. In defending the related bill before Parliament, Cambó stated that “a bank’s losses do not only affect its shareholders; they affect its customers and they affect the country’s entire economy”. Regulations have since ensued giving continuity to intervention by the public authorities, such as the Banking Regulation Law of 31 December 1946, which this present Law definitively repeals, and the Basic Credit and Banking Law of 14 April 1962.

The last legal corpus of banking prudential regulation, which is replaced by this Law, consisted of Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting obligations of financial intermediaries, and Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions. These regulations arose from two historical circumstances which are clearly recognisable today. First, the deep-seated crisis affecting the whole of the banking system in the 1977-1985 period, which prompted the bankruptcy of more than half the banks operating in the country in early 1978. And, second, Spanish accession to the European Economic Community in 1986, which opened the way for the current phase of locking Spanish financial regulations into the prolific related developments in the “acquis communautaire”.

Banking legislation, influenced by European Union law and the attendant international agreements, has since progressively taken the form of a complex and extensive legal framework that operates in practice as a true professional statute for credit institutions. This legal corpus is firstly entrusted with the ongoing supervision of institutions’ solvency and risk management, which is attributed with wide-ranging prerogatives to the Banco de España. But it is not in the least confined to this oversight and covers other most substantial and particular elements of the regulation of credit institutions, such as vetted access, control of access by and suitability of the most significant executives and shareholders, the specific strengthening of corporate governance requirements and, ultimately, the highly singular treatment of institutions with viability problems, which includes the possibility of intervention and the replacement of their directors or the imposition of losses on their respective creditors.

As occurred in the mid-1980s, the new regulations incorporated into this Law have been driven by two powerful currents. One is the international development of banking law, and the other the realisation that the financial crisis has flagged the need to enhance the quality of the prudential regulation of credit institutions.

Indeed, one of the most substantial changes in the financial markets in recent decades is related to the full internationalisation of financial activity, in parallel with – but also leading – the phenomenon of the greater scope of economic globalisation. This has had major

repercussions for the regulatory field since, at the same time supervisory and regulatory arrangements were being set in place at the national level, banking business was going global and there was a tangible need to adopt a supranational regulatory perspective. Accordingly, it is now sought to harmonise the prudential requirements of solvency regulations at the global level, avoiding undesirable regulatory arbitrage across different jurisdictions and, concurrently, improving the international co-operation tools at supervisors' disposal.

The international authority spearheading the harmonisation of international financial regulation is the Basel Committee on Banking Supervision. By means of the agreements reached by this Committee, an initial regulation was laid down for credit institutions setting a minimum capital requirement of 8% of their overall risk-weighted assets (Basel I, 1988). Subsequently, in 2004, the regulation was refined (Basel II), improving the sensitivity of the risk estimation mechanisms and building in two new pillars: the self-assessment of risk by each institution in dialogue with the supervisor (Pillar II) and market discipline (Pillar III).

But neither of the two above reforms, transposed into Spanish legislation from European Union law, prevented the effects of the crisis that broke in 2008. The quality and quantity of banks' capital proved insufficient to absorb the losses arising in a context of turmoil, and regulations were not able to temper the procyclical behaviour of banks, which increased lending excessively during the expansionary phase and cut it substantially in the recession. That initially compounded the financial instability and subsequently worsened the effects and duration of the economic crisis.

Given the major challenges to financial market stability and the world economy that resulted from 2008, and following the political momentum provided by the major world leaders in November that year in Washington under the aegis of the G-20, the Basel Committee on Banking Supervision agreed in December 2010 on the "Global regulatory framework for more resilient banks and banking systems" (Basel III). This initiative seeks to pre-empt future crises and to improve international cooperation, while significantly reinforcing banks' capital requirements.

The European Union incorporated these agreements into its legal system through Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements of credit institutions and investment firms, amending Regulation (EU) 648/2012 and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, whose transposition to Spanish law began with Royal Decree-Law 14/2013 of 29 November 2013 on urgent measures for the adaptation of Spanish law to European Union regulations on the supervision and solvency of financial institutions, and which currently continues. These European Union rules are, in turn, of a purpose and scale that exceed the mere adoption of the Basel III Accord. For one thing, they further the objective of reducing the excessive dependency on credit rating agencies for the measurement of exposures to different risks. And for another, they make substantial progress towards the

creation of a genuine single banking regulation on solvency. This exercise in harmonisation will be vital in light of the setting-up of the Banking Union, which will rely firmly on this common financial regulation for the establishment of the single supervisory and resolution mechanisms for euro area credit institutions. Furthermore, lessening dependence on the external credit rating agencies is crucial for reinforcing solvency insofar as the financial crisis has highlighted how these agencies' analysis methods understate the risks inherent in certain assets.

In recent years Spain has witnessed at first hand the serious effects caused by bank crises. The non-viability of certain credit institutions without financial support required resolute public intervention to see through the clean-up and restructuring. Having made this effort, new prudential regulations must now be approved to ensure a framework in which our financial institutions may pursue their activities, which are vital for the economy, with the least risk possible to the country's financial stability.

## II

The main aim of this Law is to adapt our legal system to the regulatory changes being imposed internationally and within the European Union, furthering the transposition initiated by Royal Decree-Law 14/2013 of 29 November 2013. In this respect, Regulation (EU) No 575/2013 of 26 June 2013 and Directive 2013/36/EU of 26 June 2013 entail, as mentioned earlier, a substantial change to the regulations applicable to credit institutions, as they widely amend aspects such as the supervisory regime, capital requirements and sanctioning arrangements.

But this Law also sets about an undertaking viewed as a necessity for years, namely the recasting in a single text of the main rules for regulating and disciplining credit institutions. The very frequent amendments of the legislation in force have progressively impaired their intelligibility in such a way that the regulations ultimately lacked the minimal systematic rigour required to ensure their consistency as a whole and to provide for their proper application and interpretation. Therefore, the drafting of a single regulatory text – which incorporates, alongside the transposition of the Regulation recently enacted by the European Union, the diffuse and unconnected national rules governing this area – contributes decisively to enhancing the efficiency and quality of our financial law.

Accordingly, this Law contains the essence of the legal regime applicable to credit institutions, without prejudice to the presence of other special rules regulating specific aspects of their activity or the particular legal regime of a specific type of credit institution, as occurs with savings banks and credit cooperatives.

The structure of the text should be explained taking as a starting point its overlapping with Regulation (EU) No 575/2013 of 26 June 2013, its mission in transposing Directive 2013/36/EU of 26 June 2013, and the national provisions currently in force that need to be recast. The Regulation and the Directive are the fundamental legal regime governing credit

institutions' solvency and access to activity. This Law will regulate the general aspects of the legal regime of access to credit institution status, the functioning of credit institutions' governing bodies, and the supervisory and sanctioning instruments to be used by the authorities with a view to ensuring the full effectiveness of the regulation. The European Union Regulation, for its part, establishes the fundamental obligations of capital and solvency requirements along with institutions' proper management of risk.

Title I contains the general provisions of the legal regime governing credit institutions. It thus includes their definition, listing those institutions deemed to be credit institutions, stipulating the content of the activity whose pursuit is reserved exclusively for these institutions and detailing the sources of their legal regime.

In addition, the Title regulates other aspects which, owing to their specificity, are linked to the very nature of credit institutions and are implemented in the following chapters: the authorisation and withdrawal of licences; qualifying holdings; the suitability and incompatibilities of members of the board of directors or equivalent body; and corporate governance and remuneration policies.

The regulation makes substantial inroads into corporate governance. These reforms arise in light of the evidence that the prudential regulation of institutions should promote more efficient and optimal management practices for the pursuit of an activity as complex and fraught with risk as financial activity. Essentially, two areas are concerned: the establishment of efficient corporate governance systems and the pursuit of a remuneration policy more in step with institutions' medium-term risks.

While the core regulation governing credit institutions' solvency has, since 1 January 2014, been Regulation (EU) No 575/2013 of 26 June 2013, Title II includes the attendant provisions that should be retained in the national legal system. These provisions refer, firstly, to the assessment of institutions' capital adequacy for the risk they assume. This assessment complements the own funds requirements set in the Regulation with a clearly generalist and automatic policy, which might not take into account the singularities arising from each institution's risk profile. In short, it is for each institution to determine whether the capital requirements set in the Regulation are sufficient or whether, on the contrary, given their business model and level of exposure to risk, a greater level of capital is needed. The final decision on these requirements is taken in a dialogue between the supervisor and the institution, following the Basel Pillar II arrangement.

This Title also introduces the criteria the Banco de España should take into account in establishing potential liquidity requirements as part of the review of the strategies, procedures and systems set in place by institutions to comply with solvency regulations. This competence seeks to contribute to the prevention of liquidity crises, during which institutions have difficulty gaining access to markets, which ultimately impairs their solvency. It is, moreover, an individualised complement for each institution to the liquidity requirements that will be demanded from 2016 by virtue of the provisions laid down in the Regulation.

Thirdly, a set of Common Equity Tier 1 capital requirements additional to those established in Regulation (EU) No 575/2013 of 26 June 2013 is articulated. These are the so-called capital buffers. Two of these buffers are of a non-discretionary nature: the capital conservation buffer and that envisaged for global systemically important banks. In addition, the buffer for other systemically important institutions grants a degree of discretion to the Banco de España concerning the demands it makes of specific banks. These three buffers respond to the need to have capital supplements against unexpected losses or to cover risks arising due to the systemic nature of certain banks. Both the countercyclical and the systemic risk buffer are tools at the disposal of the Banco de España to soften the procyclical effect on credit of capital requirements and, where appropriate, to address the emergence of risks with the potential to affect the financial system as a whole. To counter possible non-compliance with the provisions regulating the capital buffers regime, a system based on restrictions on distributions and the drafting of a capital conservation plan is to be devised.

Under Title III and in line with the legislation currently in force, the Banco de España is designated as the supervisory authority of credit institutions. In that connection it is granted the necessary competences and powers to perform this function, the subjective and objective scope of its supervisory action is defined and it is given the capacity to take measures to ensure compliance with solvency regulations. In respect of accounting, it is envisaged that the Minister for Economic Affairs and Competitiveness may authorise the Banco de España, the CNMV (National Securities Market Commission) or the ICAC (Institute of Accounting and Auditing) to establish and amend the accounting rules and formats to which the financial statements of credit institutions and the institutions regulated under Article 84(1) of Securities Market Law 24/1988 of 28 July 1988 must adhere, as must consolidated groups of specific investment service firms and other entities. The granting of this authorisation is without prejudice to the reports that the ICAC must request in accounting planning matters.

Insofar as the activity of credit institutions is within an increasingly integrated environment, particularly at the European level, relations between the Banco de España and other supervisory authorities and, in particular, with the European Banking Authority, need to be regulated. In this context it should be stressed that, following the entry into force and full effectiveness of the Single Supervisory Mechanism in the European Union, the Banco de España will be exercising its credit institution-supervising functions in cooperation with, and without prejudice to the competences directly attributed to, the European Central Bank. This is in conformity with the provisions of Council Regulation (EU) No 1024/2013 of 15 October 2013 which entrusts to the European Central Bank specific tasks relating to the prudential supervision of credit institutions. The Single Supervisory Mechanism will play a crucial role in ensuring the consistent and effective application of the Union's prudential supervisory policies for credit institutions.

The Banco de España may access whatsoever information on credit institutions is needed to monitor the activities engaged in by these institutions. Such monitoring refers, in particular, to institutions' systems, procedures and strategies to comply with solvency

regulations, to the risks to which institutions may be exposed and which might impair their solvency, and to corporate governance and remuneration policy arrangements. The aim, in short, is the early detection of failures to comply with solvency regulations and of situations that might give rise in the future to such non-compliance and potentially jeopardise the stability of the financial system.

These supervisory tasks should be pursued within an orderly and systemic framework for which the Banco de España will annually prepare a supervisory programme. It is of vital importance to provide clear criteria to supervised institutions as to how solvency regulations and other types of regulations relating to the management and discipline of credit institutions should be applied.

The organisational complexity of institutions, which are in a group in which not necessarily regulated companies participate, makes it advisable that the supervisory scope of the Banco de España should be as broad as possible. The supervisory powers of the Banco de España in relation to branches should also be defined since, especially if European bank branches are involved, their parents will have been authorised and will be supervised in another Member State.

In the exercise of its powers, the Banco de España may be the supervisor of a subsidiary within a group or of the parent of a group. In that case, it is vital to ensure the necessary coordination with other supervisors and to provide for mechanisms such as joint decision-making or the formation of supervisory colleges that allow consistent and effective decisions for the entire group to be taken. Further, cooperation must be ensured between the Banco de España, the CNMV and the Directorate General for Insurance and Pension Funds, for those groups in which credit institutions, insurance corporations and investment firms pursue their activity.

In the event of a breach of solvency regulations, the Banco de España is empowered and authorised to intervene in the activity of the institution, introducing greater capital requirements, further provisions or restricting the distribution of dividends, inter alia. If the situation were exceptionally serious, the Banco de España might even place the institution under its control and replace its governing bodies.

Title IV sets out the sanctioning procedure applicable to credit institutions, following the format detailed by Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions. The necessary amendments are introduced to transpose Directive 2013/36/EU of 26 June 2013, chiefly concerning the inclusion of new penalties and the amendment of the amounts of the infringements applicable and the way in which they are calculated and publicised. Lesser, technical amendments have also been made, these being needed to update certain provisions of the rules on general administrative procedure currently in force.

The Law finally concludes with a series of provisions that contain, inter alia, the regime governing preference shares and the rules applicable to institutional protection schemes. A significant number of transitional rules are also detailed, having regard to the fact that the

European Union regulations being transposed provide for the staggered application of many of the related provisions, such as, for instance, those concerning the setting-up of capital buffers. Moreover, the composition of the Deposit Guarantee Fund Management Committee is modified to include representatives from the respective Ministries of Economic Affairs and Competitiveness, and of Finance and Public Administration.

### III

With regard to the final provisions, there is an extensive amendment to Securities Market Law 24/1988 of 28 July 1988. This amendment is in response to the extension to investment firms of the prudential supervision regime envisaged for credit institutions in Directive 2013/36/EU of 26 June 2013. Specifically, this regime is extended to all investment firms whose scope of activity is not confined solely to the provision of investment advisory services or to the reception and transmission of investors' orders without holding transferable funds or securities belonging to customers.

Hence, the board members of investment firms subject to the scope of application of Directive 2013/36/EU of 26 June 2013 come under the same regime of suitability and incompatibilities and of corporate governance as their counterparts in credit institutions.

Whereas the main solvency rule for investment firms is, as is the case for the solvency of credit institutions, Regulation (EU) No 575/2013 of 26 June 2013, these firms may evidence particular risks in respect of their activity that are not appropriately reflected in that Regulation. Accordingly, they are obliged to make a self-assessment of their capital and liquidity levels in order to determine whether it is necessary to maintain levels of own funds or liquidity higher than those laid down in the Regulation. The final decision on these requirements is determined through a dialogue between the CNMV and the investment firm.

In addition, the CNMV, like the Banco de España, is empowered to demand a series of additional Common Equity Tier 1 capital requirements, the so-called capital buffers. However, the capital buffers regime will not be applicable to those investment firms that do not engage in proprietary trading or in the underwriting of financial instruments or placing of financial instruments on a firm commitment basis. In the case of investment firms that are considered small and medium-sized enterprises, the CNMV may opt not to apply the capital conservation buffer and the countercyclical buffer if it considers that this does not entail a threat to the stability of the financial system.

The proper exercise of these functions by the CNMV requires a degree of coordination by this supervisory agency with other national and foreign supervisors. Accordingly, a substantial portion of the amendments to Law 24/1988 of 28 July 1988 are in response to this need to strengthen coordination.

Furthermore, the supervisory function of the CNMV should be carried out in an orderly and systematic framework, for which purpose this agency should annually draw up a



supervisory programme that provides supervised investment firms with clear criteria as to the application of the rules.

Mention may also be made of the adaptation of the sanctioning regime envisaged for investment firms. In this respect, the current regime is updated to include the pertinent infringements and penalties arising from a breach of solvency regulations.

In addition to the appropriate amendments for the proper transposition of Directive 2013/36/EU, the amendments to Law 24/1988 of 28 July 1988 include most notably the updating of the regulations on central counterparties to make them compatible with Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and their implementing rules, which came into force in 2012 and 2013. Additionally, the sanctioning regime applicable to the breach of European Union rules on short selling is improved. To this end, and for greater clarity and greater legal security, types of infringement are laid down that are expressly referred to in Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, which will be additional to the regime already in force operating on the basis of broader and more general types of infringement. Article 79 quater is also reworded to extend the customer information regime generally envisaged in Articles 79 bis and 79 ter to investment services that might be offered linked to other financial products. This will be without prejudice to the fact that those other services, such as mortgage lending, already have their own transparency and customer protection regulations. Thus, to maximise investor protection and ensure legal security and homogeneity in the transparency rules applicable to the marketing of investor services, the extension of this customer information regime is anticipated in Spain, in line with the European Union's regulatory plans for markets in financial instruments.

#### IV

The financial crisis has highlighted the need for public authorities to take an integrated view when regulating financial markets. The fact that the necessary steps are being taken within the European Union to create a Banking Union, entailing the unification of supervisory and resolution competences in the European arena, is proof that finance and, in particular, the regulation of credit institutions, requires harmonised, unitary legislation capable of setting down foundations in all Member States. The new European regulations attest to the aim to achieve a genuine internal financial market, and thereby prevent the dysfunctionalities to which regulatory and institutional dispersion gives rise. The very cross-border nature of credit institutions and their financial activity requires action by the public authorities, setting in place bodies that extend beyond Member States' borders, such as the Single Supervisory Mechanism and the Single Resolution Authority. Transferring this mindset to Spain, there is a blatant need for a basic regulation capable of ensuring the application of a common legal framework for credit institutions which, in turn, fully observes the European Union's framework.

A country's financial and credit system can hardly be divided into compartments since financial stability, and the country's possibilities of enjoying a fluid circulation of credit capable of setting and keeping the rest of its economic sectors in motion, depends on the position in which credit institutions find themselves, including those which, a priori, may not be systemic in nature. The regulations in this Law therefore observe the basic concept defined by the Constitutional Court over the course of recent years, grounded in the conviction that financial markets should be regulated by basic State legislation, in a unitary fashion, to avoid fragmentation and to ensure that the public authorities may, effectively, manage a highly globalised activity whose regulation and supervision now derives essentially from the action of European authorities and institutions.

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Repealing provision.

First final provision. Amendment of Securities Market Law 24/1988 of 28 July 1988.

Second final provision. Amendment of Law 13/1989 of 28 July 1988 on credit cooperatives.

Third final provision. Amendment of Law 1/1994 of 11 March 1994 on the legal regime for mutual guarantee companies.

Fourth final provision. Amendment of Law 41/1999 of 12 November 1999 on payment and securities settlement systems.

Fifth final provision. Amendment of Law 36/2003 of 11 November 2003 on economic reform measures.

Sixth final provision. Amendment of the consolidated text of the Private Insurance Law, enacted by Royal Legislative Decree 6/2004 of 29 October 2004.

Seventh final provision. Amendment of Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector legislation.

Eighth final provision. Amendment of the consolidated text of the Audit Law, enacted by Royal Legislative Decree 1/2011 of 1 July 2011.

Ninth final provision. Amendment of Royal Decree-Law 16/2011 of 14 October 2011 creating the Credit Institution Deposit Guarantee Fund (DGF).

Tenth final provision. Amendments to Law 26/2013 of 27 December 2013 on savings banks and banking foundations.

Eleventh final provision. Enabling provisions.

Twelfth final provision. Incorporation of European Union legislation.

Thirteenth final provision. Implementing regulations.

Fourteenth final provision. Entry into force.

ANNEX List of activities subject to mutual recognition

**TITLE I**  
**Credit institutions**

**CHAPTER I**  
**General provisions**

**Article 1.** *Credit institutions.*

1. Credit institutions are authorised companies whose activity consists of receiving deposits or other reimbursable funds from the public and of granting loans on their own account.

2. The following are considered to be credit institutions:

- a) Banks.
- b) Savings banks.
- c) Credit cooperatives.
- d) The ICO (Official Credit Institute).

**Article 2.** *Regulatory and disciplinary rules for credit institutions.*

1. The legal regime for credit institutions shall be that established by the regulatory and disciplinary rules. The following rules are considered as such:

a) This Law and its implementing provisions.

b) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

c) All other rules under the Spanish legal framework and under European Union Law that contain provisions specifically relating to credit institutions.

2. The rules regulating commercial-law firms shall apply to credit institutions insofar as they do not run counter to those referred to in the above paragraph and, in particular, to the special rules governing savings banks and credit cooperatives.

**Article 3.** *Vetted access to activity and name.*

1. The raising of repayable funds from the public, whatever their end-use, in the form of deposits, loans, sales of financial assets under repurchase agreements (repos) and similar, is reserved for credit institutions that have obtained the mandatory authorisation and are inscribed in the related register.

2. Credit institutions shall use their own generic names, which will be different for each type of credit institution, in keeping with regulatory provisions or as laid down in a specific law.

3. Any unauthorised natural or legal person not registered as a credit institution shall be prohibited from engaging in activities legally reserved for credit institutions and from using names proper to such institutions or whatsoever other names that may lead to them being mistaken for them.

4. Foreign credit institutions may use their original names in Spain provided this raises no doubts about their identity. Were there any danger of confusion, the Banco de España may demand some clarifying addition be included in the name.

5. The Mercantile Register and other public registers shall refuse the inscription of those institutions whose activity, corporate purpose or name is contrary to the provisions of this Article. Inscriptions made in breach of the foregoing shall be null and void as a matter of law, and shall be cancelled automatically or further to a request of the competent administrative body. This nullity shall not impair bona fide third parties' rights that have been acquired in compliance with the content of the related registers.

**Article 4.** *Competences of the Banco de España.*

1. The Banco de España shall exercise the competences attributed to it by the rules on the regulation and discipline of credit institutions and, where appropriate, on financial holding companies and mixed financial holding companies.

The Banco de España shall exercise its competences without prejudice to the functions attributed to the European Central Bank and in cooperation with this institution, in conformity with the provisions of Council Regulation (EU) No 1024/2013 of 15 October 2013 which entrusts to the European Central Bank specific tasks concerning policies relating to the prudential supervision of credit institutions.

2. In particular, it is for the Banco de España to:

a) Authorise the creation of credit institutions and the opening in Spain of branches of foreign credit institutions not authorised in a European Union Member State.

b) Authorise the creation of a foreign credit institution or the acquisition of a qualifying holding in an existing institution by a Spanish credit institution or group of credit institutions, if the foreign credit institution in question is to be formed or is domiciled in a non-European Union country.

c) Authorise amendments to credit institutions' constitutional documents, in the terms stipulated in the regulations laid down. In particular, amendments to constitutional documents where authorisation may be replaced by mandatory communication to the Banco de España may be determined for regulatory purposes.

d) Withdraw the authorisation granted to a credit institution in the instances provided for in Article 8.

e) Make the inscription in the registers referred to in Article 15 and manage those and the remaining registers envisaged in other regulatory and disciplinary rules.

f) Perform the supervisory and sanctioning function in respect of credit institutions and, where appropriate, of financial holding companies and mixed financial holding companies, to ensure compliance with regulatory and disciplinary rules.

g) Grant the authorisations envisaged in Regulation (EU) No 575/2013 of 26 June 2013 and, where appropriate, withdraw them.

h) Without prejudice to the remit of the CNMV, to monitor and oversee the application of Law 2/1981 of 25 March 1981 regulating the mortgage market.

i) Whatsoever other powers as may be laid down in law.

**Article 5.** *Protection of credit institution customers.*

1. The Ministry of Economic Affairs and Competitiveness, with the aim of protecting the legitimate interests of customers of banking – other than investment-related – services or products provided by credit institutions may dictate provisions relating to:

a) The pre-contractual information to be provided to customers, the information and content of the agreements and subsequent communications enabling follow-up thereon, so that they explicitly reflect with the utmost clarity the rights and obligations of the parties, the risks arising from the service or product for the customer and the remaining circumstances necessary for ensuring the transparency of the most relevant conditions of the services or products and for allowing customers to evaluate whether such conditions fit their needs and their financial position. To this end, agreements covering these services or products shall necessarily be entered into in writing or in an electronic or other durable format, and the Ministry of Economic Affairs and Competitiveness may, in particular, determine the contractual clauses that contracts on standard banking services or products must expressly address or provide for.

b) The transparency of the basic conditions of the marketing or selling of the banking services or products that credit institutions offer and, where appropriate, the duty to communicate – and how they should communicate – such conditions to their customers or to the Banco de España. Basic conditions of banking services or products requiring due compliance by credit institutions may also be laid down. In particular, they may only receive commission on or charge for services effectively requested or expressly accepted by a customer, and only on condition that they are for services actually provided or for expenses incurred that can be substantiated.

c) The principles and criteria to which the advertising of banking services or products shall be subject, and the means of administrative control thereof, so that it is clear, sufficient, objective and not misleading.

d) The sale of banking services or products electronically or by other remote means and the information which, for the purposes of the provisions of this Article, should feature on credit institutions' websites.

e) The scope of the rules laid down in this Article and their application to whatsoever agreements or operations of the nature envisaged in the rules, even if the institution party thereto does not have credit institution status.

2. In particular, in the selling of loans or credit, the Ministry of Economic Affairs and Competitiveness may issue rules promoting:

a) Proper attention to customers' income relative to the commitments they acquire on receiving a loan.

b) The proper and independent valuation of the real estate collateral backing the loans, contemplating mechanisms that avoid undue influence from the institution itself or from its subsidiaries on the valuation.

c) The consideration of different scenarios in respect of changes in variable interest rates on loans, the possibilities of hedging against such changes and this bearing in mind, moreover, the use or not of official reference indices.

d) The obtaining of and appropriate documentation on the applicant's relevant data.

e) Appropriate pre-contractual information and assistance for customers.

f) Adherence to data protection standards.

Without prejudice to freedom of contract, the Ministry of Economic Affairs and Competitiveness may, of its own accord or through the Banco de España, regularly publish, on an official basis, specific indices or reference interest rates that may be applied by credit institutions to variable rate loans, especially in the case of mortgage loans.

3. The provisions that the regional (autonomous) governments may issue in the exercise of their competences on the matters envisaged in this Article may not determine a level of protection less than that offered in the rules approved by the Ministry of Economic Affairs and Competitiveness. Furthermore, basic standardised information formats may be established, that may not be altered by regional government regulations, for the purposes of the proper transparency and uniformity of the information provided to customers on banking services or products.

4. The rules issued under the provisions of this Article shall be considered as pertaining to regulatory and disciplinary rules and shall be overseen by the Banco de España.

## **CHAPTER II**

### **Authorisation, registers and withdrawal of authorisation**

#### **Article 6.** *Authorisation.*

1. The Banco de España shall authorise the creation of credit institutions and the free provision of services by and creation of branches of credit institutions from non-European Union countries that seek to establish a presence in Spain under the terms provided for in the regulations. To this end, and prior to authorisation being granted, the Banco de España shall request, for those matters under their remit, a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), from the CNMV and from the Directorate General for Insurance and Pension Funds. If no decision is issued within the period stipulated in paragraph 8, the request shall be understood to be rejected.

2. The Banco de España shall notify the Ministry of Economic Affairs and Competitiveness of the initiation of the authorisation procedure, indicating the essential elements of the case to be processed and the conclusion thereof.

3. Authorisation for the creation of a credit institution shall be subject to prior consultation with the competent supervisory authority of the related European Union Member State in any of the following circumstances:

a) The credit institution is to be controlled by another credit institution, an investment firm or an insurance or reinsurance company authorised in that State.

b) The credit institution is to be controlled by the parent of a credit institution, of an investment firm or of an insurance or reinsurance company authorised in that State.

c) The credit institution is to be controlled by the same natural or legal persons that control a credit institution, an investment firm or an insurance or reinsurance company authorised in that State.

An institution shall be understood to be controlled by another when one or more of the cases regulated under Article 42 of the Commercial Code arise.

4. The consultation envisaged in the previous paragraph shall cover, in particular, the assessment of the suitability of the shareholders, members of the board of directors and managing directors and similar officers of the new institution or the parent, if financial holding companies or mixed financial holding companies are involved, and it may be repeated to ensure that these requirements continue to be met by Spanish credit institutions.

5. The Banco de España shall reciprocally address the consultations sent to it by the authorities responsible for authorising the credit institution from another Member State and, where appropriate, so too shall the CNMV or the Directorate General for Insurance and Pension



Funds. Moreover, ex officio and without unwarranted delays, it shall provide them with all the essential information for the intended authorisation.

6. For the purposes of the provisions of this Law, managing directors shall be deemed to include:

a) Those individuals in the credit institution performing senior management functions and reporting directly to the management board, to executive boards or to chief executive officers, and those managing the branches of foreign credit institutions in Spain.

b) Those individuals who, meeting the foregoing reporting requirements, restrict their senior management functions to a specific area of activity, provided that they are part of a management organisational structure that assumes day-to-day management of the institution at the highest level.

c) Those individuals with a senior management employment contract subject to Royal Decree 1382/1985 of 1 August 1985 regulating the special employment relationship of senior management staff.

7. For the purposes of the provisions of this Law, the board of directors shall be equated with the governing board of credit cooperatives and to whatsoever other equivalent management body of credit institutions.

8. The application for authorisation should be resolved within the six months following its reception at the Banco de España, or at the time at which the required documentation is completed and, in any event, within the 12 months following its reception. When the application is not resolved within the above-mentioned term, it may be understood to have been rejected.

Notwithstanding, the term to which the foregoing subparagraph refers shall be three months for applications for authorisation that come under the cases set out in Article 7(3).

#### **Article 7.** *Refusal of authorisation.*

1. Authorisation to create a credit institution shall be refused in the following instances:

a) If the institution lacks the minimum required capital, and appropriate organisational structure, a sound administrative and accounting structure, or appropriate internal control procedures ensuring the sound and prudent management of the institution.

b) If any of the members of its board of directors, a managing director or similar officer fail to meet suitability requirements.

c) If any of the members of its board of directors, a managing director or similar officer of its parent company, provided that the latter is a financial holding company or a mixed financial holding company, as laid down in Article 4(1)(20) and (21), respectively, of Regulation (EU) No 575/2013 of 26 June 2013, do not meet suitability requirements.

d) If suitable internal procedures for preventing money laundering and the financing of terrorism are lacking.

e) If it fails to meet any of the other requirements stipulated in the regulations for acquiring the status of credit institution.

2. Authorisation shall also be refused if, having regard to the need to ensure the sound and prudent management of the institution, the shareholders who are to have a qualifying holding are not considered suitable or, in the absence of shareholders with a qualifying holding, any of the 20 biggest shareholders are not considered suitable.

3. The authorisation of institutions referred to in Article 4(2) (b) may be refused in any of the following instances:

a) if, having regard to the credit institution's financial position or its management capacity, it is considered that the project may adversely affect it;

b) if, in light of the localisation and characteristics of the project, effective supervision of the group on a consolidated basis by the Banco de España cannot be ensured;

c) if the activity of a controlled entity is not subject to effective oversight by a national supervisory authority.

#### **Article 8.** *Withdrawal of authorisation.*

1. Withdrawal of the authorisation granted to a credit institution may, under the regulatory procedures envisaged, only be agreed upon in the following instances:

a) If the activities specific to its corporate purpose are actually interrupted for a period of over six months.

b) If the authorisation was obtained through false statements or through other irregular means.

c) If the conditions that gave rise to the authorisation are not met, unless otherwise provided for in the regulatory and disciplinary rules.

d) If the prudential requirements set in Parts Three, Four and Six of Regulation (EU) No 575/2013 of 26 June 2013, or imposed by virtue of Articles 42 and 68(2)(a) of this Law, cease to be fulfilled, or if it compromises the refundability of the funds entrusted to it by depositors or does not offer assurances as to being able to meet its obligations to creditors.

e) If the withdrawal penalty in the terms envisaged in Title IV is imposed.

f) If the assumption envisaged in Article 23 materialises.

g) If the institution is excluded from the Credit Institution Deposit Guarantee Fund.

h) If a court decision for the initiation of winding-up proceedings has been issued.

2. The authorisation of a branch of a credit institution of a non-European Union country shall be withdrawn if the authorisation of the credit institution itself is withdrawn. In the case of branches of a credit institution of a European Union Member State, authorisation shall be understood as withdrawn if the authorisation of the institution itself has been withdrawn by the competent authority of the home Member State.

3. In the case of branches of credit institutions authorised in another European Union Member State, the withdrawal of the authorisation shall be understood as replaced by the prohibition on it initiating new business in Spanish territory. Before adopting this decision, the Banco de España shall consult the competent authority of the Member State in question.

If the Banco de España is aware that a credit institution from another European Union Member State that is operating in Spain has had its authorisation withdrawn, it will immediately agree on the pertinent measures so that the institution may not initiate new business, and to safeguard depositors' interests.

4. The Banco de España shall notify the Ministry of Economic Affairs and Competitiveness of the withdrawal of the authorisation granted to a credit institution or branch.

5. In the event of withdrawal of the authorisation of a Spanish credit institution, the Banco de España shall immediately notify the competent authorities of the Member State in which the institution has a branch or operates under the freedom to provide services.

6. The withdrawal of the authorisation shall entail the winding-up of the institution and the initiation of the liquidation period, which will unfold in keeping with the rules and articles of association or other constitutional documents governing the institution.

Despite the withdrawal of the authorisation, under paragraph 1.h), the insolvency management may continue pursuing the activities of the credit institution that are necessary for its liquidation, under the terms previously authorised by the Banco de España.

7. Record of the withdrawal of the authorisation shall be made in all the related public registers and, as soon as the credit institution is notified, that shall entail the discontinuation of the activity for which it was authorised.

#### **Article 9. *Waiver of authorisation.***

Waiver of the authorisation granted to be a credit institution shall be communicated to the Banco de España, which shall expressly accept it unless there are well-founded reasons for considering that the discontinuation of activity may give rise to serious risks to financial stability.

**Article 10.** *Lapse of authorisation.*

1. A lapse of the authorisation to operate as a credit institution shall take place if, within the twelve months following the notification date, the institution has not commenced the specific activities proper to its corporate purpose owing to causes attributable to the institution.

2. The Banco de España shall expressly declare such lapse in keeping with the procedure established in the regulations.

**Article 11.** *Opening of branches and free provision of services abroad by Spanish credit institutions.*

1. When a credit institution seeks to open a branch abroad, it must submit a request first to the Banco de España, accompanying the application with the documentation required by the regulations.

The Banco de España shall notify the European Commission and the European Banking Authority of the number and nature of the cases in which the prior request has been rejected.

2. When a Spanish credit institution wishes to engage for the first time, under the freedom to provide services, in any type of activity abroad, it must first notify the Banco de España. When the services are to be provided in another European Union Member State, the Banco de España, within a month at most as from the reception of the notification, shall convey this information to the supervisory authority of the Member State in question.

3. Specific regulations shall be laid down for the procedure for the applications envisaged in this Article.

**Article 12.** *Opening of branches and free provision of services in Spain by credit institutions from another European Union Member State.*

1. Credit institutions authorised in another European Union Member State may, either through opening a branch or under the freedom to provide services, pursue in Spain the activities enjoying mutual recognition within the European Union that are annexed to this Law. To this end, the authorisation, constitutional documents and legal regime to which the institution is subject should enable it to pursue the activities in which it seeks to engage.

All of the places of business set up in Spain by a credit institution with headquarters in another Member State shall be regarded as a single branch.

2. The institutions referred to in the previous paragraph shall observe, in the pursuit of their activity in Spain, the regulatory and disciplinary provisions for credit institutions which, where appropriate, are applicable and whatsoever other provisions issued for reasons of general interest, whether at the central, regional or local government level.

3. Regulations shall establish the procedural rules and requirements needed for the inscription of the branch in the related Banco de España register, or for the start-up in Spain of its activity under the freedom to provide services.

4. Any financial institution of another European Union Member State, whether a subsidiary of a credit institution or a subsidiary common to several credit institutions, may, both through establishing a branch and through the provision of services, engage in the activities listed in the Annex provided that its constitutional documents allow the pursuit of such activities and meet the following conditions:

a) The parent or parents are authorised as credit institutions in the European Union Member State to whose legal system the financial institution is subject.

b) The activities involved are effectively pursued in the territory of the home Member State.

c) The parent or parents hold at least 90% of the voting rights linked to the ownership of holdings or shares in the financial institution.

d) The parent or parents have demonstrated, in the opinion of the competent supervisory authority of the home Member State, that they manage the financial institution soundly and prudently and they have stated, with the consent of the competent authorities of the home Member State, that they will jointly and severally guarantee the commitments assumed by the financial institution.

e) The financial institution is actually included, especially for the activities referred to in the Annex, in the consolidated supervision to which the parent – or each of its parents – is subject, in conformity with Article 57 and with Part One of Title II of Chapter 2 of Regulation (EU) No 575/2013 of 26 June 2013, in particular for the purposes of the own funds requirements laid down in Article 92 of that Regulation, for the monitoring of large exposures envisaged in Part Four of the Regulation and for the purposes of the limitation of qualifying holdings envisaged in Articles 89 and 90 of the Regulation.

If the competent authorities of the home Member State inform the Banco de España that the financial institution has ceased to comply with any of the requirements envisaged in this paragraph, the activities carried out by this institution will be subject to Spanish regulatory and disciplinary rules.

The provisions laid down in this paragraph shall likewise be applicable to the subsidiaries of the financial institutions contemplated therein.

**Article 13.** *Opening of branches and free provision of services in Spain by credit institutions from a non-European Union country.*

1. The establishment in Spain of branches of credit institutions authorised in non-European Union countries shall require authorisation from the Banco de España as stipulated

by the pertinent regulations. If no decision is issued within the period established the application shall be understood to be rejected.

The Banco de España shall notify the European Commission, the European Banking Authority and the European Banking Committee of all authorisations of branches granted to credit institutions whose central management is in a non-European Union country.

2. The free provision of services without a branch in Spain by credit institutions from a non-European Union country shall be subject to prior authorisation by the Banco de España as stipulated by the pertinent regulations.

**Article 14.** *Agents of credit institutions.*

Regulations may be laid down setting the requirements to be met by those who habitually act as agents in Spain of credit institutions, and the conditions to which they shall be subject in the pursuit of their activity.

**Article 15.** *Registers of the Banco de España.*

1. In order to pursue their activities, credit institutions must be inscribed in the Banco de España register of credit institutions. The inscription shall be made, once the mandatory authorisation has been obtained and following their incorporation and inscription in the corresponding public register according to the nature of the institution.

2. Likewise, the following shall be inscribed in the Register of credit institutions, including most notably:

a) Branches of credit institutions authorised in another European Union Member State which pursue their activity in Spain.

b) Branches of foreign credit institutions not authorised in a European Union Member State.

c) The free provision of services by credit institutions authorised in another European Union Member State and those of third countries that have communicated, in conformity with Article 13, their pursuit of activities under the freedom to provide services.

3. The inscriptions in the Register of credit institutions to which points a) and b) above refer, and the removal of institutions therefrom, shall be published in the “Boletín Oficial del Estado” (Official State Gazette), notified to the European Banking Authority and made available on the Banco de España website.

4. In addition, the Banco de España shall be entrusted with the inscription and management of:

a) The Register of parent companies of Spanish credit institutions when these institutions are financial holding companies or mixed financial holding companies, in

accordance with Article 4(1)(20) and (21), respectively, of Regulation (EU) No 575/2013, of 26 June 2013.

b) The Register of agents of credit institutions.

### **CHAPTER III**

#### **Qualifying holdings**

##### **Article 16.** *Qualifying holding.*

1. A qualifying holding in a Spanish credit institution shall be understood to mean a direct or indirect holding representing at least 10% of the capital or of the voting rights of the institution.

A holding which, without reaching the aforementioned percentage, enables notable influence to be exerted over the institution shall also have the consideration of a qualifying holding.

Given the characteristics of the different types of credit institution, regulations shall be laid down to determine when it should be presumed that a natural or legal person may be exercising such significant influence, bearing in mind to this end, inter alia, the power to appoint or remove from office any member of its board of directors.

2. The provisions of this chapter for credit institutions shall be understood without prejudice to the application of the rules on takeover bids and information on qualifying holdings in Securities Market Law 24/1988 of 28 July 1988.

##### **Article 17.** *Obligation to notify acquisition of or increase in qualifying holdings.*

1. Any legal or natural person that, of their own accord or in concert with others (hereinafter, the potential acquirer), has resolved to purchase, directly or indirectly, a qualifying holding in a Spanish credit institution, or to increase, directly or indirectly, a qualifying holding in a Spanish credit institution, with the result that either the percentage of voting rights or capital held is equal to or greater than 20%, 30% or 50%, or that, by virtue of the acquisition, could come to control the credit institution (hereinafter, the proposed acquisition), shall notify this beforehand to the Banco de España, indicating the amount of the envisaged holding and including all the information prescribed in the regulations. This information must be pertinent to the evaluation, and proportionate and appropriate to the nature of the potential acquirer and of the proposed acquisition.

A control relationship shall be understood to exist for the purposes of this chapter in the event that any of the cases envisaged in Article 42 of the Commercial Code prevail.

2. When the Banco de España receives several proposals to acquire or increase qualifying holdings in a single credit institution, it shall treat all potential acquirers in a non-discriminatory fashion.

3. Any legal or natural person that, of their own accord or in concert with others has purchased, directly or indirectly, a holding in a Spanish credit institution, with the result that the percentage of voting rights or capital held is equal to or greater than 5%, shall communicate this immediately in writing to the Banco de España and to the related credit institution, indicating the amount of the holding attained.

4. For the purposes of the provisions of this Article, account will not be taken of the voting rights or the capital resulting from the underwriting of an issue or placement of financial instruments, or from placement of financial instruments on a firm commitment basis, provided that such rights are not exercised to intervene in the management of the issuer and are transferred within one year from their acquisition.

**Article 18.** *Evaluation of the proposed acquisition.*

1. On examining the notification referred to in paragraph 1 of the foregoing Article, the Banco de España, further to a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences acting within its remit, with the aim of ensuring the sound and prudent management of the credit institution in which the acquisition is proposed, and having regard to the possible influence of the potential acquirer in this connection, shall evaluate the suitability of the acquirer and the financial soundness of the proposed acquisition.

2. Regulations shall be laid down determining the criteria and procedure governing this evaluation and the period within which it shall be performed.

**Article 19.** *Collaboration between supervisory authorities.*

1. In performing the evaluation referred to in the foregoing Article, the Banco de España should consult the authorities responsible for supervision in other European Union Member States if the potential acquirer is:

a) a credit institution, an insurance or reinsurance company, an investment firm or a management company of collective investment institutions or of pension funds, authorised in another European Union Member State;

b) the parent company of a credit institution, of an insurance or reinsurance company, of an investment firm or of a management company of collective investment institutions or of pension funds, authorised in another European Union Member State;

c) a natural or legal person that exercises control of a credit institution, an insurance or reinsurance company, an investment firm or a management company of collective



investment institutions or of pension funds, authorised in another European Union Member State;

2. The Banco de España, in performing the evaluation referred to in the foregoing paragraph, shall consult, within their remit, the CNMV and the Directorate General of Insurance and Pension Funds.

3. The Banco de España shall reciprocally attend to the consultations addressed to it by the authorities responsible for the supervision of the potential acquirers from other European Union Member States and, where appropriate, from the CNMV and the Directorate General of Insurance and Pension Funds. Moreover, it shall provide them ex officio and without unwarranted delays with all the information essential for the evaluation, along with any other information they may request, provided this is pertinent to the evaluation.

4. The consultation envisaged in the foregoing paragraphs shall, in particular, cover the evaluation of the suitability of the potential acquirers and the good repute and experience of the members of the board of directors, managing directors and similar officers which, if any, are going to be appointed at the institution it is sought to acquire; and, in particular, the evaluation of the members that hold any of the offices mentioned in another company in the same group. The above-mentioned consultation may be reiterated for the purposes of evaluation by Spanish credit institutions of ongoing compliance by the office-holders in question.

5. The decisions adopted by the Banco de España in relation to the proposed acquisition should mention the observations or reservations, if any, expressed by the competent authority responsible for the acquirer.

**Article 20.** *Effects of non-fulfilment of obligations.*

The acquisition of qualifying holdings without having previously notified the Banco de España and those transacted without the period for their evaluation having elapsed or with the express opposition of the Banco de España, will cause the following effects:

a) The voting rights relating to irregularly acquired holdings may not be exercised. If, however, they were to be exercised, the votes issued in breach of the foregoing would be null and void and the resolutions adopted would be legally challengeable if the votes relating to the irregularly acquired holdings were a determining factor for their adoption, according to the provisions of Chapter IX of the consolidated text of the Share Capital Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, the Banco de España being authorised to this end.

b) Where necessary, the intervention of the institution or the replacement of its directors shall be resolved, in accordance with the provisions of Title III.

c) The penalties envisaged in Title IV shall be imposed.

**Article 21.** *Reduction in qualifying holdings.*

Any legal or natural persons that decide, directly or indirectly, to cease to have a qualifying holding in a credit institution shall notify the Banco de España beforehand, indicating the amount of their envisaged holding. Likewise, they shall notify the Banco de España if they have decided to reduce their qualifying holding to the extent that the percentage of voting rights or of capital held falls below 20%, 30% or 50% or entails the loss of control of the credit institution.

Failure to comply with this obligation may be penalised in the terms laid down in Title IV.

**Article 22.** *Reporting and communication obligations of credit institutions.*

1. Credit institutions shall notify the Banco de España of any acquisitions or disposals of holdings in their capital that cross any of the levels indicated in Articles 16, 17 and 21, as soon as they become aware of same.

2. In addition, credit institutions shall inform the Banco de España, as and when established in the regulations, about the composition of their shareholder structure and any changes arising therein. This information shall necessarily cover that relating to the holdings of other financial institutions in their capital, whatever the amount.

**Article 23.** *Measures to ensure the sound and prudent management of the institution.*

When there are sound and substantiated reasons to consider that the influence exerted by persons holding a qualifying holding in a credit institution may be to the detriment of the institution's sound and prudent management, seriously impairing its financial position, the Banco de España may adopt one or more of the following measures:

a) Those envisaged in points a) and b) of Article 20, although the suspension of voting rights may not exceed three years.

b) Exceptionally, withdrawal of authorisation.

Further, the penalties applicable under the provisions of Title IV may be imposed.

## **CHAPTER IV**

### **Suitability, incompatibilities and register of senior officers**

**Article 24.** *Suitability requirements.*

1. Credit institutions shall have a board of directors made up of individuals meeting the necessary suitability requirements to hold such office. In particular, they shall have good

commercial and professional repute, suitable knowledge and experience to perform their duties, and a readiness to ensure sound governance of the institution.

The general composition of the board of directors as a whole should bring together sufficient knowledge, competences and experience in the governance of credit institutions as to properly understand the activities of the institution, including its main risks, and to ensure the effective capacity of the board of directors to take decisions independently and autonomously to the benefit of the institution. In any event, there should be assurances that board member selection procedures promote a diversity of experience and knowledge, facilitate the selection of female board members and, generally, are free from implicit bias that may entail any degree of discrimination.

2. The foregoing requirements of good repute, knowledge and experience shall likewise apply for managing directors or similar officers, and for those in charge of internal control functions and other key posts in the day-to-day running of the credit institution's financial activity. These requirements shall also be demanded of natural persons representing directors on the board who are legal persons. They shall likewise apply to persons who effectively determine the business approach of branches of credit institutions not authorised in a European Union Member State.

3. For the purposes of the provisions of the foregoing paragraphs:

a) Good repute is attributed to those who have shown a personal, commercial and professional conduct that casts no doubt on their ability to pursue sound and prudent management of the institution. To assess good repute, all information available should be considered, in keeping with the parameters set in the regulations laid down.

b) Suitable knowledge and experience to perform their duties in credit institutions are attributed to those who have the appropriate skills level and profile, in particular in the banking and financial services areas, and practical experience from their previous positions over sufficient periods of time.

c) To assess the ability of the members of the board of directors to exercise good governance of the institution, the existence of potential conflicts of interest and the ability to dedicate sufficient time to perform the attendant functions shall be taken into account.

**Article 25.** *Supervision of suitability requirements.*

1. Credit institutions and the branches of credit institutions not authorised in a European Union Member State should have, commensurate with the nature, scale and complexity of their activities, suitable internal units and procedures to carry out the ongoing selection and assessment of officers subject to the suitability regime provided for in the previous Article.

Credit institutions shall likewise identify the key posts for the day-to-day running of their financial activity and those in charge of internal control functions, maintaining for the Banco

de España an updated list of the individuals performing such functions, the assessment of suitability made by the institution and the attendant substantiating documentation.

2. The assessment of suitability requirements shall be both by the credit institution itself and, where appropriate, by its promoters, or by the acquirer of a qualifying holding, if this were the case, and, when appropriate, by the Banco de España.

3. Credit institutions should seek at all times to ensure compliance with the suitability requirements envisaged in this chapter. To this end, the Banco de España shall call for the temporary suspension or definitive removal from office of the post-holders envisaged in the previous Article or for rectification of the deficiencies identified in the event of a lack of suitable good repute, knowledge or experience or of the ability to exercise good governance.

If the institution does not fulfil these requirements within the period stipulated by the Banco de España, the latter may resolve to temporarily suspend or definitively remove from office the related officer, in conformity with the procedure laid down in Chapter V of Title III. And this without prejudice to imposing the related penalties provided for in Title IV.

**Article 26.** *Incompatibilities and limitations regime.*

1. The Banco de España shall determine the maximum number of posts a member of the board of directors or a managing director or similar officer may occupy simultaneously, taking into account the particular circumstances of the credit institution and the nature, scale and complexity of its activities.

Except in the case of directors designated under a measure involving the replacement of directors envisaged in Chapter V of Title III, members of the board of directors and managing directors and similar officers of larger, more complex or more singular credit institutions in terms of the criteria in the foregoing paragraph may not occupy at the same time more posts than those foreseen in any one of the following combinations:

- a) An executive position along with two non-executive positions.
- b) Four non-executive positions.

Executive positions shall be understood to be those involving the performance of management functions, whatever the legal relationship attributing these functions to them.

2. For the purposes of the provisions of the previous paragraph, the following shall count as a single position:

- a) The executive or non-executive posts held within a single group.
- b) The executive or non-executive posts held within:

1º- institutions forming part of the same institutional protection scheme, provided that the conditions laid down in Article 113(7) of Regulation (EU) No 575/2013 of 26 June 2013 are met, or;

2º. commercial-law firms in which the institution has a qualifying holding.

3. In determining the maximum number of posts, those held in not-for-profit organisations or institutions or those not pursuing commercial ends shall not count.

4. The Banco de España may authorise members of the board of directors and managing directors or similar officers mentioned in paragraph 1 to occupy an additional non-executive post if it considers that this does not prevent the proper pursuit of their activities in the credit institution. This authorisation shall be communicated to the European Banking Authority.

5. Persons occupying the posts referred to in the previous paragraphs may not obtain loans or guarantees from the credit institution in whose management or administration they are involved above the limit and under the terms set in the regulations laid down, unless expressly authorised by the Banco de España.

**Article 27.** *Register of senior officers.*

1. Without prejudice to their prior inscription in the Mercantile Register, the exercise of the functions of a member of the board of directors or managing director or similar officer of a credit institution or of the branches of foreign credit institutions shall require their prior inscription in the Banco de España Register of senior officers.

2. Prior to inscription in the Register of senior officers, the Banco de España shall verify the compliance by those concerned with the requirements laid down in this Law.

3. In addition, the Banco de España shall be entrusted with the inscription and management of the Register of directors and managing directors or similar officers of parent institutions when such institutions are financial holding companies or mixed financial holding companies, in accordance with Article 4(1)(20) and (21), respectively, of Regulation (EU) No 575/2013 of 26 June 2013.

## **CHAPTER V**

### **Corporate governance and remuneration policy**

**Article 28.** *Corporate governance rules.*

Credit institutions shall pursue their activity observing the corporate governance rules laid down in this Law and in other applicable legislation.

**Article 29.** *Corporate governance system.*

1. Credit institutions and consolidated groups of credit institutions shall have robust corporate governance arrangements, including:

a) A clear organisational structure with well-defined, transparent and consistent lines of responsibility.

b) Effective procedures to identify, manage, monitor and report the risks to which they are or might be exposed.

c) Adequate internal control mechanisms, including sound administration and accounting procedures.

d) Remuneration policies and practices consistent with and conducive to sound and effective risk management.

The arrangements, procedures and mechanisms envisaged in this paragraph shall be exhaustive and proportionate to the nature, scale and complexity of the risks inherent in the institution's business model and activities. Further, they shall observe the technical criteria relating to the organisation and treatment of risks laid down in the regulations.

2. The board of directors of credit institutions shall define a corporate governance system that ensures sound and prudent management of the institution, and that includes an appropriate distribution of functions in the organisation and the prevention of conflicts of interest. The board of directors shall monitor the application of this system and be accountable for it. In this connection it should control and periodically evaluate its effectiveness and adopt the appropriate measures to remedy its shortcomings.

3. The following functions may not be delegated by the board of directors:

a) The monitoring, control and periodic evaluation of the effectiveness of the corporate governance system and the adoption of the appropriate measures to remedy, where necessary, its shortcomings.

b) To assume responsibility for the administration and management of the institution, and the approval and monitoring of the application of its strategic objectives, its risk strategy and its internal governance.

c) To ensure the integrity of the accounting and financial reporting systems, including financial and operational control and compliance with applicable legislation.

d) To oversee the disclosure of information and communications relating to the credit institution.

e) To ensure the effective supervision of senior management.

4. The chair of the board of directors may not simultaneously hold the post of chief executive officer, unless the institution justifies this and the Banco de España authorises it.

5. Credit institutions shall have a website on which they shall disseminate the public information envisaged in this chapter and communicate how they are complying with corporate governance obligations, in keeping with the attendant regulations laid down.

6. Likewise, as part of governance and organisational structure procedures, credit institutions and consolidated groups of credit institutions that provide investment services shall observe the internal organisation requirements set out in Article 70 ter.2 of Securities Market Law 24/1988 of 28 July 1988, with the specifications, if any, that are laid down in regulations.

The adoption of such measures is understood without prejudice to the need to define and apply those other organisational policies and procedures which, in specific relation to the provision of investment services, are required of those institutions in application of the specific securities market regulations.

**Article 30.** *General Viability Plan.*

As part of the governance and organisational structure procedures referred to in paragraph 1 of the foregoing Article, credit institutions and consolidated groups of credit institutions shall draw up and keep updated a General Viability Plan that envisages the measures to be adopted in order to restore the viability and financial soundness of institutions should they undergo any significant impairment. The Plan shall be subject to approval by the Banco de España, which may require the amendment of its content and, should it consider it insufficient, may impose on institutions the measures envisaged in Article 24 of Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions. Regulations shall specify the content to be included in the General Viability Plan.

**Article 31.** *Appointments committee.*

1. Credit institutions shall set up an appointments committee, made up of members of the board of directors who do not perform executive functions at the institution. At least one-third of these members and, in any case the chair, should be independent directors.

The Banco de España may determine that certain institutions, in light of their size, internal organisation, nature, scope or limited complexity of their activities, may set up the appointments committee jointly with the remunerations committee.

2. Savings banks shall in any event establish a remunerations and appointments committee in conformity with their own rules. This committee shall exercise the competences and functions attributed to the remunerations and appointments committees envisaged in this chapter.

3. The appointments committee shall set a representation target for the gender least represented on the board of directors and lay down guidelines on how to attain this target.

**Article 32.** *Remuneration policy.*

1. Credit institutions, on setting and applying their overall remuneration policy, including wages and discretionary pension benefits, for staff categories whose professional activities significantly bear on the risk profile of the institution, its group, parent or subsidiaries, shall conform to the principles established in Article 33 in a manner commensurate with their size, their internal organisation and the nature, scope and complexity of their activities. In particular, these principles shall be applied to senior executives, employees who assume risks, those who perform control functions and any staff receiving overall remuneration which is included in the same remuneration bracket as that of senior management and employees who assume risks, whose professional activities bear significantly on the institution's risk profile.

2. Credit institutions shall submit to the Banco de España whatsoever information the latter requires of them to verify compliance with this obligation and, in particular, they shall submit a list indicating the staff categories whose professional activities bear significantly on their risk profile. This list shall be submitted annually and, in any event, whenever there have been significant changes. The Banco de España shall determine how this list is to be presented.

3. Without prejudice to the obligations contained in Article 450 of Regulation (EU) No 575/2013 of 26 June 2013, credit institutions shall make public the total remuneration earned in each business year by each board member.

4. The provisions laid down in this Article, and in Articles 33, 34, 35 and 36, shall be applicable to institutions at the level of the group, parent and subsidiary, including those established in offshore financial centres.

**Article 33.** *General remuneration policy principles.*

1. Remuneration policy for the staff categories referred to in Article 32(1) shall be determined in keeping with the following general principles:

a) It shall promote and be consistent with sound and effective risk management, and it shall not encourage risk-taking that exceeds the level of tolerated risk of the institution.

b) It shall be consistent with the corporate strategy, objectives, values and long-term interests of the institution and shall include measures to avoid conflicts of interests.

c) Staff performing control functions within the credit institution shall be independent from the business units they oversee, have the necessary authority to perform their functions and be remunerated in accordance with the attainment of targets related to their functions, irrespective of the performance of the business areas they control.

d) The remuneration of senior executives entrusted with risk management and with compliance functions shall be overseen directly by the remunerations committee.

e) A clear distinction shall be drawn between the criteria for setting:



1.- fixed remuneration, which should chiefly reflect relevant professional experience and the level of responsibility in the organisation, as set out in the corresponding job description as part of the terms of employment; and

2.- variable remuneration, which should reflect not only a sustainable and risk-adjusted performance but also a performance in excess of that required to meet the job description as part of the terms of employment.

2. The institution's board of directors shall adopt and periodically review the general remuneration policy principles, and shall be responsible for overseeing their application.

In addition, remuneration policy shall be subject, at least once a year, to a central and independent internal evaluation, for the purposes of verifying whether the remuneration guidelines and procedures adopted by the board of directors in its oversight role are being fulfilled.

3. Remuneration policy for the credit institution's board members shall be submitted for approval to the annual general meeting, general assembly or equivalent body, under the same terms as set for listed companies under mercantile legislation.

**Article 34.** *Variable remuneration.*

1. For the staff categories referred to in Article 32(1), the following principles shall apply to variable remuneration:

a) Where it is performance-related, total remuneration shall be based on a combined assessment of individual performance, considering both financial and non-financial criteria, and business unit and institution-wide performance.

b) The performance assessment shall be set in a multi-year framework so as to ensure that the assessment process is based on long-term performance and that the actual payment of performance-based remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks.

c) The total variable remuneration must not limit the ability of the institution to strengthen its capital base.

d) Guaranteed variable remuneration is not consistent with sound risk management or with the pay-for-performance principle and shall not be a part of prospective remuneration plans.

e) Guaranteed variable remuneration shall be exceptional, it shall be used only for new hires and when the institution has a sound and strong capital base, and shall be limited to the first year of employment.

f) Fixed and variable components of total remuneration shall be appropriately balanced. The fixed component shall represent a sufficiently high proportion of the total

remuneration so as to ensure optimum flexibility in application of the variable components, including the possibility of no variable components being paid.

g) Institutions shall set appropriate ratios between the fixed and variable components of total remuneration, applying the following principles:

1.- the variable component shall not exceed 100% of the fixed component of each individual's total remuneration;

2.- however, the institution's Annual General Meeting may approve a higher maximum percentage, provided the variable component does not exceed 200% of the fixed component. Approval of the higher level of variable remuneration shall be by the following procedure:

i) The institution's Annual General Meeting shall take its decision on the basis of a detailed recommendation from the board of directors or equivalent body that sets out the reasons for and scope of the decision and includes the number of staff affected and their posts, as well as the foreseeable effect on the institution maintaining a sound capital base.

ii) The institution's Annual General Meeting shall adopt its decision by a majority of at least two-thirds, provided at least half the entitled shares or equivalent voting rights are present or represented in the vote. If this quorum is not possible, the resolution shall be adopted by a majority of at least three-quarters of the entitled share capital present or represented.

iii) The board of directors or equivalent body shall notify all shareholders sufficiently in advance of the matter to be submitted for approval.

iv) The board of directors or equivalent body shall immediately notify the Banco de España of the recommendation addressed to the Annual General Meeting, including the higher level of the variable component of remuneration proposed and its justification, and shall vouch that that level does not affect the obligations of the institution envisaged in the solvency rules, with particular regard to the institution's own funds obligations.

v) The board of directors or equivalent body shall immediately notify the Banco de España of the decision adopted in this respect by the Annual General Meeting, including the higher maximum percentage of the variable component of remuneration approved. The Banco de España shall use the information received to benchmark the practices of institutions in that regard, and shall provide this information to the European Banking Authority.

vi) Staff directly affected by the higher maximum levels of variable remuneration shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders of the institution, and their shares shall be deducted from the share capital for the calculation of the majority of votes needed in each case in the resolutions referring to the application of higher maximum levels of variable remuneration.

References in this sub-indent to shareholders shall likewise apply to members of the general assemblies of savings banks and credit cooperatives.

3.- The Banco de España may authorise institutions to apply a notional discount rate of 25% of total variable remuneration, in accordance with the European Banking Authority's guideline, provided it is paid in instruments that are deferred for a period of five years or more. The Banco de España may set a lower maximum percentage.

h) Payments relating to the early termination of a contract shall reflect performance over time and shall not reward failure or misconduct. The Banco de España may define those cases that can lead to a reduction in the amount of the aforementioned payments relating to early termination.

i) Remuneration packages related to compensation or buy-outs from contracts in previous employment shall align with the long-term interests of the institution, duly including retention, deferral, performance and clawback arrangements.

j) Performance assessment with a view to calculating the variable components of remuneration shall include an adjustment for all types of current and future risks, taking into account the cost of the capital and liquidity required.

k) The allocation of the variable remuneration components within the institution shall also take into account all types of current and future risks.

l) A substantial portion – and in any event at least 50% – of any variable remuneration, whether deferred or not, shall be set striking a balance between:

1.- shares or equivalent ownership interests, subject to the legal structure of the institution concerned, or share-linked instruments or equivalent non-cash instruments in the case of a non-listed credit institution; and

2.- where possible, other instruments that may be determined by the Banco de España, within the meaning of Article 52 or 63 of Regulation (EU) No 575/2013 of 26 June 2013, or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, but which in each case adequately reflect the credit quality of the institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

The instruments referred to in this paragraph shall be subject to an appropriate retention policy designed to align incentives with the long-term interests of the credit institution. The Banco de España may place restrictions on the types and designs of those instruments or even prohibit certain instruments.

The provisions of this point shall be applicable to both the portion of the variable remuneration component deferred in accordance with point (m) and the portion of the variable remuneration component not deferred.

m) A substantial portion – and in any event at least 40% – of the variable remuneration component shall be deferred over a period of not less than three to five years and shall be

correctly aligned with the nature of the business, its risks and the activities of the member of staff in question.

Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred. The length of the deferral period shall be established bearing in mind the business cycle, the nature of the business, its risks and the activities of the member of staff in question.

n) The variable remuneration, including the deferred portion, shall be paid or vested only if it is sustainable according to the financial situation of the institution as a whole, and justified on the basis of the performance of the institution, the business unit and the individual concerned.

Without prejudice to the general principles of contract and labour law, the total variable remuneration shall be considerably reduced where the financial performance of the institution is subdued or negative, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

Up to 100 % of the total variable remuneration shall be subject to malus or clawback arrangements. Institutions shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member participated in or was responsible for conduct which resulted in significant losses to the institution and failed to meet appropriate standards of fitness and propriety.

ñ) Pension policy shall be in keeping with the business strategy, objectives, values and long-term interests of the institution.

If the employee leaves the institution before retirement, discretionary pension benefits shall be held by the institution for a period of five years in the form of instruments such as those referred to in point (l). When an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments such as those referred to in point (l), subject to a five-year retention period.

o) Staff members may not use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

p) Variable remuneration shall not be paid through instruments or methods that facilitate non-compliance with regulatory and disciplinary rules.

2. The regulations shall provide for the implementation of the principles envisaged in this Article.

**Article 35.** *Credit institutions that receive public financial support.*

In the case of credit institutions that receive public financial support, the following principles, in addition to those laid down in Article 33, shall be applied:

a) Variable remuneration shall be strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support.

b) Institutions shall be required to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, setting limits to the remuneration of the members of the institution's board of directors and executives.

c) The members of the board of directors of credit institutions shall not receive variable remuneration unless justified.

**Article 36.** *Remunerations committee.*

1. Credit institutions shall set up a remunerations committee made up of members of the board of directors who do not perform executive functions in the institution. At least one-third of these members, and in any event the chair, shall be independent directors.

2. The Banco de España may determine that certain institutions, on the basis of their size, internal organisation, nature, scope or the scant complexity of their activities, may set up the remunerations committee jointly with the appointments committee.

**Article 37.** *Responsibility in risk management.*

1. The board of directors is responsible for the risks a credit institution assumes. To this end, credit institutions shall establish effective reporting channels to the board of directors on the institution's risk management policies and all the major risks the institution faces.

2. In exercising its responsibility in relation to risk management, the board of directors shall:

a) Dedicate sufficient time to considering risk-related matters. In particular, it shall participate actively in the management of all substantial risks envisaged in solvency regulations, it shall ensure that appropriate resources are allocated for risk management, and it shall participate, in particular, in the valuation of assets, the use of external credit ratings and internal models relating to those risks.

b) Approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks to which the institution is or may be exposed, including those posed by the macroeconomic environment in which it operates in relation to the stage of the business cycle.

**Article 38.** *Risk management function and risk committee.*

1. Credit institutions shall have a unit or body that assumes the risk management function proportionate to the nature, scale and complexity of their activities, but is independent from operational functions, and that has sufficient authority, rank and resources, and enjoys timely access to the board of directors.

2. The Banco de España shall determine those institutions which, on the basis of their size, internal organisation and the nature, scale and complexity of their activities, should establish a risk committee. This committee shall be made up of members of the board of directors who do not perform executive functions and who have the appropriate knowledge, capacity and experience to fully understand and oversee the risk strategy and the institution's propensity to risk. At least one-third of these members, and in any event the chair, shall be independent directors.

3. The institutions which, in the opinion of the Banco de España, do not have to establish a risk committee, shall set up mixed audit committees that shall assume the corresponding functions of the risk committee.

## **TITLE II**

### **Solvency of credit institutions**

#### **CHAPTER I**

#### **General provisions**

#### **Article 39.** *Solvency regulations.*

This Law and its implementing provisions constitute the solvency regulations for credit institutions envisaged in Regulation (EU) No 575/2013 of 26 June 2013.

#### **Article 40.** *Area of application.*

1. The solvency regulations shall apply to:

a) Credit institutions.

b) Consolidated groups and subgroups of credit institutions, encompassing financial institutions, including asset management companies and companies defined in paragraph 26 of Article 4(1) of Regulation (EU) No 575/2013 of 26 June 2013 included in those groups or subgroups.

c) Financial holding companies and mixed financial holding companies.

2. For the purposes of the preceding paragraph, management companies of collective investment institutions, venture capital management companies and self-managed companies and funds shall be considered asset management companies.

Moreover, financial institutions shall be understood to include mortgage securitisation special purpose entity and securitisation special purpose entity management companies.

## **CHAPTER II**

### **Internal capital and liquidity**

**Article 41.** *Internal capital adequacy assessment.*

Consolidated groups of credit institutions and credit institutions that do not belong to consolidated groups shall have in place specific sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider appropriate to cover the nature and level of the risks to which they are or might be exposed. Those strategies and processes shall be subject to regular internal review, to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the business of the credit institution concerned.

**Article 42.** *Liquidity.*

To set the appropriate level of liquidity requirements for credit institutions, the Banco de España shall assess:

- a) The institutions' specific business model.
- b) Their governance systems, processes and arrangements referred to in Article 29.
- c) The results of the risk assessment and supervision performed in accordance with Article 52.
- d) Any systemic liquidity risk that might undermine the integrity of the financial markets.

## **CHAPTER III**

### **Capital buffers**

**Article 43.** *Combined buffer requirement.*

1. Credit institutions must, at all times, meet the combined buffer requirement, that is, the total Common Equity Tier 1 capital needed to meet the requirement for the capital conservation buffer and as applicable:

- a) An institution-specific countercyclical capital buffer.
- b) A buffer for global systemically important institutions (G-SIIs).
- c) A buffer for other systemically important institutions (O-SIIs).
- d) A systemic risk buffer.

This requirement shall be met without prejudice to the own funds requirements established in Article 92 of Regulation (EU) No 575/2013 of 26 June 2013 and any other requirements that may be established by the Banco de España, in accordance with the provisions of Article 68(2)(a) hereof.

2. The Common Equity Tier 1 capital required to meet each of the different buffers established by virtue of Articles 44 to 47 hereof shall be different from and, therefore, additional to that required to meet the other buffers and other own funds requirements established in the solvency regulations, save for any provisions of the Banco de España relating to the buffers for systemically important institutions, whether G-SIIs or O-SIIs, or the systemic risk buffer.

3. The capital buffer requirements must be met on an individual, consolidated or sub-consolidated basis, pursuant to the applicable regulations and in accordance with Part One of Title II of Regulation (EU) No 575/2013 of 26 June 2013.

4. If an institution or group is in breach of the requirements established in paragraph 1, it shall be subject to the restrictions on distributions laid down in Article 48 and shall have to submit a capital conservation plan pursuant to the provisions of Article 49.

The preceding subparagraph shall be understood without prejudice to the application, where appropriate, of the penalty regime envisaged in Title IV and of any measures that may have been taken by the Banco de España in accordance with Article 68.

**Article 44.** *Capital conservation buffer.*

Credit institutions shall have to maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of 26 June 2013 and, where appropriate, in accordance with any qualifications issued by the Banco de España.

**Article 45.** *Institution-specific countercyclical capital buffer.*

1. Credit institutions shall have to maintain a countercyclical capital buffer calculated specifically for each institution or group which shall be equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of 26 June 2013, and in accordance with any qualifications issued by the Banco de España, multiplied by an institution-specific capital buffer rate.

In particular, the Banco de España may require the countercyclical capital buffer to be applied to all the exposures of an institution or group or to the exposures of a specific sector.

2. The institution-specific countercyclical capital buffer rate shall be the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located.

3. Regulations shall determine:

a) The procedure to be used to calculate the institution-specific countercyclical capital buffer rate.

b) The procedure to be used by the Banco de España to set the countercyclical buffer rates by exposures located in Spain and their frequency.



c) The arrangement for recognition of countercyclical buffer rates set by the competent authority of a European Union Member State.

d) The arrangement for recognition of countercyclical buffer rates set by the competent authority of a third country, or a decision on those rates.

e) The communication mechanism.

**Article 46.** *Buffer for systemically important institutions.*

1. The Banco de España shall identify the credit institutions authorised in Spain that are:

a) Global systemically important institutions (G-SIIs), on a consolidated basis.

b) Other systemically important institutions (O-SIIs), on an individual, sub-consolidated or consolidated basis.

2. Regulations shall determine how G-SIIs shall be identified, based in any event on the following:

a) The size of the group.

b) The level of interconnection of the group with the financial system.

c) The possibility of the services or the financial infrastructure provided by the group being replaced.

d) The complexity of the group.

e) The cross-border activity of the group, including cross-border activity between European Union Member States and between a Member State and a third country.

Regulations shall also determine how to classify the credit institutions identified as G-SIIs into several sub-categories according to their systemic importance.

3. Regulations shall determine how O-SIIs shall be identified. To determine their systemic importance at least some of the following criteria shall be used:

a) Their size.

b) Their importance for the Spanish economy or for the economy of the European Union.

c) The importance of their cross-border activity.

d) The level of interconnection of the institution or group with the financial system.

4. Each G-SII shall maintain, on a consolidated basis, a G-SII buffer corresponding to the relevant sub-category to which it is allocated which may not, in any event, be lower than 1% or higher than 3.5%.

5. The Banco de España may require each O-SII, on an individual, sub-consolidated or consolidated basis, as appropriate, to maintain a buffer of up to 2% of its total risk exposure amount, according to the criteria used to identify the O-SIIs and as determined by regulations.

6. The Banco de España shall notify the European Commission, the European Systemic Risk Board and the European Banking Authority of the G-SIIs and O-SIIs and the corresponding sub-categories of G-SIIs and shall make public their names and the sub-category to which each G-SII has been allocated.

7. Regulations shall be implemented for cases where institutions are subject both to G-SII and O-SII buffers, and for where they are subject both to those buffers and to the systemic risk buffer envisaged in Article 47.

**Article 47.** *Systemic risk buffer.*

1. The Banco de España may require a systemic risk buffer of Common Equity Tier 1 capital to be created in order to prevent or mitigate long-term non-cyclical systemic or macro-prudential risks not covered by Regulation (EU) No 575/2013 of 26 June 2013. These shall be understood to be the risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

2. The systemic risk buffer may apply to all or some of the exposures located in Spain or in the Member State that sets the buffer, to exposures in third countries and to exposures located in other European Union Member States, subject to the limits established in regulations.

3. The systemic risk buffer may be required of all credit institutions, whether or not they belong to a consolidated group of credit institutions, or of one or more subsets of those institutions. Different requirements may be established for different subsets.

4. The Banco de España may require credit institutions to apply the systemic risk buffer rate set by the competent authorities of other European Union Member States for exposures located in the Member State setting the buffer rate, on the terms and in accordance with the processes determined in regulations.

**Article 48.** *Restrictions on distributions.*

1. Credit institutions that meet the combined buffer requirement may make distributions in connection with Common Equity Tier 1 capital, provided that those distributions do not reduce that capital to a level where the combined buffer requirement is no longer met, or when the Banco de España has adopted any of the measures envisaged in Article 68(2) designed to strengthen own funds or limit or prohibit dividend payments.

2. Credit institutions that do not meet the combined buffer requirement or that make a distribution of Common Equity Tier 1 capital that reduces that capital to a level where the combined buffer requirement is no longer met must calculate the maximum distributable amount, on the terms determined in regulations.

Credit institutions may not do any of the following without first having calculated the maximum distributable amount and immediately informing the Banco de España of that amount:

- a) Make a distribution in connection with Common Equity Tier 1 capital.
- b) Assume an obligation to pay variable remuneration or discretionary pension benefits, or pay variable remuneration if, when the obligation to pay was assumed, the institution did not meet the combined buffer requirement.
- c) Make payments on Additional Tier 1 instruments.

Credit institutions shall have arrangements in place to ensure that the amount of distributable profits and the maximum distributable amount are calculated accurately, and shall be able to demonstrate that accuracy to the Banco de España on request.

3. If an institution fails to meet or exceeds its combined buffer requirement, or if the Banco de España has adopted any of the measures envisaged in Article 68(2) designed to strengthen own funds or limit or prohibit dividend payments, that institution shall not be allowed to distribute more than the maximum distributable amount calculated in accordance with paragraph 2 above for the purposes thereof.

4. The limits established in this Article shall only apply to payments that reduce Common Equity Tier 1 capital or profits, and provided that suspending or cancelling the payment does not constitute a breach of any payment obligations or other circumstance that may lead to an order commencing insolvency proceedings.

5. For the purposes of this Article, the following shall be understood to be distributions in connection with Common Equity Tier 1 capital:

- a) Payment of cash dividends.
- b) Distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013 of 26 June 2013.
- c) Redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013 of 26 June 2013.
- d) Reimbursement of amounts paid relating to the capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013 of 26 June 2013.

e) Distribution of items referred to in points (b) to (e) of Article 26(1) of Regulation (EU) No 575/2013 of 26 June 2013.

f) Any others that may be determined by the Banco de España or that it may consider have a similar effect to those indicated in points (a) to (e).

6. The provisions of this Article shall be implemented in regulations.

**Article 49.** *Capital conservation plan.*

1. Where a credit institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and shall submit it to the Banco de España, on the terms determined in regulations.

This capital conservation plan shall be submitted to the Banco de España no later than five days after the institution detects that it is in breach of that requirement. Notwithstanding the foregoing, the Banco de España may extend that period to ten days, in view of the individual situation of the credit institution and bearing in mind the scale and complexity of its business.

2. The Banco de España shall assess the capital conservation plan and shall approve the plan if it considers that the plan, once implemented, would be reasonably likely to conserve or raise sufficient capital to allow the institution to meet its combined buffer requirement within a period which the Banco de España deems appropriate.

3. If it does not approve the capital conservation plan submitted, the Banco de España may:

a) Require the institution to increase its own funds within a specified period.

b) Exercise its powers under Article 68 to impose more stringent restrictions on distributions than those required by Article 48.

### **TITLE III Supervision**

#### **CHAPTER I Supervisory function**

**Article 50.** *Supervisory function of the Banco de España.*

1. The Banco de España is the authority responsible for the supervision of credit institutions and other entities envisaged in Article 56, in order to ensure compliance with regulatory and disciplinary rules. To perform this function, it may carry out the actions and exercise the powers provided for in this Law and any others which are legally conferred on it.

The provisions of the preceding subparagraph are without prejudice to the powers conferred by law on other institutions or administrative bodies.

2. To carry out its supervisory function and, in particular, to select the various supervisory and sanctioning instruments, the Banco de España may:

a) Gather from the institutions and persons subject to its supervisory function and from third parties to which said institutions have outsourced activities or operational functions the information needed to check that the regulatory and disciplinary rules are being met.

To enable the Banco de España to obtain such information or confirm its accuracy, the aforesaid institutions and persons are required to make available to the Banco de España any books, records and documents it may consider necessary, including software programmes, files and databases on any physical or virtual medium.

To this end, access to the information and data required by the Banco de España is protected by Article 11(2)(a) of Organic Law 15/1999 of 13 December 1999 on personal data protection.

b) Require of and communicate to the institutions subject to its supervision, by electronic means, the information and measures included in the regulatory and disciplinary rules. Said institutions are obliged to set in place, in the time period specified for doing so, the technical resources required by the Banco de España for the efficacy of their electronic communication systems, in the manner specified by the latter for this purpose.

c) Conduct all the necessary investigations in relation to any institution or person envisaged in point (a), where required to perform its supervisory function. For these purposes, it may:

- 1.- Require the submission of documents.
- 2.- Examine books and records and take copies of or extracts from them.
- 3.- Request and obtain written or oral explanations from any person other than those envisaged in point (a) in order to gather information on the subject matter of an investigation.
- d) Conduct all necessary inspections at the professional establishments of the legal persons envisaged in point (a), and at any other institution subject to consolidated supervision.

3. Similarly, in the exercise of its supervisory function, the Banco de España must:

a) Assess, in the choice of measures to be adopted, criteria such as the seriousness of the events detected, the efficacy of the supervisory function in terms of remedying the non-compliance detected or the institution's previous behaviour.

b) Take into consideration the potential impact of its decisions on the stability of the financial system in the other European Union Member States affected, particularly in emergency situations, based on the information available at the time.

c) Take into account the convergence of supervisory instruments and practices in the scope of the European Union.

4. Pursuant to Article 4 of Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure, any State, regional or local government bodies, without prejudice to the duty of secrecy envisaged in current legislation, have a duty to cooperate with the Banco de España and are obliged to provide, at the latter's request, any data and information available to them which may be necessary for the Banco de España to carry out the supervisory function.

**Article 51.** *Supervision of regulatory compliance mechanisms.*

The Banco de España shall be responsible for supervising the systems, strategies, procedures and mechanisms of any type, applied by credit institutions to comply with the regulatory and disciplinary rules.

**Article 52.** *Supervision of risks.*

The Banco de España shall be responsible for supervising the risks to which institutions are or may be exposed and, based on this assessment and on the provisions of the previous Article, for determining whether the regulatory compliance mechanisms and the own funds and liquidity held by the credit institutions ensure sound management and coverage of their risks.

**Article 53.** *Supervision of corporate governance systems and remuneration policies.*

The Banco de España shall be responsible for supervising compliance by credit institutions with the rules on suitability, remuneration and responsible risk management and with the other corporate governance rules envisaged in Title I and its implementing provisions.

**Article 54.** *Preparation of supervisory guidelines.*

1. The Banco de España may prepare technical guidelines addressed to the supervised institutions and groups, indicating the criteria, practices, methodologies or procedures considered suitable for compliance with supervisory regulations. These guidelines, which must be made public, may include the criteria to be followed by the Banco de España in the exercise of its supervisory activities. The Banco de España may require the supervised institutions and groups to explain why, where applicable, they have used different criteria, practices, methodologies or procedures.

2. The guidelines prepared by the Banco de España shall refer to the following matters:

a) Assessment of the risks to which institutions are exposed and suitable compliance with regulatory and disciplinary rules.

b) Remuneration practices and inducements for risk-taking which are compatible with appropriate risk management.

c) Financial and accounting information and the requirement to submit the annual accounts or financial statements of supervised groups and institutions to external audit.

d) Appropriate management of risks arising from significant holdings of credit institutions in other financial institutions or non-financial corporations.

e) Implementation of mechanisms for the restructuring or resolution of credit institutions.

f) Corporate governance and internal control.

g) Any other matter included in the Banco de España's field of competence.

3. The Banco de España may adopt as its own, and send as its own to institutions and groups, as well as develop, supplement and adapt guidelines on these issues approved by international banking regulation and supervision bodies or committees.

**Article 55.** *Supervisory programme.*

1. The Banco de España shall approve, at least once a year, a supervisory programme for all credit institutions subject to its supervision, paying particular attention to:

a) Institutions whose results in the stress tests or in the supervisory review and evaluation process, indicate the existence of significant risks to their financial soundness or reveal possible non-compliance with solvency regulations.

b) Institutions that pose a systemic risk to the financial system.

c) Any other institutions which, in the Banco de España's opinion, require special consideration in the exercise of the supervisory function.

2. The programme shall contain, at least, the following information:

a) An indication of the way in which the Banco de España proposes to perform its supervisory function and assign its resources.

b) Identification of the credit institutions which are to be subject to enhanced supervision and the measures to be taken for such supervision as set out in paragraph 3.

c) A plan of on-site inspections of credit institutions.

3. The Banco de España, in view of the results of the supervisory review and evaluation envisaged in Articles 51 to 53, may adopt the measures it considers appropriate in each case, which may include:

- a) An increase in the number or frequency of on-site inspections of the institution.
- b) A permanent presence at the credit institution.
- c) Additional or more frequent reporting by the credit institution.
- d) Additional or more frequent review of the operational, strategic or business plans of the credit institution.
- e) Thematic examinations of specific risks.

4. The Banco de España shall take into account, when it sets out its supervisory programme, the information received from the authorities of other Member States in relation to branches of Spanish credit institutions established there. For these purposes, it will also take into consideration the stability of the financial system in said Member States.

5. At least once a year, the Banco de España shall subject the credit institutions it supervises to stress tests in order to facilitate the review and evaluation process envisaged in this Article.

## **CHAPTER II**

### **Scope of the supervisory function**

**Article 56.** *Scope of the Banco de España's supervision.*

The Banco de España shall supervise Spanish credit institutions, consolidated groups of credit institutions with a parent company in Spain and branches of credit institutions of non-European Union countries in accordance with the provisions of this Law and its implementing regulations. Similarly, where the parent company of one or several credit institutions is a financial holding company or a mixed financial holding company, the Banco de España, as the party responsible for authorising and supervising said credit institutions, shall supervise said company with the limits and specificities as may be provided by law.

Likewise, supervision by the Banco de España may cover Spanish individuals who control credit institutions in other European Union Member States, within the framework of collaboration with the authorities responsible for supervision of these credit institutions.

**Article 57.** *Supervision of consolidated groups.*

1. The Banco de España shall supervise consolidated groups of credit institutions with a parent company in Spain, as defined in Regulation (EU) No 575/2013 of 26 June 2013.



2. Where there are foreign institutions that might be included in a consolidated group of credit institutions, the scope of the supervision on a consolidated basis under the responsibility of the Banco de España shall be as provided by law, taking into account, among other criteria, whether the institutions belong to a European Union Member State, their legal nature and the degree of control.

**Article 58.** *Supervision of mixed financial holding companies and mixed holding companies.*

1. Where a mixed financial holding company under the supervision of the Banco de España is subject to equivalent provisions under this Law and Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector legislation, in particular in terms of risk-based supervision, the Banco de España, after consulting the other authorities responsible for the supervision of the subsidiaries of the mixed financial holding company, may decide to apply to that company only the provisions of Law 5/2005 of 22 April 2005 and its implementing regulations.

2. Also, where a mixed financial holding company under the supervision of the Banco de España is subject to equivalent provisions under this Law and the consolidated text of the Private Insurance Law, enacted in Royal Legislative Decree 6/2004 of 29 October 2004, in particular in terms of risk-based supervision, the Banco de España, after consulting the other authorities responsible for the supervision of the subsidiaries of the mixed financial holding company, may decide to apply to that company only the provisions of the consolidated text of the Private Insurance Law.

3. The Banco de España shall inform the European Banking Authority and the European Insurance and Occupational Pensions Authority of the decisions adopted in accordance with the previous paragraphs.

4. Without prejudice to the provisions of Part Four of Regulation (EU) No 575/2013 of 26 June 2013, where the parent company of one or more Spanish institutions is a mixed holding company, the Banco de España shall perform the general supervision of the transactions between the institution and the mixed holding company and its subsidiaries.

5. The subsidiaries of a mixed holding company must have in place adequate risk management arrangements and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed holding company and its subsidiaries appropriately. The Banco de España shall require the institution to report any significant transaction with those entities other than that referred to in Article 394 of Regulation (EU) No 575/2013 of 26 June 2013. Those procedures and significant transactions shall be subject to overview by the Banco de España.

**Article 59.** *Supervision of branches of credit institutions of European Union Member States.*

1. The Banco de España may carry out checks and on-site inspections of the activities performed by branches of credit institutions of other European Union Member States. To this

end, it may require information from said branches on their activities for reasons linked to the stability of the financial system.

Before proceeding with those checks and inspections, the Banco de España shall consult the competent authorities of the home Member State. Following the checks and inspections, the Banco de España shall convey to those authorities the information obtained and any findings that are relevant for the risk assessment of the institution or the stability of the financial system.

2. The Banco de España may submit requests to the competent supervisory authorities of an authorised credit institution in the European Union with branches in Spain for the latter to be deemed significant branches and, in the absence of a joint decision in this respect, determine that they are significant in accordance with the procedure provided by law.

In these cases the Banco de España shall instigate the adoption of a joint decision on the request with the other competent authorities of other Member States responsible for the supervision of the institutions included in the group.

**Article 60.** *Supervision of branches of credit institutions of non-European Union countries and assessment of equivalence of supervision on a consolidated basis.*

1. The obligations established in the solvency regulations shall apply to branches of credit institutions with headquarters in a non-European Union country. The criteria whereby the Banco de España may introduce in that regime specific provisions for said branches shall be provided for in regulations. In any event, the obligations applicable to branches of non-European Union countries may not be less strict than those applicable to branches of European Union Member States.

2. Subsidiary credit institutions of a financial institution domiciled outside the European Union shall not be subject to supervision on a consolidated basis, provided that they are already subject to such supervision by the competent authority of the third country, which is equivalent to that provided for in this Law and its implementing regulations, and in Part One of Title II of Chapter 2 of Regulation (EU) No 575/2013 of 26 June 2013.

The Banco de España shall check this equivalence, taking into account for this purpose the guidelines prepared in this connection by the European Banking Authority which it shall consult before adopting a decision in this regard.

If there are no equivalent supervisory arrangements, the arrangements for supervision on a consolidated basis envisaged in the solvency regulations shall apply to the credit institutions mentioned in the first subparagraph of this paragraph.

Notwithstanding the provisions of the previous subparagraph, the Banco de España may establish other methods for supervision on a consolidated basis of the groups referred to in this paragraph. These methods shall include the power of the Banco de España to require that a parent financial institution be set up which has its registered office in the European Union.

The methods shall comply with the objectives of supervision on a consolidated basis determined by this Law and be conveyed to the other competent authorities involved, the European Commission and the European Banking Authority.

### **CHAPTER III**

#### **Collaboration among supervisory authorities**

**Article 61.** *Collaboration of the Banco de España with authorities of other countries.*

1. In the exercise of its supervision of credit institutions, the Banco de España shall collaborate with the supervisory authorities of other countries and may or shall, as the case may be, report information on the management and ownership of these institutions, information that may facilitate the monitoring of their solvency and liquidity, factors that may influence their systemic risk and any other information that may facilitate their supervision or be used to avoid, pursue or sanction irregular conduct. For this purpose, it may enter into collaboration agreements.

The reporting of information referred to in the previous subparagraph shall be conditional upon the foreign supervisory authorities being bound by obligations of professional secrecy which are equivalent, at least, to those established in Article 82.

The content of and conditions governing the collaboration envisaged in this paragraph shall be provided for in regulations.

2. If they are important for the supervisory tasks of the competent authorities of another European Union Member State, the Banco de España shall consult those authorities before adopting:

a) The decisions envisaged in Article 17, irrespective of the extent of the change in the shareholder structure to which the decision relates.

b) Decisions on mergers, spin-offs or any other important change in the organisation or management of a credit institution that is subject to administrative authorisation.

c) Penalties for serious and very serious infringements punishable by a public reprimand or disqualification of directors or managers.

d) Decisions on intervention and replacement envisaged in Chapter V of Title III and the measures arising from Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution.

e) Requests for additional own funds in accordance with the provisions of Article 68(2) and the imposition of restrictions on the use of internal methods to measure operational risk.

Also, in the cases indicated in points (c), (d) and (e), the European Union authority responsible for the consolidated supervision of the group potentially affected must always be consulted.

In any event, the Banco de España may waive the consultation envisaged in this paragraph in an emergency or where it considers that the consultation may compromise the efficacy of its own decisions. In these cases, it shall inform the authorities concerned of the final decision adopted without delay.

3. In the exercise of its supervision of credit institutions authorised in Spain that are controlled by a credit institution supervised on a consolidated basis by the competent authority of another EU Member State, the Banco de España shall ask the relevant consolidating supervisor for information on the use of approaches and methodologies set out in this Law and in Regulation (EU) No 575/2013 that may already be available to that consolidating supervisor.

**Article 62.** *Collaboration with the European Union supervisory authorities in its capacity as the consolidating supervisor.*

1. The Banco de España, as the authority responsible for the supervision of consolidated groups of credit institutions, shall collaborate with the supervisory authorities of the European Union to:

a) Coordinate the gathering of information and disseminate among the other authorities responsible for the supervision of group institutions the most relevant and essential information, both in ordinary and emergency situations.

b) Plan and coordinate supervisory activities in ordinary situations, including in relation to the activities envisaged in Chapter I linked to consolidated supervision and in the provisions on technical criteria concerning the organisation and treatment of risk.

c) Plan and coordinate supervisory activities in collaboration with the competent authorities involved and, if necessary, with central banks, in preparation for and during emergency situations including, in particular, adverse developments in credit institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management.

d) Cooperate with other competent authorities having supervisory responsibility over foreign credit institutions, parents, subsidiaries or investees of the same group in the terms envisaged in the previous Article.

e) Enter into coordination and cooperation agreements with other competent authorities aiming to facilitate and establish effective supervision of the groups in their supervisory remit and take on any additional tasks arising from such agreements with the content provided for in regulations.

In particular, the Banco de España may enter into a bilateral agreement in accordance with Article 28 of Regulation (EU) No 1093/2010 of 24 November 2010 to delegate its supervisory responsibility for a subsidiary to the competent authorities which have authorised and supervise the parent, so that they assume responsibility for monitoring the subsidiary pursuant to the provisions envisaged in this Law, in its implementing regulations and in

Regulation (EU) No 575/2013 of 26 June 2013. The Banco de España shall notify the European Banking Authority of the existence and content of such agreements.

f) Reach joint decisions on requests for branches to be deemed significant submitted by the competent authorities of countries where branches of Spanish credit institutions are located and, in the absence of a joint decision in this regard, recognise the decision of said competent authority as to their significance.

2. The Banco de España shall respond to requests from competent authorities of another European Union Member State for verification of information on an institution under its supervision.

**Article 63.** *Collaboration in cases of infringements by branches of credit institutions authorised in other European Union Member States.*

1. If the Banco de España confirms that a credit institution of a European Union Member State with a branch in Spain or which operates in Spain under the freedom to provide services is, or there is a significant risk that it may be, in breach of the solvency regulations in Spain, it shall notify the corresponding supervisory authorities in order that, without delay, they may adopt the measures deemed appropriate to ensure that the institution terminates the infringement or takes measures to prevent the risk of infringement, and in any event to prevent any repeat thereof in the future. Such measures shall be notified to the Banco de España without delay.

2. If the competent authorities of the home Member State do not act as envisaged above, the Banco de España may appeal to the European Banking Authority for assistance, as provided for in Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010.

**Article 64.** *Transitional measures in cases of infringements by branches of institutions of other European Union Member States.*

1. In emergency situations, before resorting to the collaboration envisaged in Article 63(1), and until the measures of the competent authorities of the home Member State provided for in that Article or the reorganisation measures referred to in Article 3 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions are taken, the Banco de España may take any transitional measures that may be necessary to prevent any instability of the financial system that might pose a serious threat to the collective interests of depositors, investors or customers in Spain. Any transitional measures taken shall be notified immediately to the European Commission, the European Banking Authority and the competent authorities of the other European Union Member States affected.

2. The transitional measures, which may include suspending the performance of payment obligations, shall in any event be proportionate to the aim of protecting the collective

interests indicated above. Under no circumstances may these measures grant priority to Spanish creditors of the credit institution over creditors from other Member States.

3. These transitional measures shall become null and void when reorganisation measures are adopted by administrative or court authorities of the home Member State.

4. The Banco de España may end these transitional measures whenever it considers them no longer necessary.

**Article 65.** *Joint decision-making.*

In the collaboration framework established in Article 62, and as may be provided for in the regulations, the Banco de España, as the consolidating supervisor of a group or as the competent authority responsible for supervision of the subsidiaries of a European Union parent credit institution or of a European Union parent financial holding company or mixed financial holding company in Spain, shall do its utmost to reach a consensus decision with the other supervisory authorities of the European Union on:

a) Applying Articles 41 and 51 to determine whether the consolidated equity level of a group is appropriate in view of its financial situation and risk profile, and the equity level needed to apply Article 68 to each of the institutions of the group and on a consolidated basis.

b) The measures to be used to settle any significant questions and key findings relating to supervision of liquidity.

**Article 66.** *Colleges of supervisors.*

1. Where the Banco de España is the consolidating supervisor it shall appoint colleges of supervisors to facilitate the tasks referred to in points (a) to (d) of Article 62(1), Article 65 and Article 81. It shall also take the measures required to guarantee an appropriate level of coordination and co-operation with the competent authorities of third countries, respecting in all cases the confidentiality requirements envisaged in the applicable legislation and in European Union Law.

2. The colleges of supervisors shall provide the framework that should allow the Banco de España, as the consolidating supervisor, the European Banking Authority and, where appropriate, any other competent authorities concerned to:

a) Exchange information pursuant to Article 21 of Regulation (EU) No 1093/2010 of 24 November 2010.

b) Agree, where appropriate, on the voluntary allocation of duties and delegation of responsibilities.

c) Establish the supervisory programmes envisaged in Article 55, based on risk assessment at a group level, in accordance with Articles 51 and 52.

d) Enhance supervisory efficiency, eliminating all unnecessary duplication of prudential requirements, including those related to the information requests referred to in Article 81 and Article 61(1).

e) Apply the prudential requirements envisaged in this Law and its implementing regulations, and in Regulation (EU) No 575/2013 of 26 June 2013, coherently at all institutions of a group, without prejudice to the options and powers envisaged in European Union law.

f) Apply Article 62(1)(c), in view of the work performed at other for a established in this respect.

3. The process for the creation of colleges of supervisors and their rules of procedure shall be determined in regulations.

**Article 67.** *Relations between the Banco de España and other Spanish financial authorities.*

1. Any regulations to be issued by the Banco de España implementing regulatory and disciplinary rules that may directly affect the exercise of the functions attributed by law to the CNMV, the Directorate General of Insurance or the FROB shall be issued following a report from the respective body.

2. Where a consolidated group of credit institutions includes institutions that are subject to supervision on an individual basis by bodies other than the Banco de España, the latter, exercising the powers granted to it hereunder, shall act in coordination with the corresponding supervisory body. The Minister for Economic Affairs and Competitiveness may issue the rules necessary to ensure correct coordination.

3. The Banco de España shall submit to the FROB, ex officio or at the request of the latter, any information obtained from the exercise of its supervisory functions that the FROB may need to perform the duties entrusted to it under Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution. For correct coordination of the performance of their respective functions, the Banco de España and the FROB may enter into collaboration agreements.

## **CHAPTER IV**

### **Prudential supervision measures**

**Article 68.** *Prudential supervision measures.*

1. The Banco de España shall require credit institutions or consolidated groups of credit institutions to immediately adopt the necessary measures to restore compliance where:

a) They do not meet the requirements contained in the solvency regulations, including the liquidity requirement and those relating to their organisational structure or internal risk control, or it considers that an institution's own funds or liquidity do not guarantee sound risk management and cover.

b) There are, according to the data available to the Banco de España, well-founded grounds to believe that an institution will not comply with the requirements described in point (a) over the next 12 months.

2. In such cases the Banco de España may take the measures it deems most appropriate, from among those described below, in view of the situation of the institution or group:

a) Require credit institutions to hold own funds in excess of the capital requirements established in Title II of Chapter III and in Regulation (EU) No 575/2013 of 26 June 2013 related to elements of risks and risks not covered by Article 1 of the Regulation.

b) Require credit institutions and their groups to reinforce the processes, mechanisms and strategies established to comply with Articles 29, 30 and 41.

c) Require credit institutions and their groups to present a plan to restore compliance with the requirements established herein and in Regulation (EU) No 575/2013 of 26 June 2013, and to include any necessary improvements to that plan regarding scope and deadline.

d) Require credit institutions and their groups to apply a specific provisioning policy or treatment of assets in terms of own funds requirements.

e) Restrict or limit the business, operations or network of institutions or request the divestment of activities that pose excessive risks to the soundness of an institution.

f) Require the reduction of the risk inherent in the activities, products and systems of institutions.

g) Require credit institutions and their groups to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base.

h) Require credit institutions and their groups to use net profits to strengthen their own funds.

i) Restrict or prohibit distributions by the institution of dividends or interest to shareholders, members or holders of Additional Tier 1 instruments provided that the prohibition does not constitute an event of default of the payment obligations of the institution.

j) Impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions.

k) Impose the obligation to have in place a minimum amount of liquid assets with which to withstand potential outflows of funds arising from liabilities and commitments, including in the event of serious incidents potentially affecting liquidity, and to maintain an appropriate structure of financing sources and of maturities in related assets, liabilities and commitments



in order to avoid potential imbalances or liquidity tensions that might impair or jeopardise the institution's financial situation.

l) Require additional disclosures.

3. The above provisions are understood without prejudice to the penalty regime established in Title IV and the early intervention measures envisaged in Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution.

4. The Banco de España shall inform the FROB of its decision to require an institution to take any of the measures indicated above and of the process of enforcement of and compliance with such measures. For these purposes, the FROB may request any additional information it may deem necessary for the exercise of its functions.

**Article 69.** *Additional own funds requirements.*

1. The Banco de España shall require credit institutions to hold own funds in excess of the capital requirements established, in accordance with Article 68(2)(a), at least where:

a) An institution does not meet the requirements established in Articles 29, 30 and 41 or in Article 393 of Regulation (EU) No 575/2013 of 26 June 2013.

b) There are elements of risks or risks that are not covered by the own funds requirements established in the solvency regulations.

c) There are well-founded grounds to believe that applying other measures will not improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe.

d) The risk review referred to in Article 52 reveals that the non-compliance with the requirements for the use of a method of calculation of own funds requirements that requires prior authorisation pursuant to Part Three of Regulation (EU) No 575/2013 of 26 June 2013 could lead to inadequate own funds requirements, or valuation adjustments taken for trading book positions or portfolios, as set out in Article 105 of Regulation (EU) No 575/2013 of 26 June 2013, do not enable an institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

e) There are well-founded grounds to believe that the risks might be underestimated, despite compliance with the requirements of the solvency regulations.

f) An institution reports to the Banco de España, in accordance with Article 377(5) of Regulation (EU) No 575/2013 of 26 June 2013, that the stress test results referred to in that Article materially exceed the own funds requirements for the correlation trading portfolio.

2. In order to determine the appropriate level of own funds based on the review and evaluation made in accordance with this Title, the Banco de España shall assess:

a) The quantitative and qualitative aspects of the process of assessment of credit institutions referred to in Article 41.

b) The arrangements, processes and mechanisms relating to credit institutions' viability and resolution plans.

c) The outcome of the review and evaluation carried out in accordance with Articles 51 to 53.

d) Systemic risk.

**Article 69 bis.** *Limits on sectoral concentration.*

When the aggregate exposure of credit institutions or of a sub-group of credit institutions to a particular economic sector reaches levels that may amount to a systemic risk, the Banco de España may require credit institutions to limit their exposure to that sector.

**Article 69 ter.** *Conditions on the granting of loans and other exposures.*

In order to prevent an excessive increase in bank risk or excessive indebtedness of economic agents, the Banco de España may, insofar as their transactions with the private sector in Spain are concerned, impose limits and conditions on the granting of loans and the purchase of debt securities and derivatives by credit institutions.

## **CHAPTER V**

### **Intervention and replacement measures**

**Article 70.** *Grounds for intervention and replacement of the management body.*

1. Grounds for intervention of a credit institution or temporary replacement of its management body, or of one or more of its members shall exist:

a) In accordance with the provisions of Law 11/2015 of 18 June 2015 on the resolution of credit institutions and investment firms

b) Where there is sound evidence that the credit institution, while not in any of the situations envisaged in Law 11/2015 of 18 June 2015, is in an exceptionally serious situation that might undermine its stability, liquidity or solvency.

c) Where a qualifying holding is acquired in a credit institution in breach of the provisions of this Law, or where there are well-founded and proven grounds to believe that the influence exercised by the holders of that shareholding might be detrimental to the sound and prudent management of the institution, and might seriously harm its financial situation.

2. The intervention or replacement measures to which this Article refers may be adopted while a penalty proceeding is under way or independently of the exercise of sanctioning powers.

**Article 71.** *Intervention and replacement powers.*

1. The intervention or replacement measures to which the previous Article refers shall be ordered by the Banco de España, giving a reasoned account of its decision to the Minister for Economic Affairs and Competitiveness and the FROB.

2. The decision may be adopted ex officio or at the reasoned request of the institution concerned. In this case, the request may be made by the directors of the credit institution, by its internal control body or, where appropriate, by a minority of shareholders equivalent, at least, to the number required under corporate/commercial law to request that an Extraordinary General Meeting or Assembly be called.

**Article 72.** *Intervention or replacement decisions.*

Intervention or replacement decisions shall be adopted after consulting the credit institution concerned during the period granted to that effect, which shall be no less than five days.

The consultation process may be waived when the institution itself has asked for the measure to be adopted or when that process may seriously undermine the effectiveness of the measure or the economic interests concerned. In the latter case, the period for resolution of an appeal filed against the decision shall be ten days from the date of its filing.

**Article 73.** *Content of intervention and replacement decisions.*

1. The decision shall name the person or persons who are to act as administrators or temporary directors and shall indicate if they are to act jointly, jointly and severally or individually. The persons named shall have the capacity, professional skills and sufficient knowledge to perform these duties, and shall not be subject to any conflict of interest.

Also, the decision shall determine whether the intervention involves the replacement of the management body or of one or more of its members and whether the temporary directors may exercise their duties in collaboration with the management body.

2. The decision, which shall be enforceable as soon as it is issued, shall be immediately published in the Official State Gazette and recorded in the corresponding public registers. Once it is published in the Official State Gazette, the decision shall be effective vis-à-vis third parties.

3. Where necessary for the purposes of enforcement of an intervention decision or a decision to replace directors, recourse may be had to direct compulsion in order to take possession of the relevant offices, records and documents or to examine the latter, without prejudice to Article 96(3) of Law 30/1992 of 26 November 1992.

4. The Banco de España may, giving reasons and by the procedure envisaged in this Chapter, amend intervention or replacement measures as and when circumstances require.

**Article 74.** *Perfection requirements for acts and resolutions post-intervention.*

1. If a credit institution is intervened, all the acts and resolutions of any of its bodies adopted after the decision is published in the Official State Gazette shall require, in order to be valid and effective, the express approval of the administrators appointed, with the exception of any actions taken or appeals lodged by the credit institution relating to the intervention measure or the conduct of the administrators which shall not require such approval.

2. The administrators appointed shall be authorised to revoke any powers of attorney or delegations of power granted by the management body of the credit institution or by its duly authorised representatives before the decision was published. Once the intervention measure has been adopted, the administrators appointed shall require the documents recording the powers of attorney to be returned and shall have the revocation of those powers recorded in the relevant public registers.

**Article 75.** *Temporary administration.*

1. If the management body is replaced, the temporary directors appointed shall act in an intervening capacity in respect of the acts and resolutions of the General Meeting or Assembly of the credit institution, subject to Article 74(1).

2. The requirements relating to periodic public reporting, preparation and approval of financial statements and approval of the conduct of business shall be stayed, for a maximum period of one year, from the end of the period established in law for that purpose, if the new management body considers on a reasoned basis that there are no reliable and comprehensive data or documents to allow the requirements to be met.

**Article 76.** *Lifting of intervention or replacement measures.*

Once the Banco de España resolves to lift the intervention or replacement measures, the temporary directors shall immediately call the General Meeting or Assembly of the credit institution and it shall appoint the new management body. Until the new management body takes up its duties, the temporary directors shall continue to perform their duties.

**Article 77.** *Winding up and voluntary liquidation.*

If a credit institution decides to be wound up and to petition for voluntary liquidation, it must notify the Banco de España of that decision and the latter may set conditions on the decision within a period of three months from the filing of the petition.

**Article 78** *Intervention of liquidation transactions.*

1. When a credit institution is wound up, the Minister for Economic Affairs and Competitiveness may order the intervention of the liquidation transactions if this is advisable in view of the number of persons affected or the financial situation of the credit institution.

2. The decision envisaged in the preceding paragraph shall be subject to Article 74, and the acts of the liquidators and the powers of the administrators appointed to Article 75.

**Article 79.** *Report to Parliament.*

The Banco de España shall send a Report each year to Parliament on the intervention or replacement measures taken.

The Banco de España shall likewise send to Parliament the overall results of the stress tests referred to in Article 55(5), as soon as they are available.

**CHAPTER VI**  
**Reporting and disclosure requirements**

**Article 80.** *Banco de España disclosure requirements.*

1. Without prejudice to the obligations of secrecy established in this Law, the Banco de España shall periodically disclose the following information on solvency regulations:

a) The general criteria and methodologies used to review and evaluate regulatory compliance arrangements, risk supervision, and governance and remuneration policy.

b) Aggregate statistical data on key aspects of the exercise of the supervisory function, including the number and nature of supervisory measures taken and administrative penalties imposed.

c) The general criteria and methodologies used to verify compliance with Articles 405 to 409 of Regulation (EU) No 575/2013 of 26 June 2013.

d) A summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU) No 575/2013 of 26 June 2013, identified on an annual basis.

e) The outcome of stress tests on the terms indicated in Article 32 of Regulation (EU) No 1093/2010 of 24 November 2010.

The information referred to in this point shall be conveyed to the European Banking Authority, whenever so required by the latter, for publication of the EU-wide results.

f) Any other information determined in regulations.

2. The information disclosed in accordance with paragraph 1 should be sufficient to permit meaningful comparison between the approaches adopted by the Banco de España and those adopted by its partner authorities in the other European Union Member States. The information shall be disclosed in the format determined by the European Banking Authority and shall be periodically updated. It shall be available on the Banco de España's website.

**Article 81.** *Banco de España reporting requirements in emergency situations.*

The Banco de España shall advise the Minister for Economic Affairs and Competitiveness, the FROB, the central banks of the European System of Central Banks, any

other Spanish or foreign supervisory authorities affected, the European Banking Authority and the European Systemic Risk Board, as promptly as possible, whenever an emergency situation arises, including that defined in Article 18 of Regulation (EU) No 1093/2010 of 24 November 2010, or where an adverse financial market performance may compromise market liquidity or the stability of the financial system of any European Union Member State where institutions belonging to a group that is supervised on a consolidated basis by the Banco de España are authorised or where significant branches of a Spanish credit institution are established, as envisaged in Article 62(1)(f).

**Article 82.** *Obligation of secrecy.*

1. All data, documents and information held by the Banco de España by virtue of the exercise of its supervisory functions or any other functions entrusted to it by law shall be used exclusively by it in the exercise of those functions, they shall be confidential and they may not be disclosed to any person or authority. Such data, documents and information shall cease to be confidential when the parties concerned make public the facts to which they relate. All data, documents and information on the procedures and methods used by the Banco de España in the exercise of the above functions shall likewise be confidential, unless the competent body of the Banco de España expressly decides that this is no longer the case.

In any event, the Banco de España may publish the outcome of the stress tests carried out in accordance with Article 55(5) and with Article 32 of Regulation (EU) No 1093/2010 of 24 November 2010.

Parliamentary access to information falling under the secrecy obligation must be channelled through the Governor of the Banco de España. To this end, the Governor may request that the appropriate parliamentary body hold a secret session or use the appropriate procedures for access to classified material.

2. All persons who perform or have performed activity for the Banco de España and who have become aware of confidential data, documents or information are bound to hold those data, documents or information confidential. Such persons may not make declarations or give evidence regarding, or publish, communicate or exhibit, any confidential data or documents, even when they are no longer in the service of the Bank, unless they are expressly authorised to do so by the competent body of the Bank. If that permission is not granted, the person concerned shall maintain the data or documents secret and shall be exempt from any liability that may arise therefrom.

Any breach of this obligation shall give rise to criminal and other liabilities provided for by law.

3. The following exceptions shall be made to the obligation of secrecy regulated in this Article:

a) Where the interested party expressly consents to the disclosure, publication or communication of the data.

b) Publication of aggregate data for statistical purposes, or summary or aggregate disclosures that do not allow identification of the individual institutions, not even indirectly.

c) Information requested by the competent judicial authorities in criminal proceedings.

d) Information that may be requested by judicial authorities in the framework of commercial proceedings arising from the insolvency or compulsory winding-up of a credit institution, provided that it does not relate to third parties involved in the bail-out of the institution.

e) Information that may be requested by the competent judicial authorities to hear appeals in the framework of administrative or court appeals filed against administrative decisions issued relating to the regulation and discipline of credit institutions.

f) Information that the Banco de España may have to provide, to comply with its respective functions, to the CNMV, the Directorate General of Insurance, the ICAC, the Credit Institution Deposit Guarantee Fund, the FROB, the Financial Stability Board, the temporary administrators or insolvency managers of a credit institution or an institution of its group, appointed in the corresponding administrative or court proceedings, or the auditors of credit institutions and their groups.

g) Information that the Banco de España may disclose to central banks and other bodies with a similar function in their capacity as monetary authorities, when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, supervision of payments, clearing and settlement systems and the safeguarding of stability of the financial system.

h) Information that the Banco de España may have to provide, to comply with its functions, to bodies or authorities of other countries entrusted with the public duty of supervising other credit institutions, investment firms, insurance firms, other financial institutions or financial markets, or of managing deposit guarantee schemes or compensation schemes for investors in credit institutions, maintaining the stability of the financial system in Member States through the use of macro-prudential rules, reorganisation activities designed to protect the stability of the financial system, or supervision of contractual or institutional protection schemes, provided that there is reciprocity in these arrangements and that the bodies or authorities are subject to professional secrecy on at least equivalent terms to those established by Spanish law.

i) Information that the Banco de España may decide to provide to a clearing house or similar body legally authorised to provide clearing or settlement services for the Spanish markets, when it considers that such information is necessary to ensure the proper functioning of those bodies in relation to any defaults or potential defaults by market participants.

j) Information that the Banco de España may have to provide to the authorities responsible for the fight against money laundering and terrorist financing, and exceptional disclosures that may be made in accordance with Section 3 of Chapter I of Title III of General Tax Law 58/2003 of 17 December 2003, following authorisation from the Minister for Finance and Public Administration. For these purposes, regard shall be had to the collaboration agreements that the Banco de España has signed with other countries' supervisory authorities.

k) Information that, for reasons of prudential supervision or prevention in respect of credit institution restructuring or resolution, the Banco de España may have to provide to the Ministry of Economic Affairs and Competitiveness, the FROB or the regional government authorities with powers over credit institutions, or, in the emergency situations envisaged in Article 81, to the corresponding authorities of the European Union Member States affected.

l) Information requested by the Spanish Court of Auditors or by a Parliamentary Committee, on the terms established in the specific legislation.

m) Information disclosed to the European Banking Authority under current legislation, and in particular that established in Articles 31 and 35 of Regulation (EU) No 1093/2010 of 24 November 2010. Notwithstanding the foregoing, this information shall be subject to professional secrecy.

n) Information disclosed to the European Systemic Risk Board, when this information is relevant for the pursuit of its statutory tasks pursuant to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

ñ) Information disclosed to the European Securities and Markets Authority and to the European Insurance and Occupational Pensions Authority, when this information is relevant for the pursuit of their statutory tasks pursuant to Regulations (EU) No 1094/2010 and 1095/2010 of the European Parliament and of the Council of 24 November 2010.

o) Information that the Banco de España may have to provide to the contractual or institutional protection schemes pursuant to Article 113(7) of Regulation (EU) No 575/2013 of 26 June 2013.

4. Judicial authorities that receive confidential information from the Banco de España shall have to take the appropriate measures to ensure that the information is held confidential throughout the course of the relevant proceedings. Any other authorities, persons or entities that receive confidential information shall be subject to the obligation of secrecy regulated in this Article and may only use that information in order to comply with the tasks entrusted to them by law.

Parliamentary investigation committee members who receive confidential information shall have to take the appropriate measures to ensure that the information is held confidential.



5. Disclosure of confidential information, when that information originates in another Member State, shall be conditional upon the express agreement of the authority that provided the information and may be disclosed only to the addressees named for the purposes for which the authority granted its consent. This restriction shall apply to the information disclosed to the clearing houses and bodies indicated in paragraph 3, points (h) and (i), to information requested by the Spanish Court of Auditors or Parliamentary investigation committees and to information provided to the ICAC.

6. The Banco de España shall inform the European Banking Authority of the identity of the authorities or bodies to which it may disclose data, documents or information in accordance with paragraph 3, points (d) and (f) relating to the ICAC, and point (h) relating to the supervisory bodies of contractual or institutional protection schemes.

**Article 83.** *Duty of confidentiality.*

1. The institutions and other persons subject to the regulatory and disciplinary rules applicable to credit institutions must hold confidential all information on balances, positions, transactions and other operations with their customers; that information may not be disclosed to third parties or disseminated.

2. An exception to this rule is information whose disclosure or dissemination to third parties is permitted by the customer or by law, or information that is requested by or must be submitted to the corresponding supervisory authorities or that is required in order to comply with Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing. In this case the information shall be disclosed in accordance with the provisions established by the customer or by law.

3. Information exchanges between credit institutions belonging to the same consolidated group are likewise an exception to this rule.

4. Any breach of this Article shall be considered a serious infringement and shall be penalised on the terms and in accordance with the procedures envisaged in Title IV.

5. This Article shall apply, without prejudice to the provisions of personal data protection legislation.

**Article 84.** *Accounting data to be provided by credit institutions.*

1. Credit institutions and their consolidated groups must provide to the Banco de España and make public their financial statements, without prejudice to any additional reporting requirements that may apply in accordance with applicable legislation.

2. Without prejudice to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards and to the legislation on accounting data contained in Securities Market Law 24/1988 of 28 July 1988 and other applicable corporate/commercial legislation, the Minister for Economic Affairs and

Competitiveness may establish and amend the accounting standards and formats for the financial statements and consolidated financial statements of credit institutions, with the limits and specifications determined in regulations, indicating the frequency and level of breakdown with which the corresponding information should be provided to the Banco de España and made publicly available by the credit institutions. The only constraint on the exercise of this power, which may be entrusted by the Minister for Economic Affairs and Competitiveness to the Banco de España, the CNMV or the ICAC, shall be the requirement that the disclosure standards be the same for all credit institutions of the same kind and similar for the different kinds of credit institutions.

The ministerial order containing the authorisation shall determine the reports necessary, where appropriate, for establishing and amending the above-mentioned standards and formats, and for replying to any enquiries regarding this legislation.

**Article 85.** *Prudential information of credit institutions.*

1. Pursuant to Part Eight of Regulation (EU) No 575/2013 of 26 June 2013, consolidated groups of credit institutions and credit institutions not belonging to consolidated groups shall disclose, as soon as this is viable, on at least an annual basis and duly included in a single “Prudential information” document, specific information on their financial situation and activity that may be of interest to the market and other interested parties in order to assess the risks facing those groups and institutions, their market strategy, their risk control, their internal organisation and their situation with a view to meeting the minimum common equity requirements envisaged in the solvency regulations.

2. The groups and institutions shall adopt a formal policy to meet these disclosure requirements and ensure that the data disclosed are sufficient and accurate and that the frequency of disclosure is correct, and shall have in place procedures to permit assessment of the suitability of that policy.

3. The Banco de España may require parent companies to make public, on an annual basis, whether in full or by means of references to equivalent information, a description of the legal structure and governance of the group and its organisational structure.

4. Disclosure, in accordance with the requirements of corporate/commercial or securities market legislation, of the information referred to in paragraph 1 shall not preclude its inclusion as envisaged in that paragraph.

5. The Banco de España may require credit institutions that are under the obligation to disclose the information referred to in paragraph 1 to:

a) Subject the information that is not covered by audit to control by independent auditors or experts, or by any other means it deems satisfactory, in accordance with the provisions on the independence of auditors established in Chapter III of the Consolidated Text of the Audit Law approved by Royal Legislative Decree 1/2011 of 1 July 2011.

b) Disclose one or more of such items of information, whether separately at any time or more frequently than on an annual basis, and establish disclosure time limits.

c) Make disclosures in media and places other than the financial statements.

**Article 86.** *Information required of branches of credit institutions based in the European Union.*

1. The Banco de España may require credit institutions of another European Union Member State with a branch in Spain to submit periodic information on the transactions that the branch conducts in Spain.

2. That information shall be requested purely for informative or statistical purposes, for application of Article 59(2) in particular regarding whether a branch is deemed significant, and for supervisory purposes in accordance with this Title. These reports shall be subject to the obligation of secrecy referred to in Article 82.

3. In accordance with Article 84(2), the scope of their accounting obligations and the information to be provided for statistical purposes shall be determined.

4. In addition, Spanish credit institutions with branches in other European Union Member States shall comply with equivalent requests made by other Member States.

**Article 87.** *Annual banking report.*

1. Credit institutions shall submit to the Banco de España and shall make public, on an annual basis, broken down by the countries in which they operate, the following information on a consolidated basis for each year:

a) Name, type and geographical location of the business.

b) Turnover.

c) Number of full-time employees.

d) Profit before tax.

e) Income tax.

f) Public aid or subsidies received.

2. The information referred to in the previous paragraph shall be made public as a report attached to the financial statements audited in accordance with the audit regulations and headed the annual banking report.

3. Institutions shall disclose, in their annual banking report, among the key indicators, their return on assets, calculated by dividing net income by total assets.

4. The Banco de España shall make these reports available on its website.

**Article 88.** *Information on holdings in credit institutions.*

Credit institutions shall make public, on the terms determined in regulations, any holdings of other Spanish or foreign credit institutions in their capital, and their holdings in the capital of any other credit institutions.

**TITLE IV**  
**Sanctioning regime**

**CHAPTER I**  
**General provisions**

**Article 89.** *General provisions.*

1. Credit institutions, along with their directors and executives, that infringe regulatory and disciplinary rules shall be liable to administrative penalties pursuant to the provisions of this title.

The respective liability attributable to a credit institution and to its directors and executives shall be independent. The non-initiation of sanctioning proceedings or the shelving or dismissal of the case against a credit institution shall not necessarily affect the potential liability of its directors and executives, and vice versa.

2. The administrative liability envisaged in the previous paragraph may likewise extend to natural or legal persons with a qualifying holding, in accordance with the provisions of Chapter III of Title I, and to those who, of Spanish nationality, control a credit institution in another European Union Member State, as well as to those subject to the notification obligation laid down in Article 17. Liability shall also extend to the directors and executives of the institutions liable.

3. The management bodies of an institution are those that are empowered to set the strategy, objectives and general direction of the institution and that oversee and control management decision-making, including those who effectively run the institution.

Office-holders in credit institutions, for the purposes of the provisions laid down in this title, are their directors or members of their collegiate management bodies, their managing directors and similar posts in the terms envisaged in Article 6(6).

4. The sanctioning regime envisaged in this title shall also be applicable to:

- a) Branches opened in Spain by foreign credit institutions.
- b) Natural or legal persons and their de facto or de jure directors and executives who infringe the prohibitions envisaged in Article 3.
- c) Financial holding companies, mixed financial holding companies and their directors and executives.

- d) All other institutions provided for under the legal system.
  - e) Those third parties to which credit institutions or the institutions envisaged in points (a), (c) and (d) have outsourced operational functions or activities.
5. The sanctioning regime envisaged in this title shall be applied without prejudice to the functions attributed to the European Central Bank, pursuant to Regulation (EU) No 1024/2013 of 15 October 2013.

**Article 90.** *Competence for hearing proceedings.*

1. The Banco de España shall be competent to hear and resolve the proceedings to which this title refers, and may impose the penalties described herein and, where appropriate, the necessary administrative measures.
2. In a reasoned decision, the Banco de España shall notify the Ministry of Economic Affairs and Competitiveness of the imposition of penalties for very serious infringements and shall, in any event, submit quarterly to the latter the essential information on proceedings under way and the resolutions adopted.

## **CHAPTER II** **Infringements**

**Article 91.** *Classification of infringements.*

Infringements are classified as very serious, serious and minor.

**Article 92.** *Very serious infringements.*

Very serious infringements include:

- a) Engaging professionally in the activity of taking deposits or other repayable funds from the public and making use of the names reserved for credit institutions or of other names that may be mistaken for them, without having been authorised as a credit institution.
- b) Performing the functions detailed below, without authorisation when this is mandatory, without observing the basic conditions set in such authorisation, or having obtained authorisation through false statements or through other irregular means:
  - 1.- Mergers or spin-offs affecting credit institutions and transfers en bloc of assets or liabilities involving a credit institution.
  - 2.- Direct or indirect acquisition or assignment of a foreign credit institution's shares or other capital instruments, or of their voting rights, by Spanish credit institutions or by a subsidiary or parent thereof.
  - 3.- Distribution of reserves, whether express or hidden.

4.- Opening by Spanish credit institutions of branches abroad.

c) Holding over a period of six months own funds lower than those required to obtain authorisation as a credit institution.

d) Insufficient coverage by credit institutions or the consolidated group or financial conglomerate to which they belong of own funds requirements, when these stand below 80% of the minimum level set in terms of risks assumed, or below the percentage of own funds required, where appropriate, by the Banco de España of a specific institution, in both cases for a period of at least six months

e) Engaging in activities outside the scope of the exclusive and legally stipulated corporate purpose, unless such activities are of a merely occasional or isolated nature.

f) Performing functions or operations prohibited by regulatory and disciplinary rules with the status of law or by European Union regulations, or failing to comply with the requirements laid down therein, unless on a merely occasional or isolated basis.

g) Lacking the legally required accounting procedures or keeping accounts with essential irregularities that prevent the net worth or financial position of the institution or of the consolidated group or financial conglomerate to which it belongs from being known.

h) Failing to comply with the obligation to submit its annual accounts to audit in conformity with the legislation prevailing in this connection.

i) Refusing or not cooperating with actions by the Banco de España in the exercise of its supervisory function, in instances where the supervisor has presented the attendant express and written requirement.

j) Not forwarding to the competent administrative body whatsoever data and documentation should be sent to it or which it may require in the exercise of its functions, or sending such data in an incomplete or inaccurate manner, thereby hampering any assessment of the solvency or liquidity of the institution or of the consolidated group or financial conglomerate to which it belongs. For the purposes of this point, late reporting, i.e. exceeding the term envisaged in the related rule or the term granted by the competent body on requiring the data, shall be considered a breach.

In particular, this point covers:

1.- The failure to report, or the incomplete or inaccurate reporting of:

i) The data referred to in Article 101 of Regulation (EU) No 575/2013 of 26 June 2013.

ii) Information on large exposures, thereby failing to comply with Article 394(1) of Regulation (EU) No 575/2013 of 26 June 2013.

iii) Information on compliance with the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 of 26 June 2013, in breach of Article 99(1) of that Regulation.

iv) Information on liquidity, in breach of Article 415(1) and (2) of Regulation (EU) No 575/2013 of 26 June 2013.

v) Information on the leverage ratio, in breach of Article 430(1) of Regulation (EU) No 575/2013 of 26 June 2013.

2.- The failure to report or the incomplete or inaccurate reporting of the following information, provided that, given the importance of the information or the delay in its transmission, such failings may be considered to be particularly material:

i) Financial information subject to regular reporting.

ii) Data reported to the Central Credit Register.

k) Failing to comply with the duty of accuracy when informing partners, financial counterparts, customers and the public in general, and non-compliance with the duty of confidentiality regarding data received from the Central Credit Register, their use for purposes other than those envisaged in the attendant regulations, and requesting reports on borrowers outside the scope of the cases expressly authorised in the aforementioned regulations. This unless, owing to the number of parties concerned or the import of the information, such breaches may be considered relatively insignificant.

l) Serious infringements, involving fraudulent actions or the use of natural or legal persons as a front.

m) Directly or indirectly acquiring a qualifying holding in a credit institution or directly or indirectly increasing that holding such that the proportion of voting rights or of capital held is equal to or higher than the thresholds indicated in Article 17, thereby failing to comply with the provisions of Chapter III of Title I and, in particular, with the obligation to notify the Banco de España.

n) Directly or indirectly assigning or lowering a qualifying holding in a credit institution, such that the proportion of voting rights or of capital held falls below the thresholds indicated in Article 16, thereby failing to comply with the provisions of Article 21.

ñ) Jeopardising the sound and prudent management of a credit institution through the influence exercised by the holder of a qualifying holding.

o) That the credit institution, or the consolidated group or financial conglomerate to which it belongs, evidences shortcomings in its organisational structure, in its internal control mechanisms or in its administrative and accounting procedures, including those relating to risk management and control, when such shortcomings jeopardise the solvency or viability of the institution or of the consolidated group or financial conglomerate to which it belongs.

p) Failing to comply with the specific policies required by the Banco de España of a specific institution in respect of capital buffers, provisions, treatment of assets or reduction of the risk inherent in its activities, products or systems, when the policies in question have not been adopted within the period and under the terms set to this end by the Banco de España and such non-compliance endangers the institution's solvency or viability.

q) Failing to comply with the restrictions or limitations imposed by the Banco de España in relation to the business, operations or network of a specific institution.

r) Failure by the directors of a credit institution to report to the Banco de España the plan for restoring compliance with the solvency regulations pursuant to Article 68(2)(c) or the action or restructuring plans referred to by Law 9/2012 of 14 November 2012, when this is appropriate. This failure to report shall be understood to be the case when the term set for reporting, counting from the time the executives know or should have known that the institution was in one of the situations determining the existence of this obligation, has expired.

s) Incurring an exposure that exceeds the limits set in Article 395 of Regulation (EU) No 575/2013 of 26 June 2013.

t) Incurring an exposure to the credit risk of a securitisation position without meeting the conditions set out in Article 405 of Regulation (EU) No 575/2013 of 26 June 2013.

u) Making payments to holders of instruments included in own funds that lead to a breach of the requirements in respect of Common Equity Tier 1 capital, Additional Tier 1 capital, Tier 2 capital or the capital buffer levels established in this Law or in Regulation (EU) No 575/2013 of 26 June 2013.

v) Not publishing the required information and thereby failing to comply with Article 431(1), 431(2) and 431(3) or Article 451(1) of Regulation (EU) No 575/2013 of 26 June 2013, and the incomplete or inaccurate publication of such information.

w) Failing to comply with the suitability requirements for members of the management bodies, managing directors and similar posts, and other individuals occupying key positions for the pursuit of the credit institution's activity, when the Banco de España considers such requirements not to have been met and not to have been rectified following the transmission of the corresponding requirement; also, failing to comply with the other corporate governance rules and remuneration policies provided for in Chapter V of Title I, when such non-compliance is considered particularly significant in light of the importance of the specific rules breached or the economic and financial position of the institution.

x) Performing actions or entering into operations in non-compliance of the rules laid down in Article 5, provided that, in light of the number of parties affected, of repeated misconduct or of the effects on customer confidence and on the stability of the financial system, such non-compliance may be considered particularly material.



y) Serious infringements when, over the five years prior to their being committed, a final administrative penalty for the same type of infringement has been imposed on the credit institution.

z) The performance of acts or transactions that do not comply with the obligations set out in the legal provisions indicated in Article 71(3) of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, provided that, in view of the number of parties affected, the repetition of the conduct or the effect on customer confidence and financial system stability, such failures to comply may be considered to be especially significant;

aa) The repeated provision on a professional basis of any of the payment services listed in Article 1(2) of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, without having the status of payment service provider, or the use of any of the names reserved for payment service providers without having been authorised or registered.

ab) Breach of the duty of confidentiality and custody of the data obtained by a payment service provider listed in Article 5(1) in the provision of any of the payment services referred to in Article 1(2) of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, unless, in view of the number of parties affected or the importance of the information, such breaches may be considered to be of little significance.

**Article 93.** *Serious infringements.*

Serious infringements involve:

a) Unauthorised actions or operations when such authorisation is mandatory, without observing the basic conditions thereof, or having obtained authorisation by means of false statements or through other irregular means, wherever this does not entail committing a very serious infringement under the provisions of the previous Article.

b) Failing to submit notification, when this is mandatory, in the cases detailed in Article 92(b) and in those in which notification refers to the composition of the institution's management bodies or to the composition of its shareholder structure.

c) Engaging on a merely occasional or isolated basis in activities outside the scope of the institution's legally stipulated and exclusive corporate purpose.

d) Performing on a merely occasional or isolated basis actions or operations prohibited by regulatory and disciplinary rules with the status of law or established in European Union regulations, or in non-compliance with the requirements laid down therein.

e) Performing actions or operations prohibited by regulatory and disciplinary rules or in non-compliance with the requirements laid down therein, unless this is on an occasional or isolated basis.

f) Performing actions or operations in non-compliance with the rules laid down in Article 5, provided this does not entail committing a very serious infringement pursuant to the provisions of the previous Article, unless they are of an occasional or isolated nature.

g) Failure by credit institutions or by the consolidated group or financial conglomerate to which they belong sufficiently to cover the own funds requirements set out in solvency regulations or required by the Banco de España of a specific institution, this situation having prevailed for at least six months, provided this does not constitute a very serious infringement under the provisions of the previous Article.

h) Non-compliance with the rules on risk limits or any other rules imposing quantitative limits, whether absolute or relative, on the volume of specific asset- or liabilities-side operations, provided this does not involve a very serious infringement being committed under the provisions of the previous Article.

i) Non-compliance with the obligation to hold liquid assets set out in Article 412 of Regulation (EU) No 575/2013 of 26 June 2013.

j) Non-compliance with the conditions and requirements demanded under the related rules in respect of credit operations enjoying subsidised interest rates or other State aid.

k) Insufficient funding of obligatory reserves and loan-loss provisions or of the funds and compensatory items required under accounting rules for the coverage of other assets or contingencies.

l) Failure to report to the competent administrative body the data or documents that must be transmitted to it or that it requires in the performance of its duties, or the incomplete or inaccurate transmission thereof, unless this constitutes a very serious infringement. For the purposes of this point, late reporting, i.e. exceeding the term envisaged in the related rule or the term granted by the competent body on requiring the data, shall be considered a breach.

m) Failure by the directors to communicate to the Annual General Meeting or Assembly those events or circumstances whose communication has been ordered by the duly empowered administrative body, provided this does not constitute a very serious infringement under the provisions of the previous Article.

n) Failure to comply with the duty of accuracy when informing partners, financial counterparts, customers and the public in general, and non-compliance with the duty of confidentiality regarding data received from the Central Credit Register, their use for purposes other than those envisaged in the attendant regulations, and the request of reports on borrowers outside the scope of the cases expressly authorised in this Law, provided this does not constitute a very serious infringement under the provisions of the previous Article.

ñ) Performing fraudulent acts or using natural or legal persons as a front in order to achieve an outcome contrary to the solvency and discipline rules, provided this does not constitute a very serious infringement under the provisions of the previous Article.

o) Non-compliance with the rules in force on the recording of operations and on preparation of the financial statements that have to be reported to the competent administrative body.

p) That the credit institution, or the consolidated group or financial conglomerate to which it belongs, evidences shortcomings in its organisational structure, in its internal control mechanisms or in its administrative and accounting procedures, including those relating to risk management and control, and provided this does not constitute a very serious infringement under the provisions of the previous Article.

q) Persons managing or directing credit institutions who do not hold de jure a management post in such institutions.

r) Failing to comply with the specific policies required by the Banco de España of a specific institution in respect of capital buffers, provisions, treatment of assets or reduction of the risk inherent in their activities, products or systems, when the policies in question have not been adopted within the period set to this end by the Banco de España, and provided this does not constitute a very serious infringement under the provisions of the previous Article.

s) Non-existence or poor functioning of customer care departments or services, in this latter case if, the term extended in this connection by the Banco de España having expired, the shortcomings detected by the supervisor have not been remedied.

t) Failure to comply with the suitability requirements for members of the management bodies, managing directors and similar posts, and other individuals occupying key positions for the pursuit of the credit institution's activity; also, failure to comply with the other corporate governance rules and remuneration policies provided for in Chapter V of Title I, if, in both cases, this does not constitute a very serious infringement under the provisions of the previous Article.

u) Minor infringements when, over the two years prior to their being committed, a final administrative penalty for the same type of infringement has been imposed on the credit institution.

v) the performance of acts or transactions that do not comply with the obligations set out in the legal provisions indicated in Article 71(3) of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, if the circumstances described in Article 92(z) do not exist, unless such acts or transactions are occasional or isolated.

w) Failure to send any data or documents that must be sent to the Banco de España or that the latter may request in the exercise of its supervisory functions in application of the legal provisions indicated in Article 71(3) of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, or sending such data or documents incompletely or inaccurately. For the purposes of this subparagraph, failure to send data or documents shall also be understood to include their sending outside the period set in the

related legal provision or outside the period granted by the competent body when making the relevant request.

x) Breach of the duty of confidentiality and custody of the data obtained by a payment service provider listed in Article 5(1) in the provision of any of the payment services referred to in Article 1(2) of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, provided that such breach does not constitute a very serious infringement in accordance with the provisions of the preceding subparagraph.

**Article 94.** *Minor infringements.*

Minor infringements involve non-compliance with precepts that are obligatory for credit institutions and are included under regulatory and disciplinary rules, and which do not constitute a serious or very serious infringement under the provisions of the two previous Articles.

**Article 95.** *Limitation period for infringements and penalties.*

1. The respective limitation periods for very serious, serious and minor infringements shall be five years, four years and two years.

2. The limitation period shall run from the date on which the infringement has been committed. For infringements arising from a continuous activity or omission, the starting date shall be that of the end of the activity or that of the last action under the infringement.

3. The limitation period shall be interrupted by the initiation, with the knowledge of the party concerned, of the sanctioning procedure. It shall resume if the proceedings remain halted for six months owing to a cause not attributable to those against which the proceedings are directed.

There shall not be considered to be a stay in proceedings for the purposes of the terms of the previous subparagraph if such stay arises as a result of the adoption of a resolution to suspend the procedure under the provisions of Article 117.

4. The limitation period regime for penalties shall be as laid down in Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure.

### **CHAPTER III** **Penalties**

**Article 96.** *Penalties.*

1. The infringements referred to in the foregoing Articles shall give rise to the imposition of the penalties provided for in this chapter.

2. The penalties imposed, and whatsoever appeal made against them and the outcome of such appeals, shall be communicated to the European Banking Authority.

3. Unless otherwise provided for, the penalties regulated in the following Articles shall be applicable to the entities mentioned in Article 89(4) and to their directors or executives, as appropriate. Holders of qualifying holdings or the persons subject to the obligation envisaged in Article 17 who commit very serious infringements under the terms of this Law shall be penalised pursuant to the provisions of Article 97, with their directors or executives being penalised pursuant to the provisions of Article 100.

**Article 97. *Penalties for very serious infringements.***

1. One or more of the following penalties shall be imposed on institutions that have committed very serious infringements:

a) A fine, which may, in the judgment of the resolving competent body, be:

1º.- between three and five times the amount of the gains arising from the infringement, when such gains may be quantified; or

2º.- Up to 10% of total net annual turnover, including gross revenue from interest receivable and similar revenue, income from shares and other fixed-income or variable-yield securities, and commissions or fees receivable by the institution in the previous business year; or a fine of between €5 million and €10 million, if the aforementioned percentage were lower than this figure in accordance with Article 316 of Regulation (EU) No 575/2013, realised by the institution in the previous business year, or a fine of up to €10 million if the aforementioned percentage comes to an amount lower than this latter figure, in the case of credit institutions or entities engaging in the unauthorised pursuit of activities reserved to any of the institutions supervised by the Banco de España.

Up to 10% of the institution's own funds in the previous business year or a fine of up to €1 million if the aforementioned percentage comes to an amount lower than this figure, in the case of institutions supervised by the Banco de España other than credit institutions, or entities making unauthorised use of names reserved to credit institutions

If the infringing institution is the subsidiary of another undertaking, consideration shall be given, for the purposes of determining the amount of the fine, to the own funds of the parent company in the previous business year.

b) Withdrawal of the institution's authorisation.

In the case of branches of credit institutions authorised in another European Union Member State, the authorisation withdrawal penalty shall be understood to be replaced by the prohibition on commencing new business in Spanish territory.

2. In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

a) Requirement that the infringer cease such conduct and refrain from any repeat thereof.

b) Suspension of the voting rights of the shareholder or shareholders held responsible in the case of very serious infringements arising from non-compliance with authorisation requirements and with those applicable to acquisitions of qualifying holdings.

c) Public reprimand, with publication in the Official State Gazette of the infringer's identity, the nature of the infringement and the penalties imposed.

**Article 98.** *Penalties for serious infringements.*

1. A fine shall be imposed on an institution that has committed serious infringements which may, in the judgment of the resolving competent body, be:

a) Between twice and three times the amount of the gains arising from the infringement, when such gains may be quantified; or

b) Up to 5% of total net annual turnover, including gross revenue from interest receivable and similar revenue, income from shares and other fixed-income or variable-yield securities, and commissions or fees receivable by the institution in the previous business year; or a fine of between €2 million and €5 million, if the aforementioned percentage were lower than this figure in accordance with Article 316 of Regulation (EU) No 575/2013, realised by the institution in the previous business year, or a fine of up to €5 million if the aforementioned percentage comes to an amount lower than this latter figure, in the case of credit institutions or entities engaging in the unauthorised pursuit of activities reserved to any of the institutions supervised by the Banco de España.

Up to 5% of the institution's own funds in the previous business year or a fine of up to €500,000 if the aforementioned percentage comes to an amount lower than this figure, in the case of institutions supervised by the Banco de España other than credit institutions, or entities making unauthorised use of names reserved to credit institutions

If the infringing institution is the subsidiary of another undertaking, consideration shall be given, for the purposes of determining the amount of the fine, to the own funds of the parent company in the previous business year.

2. In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

a) Requirement that the infringer cease such conduct and refrain from any repeat thereof.

b) Public reprimand, with publication in the Official State Gazette of the infringer's identity, the nature of the infringement and the penalties imposed; or private reprimand.

**Article 99.** *Penalties for minor infringements.*

1. A fine shall be imposed on a credit institution that has committed minor infringements which may, in the judgment of the resolving competent body, be:

a) Between the amount of and twice the amount of the gains arising from the infringement, when such gains may be quantified; or

b) Up to 1% of total net annual turnover, including gross revenue from interest receivable and similar revenue, income from shares and other fixed-income or variable-yield securities, and commissions or fees receivable by the institution in the previous business year in accordance with Article 316 of Regulation (EU) No 575/2013; or a fine of up to €1 million, if the aforementioned percentage were lower than this latter figure, in the case of credit institutions or entities engaging in the unauthorised pursuit of activities reserved to any of the institutions supervised by the Banco de España

Up to 1% of the institution's own funds in the previous business year or a fine of up to €100,000 if the aforementioned percentage comes to an amount lower than this figure, in the case of institutions supervised by the Banco de España other than credit institutions, or entities making unauthorised use of names reserved to credit institutions.

If the infringing institution is the subsidiary of another undertaking, consideration shall be given, for the purposes of determining the amount of the fine, to the own funds of the parent company in the previous business year.

2. In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

a) Requirement that the infringer cease such conduct and refrain from any repeat thereof.

b) Private reprimand.

**Article 100.** *Penalties for directors or executives for very serious infringements.*

1. Irrespective of any penalty imposed on the infringing credit institution for very serious infringements, one or more of the following penalties may be imposed on the credit institution's de facto or de jure directors or executives responsible for the infringement:

a) A fine for each of them for an amount up to €5 million.

b) Suspension from the office of director or executive in the credit institution for a term of no more than three years.

c) Removal from office in the credit institution, disqualifying such persons from holding a director's or executive post in this same credit institution for a maximum term of five years.

d) Disqualification to hold a directorship or executive post at any credit institution in the financial sector and removal, where appropriate, from any such post held by the infringer at a credit institution, for a period of no more than ten years.

2. In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

a) Requirement that the infringer cease such conduct and refrain from any repeat thereof.

b) Public reprimand, with publication in the Official State Gazette of the infringer's identity, the nature of the infringement and the penalties or accessory measures imposed.

**Article 101.** *Penalties for directors or executives for serious infringements.*

1. Irrespective of any penalty imposed on the infringing credit institution for serious infringements, one or more of the following penalties may be imposed on the credit institution's de facto or de jure directors or executives responsible for the infringement:

a) A fine for each of them for an amount up to €2.5 million.

b) Suspension from office for a term of no more than one year.

c) Removal from office and disqualification from serving as a director or executive at the same credit institution for a maximum term of two years.

d) Disqualification from serving as a director or executive at any credit institution in the financial sector, with suspension, where appropriate, from the directorship or executive office held by the infringer in a credit institution, for a term not exceeding five years.

2. In addition to the penalties envisaged in the previous paragraph, the following accessory measures may be imposed:

a) Requirement that the infringer cease such conduct and refrain from any repeat thereof.

b) Public reprimand, with publication in the Official State Gazette of the infringer's identity, the nature of the infringement and the penalties or accessory measures imposed.

**Article 102.** *Penalties for directors or executives for minor infringements.*

1. Irrespective of any penalty imposed on the infringing credit institution for minor infringements, a fine of up to €500,000 on each of the credit institution's de facto or de jure directors or executives responsible for the infringement.



In addition to the fine envisaged in the previous sub-paragraph, a private reprimand may be imposed as a secondary measure.

2. In addition to the penalties envisaged in the previous paragraph, the infringer may be required to cease such conduct and refrain from any repeat thereof.

**Article 103.** *Criteria for determining penalties.*

The penalties applicable in each case for very serious, serious or minor infringements shall be determined on the basis of the following criteria:

- a) The nature and scale of the infringement.
- b) The degree of responsibility for the events.
- c) The gravity and duration of the infringement.
- d) The significance of the profits gained or losses avoided, as appropriate, as a result of the actions or omissions that constitute the infringement.
- e) The financial strength of the legal person responsible for the infringement, as indicated, among other objective criteria, by the total turnover of the legal person responsible.
- f) The financial strength of the natural person responsible for the infringement, as indicated, among other objective criteria, by the annual income of the natural person responsible.
- g) The unfavourable consequences of the events for the financial system or the national economy.
- h) The rectification of the infringement on the initiative of the infringer.
- i) Reparation for the damage or harm caused.
- j) The losses for third parties caused by the infringement.
- k) The level of cooperation with the competent authority.
- l) The systemic consequences of the infringement.
- m) The level of representation of the infringer in respect of the infringing institution.
- n) In the event of insufficiency of own funds, the objective difficulties in the way of attaining or maintaining the legally required level.
- ñ) The previous conduct of the infringer in relation to the regulatory and disciplinary rules at issue, with regard to final penalties having been imposed, over the past five years.

**Article 104.** *Responsibility of directors or executives.*

1. The credit institution's directors or executives shall be responsible for infringements when such infringements are attributable to their wilful misconduct or negligence.

2. Its directors or members of its management bodies shall not be considered responsible for the infringements in the following cases:

a) When members of management bodies have not, justifiably, attended the related meetings, or have voted against or expressly refrained from voting on the decisions or resolutions giving rise to the infringements.

b) When these infringements are exclusively attributable to executive boards, members of the management body with executive functions, managing directors or similar officers, or other persons with executive functions in the institution.

**Article 105.** *Responsibility of consolidated groups of credit institutions.*

1. When the infringements set out in Articles 92, 93 and 94 refer to obligations of consolidated groups of credit institutions, the obliged entity shall be penalised as will, where appropriate, its directors and executives.

Also, when such infringements refer to the obligations of financial conglomerates, the penalising measures envisaged in this Law shall be applied to the obliged entity when the latter is a credit institution or a mixed financial holding company, provided that in this latter case it is incumbent upon the Banco de España to perform the role of coordinator of the supplementary supervision of the financial conglomerate. The penalising measures referred to may also be imposed, where appropriate, on the directors and executives of the obliged entity.

2. If the applicable penalty were to be that of the withdrawal of authorisation envisaged in Article 97(1)(b) and the financial institution that were head of the consolidated group were not a credit institution, the penalty of compulsory winding-up of the former shall be imposed with the opening of the liquidation period.

3. When, pursuant to the provisions of the two previous paragraphs or those set out in Article 92(b)(2.-), penalties are to be imposed on natural persons or on institutions without the status of credit institutions, the applicable measures shall be those set out to this end in this Law for institutions that do have the status of credit institutions, without prejudice to the provisions of the previous paragraph.

**Article 106.** *Temporary appointment of members of the management body.*

If, owing to the number and office of the persons affected by suspension or removal penalties, it is strictly necessary to ensure continuity in the management and stewardship of the credit institution, the Banco de España may provisionally appoint the members needed so that the management body may adopt resolutions, or appoint one or more managers, specifying their functions. These persons shall perform their duties until the competent body of the credit institution, which shall be convened immediately, provides for the corresponding

appointments and those designated take office, where appropriate, until the term of suspension has elapsed.

#### **CHAPTER IV**

##### **Procedural rules**

**Article 107.** *Procedure for imposing penalties.*

1. The imposition of penalties envisaged in this Law shall be in accordance with the procedure and principles laid down in Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure, with the special conditions included in the following Articles, and in the implementing provisions.

2. The penalties, if any, corresponding both to credit institutions and to those holding directorships or executive posts in them shall be imposed, wherever possible, in a single decision, as the outcome of a single sanctioning procedure.

**Article 108.** *Procedure applicable in the case of minor infringements.*

In the case of minor infringements, the penalty may be imposed following the simplified procedure, and only consultation of the institution concerned and of the related directors and executives shall be mandatory.

**Article 109.** *Appointment of examiners or assistant secretaries.*

In the resolution to initiate proceedings, or during such proceedings, examiners or assistant secretaries may be appointed if the complexity of the case so advises it. The assistant examiners may act under the supervision of the examiner.

**Article 110.** *Submission of evidence.*

Following the response to the charge sheet, the examiner may, ex officio or at the request of the parties concerned in their submissions relating to the charge sheet, resolve that any further evidence considered necessary be submitted.

**Article 111.** *Transitional measures.*

1. Before initiating proceedings, and provided there are pressing reasons, the Banco de España, ex officio or at the request of one of the parties, may adopt the transitional measures it deems necessary to ensure the proper exercise of its supervisory function and the effectiveness of any decision that may be issued. These measures must be confirmed, amended or withdrawn in the resolution to initiate the sanctioning proceedings.

2. Further, the body competent for initiating proceedings may adopt, through a reasoned resolution, the transitional measures needed to ensure: the effectiveness of the decision handed down; the successful outcome of the procedure; avoiding the continuing effects of the infringement; and the demands of the general interest.

3. The body adopting the transitional measures may, if the nature of such measures and the circumstances of the case so advises, decide to publish the measures, pursuant to Article 60 of Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure, and to inscribe them in the corresponding public registers, especially if those targeted by the measures were not to comply voluntarily with them.

4. The transitional measures that may be adopted include the suspension of the alleged infringer's activity, or any other measure, provided this is advisable for protecting the financial system or the economic interests concerned.

**Article 112.** *Provisional suspension of persons holding directorships or executive posts.*

1. In the resolution to initiate proceedings or during the course of the proceedings, it may be decided to provisionally suspend from the exercise of their duties persons who, acting as directors or executives in the credit institution, are allegedly responsible for very serious infringements, provided this is advisable for protecting the financial system or the economic interests concerned. This suspension shall be inscribed in the Mercantile Register and in those other registers where appropriate.

2. Provisional suspension, except when the case against the party concerned is stayed, shall be for a maximum duration of six months, and may be lifted at any time ex officio or at the request of the party.

3. The duration of the provisional suspension shall be calculated for the purposes of compliance with the suspension penalties.

4. The provisions of Article 106 relating to the temporary appointment of members of the management body shall be applicable to the provisional suspension envisaged in this Article.

**Article 113.** *Enforceability of penalties and challenge through the administrative channel.*

1. The penalties imposed under this Law shall not be enforceable until the administrative channel has been exhausted.

2. The Banco de España resolutions concluding the sanctioning procedure may be appealed against before the Ministry of Economic Affairs and Competitiveness, pursuant to the provisions of Articles 114 and 115 of Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure.

**Article 114.** *Penalties comprising a fine.*

1. When the penalty is a fine, the related amount shall be paid in to the Treasury.

2. If the penalty referred to in the previous paragraph were not complied with in the stipulated period of time, a claim may be lodged through the executive channel in keeping with the procedural rules applicable.

**Article 115.** *Disclosure of penalties.*

1. The imposition of penalties, with the exception of private reprimands, shall be inscribed in the corresponding administrative registers of credit institutions and senior officers.

2. The penalties of suspension, removal from office and removal from office with disqualification shall, once they are enforceable, also be recorded in the Mercantile Register and, where appropriate, in the Register of Credit Cooperatives.

3. The appointment of members of the management body or of temporary directors referred to in Article 106 shall also be recorded in the related registers.

4. Once the penalties imposed on the credit institution or on those acting as directors or executives therein are enforceable, they shall be communicated in the following Annual General Meeting or Assembly to be held.

5. Penalties and reprimands for very serious and serious infringements shall be published in the Official State Gazette) once they acquire administrative finality. The information published shall include at least the type and nature of the infringement and the identity of the party responsible for it.

6. Regarding the provisions of the preceding paragraph, exceptionally the Banco de España may delay publication until such time as the reasons for the delay cease to exist or it may publish the penalty anonymously if it considers that one or more of the following circumstances apply:

a) The penalty is imposed on a natural person and, on the basis of a prior assessment, publication of the personal data would be disproportionate.

b) Publication might jeopardise financial market stability or an ongoing criminal investigation.

c) Publication might cause disproportionate harm to the institutions or individuals involved, insofar as the harm may be determined.

7. Penalties and reprimands for very serious and serious infringements shall likewise be published on the Banco de España website, within fifteen working days as from the administrative finality of the penalty or reprimand, and the information published shall be that specified in paragraph 5 above, notwithstanding that the measures specified in paragraph 6 above may be adopted in the cases envisaged therein.

When an appeal against the decision to impose a penalty or measure is filed in the courts, the Banco de España shall also publish immediately on its website that information and all subsequent information on the outcome of that appeal. Furthermore, any decision revoking or cancelling a previous ruling to impose a penalty or measure shall be published.

The Banco de España shall maintain in published form on its official website all the information referred to above for at least five years after initial publication.

**Article 116.** *Notification of penalties.*

Credit institutions must have the appropriate procedures so that their employees may notify infringements internally through an independent, specific and autonomous channel. These procedures must ensure confidentiality both for the person reporting the infringements and the natural persons allegedly responsible for the infringement.

Also, institutions must ensure protection from retaliation, discrimination and any other type of improper treatment for employees who report infringements committed in the institution.

**Article 117.** *Concurrence with criminal proceedings.*

The exercise of the sanctioning power referred to in this title shall be independent from any concurrent criminal offences or misconduct. However, when criminal proceedings are under way for the same events or for others from which the sanctionable events under this title cannot be rationally separated, the administrative procedure shall be stayed in respect of such events until there is a final ruling from the judicial authority. If the procedure is resumed, the decision issued must observe the assessment of the facts contained in such ruling.

**Article 118.** *Sending of report on sanctioning measures to Parliament.*

Annually, the Banco de España shall send to Parliament a Report on actions that have given rise to very serious penalties.

## **CHAPTER V**

### **Communication of infringements**

**Article 119.** *Types of and channel for communications.*

1. Any person having knowledge or a founded suspicion of failure to comply with obligations in respect of the prudential supervision of credit institutions specified in this Law and its implementing regulations, provided they are envisaged in Directive 2013/36/EU of 26 June 2013 or Regulation (EU) No 575/2013 of 26 June 2013, may so inform the Banco de España in the manner and with the assurances set out in this article.

2. The communication may be made in any way which leaves a reliable record of the informant's identity and of its remittance to the Banco de España.

3. By means of publication on its website, el Banco de España will furnish the basic information on the procedure for informing of infringements and, in particular, on the measures for protecting the identity of the informant.

**Article 120.** *Minimum content of communications.*

1. The communications referred to in Article 119 above shall include the identification of the person making them and provide factual evidence constituting reasonable grounds for at least a founded suspicion that an infringement has taken place.

2. Once it receives the communication, the Banco de España shall make the appropriate checks to determine whether or not there is a founded suspicion of infringement and its disciplinary importance.

3. If the communication expressly requests the initiation of a sanctioning procedure, the Banco de España shall inform the person sending the communication of the initiation of a sanctioning procedure, if any. If, following the communication, a sanctioning procedure is initiated on the basis of the facts communicated, the Banco de España shall notify the informant of such initiation. The communication does not in itself bestow on the informant the status of interested party in the sanctioning procedure.

4. The Banco de España shall also inform, where applicable, of the referral of the facts to other authorities inside or outside Spain.

**Article 121.** *Assurance of confidentiality.*

1. The Banco de España shall have in place mechanisms to ensure the confidentiality of the informant's identity and of the information communicated. The communications received shall not have evidential value and may not be included directly in administrative or legal proceedings.

2. Any transmission of the communication, inside or outside the Banco de España, shall be made without revealing, directly or indirectly, the personal data of the informant or of the persons included in the communication, except in the following cases:

a) When the personal data of the alleged infringer or of third parties other than the informant are needed for the performance of preliminary steps to or the initiation, investigation stage or resolution of sanctioning administrative proceedings or of legal proceedings.

b) When the personal data of the informant are expressly required by a criminal-law judiciary body in the course of criminal investigations or proceedings. These data shall have a minimum level of protection equal to that of persons under investigation or sanctioned by the competent body.

c) When the personal data included in the communication are needed by authorities equivalent to national competent authorities in the European Union, upon prior compliance with the requirements set in the applicable national or European legislation, or of non-European Union countries, provided that the level of protection of personal data confidentiality is equal to that in Spain.

d) When so permitted by data protection regulations.

**Article 122.** *Protection in labour and contractual settings.*

1. The communication of any of the infringements referred to in Article 119:
  - a) Shall not constitute a breach of or failure to comply with information disclosure restrictions imposed contractually or by laws, regulations and administrative provisions which may affect the informant, persons closely linked to the informant, or firms managed by the informant or of which the informant is the actual owner.
  - b) Shall not constitute an infringement of any kind by the informant under labour law and may not give rise to unfair or discriminatory treatment by the employer.
  - c) Shall not give rise to any right to compensation or indemnity for the firm to which the informant provides services or for a third party, even though an undertaking may have been given to inform said firm or third party in advance.
2. The Banco de España shall apprise the informant in a practical and precise manner of the remedies and procedures available under law to protect him/her from possible harm deriving from any of the situations referred to in paragraph 1 above. Also, it shall provide effective assistance by apprising the informant of his/her rights and issuing, where applicable, the related certificate of his/her status of whistle-blower so that it is recognised by the courts. Furthermore, it shall afford the necessary means to provide any informant so requiring with assistance in facing the real risks stemming from the communication, including, in particular accreditation of the existence, content and material value of the communication.

**First additional provision.**

**Requirements for preference shares to qualify as capital for the purposes of the solvency regulations and the tax treatment applicable to these shares and to certain debt instruments.**

1. Preference shares shall be considered Additional Tier 1 capital for the purposes of Regulation (EU) No 575/2013 of 26 June 2013, provided they meet the conditions laid down in Chapter 3, Title I, Part Two, or in Chapter 2, Title I, Part Ten, of the Regulation.
2. Preference shares that meet those conditions shall be subject to the tax treatment envisaged in paragraphs 3 and 4 of this additional provision when they also meet the following additional requirements:
  - a) They are issued by a Spanish credit institution or a company resident in Spain or in a territory of the European Union that is not considered a tax haven, whose voting rights are held in full, directly or indirectly, by a Spanish credit institution and whose business or purpose focuses exclusively on the issue of preference shares.
  - b) In the case of issues made by a subsidiary of the entities envisaged in point a), the funds obtained should be permanently invested in full, minus any issuance and management



costs, in the parent credit institution, directly earmarked to cover the latter's risks and its financial situation and that of the consolidated group or sub-group to which it belongs.

c) They do not grant voting rights to their holders, save in exceptional circumstances established in the respective terms of issue.

d) They do not grant pre-emption rights to future issues.

e) They trade on regulated markets, multilateral trading facilities or other organised markets.

f) At least 50% of the total public offering must be addressed exclusively to professional investors, who must number at least 50, and the provisions of Article 78 bis(3)(e) of Securities Market Law 24/1988 of 28 July 1988 shall not apply in this case.

g) In the case of issues made by entities other than listed companies, under the terms of Article 495 of the Consolidated Text of the Share Capital Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, the minimum denomination per unit of the preference shares shall be €100,000; in all other issues the minimum denomination per unit shall be €25,000.

3. The tax treatment of preference shares issued in accordance with the previous paragraph shall be as follows:

a) Distributions to holders shall be considered a deductible expense for the issuer.

b) Any income from the preference shares shall be classed as income obtained from the transfer of own capital to third parties pursuant to Article 25(2) of Law 35/2006 of 28 November 2006 on personal income tax and partially amending the Corporate Income Tax, Non-Resident Income Tax and Wealth Tax Laws.

c) In the case of issues made by a subsidiary, income generated from depositing the funds obtained with the parent credit institution will not be subject to any withholding tax, and, where applicable, the exemption established in Article 14(1)(f) of the Consolidated Text of the Non-Resident Income Tax Law, approved by Royal Legislative Decree 5/2004 of 5 March 2004, shall apply.

d) Income from preference shares obtained by taxpayers subject to non-resident income tax with no permanent establishment shall be exempt from non-resident income tax on the same terms as income from public debt pursuant to Article 14 of the Consolidated Text of the Non-Resident Income Tax Law, approved by Royal Legislative Decree 5/2004 of 5 March 2004.

e) Transactions arising from the issue of preference shares shall be exempt from transfer tax under the "corporate transactions" heading.

4. The parent credit institution of a consolidated group or sub-group of credit institutions shall be required to inform the tax authorities and the financial supervisory authorities, as determined in regulations, of the activities pursued by the subsidiaries referred to in paragraph 2(a) above and of the identity of personal and corporate income taxpayers that hold securities issued by those subsidiaries and of taxpayers subject to non-resident income tax that obtain income from such securities through a permanent establishment in Spain.

5. This additional provision shall also apply where the parent institution referred to in paragraph 2(a) above is governed by the laws of a state other than Spain.

6. The arrangements envisaged in paragraphs 3 and 4 above shall also apply to issues of debt instruments made by credit institutions that meet the requirements laid down in paragraphs 2(a), (b), (c), (d) and (e). In these cases, the exclusive business or purpose envisaged in paragraph 2(a) shall refer to the issue of preference shares and to the issue of other financial instruments.

Likewise, the arrangements envisaged in paragraphs 3 and 4 above shall also apply to securities that trade on regulated markets, multilateral trading facilities or other organised markets and that are issued by mortgage securitisation special purpose vehicles, regulated by Law 19/1992 of 7 July 1992 on real estate investment funds and companies and mortgage securitisation special purpose vehicles, and by asset securitisation funds regulated by the fifth additional provision of Law 3/1994 of 14 April 1994 which adapts Spanish law on credit institutions to the Second Banking Co-ordination Directive and introduces other changes relating to the financial system.

7. The tax treatment envisaged in paragraphs 3 and 4 above shall also apply to preference shares issued by listed entities that are not credit institutions or by a company resident in Spain or in a territory of the European Union that is not considered a tax haven, whose voting rights are held in full, directly or indirectly, by listed entities that are not credit institutions. In these cases the preference shares should meet the following conditions:

a) they must meet the requirements established in points (b), (c), (d), (e), (f) and (g) of paragraph 2;

b) they must have been issued and paid up;

c) they must not have been acquired by the issuer or its subsidiaries, or by an entity in which the issuer holds, directly or indirectly, 20% or more of the voting rights or capital;

d) their acquisition must not have been funded directly or indirectly by the issuer;

e) for the purposes of the seniority of claims, they must rank immediately below all other creditors, whether or not subordinated, of the issuer or the parent entity of the consolidated group or sub-group, and above ordinary shareholders;

f) they must not be secured by or subject to a guarantee that enhances the seniority of claims in insolvency or liquidation provided by any of the following:

i) the entity or its subsidiaries,

ii) the parent company of the entity or its subsidiaries,

iii) any company that has close links with the entities referred to in indents i) and ii) above (to this effect, in accordance with the provisions of Article 4(1)(38) of Regulation (EU) No 575/2013 of 26 June 2013);

g) they must not be subject to any arrangement, contractual or otherwise, that enhances the seniority of claims arising from the preference shares in insolvency or liquidation;

h) they must be perpetual and the provisions governing them must include no incentive for the institution to redeem them;

i) where the provisions governing the preference shares include one or more call options, those options may be exercised at the sole discretion of the issuer;

j) they may not be redeemed or repurchased before five years after the date of disbursement;

k) distributions to holders of the preference shares must meet the following conditions:

i) they must be paid out of distributable items,

ii) the level of distributions must not be altered according to the credit standing of the issuer or the parent company,

iii) the provisions governing the instruments must give the institution full discretion at all times to cancel the distributions for an unlimited period and on a non-cumulative basis, and the institution may use such cancelled payments without restriction to meet its obligations as they fall due,

(iv) the cancellation of distributions must not constitute an event of default of the issuer,

(v) the cancellation of distributions must not impose restrictions on the issuer, in accordance with Article 53 of Regulation (EU) No 575/2013, of 26 June 2013;

l) where the issuer or parent entity, or its consolidated group or sub-group, incur material accounting losses or a sharp drop in their own funds, the terms of issue of the preference shares should set in place arrangements to ensure that the holders of these instruments will share in the absorption of current or future losses and that potential recapitalisation processes are not undermined, whether by conversion of the preference shares into ordinary shares of the issuer or parent, or by a reduction in their par value.

8. The tax treatment envisaged in paragraphs 3 and 4 above shall also apply to debt instruments issued by companies resident in Spain or public corporations. In these cases, the debt instruments should meet the conditions established in paragraphs 2(c), (d) and (e).

This tax treatment shall also apply to debt instruments issued by a company resident in a territory of the European Union that is not considered a tax haven, whose voting rights are held in full, directly or indirectly, by entities resident in Spain envisaged in the previous paragraph. In these cases the debt instruments should meet the conditions established in paragraphs 2(b), (c), (d) and (e).

9. The limit imposed, for reasons of capital and reserves, in Articles 405 and 411 of the Consolidated Text of the Share Capital Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, shall not apply to the issues of debt instruments referred to in paragraphs 6 and 8 above.

**Second additional provision.  
Limits on the issue of debt securities.**

The provisions of Article 510 of the Consolidated Text of the Share Capital Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, shall apply to credit institutions.

**Third additional provision.  
Financial leasing transactions.**

1. Financial leasing transactions shall be agreements whose exclusive purpose is the assignment of use of movable or immovable property, acquired for that purpose according to the specifications of the future user, in exchange for a consideration consisting of regular instalment payments. The assets leased may only be used for the farming, fishing, industrial, commercial, artisan, service or professional activities of the user. Financial leases shall necessarily include a purchase option, at the end of the lease, in favour of the user.

Where for whatever reason the user does not purchase the asset leased, the lessor may assign it to a new user, without it being considered that the principle established above has been breached because the asset was not purchased according to the specifications of the new user.

2. In addition, institutions that carry out financial leasing may also pursue the following activities:

- a) Maintenance and upkeep of the assets leased.
- b) Grant of financing relating to a present or future financial leasing transaction.
- c) Intermediation in and management of financial leasing transactions.
- d) Non-financial leasing, with or without a purchase option.
- e) Advisory services and preparation of commercial reports.

**Fourth additional provision.**  
**Supervision of institutions not in administrative registers.**

1. In relation to individuals or legal entities which, not being registered in any of the legally required administrative registers of financial institutions, offer loans, deposits or financial services of any kind to the public, the Ministry of Economic Affairs and Competitiveness, ex officio or at the behest of the Banco de España or of any other authority, shall be empowered to:

a) Require them, directly or through the Banco de España, to provide any accounting or other information on their financial activities, with the level of detail and frequency considered appropriate.

b) Carry out, directly or through the Banco de España, any inspections deemed necessary to clarify any aspects of the financial activities of these persons or entities and their compatibility with the legal system or confirm the accuracy of the information referred to in the previous paragraph.

2. Failure to provide the information requested in accordance with paragraph 1(a) above in the period established or granted for that purpose, inaccuracy of the information supplied or refusal of or resistance to the inspection activities referred to in paragraph 1(b) shall be considered very serious infringements for the purposes of Title IV. The corresponding penalties envisaged in Title IV may be imposed each time there is a failure to provide the information indicated in the relevant period or a refusal of or resistance to inspection activities.

**Fifth additional provision.**  
**Legal framework for institutional protection schemes.**

1. The Banco de España may exempt credit institutions that belong to an institutional protection scheme from compliance with the individual solvency requirements established in Parts Two to Eight of Regulation (EU) No 575/2013, of 26 June 2013, when the system is constituted through a contractual agreement between various credit institutions and complies with the requirements of Article 10 of the Regulation and with the following requirements:

a) There is a core institution that determines with binding nature its business strategies and policies and its risk management and internal control measures and levels, in which case this core institution will have to meet the regulatory requirements of the institutional protection scheme on a consolidated basis.

b) The core institution must be one of the credit institutions comprising the institutional protection scheme or an investee credit institution of all those institutions which also belongs to the scheme.

c) The contractual agreement establishing the institutional protection scheme must include a mutual solvency and liquidity commitment among the members of the scheme extending insofar as solvency support is concerned to all of the regulatory capital of each of

the members, which mutual support commitment shall include the necessary arrangements to ensure that the support among the members is provided through immediately available funds.

d) The institutions belonging to the institutional protection scheme must pool all of their income, which will be distributed, in a proportionate manner, to each member of the scheme.

e) The contractual agreement must establish that the institutions shall remain in the scheme for at least ten years, and that they must give at least two years' notice of their intention to leave it following the elapse of that period.

The agreement must also include a system of penalties for withdrawal from the scheme that reinforces the permanence and stability of the institutions in the scheme.

f) That in the view of the Banco de España, the requirements of the regulatory capital regulations for financial institutions for allocation of a risk weighting of 0% to exposures between institutional protection scheme members are met.

2. The Banco de España shall be responsible for checking that the above requirements are met for the purposes of this provision.

3. Before any members of an institutional protection scheme withdraw from it, the Banco de España shall evaluate the individual viability of the institution that wishes to leave the scheme and the viability of the scheme itself and of the other scheme members following that withdrawal.

Where the institutional protection scheme members are savings banks, the core institution shall be a public limited company and shall be jointly controlled by all of its members in accordance with the provisions of Article 42 of the Commercial Code.

#### **Sixth additional provision. References to repealed legislation.**

Any references made in law to rules repealed under the repealing provision shall be understood made to the corresponding provisions of this Law.

#### **Seventh additional provision. Registered shares and fiscal year.**

1. The capital of credit institutions that are organised as public limited companies shall be represented, in any event, by registered shares.

2. Credit institutions shall use the calendar year as their fiscal year.

#### **Eighth additional provision. Legal framework of the Official Credit Institute.**

The Official Credit Institute shall, for all effects and purposes, be considered a credit institution, with the particularities envisaged in the specific legislation.

In particular, as regards the provisions of this Law, Titles II, III and IV shall apply to it, with the exceptions determined in regulations, as shall the provisions on the duty to hold information confidential.

**Ninth additional provision.  
Regulatory and disciplinary framework for mutual guarantee companies.**

1. Any mutual guarantee or reguarantee companies, or persons serving as directors or managers in such companies, that are in breach of any regulatory or disciplinary rules shall be liable for administrative penalties as provided for in this Law.

2. For this purpose, the regulatory and disciplinary rules shall be considered to be the mandatory rules established for those companies in Law 1/1994 of 11 March 1994 on the legal framework for mutual guarantee companies and its implementing provisions.

**Tenth additional provision.  
Incompatibility for auditors to work in credit institutions.**

Where the competent authorities of the regional governments, and bodies or entities dependent on them agree, in the exercise of their powers relating to savings banks or other institutions, to request the co-operation of auditors or audit firms to carry out the tasks other than audit tasks regulated in Article 1 of the Consolidated Text of the Audit Law, approved by Royal Legislative Decree 1/2011 of 1 July 2011, this co-operation in the exercise of these powers shall be incompatible with the performance, at the same time or in the five years previous or subsequent thereto, of any audit work in those institutions or their associated companies, all the foregoing without prejudice to the provisions of Chapter III, Section 1 of the Consolidated Text of the Audit Law.

**Eleventh additional provision.  
Liability of savings banks' control committee members.**

1. Members of savings banks' control committees who are responsible for any of the infringements listed above shall be liable for administrative penalties, in accordance with the procedure and penalties provided for in this Law.

2. The following are very serious infringements by members of savings banks' control committees:

a) Serious and persistent negligence in the performance of the duties entrusted to them by law.

b) Failure to propose, to the competent management body, that resolutions adopted by the management body be suspended where such resolutions are manifestly in breach of existing provisions or may have an unfair and serious impact on the financial situation, income or credit standing of the savings bank or its depositors or customers.

c) Serious infringements if, during the five years previous to their being committed, final penalties have been imposed on them for the same type of infringement.

3. The following are serious infringements by members of savings banks' control committees:

a) Serious negligence in the performance of the duties entrusted to them by law not included in the provisions of paragraph 2(a) above.

b) Failure to submit to the competent administrative body any data or reports that they are required to send or that it may request in the performance of its duties, or sending of such data or reports with significant delay.

4. The following are minor infringements by members of savings banks' control committees: failure to perform any obligations that do not constitute serious or very serious infringements, and repeated failure to attend meetings of the control committee.

#### **Twelfth additional provision. Authorisation for structural change.**

1. The Minister for Economic Affairs and Competitiveness shall be responsible for authorising mergers, spin-offs or transfers, in full or in part, of assets and liabilities involving a bank, or any agreement that may have similar economic or legal effects. For those purposes, and before the authorisation is granted, a report shall be requested from the Banco de España, SEPBLAC, the CNMV and the Directorate General of Insurance and Pension Funds, in their respective areas of competence.

2. The request for authorisation must be settled within six months of its receipt by the General Secretariat of the Treasury, or of completion of the necessary documentation, and in any event within 12 months of its receipt. Any requests not settled by that time may be understood to have been refused. All other conditions of the authorisation procedure shall be determined by regulations.

3. Authorisation of mergers, spin-offs or transfers, in full or in part, of assets and liabilities involving a savings bank or credit cooperative shall be governed by their specific legislation.

#### **Thirteenth additional provision. Framework for adaptation of the constitutional documents of credit cooperatives.**

Credit cooperatives must adapt their constitutional documents to the provisions of the second final provision within six months of its entry into force.

Following elapse of that period, any capital contributions that do not meet the requirements established in Law 13/1989 of 26 May 1989 on credit cooperatives shall remain



valid, without prejudice to how they may be classed for the purposes of calculation in accordance with the solvency regulations.

**Fourteenth additional provision.  
Sanctioning powers of the State and the regional governments.**

1. When the Banco de España becomes aware of any events that may constitute infringements other than those established in the basic regulatory and disciplinary rules and that may be recognised as such by the regional governments, it shall notify same to the corresponding regional government.

2. When a regional government becomes aware of any events that, pursuant to the basic regulatory and disciplinary rules, may constitute infringements that are penalisable by the Banco de España, it shall notify same to the Banco de España.

3. When a regional government files a proceeding for serious or very serious infringements against a credit institution, the proposed decision must necessarily be notified to the Banco de España.

4. In any event, the Banco de España shall exercise sanctioning powers relating to credit institutions in the case of infringements of monetary regulations or affecting the solvency of institutions, insofar as the uniform exercise of such powers is appropriate for the correct functioning of monetary policy within the European system of central banks or the stability of the financial system.

**Fifteenth additional provision.  
Authorisation for partner agents of supervisory bodies.**

Supervisory bodies of credit institutions and investment firms which, under the legislation governing them, request cooperation, for the exercise of their powers, from auditors, audit or consultancy firms or any other private firms shall require, in the corresponding agreements, that they obtain prior authorisation so that these partner agents may undertake, at the same time or during the following two years, any work of the same nature in the supervised institutions or their associated companies.

In addition, in the case of auditors and audit firms, the provisions relating to the independence of auditors established in Chapter III of the Consolidated Text of the Audit Law, approved by Royal Legislative Decree 1/2011 of 1 July 2011, shall apply.

**Sixteenth additional provision.  
Integration of the Banco de España in the Single Supervisory Mechanism.**

Pursuant to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, the Banco de España, in its capacity as national competent

authority, in accordance with Article 50 hereof, is an integral part of the Single Supervisory Mechanism together with the European Central Bank and other national competent authorities.

In the framework of the Single Supervisory Mechanism, the Banco de España shall act in accordance with the principle of cooperation in good faith with the European Central Bank and shall provide it with all the assistance referred to in Article 6 of Regulation (EU) No 1024/2013 and its implementing provisions.

**Seventeenth additional provision.**

**Plans for compliance with minimum capital and own funds requirements by mutual guarantee companies.**

1. The provisions of Article 35 of Law 14/2013 of 27 September 2013 on support for entrepreneurs, relating to the minimum paid-up capital and eligible own funds of mutual guarantee companies, shall enter into force on 28 February 2015, without prejudice to the provisions of paragraph 3.

2. By 30 June 2014, any mutual guarantee companies that do not meet the requirements indicated in the preceding paragraph shall submit a compliance plan to the Banco de España, outlining the measures taken or planned in order to reach, with a high degree of reliability and in the period established, the corresponding capital and own funds requirements. This plan shall, in any event, include a detailed description and schedule of all resolutions, undertakings or authorisations that are relevant for execution of the plan, specifying the measures that have already been taken.

The plan submitted must be approved by the Banco de España within one month. The latter may request changes, additional measures or any additional information necessary to ensure compliance with this provision.

3. If in the view of the Banco de España there are well-founded grounds to believe that the measures included in the compliance plan envisaged in paragraph 2 will not allow, with a high degree of reliability and in the period established, the corresponding capital and own funds requirements to be met, such requirements shall be deemed not met, immediately and for all effects and purposes.

**Eighteenth additional provision.**

**Strengthening of the institutional financial stability framework.**

Within six months from the entry into force of this Law, the government shall inform Parliament of the measures to be taken to strengthen, in Spain, the supervision of financial stability, macro-prudential analysis, coordination and exchange of information to prevent financial crises and, in general, cooperation between competent authorities in the preservation of financial stability. The existing institutional framework shall be strengthened, with the joint involvement of the Ministry of Economic Affairs and Competitiveness, the Banco de España and the CNMV.

**Nineteenth additional provision.**  
**Fee for comprehensive assessment of credit institutions.**

1. Creation. A fee is created for performance by the Banco de España of the tasks related to the comprehensive assessment of credit institutions envisaged in Article 33(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

2. Taxable event. The taxable event is performance by the Banco de España of the tasks related to the comprehensive assessment of credit institutions envisaged in Article 33(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

3. Taxpayers. The taxpayers shall be the credit institutions included in the Spain section of the Annex to the Decision of the European Central Bank of 4 February 2014 identifying the credit institutions that are subject to comprehensive assessment (ECB/2014/3). In the case of the Saving Banks included in the list, the taxpayer shall be the bank to which they have transferred their financial business.

4. Tax base. The tax base shall be the total assets of the consolidated groups to which the taxpayers belong reported to the Banco de España as of 31 December 2013.

5. Tax rate. The tax rate shall be 0.01048 per mille of the tax base.

6. Tax payable. The tax payable for each taxpayer shall be the result of multiplying the tax base by the tax rate.

7. Tax point. The tax shall become chargeable on 31 December 2014.

8. Assessment and payment. The fee shall be assessed by the Banco de España. It shall be paid into the bank accounts authorised for that purpose by the Banco de España, included in its budget and used to fund the expenses incurred by it in the performance of the tasks described in the taxable event.

9. The Banco de España shall implement, in a circular, the necessary provisions for assessment and payment of the fee.

10. Collection. The Banco de España shall be responsible for collection of the fee in the voluntary payment period. The State tax revenue service shall be responsible for its collection in the enforcement period, following formalisation of the corresponding agreement.

**Twentieth additional provision.**  
**Customer protection proposals.**

With a view to enhancing bank customer protection, and especially mortgagor protection, regulations, within 12 months from the entry into force of this Law the government shall submit to Parliament a bill for the transposition of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010. The government shall also assess the possibility of improving the existing institutional protection scheme for customers and possible ways to enhance the efficiency of the present complaints services, customer ombudsmen and customer service services, with a view to their inclusion in the bill.

**First transitional provision.**  
**Sanctioning and authorisation procedures under way.**

Any administrative sanctioning or authorisation procedures that are already under way when this Law enters into force shall proceed, up to conclusion thereof, according to the previously existing regulations.

**Second transitional provision.**  
**Transitional tax treatment of preference shares and debt instruments.**

The entry into force of this Law shall entail no change to the tax treatment applicable to any preference shares or other debt instruments issued previous to that date.

The tax treatment and reporting requirements laid down in paragraphs 3 and 4 of the first additional provision shall apply to debt instruments issued from 1 January 2014 by those institutions referred to in paragraph 8 of such provision, provided that they fulfil all the requirements set out in that paragraph.

**Third transitional provision.**  
**Arrangements for non-voting equity units.**

The arrangements for non-voting equity units established in Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements shall remain in force until the units in circulation as of the date of entry into force of this Law have been fully redeemed.

**Fourth transitional provision.**  
**Transitional arrangements for reporting requirements of branches of credit institutions of European Union Member States.**

1. The Banco de España may require credit institutions of another European Union Member State with a branch in Spain to submit periodic information on the transactions that the branch conducts in Spain, for statistical purposes. In addition, Spanish credit institutions with branches in other European Union Member States shall comply with equivalent requests made by other Member States.

2. For the correct performance of its supervisory duties, the Banco de España may require of branches of credit institutions of another European Union Member State the same information that it requires of Spanish institutions for the supervision of liquidity.

3. The above shall apply, in lieu of the provisions of Article 86, until the liquidity coverage requirement becomes applicable in accordance with the delegated act adopted by the European Commission pursuant to Article 460 of Regulation (EU) No 575/2013, of 26 June 2013.

**Fifth transitional provision.**  
**Transitional arrangements for branches of credit institutions authorised in other European Union Member States.**

1. Without prejudice to the provisions of Article 89(4), if the Banco de España confirms that a credit institution of a European Union Member State with a branch in Spain or which operates in Spain under the freedom to provide services is in breach of the liquidity requirement regulations in Spain, it shall initiate sanctioning proceedings against that branch.

2. These institutions shall be subject to the same sanctioning regime as Spanish credit institutions. Notwithstanding the foregoing, the Banco de España shall initiate the sanctioning procedure with a request to the credit institution to cease such conduct and refrain from any repeat thereof, and if this request is not met it shall inform the competent supervisory authorities of the institution.

3. If, despite the measures taken by the home Member State of the credit institution, or if such measures prove inadequate or are not envisaged in that State, the credit institution remains in breach of the regulations referred to in paragraph 1, the Banco de España, after informing the competent authorities of the home Member State, shall continue with the sanctioning proceedings. Upon conclusion of the proceedings, the Banco de España shall communicate the decision taken to those authorities and, in the case of serious or very serious infringements, to the European Commission and the European Banking Authority.

4. The above shall apply, in lieu of the provisions of Article 63, until the liquidity coverage requirement becomes applicable in accordance with the delegated act adopted by the European Commission pursuant to Article 460 of Regulation (EU) No 575/2013, of 26 June 2013.

**Sixth transitional provision.**  
**Transitional arrangements for precautionary measures in emergency situations.**

1. Before initiating the proceedings envisaged in paragraph 1 of the fifth transitional provision, the Banco de España may, in an emergency situation, take the precautionary measures necessary to protect the interests of depositors, investors or other service recipients.

The Banco de España shall immediately notify the European Commission and the competent authorities of the other Member States concerned of any such measures.

2. The above shall apply, in lieu of the provisions of Article 62, until the liquidity coverage requirement becomes applicable in accordance with the delegated act adopted by the European Commission pursuant to Article 460 of Regulation (EU) No 575/2013 of 26 June 2013.

**Seventh transitional provision.**

**Transitional arrangements for supervision of branches of credit institutions of other European Union Member States.**

1. The Banco de España shall supervise the liquidity of the branches of credit institutions of other Member States in collaboration with the competent authorities of those Member States.

2. Moreover, without prejudice to the measures needed to strengthen the European monetary system, the Banco de España shall be responsible for any measures resulting from the implementation of its monetary policy.

These measures shall not represent discriminatory or restrictive treatment due to the fact that the credit institution is authorised in another Member State.

3. The provisions of paragraph 1 shall apply until the liquidity coverage requirement becomes applicable in accordance with the delegated act adopted by the European Commission pursuant to Article 460 of Regulation (EU) No 575/2013 of 26 June 2013.

**Eighth transitional provision.**

**Transitional arrangements for the capital conservation buffer.**

The capital conservation buffer requirement established in Article 44 of this Law and referred to in the first paragraph of Article 70 quinquies(1) of Securities Market Law 24/1988 of 28 July 1988 shall not apply until 1 January 2016. From then and up to 31 December 2018 it shall be phased in, in terms of Common Equity Tier 1 to total risk-weighted exposure, as follows:

- a) From 1 January 2016 to 31 December 2016: 0.625%.
- b) From 1 January 2017 to 31 December 2017: 1.25%.
- c) From 1 January 2018 to 31 December 2018: 1.875%.

**Ninth transitional provision.**

**Transitional arrangements for the institution-specific countercyclical capital buffer.**

The countercyclical buffer requirement established in Article 45 of this Law and in Article 70 quinquies(1)(a) of Securities Market Law 24/1988 of 28 July 1988 shall not apply until 1 January 2016. From then until 31 December 2018 this requirement shall not exceed the following levels in terms of Common Equity Tier 1 to total risk-weighted exposure:

- a) From 1 January 2016 to 31 December 2016: 0.625%.
- b) From 1 January 2017 to 31 December 2017: 1.25%.
- c) From 1 January 2018 to 31 December 2018: 1.875%.

**Tenth transitional provision.**  
**Transitional arrangements for the capital buffers for systemically important institutions.**

1. Article 46 of this Law shall apply as from 1 January 2016. In particular, the Banco de España may impose the capital buffer for other systemically important institutions (O-SIIs) as from 1 January 2016.

The CNMV may impose the capital buffer for O-SIIs envisaged in Article 70 quinquies(1)(c) of Securities Market Law 24/1988 of 28 July 1988 as from 1 January 2016.

2. Notwithstanding the foregoing, the buffer for global systemically important institutions (G-SIIs) envisaged in Article 46(4) of this Law and in Article 70 quinquies(1)(b) of Securities Market Law 24/1988 of 28 July 1988 shall be phased in as follows:

- a) 25% of the buffer in 2016.
- b) 50% in 2017.
- c) 75% in 2018.
- d) 100% in 2019.

**Eleventh transitional provision.**  
**Transitional arrangements for the restrictions on distribution of dividends and the capital conservation plan relating to capital buffers.**

The restrictions on distributions and the need to prepare a capital conservation plan envisaged in Articles 48 and 49 of this Law, respectively, and in Article 70 quinquies(6) of Securities Market Law 24/1988 of 28 July 1988 shall apply as from 1 January 2016, unless the institution is required to comply with the systemic risk buffer.

**Twelfth transitional provision.**  
**Transitional arrangements for the annual banking report and the annual report of investment firms.**

1. The requirement to make public the information envisaged in Article 87(1) of this Law and in Article 70 bis.One of Securities Market Law 24/1988 of 28 July 1988 shall apply as from 1 January 2015.

2. On 1 July 2014 credit institutions and investment firms subject to Article 70 bis.One shall be required to make public, for the first time, the information envisaged in Article 87(1)(a), (b) and (c), of this Law and in Article 70 bis(1)(a), (b) and (c) of Securities Market Law 24/1988 of 28 July 1988.

3. By 1 July 2014 all G-SIIs, whether credit institutions or investment firms, authorised in Spain and identified at international level, shall submit to the European Commission, in confidence, the information, as appropriate, referred to in Article 87(1)(d), (e) and (f) of this Law and in Article 70 bis.One(d), (e) and (f) of Securities Market Law 24/1988 of 28 July 1988.

**Thirteenth transitional provision.  
Transitional arrangements for central counterparties and official secondary futures  
and options markets.**

1. The central counterparties regulated in Article 44 ter of Securities Market Law 24/1988 of 28 July 1988 must comply with the requirements laid down in paragraph 4 of that Article, as amended by the first final provision of this Law, within three months from its entry into force. Central counterparties that are in the process of obtaining authorisation under Regulation (EU) No 648/2012 of 4 July 2012 when this Law comes into force must comply with the new wording within three months from the granting of the authorisation.

2. The Olive Oil Futures Market, governed by MFAO, Sociedad Rectora del Mercado de Futuros del Aceite de Oliva, S.A., shall only be subject to the provisions of Article 59 of Securities Market Law 24/1988 of 28 July 1988, as amended by the first final provision of this Law, from 1 January 2015.

**Fourteenth transitional provision.  
General Viability Plan.**

The General Viability Plan envisaged in Article 30 shall apply to institutions six months after the implementation of the regulations specifying its contents is complete.

**Fifteenth transitional provision.  
Designation of members of the Credit Institution Deposit Guarantee Fund  
Management Committee.**

The members of the Credit Institution Deposit Guarantee Fund Management Committee shall be appointed within a maximum of three months from the entry into force of this Law, as provided for in the ninth final provision.

**Sixteenth transitional provision.  
Supervision of branches of credit institutions of non-European Union countries.**

Until the regulations envisaged in Article 60(1) are implemented, branches of credit institutions of non-European Union countries established in Spain shall remain subject to the solvency regulations applicable to them previous to the entry into force of this Law, in all



aspects that are not inconsistent with the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

### **Repealing provision.**

All provisions of equal or lower rank that are inconsistent with this Law are repealed, and in particular the following:

- a) Banking Law of 31 December 1946.
- b) Law 31/1968 of 27 July 1968 on incompatibilities and restrictions for the chairmen, directors and senior executives of private banks.
- c) Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements of financial intermediaries.
- d) Royal Legislative Decree 1298/1986 of 28 June 1986 on the adaptation of existing credit institution law to Community legislation.
- e) Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions.
- f) Article 29(2) of Sustainable Economy Law 2/2011 of 4 March 2011.
- g) Paragraph g) of the thirteenth final provision of Law 14/2013 of 27 September 2013 on support for and internationalisation of business.

### **First final provision.**

#### **Amendment of Securities Market Law 24/1988 of 28 July 1988.**

Securities Market Law 24/1988 of 28 July 1988 has been amended as follows:

One. Article 44 ter shall read as follows:

“1. For central counterparties established in Spain, the authorisation to provide clearing services as a central counterparty, and revocation and operation of that authorisation, shall be governed by Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, by the provisions of this Law and by any other applicable Spanish or European Union law.

2. Central counterparties must be recognised as systems for the purposes of Law 41/1999 of 12 November 1999 on payment and securities settlement systems.

In order to facilitate the exercise of their functions, central counterparties may become participants in or members of the Systems Company, any other Spanish entity responsible for handling accounting records of securities represented by book entries, authorised pursuant to Article 44 bis(11), foreign entities exercising those functions and which admit them as participants, any other securities or financial instruments settlement system, regulated market

or multilateral trading facility, provided that they meet the requirements of each system and that their activity in the system does not compromise the security or solvency of the system.

3. Central counterparties shall be organised as public limited companies, legally separate from the Systems Company, from any other entity responsible for handling accounting records of securities represented by book entries, authorised pursuant to Article 44 bis(11), and from any foreign entities exercising those functions.

4. Central counterparties shall draw up their articles of association and their internal regulations, which shall be considered securities market organisation and discipline rules.

The internal regulations shall govern the operation of the central counterparty and the services it provides. The articles of association shall regulate its internal operation as a company. The regulations and articles of association shall contain the organisational and procedural requirements necessary for it to comply with Regulation (EU) No 648/2012 of 4 July 2012. The Minister for Economic Affairs and Competitiveness or, with the latter's express authorisation, the CNMV may flesh out the structure and minimum content of the internal regulations.

Membership of central counterparties shall be confined to the entities referred to in points (a) to (d) and (f) of Article 37(2), the Banco de España and other resident or non-resident entities that pursue similar activities, on the terms and with the limitations as provided by law and in the internal regulations of the central counterparty. Membership shall be subject to the provisions of this Law, its implementing regulations and the internal regulations of the central counterparty and to approval by the CNMV.

Each central counterparty shall draw up a report detailing the way in which they will comply with the technical, organisational, operational and risk-management requirements established in Regulation (EU) No 648/2012 of 4 July 2012 to exercise their functions. The Minister for Economic Affairs and Competitiveness or, with the latter's express authorisation, the CNMV may stipulate the format this report must take. Central counterparties shall keep these reports up to date and shall submit any changes to such reports to the CNMV, duly reasoned and including, if the changes affect risk management in accordance with the provisions of the above Regulation, the compulsory report by the risk committee and the internal body or unit responsible for risk management.

With the exceptions provided by law, any changes to the articles of association or internal regulations of a central counterparty must be authorised, following a report from the Banco de España, by the CNMV. The internal regulations may be rounded out by means of circulars approved by the central counterparty itself, which must be notified to the CNMV and to the Banco de España no later than 24 hours after their adoption. The CNMV may oppose or suspend such circulars or deem them null and void if it considers that they are in breach of the applicable law or that they are detrimental to the prudent and safe operation of the central counterparty and the markets that it serves or to investor protection.

Appointments of board members, managing directors and similar officers at central counterparties shall be subject to prior approval by the CNMV.

Central counterparties shall have at least an audit committee, a risk committee as envisaged in Article 28 of Regulation (EU) No 648/2012 of 4 July 2012, a compliance committee and an appointments and remuneration committee. They shall also have an internal body or unit responsible for risk management, proportionate to the nature, scale and complexity of their activities. This body or unit shall be separate from the operational functions and shall have sufficient authority, stature and resources and access to the board of directors. Central counterparties shall also have organisational structures and arrangements in place to ensure that users and other interested parties may express their views on their operation, and rules designed to avoid any possible conflicts of interest to which they may be exposed as a consequence of their relations with shareholders, directors or executives, participating entities or clients. The provisions of this paragraph may be fleshed out in regulations.

Central counterparties shall submit to the CNMV, before 1 December of each year, their estimated annual budget containing details of the charges and fees they intend to apply, along with the latest changes to their economic arrangements. The CNMV may require central counterparties to add to the documentation received and may establish exceptions to or ceilings on the prices of the services provided when these may affect the financial solvency of the central counterparty, have a disruptive effect on the securities market or its governing principles or represent unjustified discrimination among the different users of the services provided by the central counterparty.

The Minister for Economic Affairs and Competitiveness or, with the latter's express authorisation, the CNMV may add to the information required in order to assess the suitability of shareholders acquiring a qualifying holding in the capital of a central counterparty in accordance with Regulation (EU) No 648/2012 of 4 July 2012.

5. The CNMV shall be the Spanish authority responsible for authorisation and supervision of central counterparties established in Spain, pursuant to Regulation (EU) No 648/2012 of 4 July 2012.

6. Central counterparties shall keep the central register of netted financial instruments together, where appropriate, with members authorised to keep sub-registers of their clients' contracts.

Central counterparties shall establish in their internal regulations the solvency conditions and technical resources required in order for members to be authorised to keep registers of their clients' contracts, along with the procedures in place to ensure that the central register and the sub-registers match. The solvency conditions and technical resources may differ according to the different financial instruments registered or netted with the involvement of those members. Central counterparties shall also have arrangements in place to permit access to the information held in the sub-registers where members keep records of their

clients' contracts, so as to be able to identify, monitor and manage potential risks for the counterparty arising from the relationships between members and their clients.

7. Any collateral provided by members or clients in accordance with the internal regulations of a central counterparty and relating to any transactions made in the area of its activity shall only be valid vis-à-vis the entities in whose favour it was provided and for the obligations arising from such transactions with the central counterparty or its members or from the status of member of the central counterparty.

A central counterparty may establish in its internal regulations or circulars the cases that will trigger the early maturity of all of a member's contracts and positions, on its own account or on behalf of clients, which will mean, in the terms established in the regulations or circulars, that those contracts and positions will be netted, creating a single legal obligation covering all the transactions involved, and that in consequence the parties will only be able to seek payment of the net balance of those transactions. The cases envisaged may include default on obligations and the initiation of insolvency proceedings on the members and clients or the central counterparty. These netting arrangements shall be classed as master netting arrangements as envisaged in Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and improve public sector procurement and without prejudice to application of the specific arrangements envisaged in Law 41/1999 of 12 November 1999 on payment and securities settlement systems.

If a member or a member's client defaults on all or part of the obligations assumed with the central counterparty or the member, these latter may use the collateral posted by the defaulting party and may take any measures necessary for their satisfaction on the terms established in the regulations of the counterparty.

If any member (or any of its clients) of a central counterparty becomes subject to insolvency proceedings, the central counterparty shall have the absolute right of separation in respect of any collateral posted to the central counterparty by such members or their clients. Notwithstanding the foregoing, any surplus remaining after settlement of the guaranteed transactions shall be included in the client's or member's insolvency assets.

If any clients of members of a central counterparty become subject to insolvency proceedings, the members shall have the absolute right of separation in respect of any financial instruments or cash posted as guarantees by their clients in accordance with the internal regulations of the central counterparty. Notwithstanding the foregoing, any surplus remaining after settlement of the transactions shall be included in the client's insolvency assets.

Once a member has been declared insolvent, the central counterparty, after first notifying the CNMV, shall arrange for the transfer of any contracts or positions it may have registered on account of clients, and of any financial instruments and cash that may have been posted as guarantees. For these purposes, both the competent judge and the insolvency management shall provide the entity to which the contracts, book entries and collateral are to be transferred with the documentation and computer records necessary to make the transfer

effective. If the transfer cannot be made, the counterparty may order the settlement of any contracts or positions that the member had open, including any contracts or positions on the account of clients. In that case, once the necessary procedures relating to the positions registered with and the collateral posted to the member in question by the clients have been completed, those clients shall have the absolute right of separation with respect to any surplus.

If a central counterparty becomes subject to insolvency proceedings and all the contracts and positions of any member, on own account or for clients, are settled, all members and clients that have not defaulted on their obligations with the central counterparty shall have the absolute right of separation in respect of any surplus remaining of any collateral posted to the central counterparty in accordance with its internal regulations after settlement of the guaranteed transactions, with the exception of any contributions to the default fund.

8. Central counterparties shall establish in their internal regulations the rules and procedures to be followed in the event of default by their members. These rules and procedures shall stipulate the way in which the different guarantee mechanisms available to central counterparties shall be used and the means to restore them, so as to allow the central counterparty to continue operating in a sound and safe manner.

9. Subject to the provisions of this Law and of all other Spanish or European law applicable, central counterparties may enter into agreements with other resident or non-resident entities which have similar functions or manage securities clearing and settlement systems. Such agreements, and any that it may enter into with multilateral trading facilities or markets, shall require approval by the CNMV, following a report from the Banco de España, and must meet the requirements established in regulations and in each central counterparty's internal regulations.”

Two. Article 59 shall read as follows:

“1. Official secondary markets in futures and options represented by book entries may be created at national level. The authority to approve their creation shall lie with the Minister for Economic Affairs and Competitiveness, at the proposal of the CNMV, in accordance with the provisions of Article 31 bis.

In the case of regional markets, the authorisation for creation of a market and all other authorisations and approvals envisaged in this Article shall lie with the regional government with competence in that area.

2. Futures and options and other derivative financial instruments contracts, whatever the underlying asset, as defined by the market operator, shall be traded on these markets. The market operator shall organise how these contracts are traded.

The market operator shall use a central counterparty, to be approved by the CNMV, as counterparty in all the contracts it issues.

3. The institutions referred to in Article 37 of this Law may be members of these markets. Institutions whose main corporate purpose is to invest in organised markets and which meet the resources and solvency conditions established in the Market Regulations envisaged in paragraph 7 below may also be members, but in this case exclusively trading-only members, trading either on their own account or on account of institutions belonging to their group. Institutions other than those envisaged above may become members of markets in futures and options with non-financial underlyings in accordance with the provisions determined in regulations, provided that those institutions meet the specialisation, professionalism and solvency requirements.

4. Official secondary markets in futures and options shall have a market operator, as provided for in Article 31 bis. It shall be organised as a public limited company and its essential functions shall be to organise, manage and supervise market activity. These companies may not perform any financial intermediation activities or any of the activities envisaged in Article 63, except as provided for in this Law.

5. Any amendment of the articles of association of the market operator shall require prior approval by the CNMV, as envisaged in Article 31 bis, with the exceptions determined in regulations.

6. The market operator shall have a board of directors, with at least five members, and at least a managing director. Once the initial authorisation has been obtained, all new appointments shall have to be approved by the CNMV or, where appropriate, by the regional government with competence in this area, to ensure that the appointees meet the requirements of Article 67(2)(f) of this Law.

7. These markets shall be governed, not only by the rules contained in this Law and its implementing regulations, but also by specific regulations, which shall have the status of Securities Market organisation and discipline rules, which shall be approved and amended as provided for in Article 31 bis. Such regulations shall detail the classes of members, specifying the technical and solvency requirements that they must meet in relation to their various activities in the market, the contracts traded in the market, the legal relations between the market operator and the market members, on the one hand, and the clients operating in the market, on the other, supervisory rules, trading arrangements and any other aspects determined by regulation.”

Three. Article 63(1)(e) and (f) shall read as follows:

“e) Placing of financial instruments without a firm commitment basis.

f) Underwriting of financial instruments or placing of financial instruments with a firm commitment basis.”

Four. Paragraphs 2 and 5 of Article 65 bis shall read as follows:

“2. Agents must meet the requirements of good reputation, knowledge and experience established in Article 67(2)(f).”

“5. Investment firms that hire agents must notify the CNMV, which will record them in the register referred to in Article 92, following registration of their powers of attorney in the Mercantile Register and once it has been established that they possess recognised good reputation, knowledge and experience to be able to communicate all relevant information regarding the proposed service accurately to clients or potential clients. Recording in the register of the CNMV shall be a necessary prerequisite for agents to commence their activity as such.

When an investment firm terminates its relationship with an agent, it must notify the CNMV immediately so that this may be recorded in the corresponding register.

When a Spanish investment firm uses a tied agent established in another European Union Member State, the tied agent shall be recorded in the register of the CNMV if that other Member State does not allow its home investment firms to use tied agents.”

Five. The last subparagraph of Article 66(4) shall read as follows:

“Such consultation shall include, in particular, an assessment of the suitability of the shareholders and of the good reputation, knowledge and experience of the directors and executives of the new entity or the parent entity, and it may be repeated for continuous assessment of compliance with such requirements by Spanish investment firms.”

Six. Article 67 shall read as follows:

“Article 67. Refusal of authorisation and requirements for access.

1. The Minister for Economic Affairs and Competitiveness or, in the case of financial advisory firms the CNMV, may only refuse authorisation to create an investment firm on the following grounds:

a) Where the legal and regulatory requirements for obtaining and maintaining the authorisation are not met.

b) Where, in view of the need to ensure sound and prudent management of the firm, the shareholders that are to hold a significant stake, as defined in Article 69, are not considered suitable. Suitability shall depend, inter alia, on:

- The good reputation of the shareholders.
- The financial resources at the shareholders' disposal to meet the commitments assumed.
- The possibility that the firm may be inappropriately exposed to the risk of its promoters' non-financial activities or, in the case of financial activities, that the stability or control of the firm may be affected by their high risk.

All references to shareholders in this Article shall be construed as referring also to entrepreneurs in the case of financial advisory firms that are natural persons.

c) A lack of transparency in the structure of any group to which the firm may eventually belong, or the existence of close links with other investment firms or other natural or legal persons that prevent the CNMV from effectively exercising its supervisory functions and, in general, the existence of serious difficulties for inspecting the firm or obtaining any information that the CNMV deems necessary for the correct exercise of its supervisory functions.

d) Where the laws, regulations or administrative provisions of a non-European Union country that govern natural or legal persons with which the investment firm has close links, or difficulties involved in their enforcement, prevent the effective exercise of supervisory functions.

e) A lack of good reputation, knowledge and experience, and ability to practice good governance of the members of the board of directors and the persons who are to effectively manage the mixed financial holding company, where the investment firm is dependent on the latter as part of a financial conglomerate.

f) The existence of serious conflicts of interest between the posts, responsibilities or duties of the members of the board of directors of the investment firm and other posts, responsibilities or duties held by them.

2. In order to obtain authorisation as an investment firm a company shall meet the following requirements:

a) Its corporate purpose shall be exclusively to pursue activities pertaining to investment firms, in accordance with the provisions of this Law.

b) It shall be a public limited company, organised for an indefinite period, and its share capital shall be represented by registered shares. In the case of financial advisory firms that are legal persons, investment firms may be allowed to have a different corporate form, as determined by regulations.

c) If newly created, it shall be organised by the simultaneous formation method and its founders may not reserve for themselves any advantage or special remuneration of any kind.

d) It shall have the minimum capital stock, fully paid-up in cash, and minimum own funds determined by regulations according to the services to be provided and activities to be pursued and the projected business volume.

Investment firms that are authorised only to provide investment advice or to receive and transmit orders from investors, without holding money or securities belonging to their clients and which for that reason cannot at any time place themselves in debt with those clients, shall have the minimum capital stock or arrange professional liability insurance, or a combination of both, as provided for in regulations.



e) It shall have at least three directors, or a board of directors with no less than three members. Specific regulations may require a higher number of directors, according to the investment and ancillary services to be provided. Financial advisory firms that are legal persons may appoint a sole director.

f) All chairs, deputy chairs, directors and managing directors and similar officers shall have good repute, knowledge and experience for the correct performance of their duties and readiness to practice good governance of the investment firm. Moreover, all chairs, deputy chairs, directors and managing directors and similar officers of parent entities of investment firms shall also meet the good repute requirement, and most board members must have the relevant knowledge and experience for the correct performance of their duties.

Additionally, all persons who are responsible for internal control functions and who perform other key duties in the day-to-day business of an investment firm and its parent, as determined by the CNMV, must also meet the requirements as to good repute, knowledge and experience.

g) It must have the procedures, measures and resources necessary to meet the organisational requirements envisaged in paragraphs 2 and 3 of Article 70 ter of this Law.

h) It must have internal rules of conduct that conform to the provisions of this Law, together with control and security mechanisms for its IT systems and appropriate internal control procedures, including, in particular, a code of conduct for personal transactions of directors, executives, employees and authorised representatives of the firm.

i) It must belong to the Investment Guarantee Fund envisaged in Title VI of this Law, where this is required by the specific regulations of the Fund. This requirement shall not apply to the investment firms envisaged in Article 64(1)(d) of this Law.

j) It must have presented a business plan that reasonably demonstrates that the investment firm project is viable in the future.

k) It must have presented sufficient documentation on the conditions and the services, functions or activities that are to be subcontracted or outsourced to demonstrate that this does not render the requested authorisation void or invalid.

l) It must have appropriate procedures for the prevention of money laundering and terrorism financing.

The implementation of the regulations governing the requirements established in this paragraph 2 must take account of the type of investment firm in question and the type of activities it pursues, particularly in connection with the determination of the minimum capital stock and minimum own funds envisaged in point d) above.

Where the market operator of the official secondary market requests the authorisation and the multilateral trading facility is to be managed by the same persons that manage that

market, those persons shall be presumed to meet the requirements established in point f) above.

3. Additionally, when the request for authorisation relates to managing a multilateral trading facility, the investment firm, the market operator or, as the case may be, the entity established for that purpose by one or more market operators must submit Rules of Operation to the CNMV for approval. Without prejudice to the other requirements of Article 120, these must include:

a) Clear and transparent rules regulating access to the multilateral trading facility, in accordance with the conditions established in Article 37(2) and which set out the criteria for determining which financial instruments may be traded on the facility.

b) Rules and procedures regulating trading on these facilities in a fair and orderly manner, establishing objective criteria for effective order execution.

4. For the purposes of paragraphs 1 and 2 above:

a) Persons have good reputation when their personal, commercial and professional conduct cast no doubt on their ability to pursue sound and prudent management of the investment firm.

To assess good reputation all available information must be considered, as stipulated by regulations. In any event, that information must include information on any convictions for crimes or misdemeanours or any penalties for administrative infringement.

b) Persons have sufficient knowledge and experience to perform their duties in investment firms when they have the appropriate skills level and profile, in particular, in securities and financial services, along with practical experience from their previous positions over a sufficient period of time.

c) To assess the readiness of board members to practice good governance of the investment firm, account shall be taken of any potential conflicts of interest that could lead to undue influence by third parties and the capacity of board members to dedicate sufficient time to perform the corresponding functions.

5. Financial advisory firms that are natural persons must meet the following requirements in order to obtain the corresponding authorisation:

a) Have sufficient good reputation, knowledge and experience as established in paragraph 2(f) above.

b) Meet the financial requirements established in regulations.

c) Meet the requirements established in paragraphs 2(g) and 2(h) above, on the terms to be established in regulations.”

Seven. A new Article 67 bis has been added.

“Article 67 bis. Incompatibilities and limitations.

1. The CNMV shall determine the maximum number of posts that a member of a board of directors or a managing director or similar officer may occupy simultaneously, taking into account the particular circumstances of the firm and the nature, scale and complexity of its activities.

Board members with executive functions and managing directors or similar officers of investment firms may not occupy at the same time more posts than those envisaged for credit institutions in Article 26 of Law 10/2014 on the regulation, supervision and solvency of credit institutions.

2. The CNMV may authorise persons holding the posts mentioned in paragraph 1 to occupy an additional non-executive post if it considers that this does not prevent the proper pursuit of their activities in the investment firm. This authorisation shall be communicated to the European Banking Authority.

3. Notwithstanding the foregoing, this Article shall not apply to investment firms that meet the following requirements:

- a) They are not authorised to provide the ancillary service referred to in Article 63(2)(a).
- b) They provide only one or more of the investment services or activities listed in Article 63(1)(a), b), d) and g).
- c) They are not allowed to hold money or securities belonging to their clients and, for that reason, cannot at any time place themselves in debt with those clients.”

Eight. Paragraphs 3 and 4 of Article 70 have been deleted and paragraph 2 has been amended and shall read as follows:

“2. Consolidated groups of investment firms and investment firms that do not belong to consolidated groups, with the exception of those referred to in the second subparagraph of paragraph 1(a) above, shall have in place specific sound, effective and comprehensive arrangements and procedures to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider appropriate to cover the nature and level of the risks to which they are or might be exposed. These arrangements and procedures shall be subject to periodic internal review in order to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the firm in question.”

Nine. Article 70 bis shall read as follows:

“Article 70 bis. Information on solvency.

1. Consolidated groups of investment firms and investment firms that do not belong to consolidated groups shall disclose, as soon as this is possible, on at least an annual basis and duly included in a single "Solvency information" document, the information referred to in Part Eight of Regulation (EU) No 575/2013 of 26 June 2013, on the terms established therein.

2. The CNMV may require parent companies to make public, on an annual basis, whether in full or by means of references to equivalent information, a description of their legal structure and governance and of the organisational structure of the group.

3. Disclosure, in accordance with the requirements of corporate/commercial or securities market legislation, of the information referred to in paragraph 1 shall not preclude its inclusion in the "Solvency information" document in the manner envisaged therein.

4. The CNMV may require the firms that are under the obligation to disclose the information referred to in paragraph 1 to:

a) Subject the information that is not covered by audit to control by independent auditors or experts, or by any other means it deems satisfactory, in accordance with the provisions on the independence of auditors established in Chapter III of the Consolidated Text of the Audit Law approved by Royal Legislative Decree 1/2011 of 1 July 2011.

b) Disclose one or more of such items of information, whether separately at any time or more frequently than on an annual basis, and establish disclosure time limits.

c) Make disclosures in media and places other than the financial statements.

5. The provisions of this Article shall not apply to the investment firms referred to in the second paragraph of Article 70(1)(a)."

Ten. Article 70 bis. One has been added:

"Article 70 bis. One. Annual investment firm report.

1. Investment firms shall submit to the CNMV and shall make public, on an annual basis, indicating the countries in which they are established, the following information on a consolidated basis for each year:

a) Name, type and geographical location of the business.

b) Turnover.

c) Number of full-time employees.

d) Profit before tax.

e) Income tax.

f) Public aid or subsidies received.

2. The information referred to above shall be made public as a report attached to the financial statements audited in accordance with the audit regulations.

3. Firms shall disclose, in their annual investment firm report, among the key indicators, their return on assets, calculated by dividing net income by total assets.

4. The CNMV shall make these reports available on its website.

5. The provisions of this Article shall not apply to the investment firms referred to in the second paragraph of Article 70(1)(a)."

Eleven. Article 70 ter shall read as follows:

"Article 70 ter. Corporate governance rules and internal organisational requirements.

1. Investment firms shall pursue their activity observing the corporate governance rules and internal organisational requirements established in this Law and in other applicable legislation.

2. Investment firms and other entities which, in accordance with the provisions of this Title, provide investment services shall define and implement appropriate policies and procedures to ensure that the firm, its executives, its employees and its agents meet the respective requirements established in securities market legislation.

To that effect:

a) Investment firms shall have robust corporate governance arrangements, including a clear organisational structure appropriate and proportionate to the nature, scale and complexity of their activities and with well-defined, transparent and consistent lines of responsibility. Other entities that provide investment services, in accordance with the provisions of this Title, shall have an equally clear organisational structure appropriate and proportionate to the nature, scale and complexity of the investment services they provide.

b) They shall have a unit that ensures that the regulatory compliance function operates according to the principle of separation from those areas or units which provide the investment services that are being assessed for compliance. They shall ensure that there are arrangements and controls in place to ensure that employees comply with the decisions taken and perform the functions entrusted to them.

The regulatory compliance function shall periodically control and assess the appropriate nature and effectiveness of the risk-detection procedures established and the measures taken to remedy potential shortcomings; it shall also help and advise the persons responsible for providing the investment services in the performance of their duties.

c) They shall have in place information systems that ensure that their employees are aware of the obligations, risks and responsibilities arising from their actions and of the legislation applicable to the investment services they provide.

d) They shall have in place appropriate administrative and organisational measures to ensure that any of the potential conflicts of interest regulated in Article 70 quater do not harm their clients.

They shall also establish controls on the personal transactions conducted by the members of their management bodies, their employees, their agents and other persons connected to the firms, where such transactions may entail conflicts of interest or, in general, infringe the provisions of this Law.

e) They shall keep records of all transactions in securities and financial instruments and of all investment services provided so as to be able to demonstrate that they have fulfilled all the obligations required of them by this Law in respect of their clients.

The information to be included in the transactions registers is laid down in Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive. All other matters relating to record-keeping obligations shall be determined by regulations.

Moreover, they shall inform the CNMV, in the manner determined by regulations, of the transactions made, in accordance with the provisions of Article 59 bis.

f) They shall take the appropriate measures to protect the financial instruments entrusted to them by their clients and to prevent any improper use thereof. In particular, they may not use clients' financial instruments for their own account, except with the express consent of the clients. They shall also maintain an effective separation between the firm's securities and financial instruments and those of each of its clients. The firm's internal records must make it possible to ascertain, at any time and without delay, the securities position and outstanding transactions of each client, especially should the firm become insolvent.

Once insolvency proceedings have been initiated against a securities depository, the CNMV, without prejudice to the powers of the Banco de España, may immediately transfer to another entity authorised to pursue that activity, the securities deposited for the account of its clients, even if such assets are deposited at third parties in the name of the firm providing the depository service. For these purposes, both the competent judge and the insolvency management shall provide the entity to which the securities are to be transferred with access to the documentation and the accounting and computer records necessary to make the transfer effective. The insolvency proceedings shall not prevent the clients who own the securities from receiving the cash resulting from the exercise of their economic rights or from their sale.

g) They shall draw up and keep updated a General Viability Plan that envisages the measures to be adopted to restore the viability and financial soundness of the investment firms

should they undergo any significant impairment. The plan shall be subject to approval by the CNMV which may require that its content be amended.

3. Additionally, investment firms shall:

a) Have in place effective procedures to identify, manage, monitor and report the risks to which they are or might be exposed, and adequate internal control mechanisms, including sound administration and accounting procedures. They shall also have in place remuneration policies and practices consistent with and conducive to sound and effective risk management.

The organisation shall have an oversight body responsible for the internal audit function and independent of the areas or units which provide the investment services that are subject to internal audit.

The internal audit function shall prepare and maintain an audit plan to examine and assess the adequacy and effectiveness of an investment firm's systems, internal control mechanisms and arrangements, make recommendations on the basis of the work performed under the plan and monitor that the plan is fulfilled.

b) Take appropriate steps to ensure continuity and regularity in the provision of their services in the event of an incident. In particular, they shall have in place control and safeguard arrangements for their IT systems and damage or disaster contingency plans.

c) Take the appropriate measures, relating to the funds entrusted to them by clients, to protect their rights and avoid any improper use of those funds. Investment firms may not use clients' funds for their own account, save in exceptional cases determined in regulations and only with the express consent of the client. The firm's internal records shall make it possible to ascertain, at any time and without delay, the position of each client's funds, especially should the firm become insolvent.

In particular, accounts held in the name of clients shall be instrumental and transitional accounts and shall relate to the execution of transactions performed for their account. The firm's clients shall continue to own the funds delivered to the firm, even when those funds take the form of assets in the name of the firm and for the account of the clients.

d) Take the necessary measures to ensure that there is no undue increase in operational risk if investment services or any functions essential to investment services are delegated to third parties. If internal control functions are delegated to third parties, firms shall ensure that this does not undermine their internal control capacity and that the competent supervisor has the necessary access to the information. In no circumstances may functions be delegated to third parties if this undermines the internal control capacity or the capacity for supervision of the competent supervisory body. It is for the investment firm to ascertain that the person or entity to which it plans to delegate functions meets the requirements established in this Law and in its implementing provisions.

Credit institutions that provide investment services shall observe the internal organisational requirements envisaged in this paragraph 3, with the specific features to be established by regulations; the Banco de España has supervisory, inspection and sanctioning powers in respect of these requirements. These institutions shall not be subject to the prohibition on using clients' funds for their own account contained in point c) above.

4. The systems, procedures and arrangements envisaged in this Article shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent to the business model and activities of the firm. Further, they shall be designed in accordance with certain technical criteria, to be determined by regulations, to ensure correct management and treatment of risks.

The content and requirements of the procedures, registers and measures indicated in this Article shall be determined by regulations, along with the internal organisational requirements applicable to financial advisory firms that are natural persons.

5. Each financial institution belonging to a group of investment firms shall take the necessary measures to appropriately resolve potential conflicts of interest among the clients of the different group entities.

6. Boards of directors of investment firms shall design a corporate governance system which ensures sound and prudent management of the firm and which includes an appropriate distribution of functions in the organisation and the prevention of conflicts of interest.

The board of directors shall monitor the implementation of the corporate governance system and shall be accountable for it. For this purpose it shall periodically assess and control its effectiveness and take the appropriate measures to remedy its shortcomings.

7. The corporate governance system shall be governed by the following principles:

a) The board of directors shall be responsible for the administration and management of the firm, and the approval and monitoring of the implementation of its strategic objectives, its risk strategy and its internal governance.

b) The board of directors shall ensure the integrity of the accounting and financial reporting systems, including financial and operational control and compliance with applicable legislation.

c) The board of directors shall oversee the disclosure of information and communications relating to the investment firm.

d) The board of directors is responsible for ensuring the effective supervision of senior management.

e) The chairman of the board of directors may not simultaneously hold the post of chief executive officer, unless the firm justifies this and the CNMV authorises it.



8. Investment firms shall have, commensurate with the nature, scale and complexity of their activities, appropriate internal units and procedures to carry out the ongoing selection and assessment of the members of their boards of directors and managing directors or similar officers, and of the persons responsible for internal control functions or who perform other key duties in the day-to-day business of the investment firm, pursuant to the provisions of this Article.

The suitability requirements for the above posts shall be assessed, in accordance with the criteria as to good repute, experience and good governance established in this Law, by the investment firm itself and by the CNMV, as determined by regulations.

Investment firms shall seek at all times to ensure that they meet the suitability requirements envisaged in this Law.

9. Investment firms shall have a website on which they shall disclose the public information envisaged in this Chapter and report on how they comply with corporate governance obligations.

10. For the purposes of this Law, the board of directors shall be equated with whatsoever other equivalent body of investment firms.”

Twelve. A new Article 70 ter. One has been added:

“Article 70 ter. One. Appointments committee.

1. Investment firms shall set up an appointments committee, made up of members of the board of directors who do not perform executive functions at the entity. The CNMV may determine that an investment firm, in light of its size, internal organisation, nature, scope or limited complexity of its activities, may set up this committee jointly with the remunerations committee, or may be exempt from this requirement.

2. The appointments committee shall set a representation target for the gender least represented on the board of directors and lay down guidelines on how to attain this target.

3. Notwithstanding the provisions of paragraph 1, this Article shall not apply to investment firms that meet the following requirements:

- a) They are not authorised to provide the ancillary service referred to in Article 63(2)(a).
- b) They provide only one or more of the investment services or activities listed in Article 63(1)(a), (b), (d) and (g).
- c) They are not authorised to hold money or securities belonging to their clients and, for that reason, cannot at any time place themselves in debt with those clients.

This Article shall not apply either to those investment firms authorised exclusively to provide the service referred to in Article 63(1)(h).”

Thirteen. A new Article 70 ter.Two has been added:

“Article 70 ter.Two. Remuneration obligations.

1. Investment firms shall have, commensurate with the nature, scale and complexity of their activities, remunerations policies which are consistent with promoting sound and effective risk management.

2. The remunerations policy shall apply to staff categories whose professional activities significantly bear on the risk profile at group, parent and subsidiary level. In particular, it shall apply to senior executives, employees who assume risks for the investment firm, those who perform control functions, and any staff receiving overall remuneration which is included in the same remuneration bracket as that of the aforementioned types of employees, whose professional activities bear significantly on the entity’s risk profile.

3. Investment firms shall submit to the CNMV whatsoever information the latter requires of them for compliance with remuneration obligations and, in particular, they shall submit a list indicating the staff categories whose professional activities bear significantly on their risk profile. This list shall be submitted annually and, in any event, whenever there have been significant changes in the lists submitted.

4. The remunerations policy shall be determined in keeping with the general principles envisaged for credit institutions in Article 33 of Law 10/2014 on the regulation, supervision and solvency of credit institutions.

5. The principles envisaged for credit institutions in Article 34 of Law 10/2014 on the regulation, supervision and solvency of credit institutions shall apply to variable compensation.

6. Investment firms shall set up a remunerations committee. The CNMV may determine that an investment firm, on the basis of its size, internal organisation, nature, scope or the scant complexity of its activities, may set up said committee jointly with the appointments committee, or may be exempt from this requirement.

Notwithstanding the foregoing, this Article shall not apply to investment firms that meet the following requirements:

- a) They are not authorised to provide the ancillary service referred to in Article 63(2)(a).
- b) They provide only one of the investment services or activities listed in Article 63(1)(a), (b), (d) and (g).
- c) They are not authorised to hold money or securities belonging to their clients and, for that reason, cannot at any time place themselves in debt with those clients.

This Article shall not apply either to those investment firms authorised exclusively to provide the service referred to in Article 63(1)(h).

7. In addition to the rules laid down in Article 33 of Law 10/2014 on the regulation, supervision and solvency of credit institutions, those rules included for credit institutions in Article 35 of said Law and its implementing regulations, with any necessary adaptations due to the nature of the institution, shall apply to investment firms which receive public financial support.”

Fourteen. A new Article 70 ter.Three has been added:

“Article 70 ter.Three. Risk management and risk committee.

1. The board of directors is responsible for the risks an investment firm assumes. To this end, investment firms shall establish effective reporting channels to the board of directors on the firm’s risk management policies and all the major risks the firm faces.

2. In exercising its responsibility in relation to risk management, the board of directors shall:

a) Dedicate sufficient time to considering risk-related matters. In particular, it shall participate actively in the management of all substantial risks envisaged in Regulation (EU) No 575/2013 of 26 June 2013, and in the solvency rules laid down in this Law and its implementing regulations, it shall ensure that appropriate resources are allocated for risk management, and it shall participate, in particular, in the valuation of assets, the use of external credit ratings and internal models relating to those risks.

b) Approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks to which the institution is or may be exposed, including those posed by the macroeconomic environment in which it operates in relation to the stage of the business cycle.

3. Investment firms shall have a unit or body that assumes the risk management function proportionate to the nature, scale and complexity of their activities, but is independent from operational functions, and that has sufficient authority, rank and resources, and enjoys timely access to the board of directors.

4. Investment firms shall set up a risk committee. The CNMV may determine that an investment firm, in light of its size, internal organisation, nature, scope or limited complexity of its activities, may assign the risk committee’s functions to the joint audit committee or may be exempt from setting up this committee.

Notwithstanding the foregoing, this Article shall not apply to investment firms that meet the following requirements:

a) They are not authorised to provide the ancillary service referred to in Article 63(2)(a).

b) They provide only one of the investment services or activities listed in Article 63(1)(a), (b), (d) and (g).

c) They are not authorised to hold money or securities belonging to their clients and, for that reason, cannot at any time place themselves in debt with those clients.

This Article shall not apply either to those investment firms authorised exclusively to provide the service referred to in Article 63(1)(h)."

Fifteen. Article 70 quinquies has been reworded:

"Article 70 quinquies. *Combined buffer requirement.*

1. Investment firms must, at all times, meet the combined buffer requirement, that is, the total Common Equity Tier 1 capital, as defined in Article 26 of Regulation (EU) No 575/2013 of 26 June 2013, needed to meet the requirement for the capital conservation buffer and as applicable:

- a) An entity-specific countercyclical capital buffer.
- b) A buffer for global systemically important institutions (G-SIIs).
- c) A buffer for other systemically important institutions (O-SIIs).
- d) A systemic risk buffer.

This requirement shall be met without prejudice to the own funds requirements established in Article 92 of Regulation (EU) No 575/2013 of 26 June 2013 and any other requirements that may be established by the CNMV, by virtue of the provisions of Article 87 octies.

2. These buffers shall be calculated in accordance with the provisions of Chapter III of Title II of Law 10/2014 on the regulation, supervision and solvency of credit institutions.

3. Notwithstanding the foregoing, these buffers shall not apply to investment firms not authorised to perform the activities laid down in points c) and f) of Article 63(1).

Moreover, the capital conservation buffer and the countercyclical buffer shall not apply to small and medium-sized investment firms, provided that, in the opinion of the CNMV, this does not entail a threat to the stability of the Spanish financial system.

For these purposes, a small and medium-sized enterprise shall be as defined in accordance with Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

4. The Common Equity Tier 1 capital required to meet each of the different buffers in compliance with the provisions of paragraphs 1 and 2, may not be used to meet the other buffers and the own funds requirements referred to in the last subparagraph of paragraph 1, except for the provisions of the CNMV on buffers for systemically important entities and systemic risk buffers.

5. The capital buffer requirements must be met on an individual, consolidated or sub-consolidated basis, pursuant to the applicable regulations and in accordance with Part One of Title II of Regulation (EU) No 575/2013 of 26 June 2013.

6. If a firm or group is in breach of the requirements established in paragraph 1, it shall be subject to the restrictions on distributions relating to Common Equity Tier 1, by virtue of the provisions of Article 48 of Law 10/2014 on the regulation, supervision and solvency of credit institutions and shall have to submit a capital conservation plan to the CNMV pursuant to Article 49 of said Law.”

Sixteen. A new Article 70 sexies has been introduced, worded as follows:

“Article 70 sexies. Notification of penalties.

Investment firms must have the appropriate procedures so that their employees may notify infringements internally through an independent, specific and autonomous channel.

These procedures must ensure confidentiality of both the person reporting the infringements and of the natural persons allegedly responsible for the infringement.

Moreover, it must be ensured that employees who report the infringements committed in the entity are protected from retaliation, discrimination and any other type of unfair treatment.”

Seventeen. The fifth point of Article 71 bis(2) shall read as follows:

“The CNMV shall assume the responsibility for ensuring that the services provided by the branch in Spain meet the requirements laid down in Articles 59 bis, 79, 79 bis, 79 ter, 79 sexies and the requirements established in Chapter III of Title XI and the measures adopted pursuant thereto. Consequently, the CNMV shall be entitled to examine the measures adopted by the branch and to request such modifications as are strictly necessary to ensure compliance with the provisions of such Articles and in the measures adopted pursuant thereto, in respect of services or activities performed by the branch in Spain.”

Eighteen. The first point of Article 78 bis(3)(e) shall read as follows:

“e) Other clients which submit a prior request and expressly waive treatment as retail clients. Nevertheless, under no circumstances shall clients, which request to be treated as professionals, be considered to have market experience and knowledge comparable to the categories of clients listed in points a) to d) of this paragraph.”

Nineteen. Point d) of Article 79 bis(8) has been amended to read as follows:

“d) that the entity complies with the provisions of Article 70 ter(2)(d).”

Twenty. Article 79 quater has been amended to read as follows:

“Article 79 quater. Investment services as part of a financial product”.

The reporting and record-keeping obligations envisaged in Articles 79 bis and 79 ter above shall apply to investment services offered as part of other financial products, without prejudice to the application to the latter of their specific rules and regulations, especially those relating to risk assessment and requirements in respect of information to be provided to customers.”

Twenty-one. A new paragraph (5 bis) is added to Article 84:

“5 bis. Financial holding companies, mixed financial holding companies and mixed holding companies, in accordance with Article 4(1)(20) and (21), respectively, of Regulation (EU) No 575/2013 of 26 June 2013, whose subsidiaries include investment firms.”

Twenty-two. A new Article 84 bis is added:

“Article 84 bis. Supervisory programme.

1. The CNMV shall approve, at least once a year, a supervisory programme for the following investment firms:

a) Those whose results in the stress tests referred to in paragraph (3) below or in the supervisory review and evaluation process indicate the existence of significant risks to their financial soundness or reveal non-compliance with solvency regulations.

b) Those that pose a systemic risk to the financial system.

c) Any others which the CNMV considers necessary in the exercise of its supervisory functions.

2. This programme shall contain at least the information referred to in Article 55(2) of Law 10/2014 on the regulation, supervision and solvency of credit institutions and the CNMV, in view of the results of the programme, may adopt the measures it considers appropriate in each case, which may include those provided in Article 55(3) of said Law.

3. At least once a year, the CNMV shall conduct stress tests on the investment firms subject to its supervision, in order to facilitate the process of review and evaluation envisaged in this Article. For this purpose, the CNMV may adopt as its own, and send as its own to entities and groups, any guidelines approved by the European Banking Authority in this connection.

Notwithstanding the above, this Article shall not apply to investment firms which are not authorised to provide the ancillary service referred to in Article 63(2)(a), which provide only one or more of the investment services or activities listed in Article 63(1)(a), (b), (d) and (g), and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients.

4. The CNMV shall take into account, when it sets out its supervisory programme, the information received from the authorities of other Member States in relation to branches of investment firms established there. For these purposes, it will also take into consideration the stability of the financial system in said Member States.”

Twenty-three. Article 85(2)(e) and the first point of Article 85(6) shall read as follows:

“e) Require the cessation of any practice that is contrary to the provisions of this Law and its implementing regulations, and require that such practice not be repeated in the future.”

“6. The CNMV, in the exercise of its supervision and inspection powers provided in this Law, may communicate to and require of the entities specified in Articles 64, 65, 84(1)(a) to (e) and 84(2)(a) to (c), by electronic means, the information and measures set out in this Law and its implementing provisions. Said entities must set in place, in the period established for doing so, the technical resources required by the CNMV for the efficacy of their electronic notification systems, in accordance with the provisions of Article 27(6) of Law 11/2007 of 22 June 2007 on citizens' electronic access to public services.”

Twenty-four. Article 86 shall read as follows:

“Article 86. Obligations in relation to accounting information and consolidation.

1. The individual and consolidated accounts and management reports for each financial year of the entities referred to in Article 84(1) shall be approved by their respective annual general meetings in the first four months after the financial year-end, following the statutory audit.

2. Without prejudice to the provisions of Title III, Book I of the Commercial Code, the Minister for Economic Affairs and Competitiveness and, with his/her express authorisation, the CNMV, the Banco de España or the Spanish Accounting and Audit Institute are empowered to establish and amend the financial reporting rules and formats applicable to the entities referred to in paragraph (1) above, as well as those relating to compliance with any ratios which may be set, specifying the frequency and detail with which the related information must be furnished to the CNMV or generally made public by the entities themselves. This power shall have no restrictions other than the requirement that the disclosure criteria be uniform for all entities in the same category and similar across the various categories.

The ministerial order mandating the empowerment shall specify the reports, if any, which will be required for establishing and amending the aforementioned rules and formats and for resolving inquiries thereon.

In addition, the Minister for Economic Affairs and Competitiveness and, with his/her express authorisation, the CNMV are empowered to regulate the registers, internal or statistical databases and documents to be kept by the entities listed in Article 84(1) and, in relation to their securities market transactions, by those referred to in Article 65.

3. The Minister for Economic Affairs and Competitiveness and, with his/her express authorisation, the CNMV, the Banco de España or the Spanish Accounting and Audit Institute shall have the same powers provided for in paragraph (2) above in relation to the consolidated groups of investment firms referred to in paragraph (4) below and to consolidated groups whose parent is one of the entities listed in Article 84(1)(a) and (b). The exercise of these powers shall require the mandatory reports, if any, stipulated by the empowering ministerial order.

4. In order to meet the minimum own funds levels and limitations imposed by Regulation (EU) No 575/2013 of 26 June 2013, investment firms shall consolidate their accounting statements with those of other investment firms and financial institutions with which they constitute a decision-making unit, as provided in Article 4 and in said Regulation.

5. The CNMV may require the entities subject to consolidation to provide it with any information needed to verify the consolidations carried out and analyse the risks assumed by the consolidated entities as a whole; for the same purposes, it may also inspect their books, documentation and records.

When an investment firm's economic, financial or management relationships with other entities allow it to be presumed that there is a relationship of control within the meaning of this Article, but the entities have not consolidated their accounts, the CNMV may request information from those entities or inspect them in order to determine whether consolidation is appropriate.

6. The CNMV may request information from individuals and inspect the non-financial entities with which they have a relationship of control as provided in Article 4, for the purposes of determining their impact on the legal, financial and economic situation of investment firms and their consolidated groups.

7. The obligation to consolidate established in Article 42 of the Commercial Code shall be deemed to be met by the consolidation referred to in the foregoing paragraphs for corporate groups whose controlling company is an investment firm or whose controlling company engages principally in the holding of ownership interests in investment firms. This obligation shall also be deemed to be met in the case of groups of official secondary market operators and of the *Servicio de Compensación y Liquidación de Valores* (Securities Clearing and Settlement Service).

The foregoing is without prejudice to the obligation of subsidiaries which are not financial institutions to consolidate among themselves where so required in accordance with the aforementioned Article 42 of the Commercial Code.”

Twenty-five. Article 87 shall read as follows:

“Article 87. Relations with other supervisors within the framework of consolidated supervision.



1. Any implementing provisions of this Law which may affect financial institutions subject to supervision by the Banco de España or the Directorate General of Insurance and Pension Funds shall be drafted on the basis of an opinion from them.

2. Whenever a consolidated group of investment firms contains entities subject to solo supervision by an authority other than the CNMV, the latter shall, in exercising the powers granted to it by this Law over such entities, coordinate its actions with the competent supervisory authority in each case. The Minister for Economic Affairs and Competitiveness may establish the necessary rules to ensure appropriate coordination.

3. The Minister for Economic Affairs and Competitiveness, on the basis of an opinion from the CNMV, may, at the request of the Banco de España, resolve that a group of investment firms including one or more credit institutions eligible to join a deposit guarantee fund be deemed a consolidated group of credit institutions and thus be subject to consolidated supervision by the Banco de España.”

Twenty-six. Paragraphs (1) and (2) of Article 87 bis and Article 87 bis(3)(a) are reworded as follows:

“1. The CNMV, as the authority responsible for the supervision of investment firms and their consolidated groups, shall:

a) Review the systems, whether they be agreements, strategies, procedures or mechanisms of any kind, used to comply with the solvency rules in this Law and its implementing regulations and in Regulation (EU) No 575/2013 of 26 June 2013.

b) Determine whether the systems, own funds and liquidity of investment firms ensure the sound and prudent management and proper coverage of their risks.

c) Determine, on the basis of the review and assessment referred to above, whether the systems mentioned in point (a) above and the own funds and liquidity held ensure a sound management and coverage, respectively, of their risks.

The aforementioned analyses and assessments shall be updated at least yearly.

2. The CNMV, in the performance of its functions as the authority responsible for the supervision of investment firms and their consolidated groups, shall:

a) Duly take into consideration the potential impact of its decisions on the stability of the financial system in all the other Member States affected, particularly in emergency situations, based on the information available at the time.

b) Take into account the convergence of supervisory instruments and practices in the European Union.

c) Cooperate with the competent authorities of other European Union Member States, as parties to the European System of Financial Supervision (ESFS), with trust and full mutual

respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS, in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union.

d) Participate in the activities of the European Banking Authority and, as appropriate, in the colleges of supervisors.

e) Make every effort to comply with those guidelines and recommendations issued by the European Banking Authority in accordance with Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, and to respond to the warnings and recommendations issued by the European Systemic Risk Board pursuant to Article 16 of Regulation (EU) No 1092/2010 of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

f) Cooperate closely with the European Systemic Risk Board.”

“a) Oblige investment firms and their groups to hold additional own funds in excess of the minimum requirement. The CNMV shall do so at least whenever it observes serious deficiencies in an investment firm’s organisational structure or in its internal control, accounting or valuation procedures and mechanisms, including particularly those referred to in Article 70(2), or whenever it perceives, in accordance with the provisions of paragraph 1(c) of this Article, that the systems and own funds in place referred to in said provisions do not ensure a sound management and coverage of risks. In both cases the measure shall be adopted when the CNMV considers it unlikely that the mere application of other measures will improve the deficiencies or situations in a suitable time.”

Twenty-seven. The following Article 87 ter is added:

“Article 87 ter. Supervision of mixed financial holding companies and of mixed holding companies.

1. Where a mixed financial holding company under the supervision of the CNMV is subject to equivalent provisions under this Law and under Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector legislation, in particular in terms of risk-based supervision, the CNMV, after consulting the other authorities responsible for the supervision of the subsidiaries of the mixed financial holding company, may decide to apply to that company only the provisions of Law 5/2005 of 22 April 2005 and its implementing regulations.

2. Also, where a mixed financial holding company under the supervision of the CNMV is subject to equivalent provisions under this Law and the consolidated text of the Private Insurance Law, enacted in Royal Legislative Decree 6/2004 of 29 October 2004, in particular in terms of risk-based supervision, the CNMV, after consulting the other authorities responsible

for the supervision of the subsidiaries of the mixed financial holding company, may decide to apply to that company only the provisions of the consolidated text of the Private Insurance Law.

3. The CNMV shall inform the European Banking Authority and the European Insurance and Occupational Pensions Authority of the decisions adopted under paragraphs (1) and (2) above.

4. Without prejudice to the provisions of Part Four of Regulation (EU) No 575/2013 of 26 June 2013, where the parent company of one or more Spanish investment firms is a mixed holding company, the CNMV shall perform the general supervision of transactions between the investment firm and the mixed holding company and its subsidiaries.

5. Subsidiary investment firms of a mixed holding company must have in place adequate risk management arrangements and internal control mechanisms, including sound accounting and reporting procedures, in order to identify, measure, monitor and control transactions with their parent mixed holding company and its subsidiaries appropriately. The CNMV shall require the investment firm to report any significant transaction with those entities other than that referred to in Article 394 of Regulation (EU) No 575/2013 of 26 June 2013. Those procedures and significant transactions shall be subject to overview by the CNMV."

Twenty-eight. The following Article 87 quater is inserted:

"Article 87 quater. Supervision of non-European Union investment firms and their branches.

1. The obligations established in the solvency regulations will not be applicable to the branches of investment firms whose headquarters are in a non-European Union country provided that they are subject to equivalent obligations, under the terms determined by the regulations.

2. Subsidiary investment firms of a financial institution domiciled outside the European Union shall not be subject to supervision on a consolidated basis, provided that they are already subject to such supervision by the competent authority of the non-European Union country concerned, which is equivalent to that provided for in this Law and its implementing regulations, and in Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013 of 26 June 2013.

The CNMV shall verify this equivalence, taking into account for this purpose the guidelines prepared in this connection by the European Banking Authority, which it shall consult before adopting a decision in this regard.

If there are no equivalent supervisory arrangements, the arrangements for supervision on a consolidated basis envisaged in the solvency regulations shall apply to the investment firms mentioned in the first subparagraph of this paragraph.

Notwithstanding the provisions of the previous subparagraph, the CNMV may establish other methods for supervision on a consolidated basis of the groups referred to in this paragraph. These methods shall include the power of the CNMV to require that a parent financial institution be set up which has its registered office in the European Union. The methods shall comply with the objectives of supervision on a consolidated basis determined by this Law and be conveyed to the other competent authorities involved, the European Commission and the European Banking Authority."

Twenty-nine. The following Article 87 quinquies is inserted:

"Article 87 quinquies. Preparation of supervisory guides.

1. The CNMV may prepare technical guidelines addressed to the institutions and persons under its supervision, indicating the criteria, practices or procedures considered suitable for compliance with securities market regulations. These guidelines, which must be made public, may include the criteria to be followed by the CNMV in the exercise of its supervisory activities.

2. For this purpose, the CNMV may adopt as its own and send as its own or develop guidelines addressed to the entities under its supervision that active international organisations or committees may approve regarding the appropriate criteria, practices or procedures to promote better compliance with securities market regulatory provisions and disciplinary rules and supervision of their compliance."

Thirty. The following Article 87 sexies is inserted:

"Article 87 sexies. CNMV reporting requirements in emergency situations.

The CNMV shall advise the Minister for Economic Affairs and Competitiveness, other national or foreign supervisory authorities concerned, the European Banking Authority, and the European Systemic Risk Board, as soon as possible, in the event of any emergency situation's arising, including situations such as those defined in Article 18 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, and in particular, in those circumstances in which adverse developments are affecting the financial markets, such as may compromise market liquidity and the stability of the financial system in any European Union Member State in which investment firms belonging to a group subject to supervision on a consolidated basis by the CNMV or in which significant subsidiaries of a group of Spanish investment firms are established, as envisaged in Article 91 quinquies."

Thirty-one. The following Article 87 septies is inserted:

"Article 87 septies. CNMV disclosure obligations.

1. The CNMV shall periodically disclose the following information in connection with the regulations on investment firms' solvency:

a) Aggregate statistical data on fundamental aspects of the application of the prudential framework in Spain, including the number and nature of the supervisory measures adopted under Articles 70, 70 quinquies, 87 octies and 87 nonies, and the administrative penalties imposed; all in accordance with the professional secrecy rules established in Article 90.

b) The general criteria and methodologies used to verify compliance with Articles 405 to 409 of Regulation (EU) No 575/2013 of 26 June 2013.

c) A summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU) No 575/2013 of 26 June 2013, identified on an annual basis, and without prejudice to the secrecy obligations established in Article 90.

d) The outcome of stress tests conducted as indicated in Article 84 bis(3) or Article 32 of Regulation (EU) No 1093/2010 of 24 November 2010.

The information referred to in this point shall be conveyed to the European Banking Authority, whenever so required by the latter, for publication of the EU-wide results.

e) Other information determined by the regulations.

2. The information disclosed in accordance with paragraph 1 above must be sufficient to permit meaningful comparison between the approaches adopted by the CNMV and its partner authorities in the other European Union Member States. The information shall be disclosed in the format determined by the European Banking Authority and shall be periodically updated. It shall be accessible on the CNMV website."

Thirty-two. The following Article 87 octies is inserted:

"Article 87 octies. Prudential supervision measures.

1. The CNMV shall require investment firms or consolidable groups of investment firms to rapidly adopt the necessary measures to restore compliance in the following circumstances:

a) When they fail to comply with the obligations laid down in the solvency regulations.

b) When the CNMV has information suggesting that it is reasonably likely that the entity will fail to meet the obligations referred to in the preceding paragraph over the course of the next twelve months.

2. In such cases the CNMV may take whichever of the following measure or measures it deems most appropriate in view of the situation of the investment firm or group:

a) Require that investment firms hold own funds in excess of the capital requirements established in Article 70 quinquies and in Regulation (EU) No 575/2013 of 26 June 2013 related to elements of risks and risks not covered by Article 1 of the Regulation.

b) Require that investment firms and their groups strengthen the processes, mechanisms and strategies established to comply with Article 70(2).

c) Require that investment firms and their groups present a plan to restore compliance with the supervisory requirements established herein and in Regulation (EU) No 575/2013 of 26 June 2013, and set a deadline for their execution and to include any necessary improvements to that plan regarding scope and deadline.

d) Require that investment firms and their groups apply a specific provisioning policy or treatment of assets in terms of own funds requirements.

e) Restrict or limit the business, operations or network of investment firms or request the divestment of activities that pose excessive risks to the soundness of an investment firm.

f) Require that the risk inherent in the activities, products and systems of investment firms be reduced.

g) Require that investment firms and their groups limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base.

h) Require that investment firms and their groups use net profits to strengthen their capital base.

i) Restrict or prohibit distributions by the investment firm of dividends or interest to shareholders, members or holders of Additional Tier 1 instruments provided that the prohibition does not constitute an event of default of the investment firm's payment obligations.

j) Impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions.

k) The obligation to have in place a minimum amount of liquid assets with which to withstand potential outflows of funds arising from liabilities and commitments, even in the event of serious incidents potentially affecting the availability of liquidity, and to maintain an appropriate structure of financing sources and of maturities in related assets, liabilities and commitments in order to avoid potential mismatches or liquidity tensions that might impair or jeopardise the investment firm's financial situation.

3. The provisions of the foregoing paragraph are understood to be without prejudice to the application of the penalty system provided herein."

Thirty-three. The following Article 87 nonies is inserted:

"Article 87 nonies. Additional own funds requirements.

1. The CNMV shall require investment firms to hold own funds in excess of the capital requirements established, in accordance with Article 87 octies(2)(a), at least in each case where:

a) An investment firm does not meet the requirements established in Article 70(2) or in Article 393 of Regulation (EU) No 575/2013 of 26 June 2013.

b) There are risks or risk factors that are not covered by the own funds requirements established Article 70 quinques or in Article 393 of Regulation (EU) No 575/2013 of 26 June 2013.

c) It is likely that application of other measures alone will not be sufficient to improve the systems, processes, mechanisms and strategies within acceptable time limits.

d) The review referred to in Article 87 bis(1) reveals that the non-compliance with the requirements for the use of a method of calculation of own funds requirements that requires prior authorisation pursuant to Part Three of Regulation (EU) No 575/2013 of 26 June 2013 could lead to inadequate own funds requirements, or if valuation adjustments taken for trading book positions or portfolios, as set out in Article 105 of Regulation (EU) No 575/2013 of 26 June 2013, do not enable an investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

e) There is evidence to suggest that the risks are possibly being underestimated despite the applicable requirements of Regulation (EU) No 575/2013 of 26 June 2013, this Law and its implementing regulations being met.

f) An institution reports to the CNMV, in accordance with Article 377(5) of Regulation (EU) No 575/2013 of 26 June 2013, that the stress test results referred to in that Article materially exceed the own funds requirements for the correlation trading portfolio.

2. In order to determine the appropriate level of own funds based on the review and evaluation made in accordance with Article 87 bis(1), the CNMV shall assess:

a) The quantitative and qualitative aspects of the process of assessment of investment firms referred to in Article 70(2).

b) The arrangements, processes and mechanisms relating to investment firms' rescue and resolution plans.

c) The outcome of the review and evaluation carried out in accordance with Article 87 bis(1).

d) Systemic risk."

Thirty-four. Article 87 decies is inserted:

"Article 87 decies. Supervision of the requirements for good repute, knowledge and experience, and good governance.

Under its role supervising the requirements for good repute, knowledge and experience, and good governance as referred to in Article 70 ter(8), the CNMV may:

a) Exceptionally withdraw authorisation as provided in Article 73.

b) Require the temporary suspension or definitive removal from office of the director or general manager or similar officer, or the rectification of the shortcomings identified in the event of a lack of good repute, knowledge or experience or the capacity to exercise good governance.

If the investment firm does not comply with these requirements within the period stipulated by the CNMV, the latter may resolve to temporarily suspend the officer concerned or definitively remove him/her from office, in conformity with the procedure laid down in Article 107."

Thirty-five. Article 88(2) shall read:

"In all cases where the CNMV and the Banco de España share powers of supervision and inspection, the two institutions shall coordinate their actions under the principle that it is the duty of the CNMV to ensure the orderly functioning of securities markets, including the internal organisation issues indicated in Article 70 ter(2), whereas responsibility for oversight of solvency and other matters of internal organisation lies with the institution that holds the corresponding register. The CNMV and the Banco de España shall sign agreements to coordinate their respective supervision and inspection powers.

Thirty-six. Article 90(4)(f) has been reworded and two new paragraphs 6 and 7 added to Article 90:

"f) Reports the CNMV is required to submit to the following bodies in order for them to comply with their respective functions: regional governments with powers regarding securities markets; the Banco de España; the Directorate General for Insurance and Pension Funds; the ICAC; official secondary market operators in order to ensure their smooth operation; investor guarantee funds; the administrators or receivers of an investment firm or entity belonging to its group, designated in the corresponding administrative or judicial proceedings; and auditors of investment firms and their groups."

"6. The conveying of confidential information to agencies and authorities belonging to countries outside the European Economic Area, as referred to in paragraph 4(j), shall be conditional, when such information has originated in another Member State, upon the express consent of the authority conveying said information and said information may only be communicated to the cited recipients for the purposes to which the authority has consented. A similar restriction shall apply to information disclosed to the clearing houses and bodies



referred to in paragraph 4(i), and to information requested by the Spanish Court of Auditors or Parliamentary investigation committees."

"7. The CNMV will inform the European Banking Authority of the identity of the authorities or bodies to which it may transmit data, documents or information in accordance with points (d) and (f) in relation to the ICAC."

Thirty-seven. Article 91(1 bis) is amended and a new paragraph 6 added to Article 91, with the following wording:

"1 bis. The CNMV shall cooperate with the European Banking Authority for the purposes of Regulation (EU) No 575/2013 of 26 June 2013, pursuant to Regulation (EU) No 1093/2010 of 24 November 2010."

"6. As the authority responsible for supervision of the solvency of consolidable groups of investment firms, the CNMV will work jointly with other European Union supervisory authorities. For this purpose it will:

a) Coordinate the collection of information and disseminate that which is most relevant and essential, both in normal and emergency situations, among the other authorities responsible for the supervision of group investment firms.

b) Plan and coordinate supervisory activities in normal situations, including in relation to the activities envisaged in Articles 70, 70 quinquies, 87 octies and 87 nonies linked to consolidated supervision and in the provisions on technical criteria concerning organisation and handling of risk, in conjunction with the competent authorities concerned.

c) Plan and coordinate supervisory activities jointly with the competent authorities concerned and, where necessary, with central banks, in preparation for and during emergency situations, including, in particular, adverse developments in investment firms or in financial markets, using existing channels of communication for facilitating crisis management, where possible. The content of this planning and coordination may be determined by regulations.

d) Cooperate closely with other competent authorities having supervisory responsibility over foreign investment firms that are parents, subsidiaries or investees of the same group under the terms of Article 91 quater.

e) Enter into coordination and cooperation agreements with other competent authorities with a view to facilitating and establishing effective supervision of the groups in their supervisory remit and take on any additional tasks arising from such agreements with the content provided for in the regulations.

In particular, the CNMV may enter into a bilateral agreement in accordance with Article 28 of Regulation (EU) No 1093/2010 of 24 November 2010 to delegate its supervisory responsibility for a subsidiary to the competent authorities which have authorised and supervise

the parent, such that they take responsibility for monitoring the subsidiary in accordance with the provisions of this Law, its implementing regulations and in Regulation (EU) No 575/2013 of 26 June 2013. The CNMV shall notify the European Banking Authority of the existence and content of such agreements.”

Thirty-eight. Article 91 bis(8) is amended as follows:

“8. The CNMV, prior to the adoption of decisions that may affect the exercise of the supervisory functions of the interested competent authorities of another European Union Member State, shall consult with these authorities and furnish them with all information deemed essential or relevant, in view of the importance of the matter in question.

In particular, timely consultations should be held before taking the following decisions:

a) Those envisaged in Article 69, irrespective of the extent of the change in the shareholder structure to which the decision relates.

b) Reports that are due to be issued in relation to mergers, spin-offs or any other significant alteration to the organisation or management of an investment firm.

c) Penalties for committing serious and very serious infringements that, in the judgement of the CNMV, are considered particularly important.

d) The intervention and substitution measures referred to in Article 107.

e) Requests for additional own funds in accordance with the provisions of Article 87 octies(2) and the imposition of restrictions on the use of internal methods to measure operational risk.

In the cases referred to in points (c), (d) and (e) above, the European Union authority responsible for the consolidated supervision of the group potentially affected must be consulted in all cases.

Exceptionally, the CNMV may dispense with prior consultation with the interested competent authority of another European Union Member State when urgent circumstances arise or when this consultation could compromise the effectiveness of the decisions to be taken, being required to inform the aforementioned authorities without delay, as regards the decision adopted.”

Thirty-nine. Article 91 sexies reads as follows:

“Article 91 sexies. Joint decisions in the context of the supervision of groups of investment firms operating in several Member States.

As part of the cooperation framework referred to in Article 91(1), the CNMV as the consolidating supervisor of a group, or the competent authority responsible for supervising the subsidiaries of a European Union parent investment firm or a European Union parent financial

holding company or European Union parent mixed financial holding company in Spain, will do everything in its power to reach a joint decision on:

a) The application of Article 70(2) and Article 87 bis(1) to determine whether the consolidated equity level of a group is appropriate in view of its financial situation and risk profile, and the equity level needed to apply Article 87 bis(2) to each of the institutions of the group and on a consolidated basis.

b) The measures to be used to settle any significant questions and key findings relating to supervision of liquidity.

The joint decision shall be adopted in accordance with the procedure provided in the regulations."

Forty. Article 91 septies(1) shall read:

Article 91 septies. Establishment of colleges of supervisors.

"1. The CNMV, as consolidating supervisor, shall establish colleges of supervisors to facilitate the exercise of the tasks defined in the regulations in the context of the cooperation referred to by Article 91(1), and subject to the confidentiality requirements of the applicable legislation and with European Union law, will ensure proper coordination and cooperation with relevant third-country competent authorities, where appropriate.

The colleges of supervisors shall constitute the framework in which the following tasks will be carried out:

a) Exchange of information between competent authorities and with the European Banking Authority pursuant to Article 21 of Regulation (EU) No 1093/2010 of 24 November 2010.

b) Agree, where appropriate, on the voluntary sharing of tasks and delegation of responsibilities.

c) Establish supervisory inspection programmes based on an assessment of group risks in accordance with Article 87 bis.

d) Enhance supervisory efficiency, eliminating all unnecessary duplication of supervisory requirements, particularly those related to the information requests referred to in Article 91 bis(8).

e) Apply the prudential requirements envisaged in Regulation (EU) No 575/2013 of 26 June 2013, consistently across all investment firms in a group, without prejudice to the options and powers provided under European Union legislation.

f) Plan and coordinate supervisory activities, in cooperation with the competent authorities concerned, and, where appropriate, with central banks, in emergency situations or

when such situations are foreseen, drawing upon the work done in other forums that may be established in relation to this matter."

Forty-one. Paragraphs 1 and 3 of Article 98 have been reworded and a new paragraph 3 bis inserted.

"1. In relation to disciplinary proceedings, Law 30/1992 of November 26 1992 on the general government legal regime and common administrative procedure and its implementing regulations shall apply, with the particularities set out in Articles 108, 110 and 112 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, this Law, and its implementing regulations.

Similarly, in the exercise of the sanctioning powers conferred on the CNMV, entities included in Article 84(1) shall be subject to the provisions of Article 106 of the aforementioned Law 10/2014 on regulation, supervision and solvency of credit institutions.

3. The imposition of penalties shall be recorded in the corresponding administrative register held by the CNMV, which shall be accessible via its website. When penalties are published against which appeals have been lodged, the website will report on the status of the appeal and its outcome. Additionally, penalties of suspension, dismissal, and dismissal with disqualification, once enforced, shall be listed here as well as in the Mercantile Register, where applicable.

3 bis. When penalties are published, both the CNMV website and the Official State Gazette shall include information on the type and nature of the infringement and the identity of the natural or legal person to whom the penalty applies.

The CNMV may agree that the penalties imposed by the application of the types applicable to investment firms set out in Article 99(d), (e), (e bis), (e ter), (e quater), (e quinquies), (e sexies), (k), (l), (l bis), (m), (q), (u), (w), (z), (z septies), (z octies) and (z nonies), Article 100(c), (c bis) (g), (g bis), (k), (n), (ñ), (p), (t) and (z septies) and Article 107 quater(3), (4), (5), (6) and (7) be published without disclosure of the identity of the parties on which they are imposed when, in the CNMV's judgement, any of the following circumstances arise:

a) When the penalty is imposed on a natural person, and following a prior assessment, the publication of personal data is deemed disproportionate.

b) When the publication may jeopardise financial market stability or an ongoing criminal investigation.

c) When the publication may cause disproportionate harm to the entities or natural persons involved, insofar as the harm is quantifiable."

Forty-two. Article 99(c bis), (c ter), (c quater), (l), (l bis) and (x) have been reworded; Article 99(z quinquies) and (z sexies) have been renumbered (z sexies) and (z septies),

respectively, and Article 99(e sexies), (k bis) and (k ter), (z octies) and (z nonies) have been inserted.

"c bis) Failure by the institutions listed in Article 84(1)(a) and (b) to send to the CNMV, within the time limits set in the regulations or granted by it, such documents, data or information as are required under the provisions of this Law, its implementing regulations, or European Union law, or which the CNMV requires in the exercise of its functions, when the importance of the information or the delay is such that it seriously affects the assessment of its situation or activity, and likewise the sending of incomplete, inaccurate or false information, when the inaccuracy is significant.

c ter) Non-compliance by entities listed in Article 84(1)(a) and (b) with obligations relating, in each case, to the authorisation, approval or non-opposition to its articles of association, regulations, or any other matter subject to the previous system, as envisaged in this Law, its implementing regulations, or European Union law.

c quater) Non-compliance by entities listed in Article 84(1)(a) and (b) with capital structure requirements or applicable own funds levels, as envisaged in this Law, its implementing regulations or European Union law; non-compliance with the obligation to grant access to them, as envisaged in this Law, its implementing regulations or European Union law, and non-compliance with the exceptions or limitations on prices, charges or commissions imposed by the CNMV.

e sexies) Payment or distribution to holders of instruments eligible as own funds in investment firms when by doing so they breach Article 70 quinquies(6) or Articles 28, 51 or 63 of Regulation (EU) No 575/2013 of 26 June 2013.

k bis) Incurring an exposure exceeding the limits established in Article 395 of Regulation (EU) No 575/2013 of 26 June 2013.

k ter) Incurring a credit risk exposure on a securitisation position that does not satisfy the conditions established in Article 405 of Regulation (EU) No 575/2013 of 26 June 2013.

l) The lack of processes, policies or measures as referred to in Article 70 ter; persistent or reiterated non-compliance with corporate governance obligations and organisational requirements envisaged in the aforementioned Article 70 ter or obligations as regards remuneration deriving from Article 70 ter.Two; the failure to prepare the general viability plan envisaged in Article 70 ter(2)(g).

l bis) Failure of investment firms to send the CNMV any information or documents they are required to deliver under this Law and its implementing regulations, or Regulation (EU) No 575/2013 of 26 June 2013, or that the CNMV requires in the exercise of its functions, or their delivering inaccurate, incomplete or false or misleading data, when this hinders the assessment of the entity's solvency or that of the consolidable group or financial conglomerate to which it belongs.

For the purposes of this point, sending information or documents outside the period stipulated in the corresponding regulation or the deadline given, where applicable, when making the relevant request, will also be considered a failure to deliver information or documents.

In particular, the failure to send the following, or doing so in an incomplete or inaccurate form, shall be understood to be included in this point:

1) The information referred to in Article 101 of Regulation (EU) No 575/2013 of 26 June 2013.

2) Information on major exposures, thereby failing to comply with Article 394(1) of Regulation (EU) No 575/2013 of 26 June 2013.

3) Information on the compliance with the obligation to maintain own funds established in Article 92 of Regulation (EU) No 575/2013 of 26 June 2013, thereby failing to comply with Article 99(1) of the.

4) Information on liquidity requirements established, and failure to comply with Article 415(1) and (2) of Regulation (EU) No 575/2013 of 26 June 2013.

5) Information on the leverage ratio, thereby failing to comply with Article 430(1) of Regulation (EU) No 575/2013 of 26 June 2013.

x) Non-compliance by investment firms, other financial institutions, or public authenticating officials with the obligations, limitations or prohibitions deriving from the provisions of Article 36 or the provisions or rules issued in accordance with Articles 43 and 44, without prejudice to the provisions of Article 107 quater.

z sexies) Failure of credit rating agencies to send to the CNMV any data or documents they are required to submit under this Law and Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies or that the CNMV requires from them, in the exercise of the functions assigned to it by delegation or in cooperation with other competent authorities, or the submission of information to the CNMV of inaccurate data when this hinders the assessment of the organisation or functioning of the entity or the manner in which it conducts its business.

z septies) The lack of a customer service department.

z octies) Failure to establish the appointments committee under the terms of Article 70 ter. One or the remuneration committee under the terms of Article 70 ter. Two.

z nonies) Failure to publish required information, thereby failing to comply with Article 431(1), (2) and (3) or Article 451(1) of Regulation (EU) No 575/2013 of 26 June 2013, or the publication of such information in incomplete or inaccurate form."

Forty-three. Article 100(e), (g bis) and (t) have been reworded and Article 100 (z septies) has been added.

"e) Non-compliance by entities other than investment firms, financial institutions, or public authenticating officials, with the obligations, restrictions or prohibitions deriving from the provisions of Article 36 or the provisions or rules issued in accordance with Articles 43 and 44, without prejudice to the provisions of Article 107 quater.

g bis) Non-compliance with the obligation to publish the information referred to in Article 70 bis and Article 70 bis.One, and publication of such information in a way that is incomplete, or contains data that is false, misleading or untrue.

t) Occasional or isolated non-compliance by parties providing investment services of the obligations of corporate governance and organisation requirements under Article 70 ter, and of the obligations on remuneration under Article 70 ter. Two or the occasional or isolated non-compliance by parties providing investment services of the obligations, rules and restrictions under Articles 70 quater, 79, 79 bis, 79 ter, 79 quinquies and 79 sexies.

z septies) Merely occasional or isolated non-compliance with the obligation to keep the General viability plan referred to in Article 70 ter (2)(g) up to date."

Forty-four. Article 102 now reads as follows:

"Article 102. Penalties for very serious infringements.

1. One or more of the following penalties will be imposed in the case of very serious infringements:

a) A fine of up to whichever is the greater of the following amounts: five times the gross profit obtained as a result of the acts or omissions of which the infringement consists; 5% of the infringing entity's own funds, 5% of the total own or third-party funds used in the infringement, or €600,000.

In the case of investment firms that breach the rules set out in Regulation (EU) No 575/2013 of 26 June 2013, or which commit very serious infringements, as referred to in the second point of Article 98(3 bis), the fine imposed shall be of up to the greater of the following amounts: five times the gross profit obtained as a result of the acts or omissions of which the infringement consists; 10% of the total annual net turnover, including gross interest receivable and similar income, income from shares and other variable/fixed-yield securities, commissions/fees receivable, in accordance with Article 316 of Regulation (EU) No 575/2013 of 26 June 2013, generated by the company in the previous year, the own funds of the infringing entity, 5% of the total own or third-party funds used in the infringement, or €10,000,000.

If the company referred to in this paragraph is a subsidiary, the relevant gross income will be the gross income from the consolidated accounts of its parent company in the previous financial year.

b) Suspension or limitation of the type or volume of the operations or activities that the infringer may conduct in the securities markets for a period of not more than five years.

c) Suspension of the status of member of the official secondary market or multilateral trading system concerned for a period of up to five years.

d) Exclusion from trading a financial instrument on a secondary market or multilateral trading system.

e) Withdrawal of authorisation, in the case of investment services companies, public debt market management entities, and other entities on the registers of the CNMV. In the case of investment firms authorised in another European Union Member State, the penalty of withdrawal of authorisation shall be understood as being replaced by the prohibition on its initiating new business in Spanish territory.

f) Suspension of the infringer from holding the office of executive or director of a financial institution for up to five years.

g) Removal of the infringer from the office of executive or director held by him/her in a financial institution, with disqualification from holding the office of executive or director in that same entity for up to five years.

h) Removal of the infringer from the office of executive or director held by him/her in a financial institution, with disqualification from holding the office of executive or director in any other entity of the types listed in Article 84(1) and 84(2)(b), (c bis) and (d) for up to ten years.

In the case of an infringement of the type envisaged in Article 99(o), the penalty provided in paragraph 1(a) of this Article shall apply in all cases, with a minimum fine of €30,000, in addition to one of the penalties set out in paragraph 1(b), (c) or (e) of this Article, as applicable in view of the status of the infringer.

Also, in the case of a breach of the reservation of activity provided for in Article 99(q), the penalty provided under paragraph 1(a) of this Article shall be applied to the infringer, where gross profit is understood to mean the income obtained by the infringer by conducting the reserved activity, with a fine of not less than €600,000.

If a holding is acquired by an investment firm despite the opposition of the CNMV, irrespective of any other penalties applicable, it shall provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.



In the case of infringements by the persons referred to in Article 85(8), the penalties shall be imposed in accordance with Article 98, without prejudice to the capacity of other competent authorities in the European Union to impose penalties in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

2. Penalties for very serious infringements will be published in the Official State Gazette once final in administrative proceedings."

Forty-five. Article 103 now reads as follows:

"Article 103.

1. One or more of the following penalties shall be imposed in the case of serious infringements:

a) A fine of up to whichever is the greater of the following amounts: twice the gross profit obtained as a result of the acts or omissions of which the infringement consists; 2% of the infringing entity's own funds, 2% of the total own or third-party funds used in the infringement, or €300,000.

In the case of investment firms that breach the rules set out in Regulation (EU) No 575/2013 of 26 June 2013, or which commit serious infringements, as referred to in the second point of Article 98(3 bis), the fine imposed shall be of up to the greater of the following amounts: twice the gross profit obtained as a result of the acts or omissions of which the infringement consists; 5% of the total annual net turnover, including gross interest receivable and similar income, income from shares and other variable/fixed-yield securities, commissions/fees receivable, in accordance with Article 316 of Regulation (EU) No 575/2013 of 26 June 2013, generated by the company in the previous year; 2% of the total own or third-party funds used in the infringement, or €5,000,000.

If the company referred to in this paragraph is a subsidiary, the relevant gross income will be the gross income from the consolidated accounts of its parent company in the previous financial year.

b) Suspension or limitation of the type or volume of the operations or activities that the infringer may conduct in the securities markets for a period of not more than one year.

c) Suspension of the status of member of the official secondary market or multilateral trading system concerned for a period of up to one year.

d) Suspension of the infringer for a period of up to one year from the exercise of the office of executive or director at a financial institution.

In the case of an infringement of the type envisaged in Article 100(x), in relation to the failure to comply with the obligations established in Article 81, the penalty set out in point (a)

above shall apply, together with one of the penalties envisaged in (b) and (c) above, such that the fine imposed may not be less than €12,000.

Infringements of the type envisaged in Article 100(g bis) will in all cases entail deletion of the representative or attorney from the CNMV's registers.

If a significant holding is acquired by an investment firm despite the opposition of the CNMV, irrespective of any other penalties to be applied, it shall provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

2. Penalties for serious infringements will be published in the Official State Gazette once final in administrative proceedings."

Forty-six. Article 105 now reads as follows:

"Article 105.

1. In addition to the penalty imposed on the infringer for very serious infringements, when the infringer is a legal person one or more of the following penalties may be imposed on those of its directors or executives who are responsible for the infringement:

a) A fine of up to €400,000.

In the case of investment services companies that breach the rules set out in Regulation (EU) No 575/2013 of 26 June 2013 or which commit very serious infringements as referred to in the second paragraph of Article 98(3 bis), the fine will be of a sum of up to €5,000,000.

b) Suspension of the infringer from the exercise of the office of executive or director of the institution for up to three years.

c) Removal from office and disqualification from holding the office of executive or director in that same entity for up to five years.

d) Removal from office, with disqualification from holding the office of executive or director in any other entity of the types envisaged in Article 84(1) or in a credit institution for up to ten years.

e) Public reprimand in the Official State Gazette identifying the infringer and the nature of the infringement or private reprimand.

In the case of an infringement of the type established in Article 99(o), the penalty provided by point (a) above will be imposed in all cases, such that the fine may not be less than €30,000.

2. In any event, the penalties imposed in accordance with the provisions of paragraph 1 will be published in the Official State Gazette once final in administrative proceedings."

Forty-seven. Article 106 now reads as follows:

"Article 106.

1. In addition to the penalty imposed on the infringer for serious infringements, when the infringer is a legal person one or more of the following penalties may be imposed on those of its directors or executives who are responsible for the infringement:

a) A fine of up to €250,000.

In the case of investment services companies that breach the rules set out in Regulation (EU) No 575/2013 of 26 June 2013 or which commit serious infringements as referred to in the second paragraph of Article 98(3 bis), the fine will be of a sum of up to €2,500,000.

b) Suspension of the infringer from the exercise of any post of executive or director of the institution for up to one year.

c) Public reprimand in the Official State Gazette identifying the infringer and the nature of the infringement or private reprimand.

In the case of an infringement as envisaged in Article 100(x), in relation to the failure to comply with the obligations established in Article 81, the penalty set out in point a) above of this Article shall apply, although the fine imposed may not be less than €12,000.

2. In any event, the penalties imposed in accordance with the provisions of paragraph 1 will be published in the Official State Gazette once final in administrative proceedings."

Forty-eight. Article 106 ter(1) shall read:

"Article 106 ter. Determining criteria for penalties.

1. The penalties applicable in each case for very serious, serious and minor infringements shall be determined according to the criteria given in Article 131(3) of Law 30/1992 of November 26 1992 on the general government legal regime and common administrative procedure, bearing in mind the following:

a) The nature and magnitude of the infringement.

b) The degree of responsibility of the natural or legal person responsible for the infringement.

c) The financial soundness of the natural or legal person responsible for the infringement, reflected, among other quantifiable factors, by the total turnover of the legal person responsible or annual income of the natural person.

- d) The seriousness and persistence over time of the danger or harm caused.
- e) Losses caused to third parties by the infringement.
- f) The gains obtained, where applicable, as a consequence of the acts or omissions constituting the infringement.
- g) The unfavourable consequences of the infringement for the financial system or the national economy.
- h) Whether the infringer has sought to rectify the infringement on their own initiative.
- i) The restitution of the harm or damage caused.
- j) Cooperation with the CNMV, provided the natural or legal person provided significant data or items for the clarification of the facts investigated.
- k) In the event of inadequate own funds, the objective difficulties that may have arisen to reach or maintain the legally required level.
- l) The prior conduct of the entity in relation to the regulatory provisions and disciplinary rules applicable to it, considering final penalties imposed on it in the last five years."

Forty-nine. The first paragraph of Article 107 is reworded as follows:

"The provisions for credit institutions in Article 106 of Chapter V of Title III of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions shall be applicable to the entities listed in Article 84(1)(a), (b), (c), (d), (e) and (f). Competence to agree intervention or substitution measures shall lie with the CNMV.

Fifty. Article 107 ter shall read as follows:

"Article 107 ter. Information and notification of infringements and administrative penalties.

1. Each year the CNMV shall provide the European Securities and Markets Authority with aggregated information about the infringements committed by failure to comply with the obligations under this Law, and the penalties imposed.

Where an administrative measure or penalty has been publicly disclosed, the CNMV shall simultaneously inform the European Securities and Markets Authority of this fact.

Furthermore, subject to the requirements of professional secrecy, the CNMV shall inform the European Banking Authority of all administrative penalties imposed on investment firms considered an institution for the purposes of the definition given in Article 4(1)(3) of Regulation (EU) No 575/2013 of 26 June 2013."

Fifty-one. A new Article 107 quater has been inserted, worded as follows:

"1. Natural and legal persons conducting transactions subject to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps shall be subject to the CNMV's supervisory, inspection and penalty system provided for by this Law.

Likewise, natural and legal persons conducting transactions subject to Regulation (EU) No 648/2012 of 4 July 2012 shall also be subject to the CNMV's supervisory, inspection and penalty system provided by this Law.

The CNMV will have the powers set out in Article 85 of the Law that are necessary to fulfil the functions and tasks assigned to it by delegation or through cooperation with other competent authorities.

2. Without prejudice to the types of infringer envisaged in Articles 99 to 101, the persons referred to in paragraph 1 and the directors and executives of the legal persons mentioned there, that infringe the rules of organisation or discipline included in the aforementioned European Union regulations, shall incur punishable administrative liability and the system of penalties provided in this Chapter shall apply, with the particularities envisaged in this Article.

3. The following breaches of Regulation (EU) No 236/2012 of 14 March 2012 shall constitute very serious infringements:

a) Non-compliance with the obligations set out in Articles 5 to 8 of the Regulation without observing the stipulations of Article 9 thereof, in cases where delay in communication is significant or there has been a requirement from the CNMV, and breach of the duty to safeguard information set out in Article 9.

b) Non-compliance with the duty of communication referred to in Article 17(9) and (10) of the Regulation, when the delay in communication or the number and volume of transactions is significant; also, non-compliance with the duty of communication set out in Article 17(11) when there has been a delay in communication or a requirement has been made by the CNMV.

c) Short-selling when the conditions described in Article 12 of the Regulation have not been met and at least one of the following circumstances arises:

- 1) the short-selling was not merely occasional or isolated;
- 2) it had a significant impact on the share price;
- 3) the transaction was relatively important with respect to the share's trading volume in the session in the multilateral order market;
- 4) there is a high degree of volatility in the market or the particular security;
- 5) the transaction raises the potential risk of failure or delay in settlement.

d) Conducting transactions with sovereign credit default swaps when not allowed under Article 14 of the Regulation, in significant volume.

e) Breach of the obligations set out in Articles 13, 15, 18 and 19 of the Regulation.

f) Conducting transactions that have been prohibited or restricted by the CNMV pursuant to Articles 20, 21 and 23 of the Regulation.

4. The following breaches of Regulation (EU) No 236/2012 of 14 March 2012 shall constitute serious infringements:

a) Non-compliance with the communication and publication obligations set out in Article 9 of the Regulation, and those contained in Article 17 of the Regulation, unless they constitute very serious infringements.

b) Conduct of the type described in paragraph 3(a), (b), (c) and (d) above, unless it constitutes a very serious infringement.

5. Without prejudice to the types of infringer already envisaged in Article 99 of this Law, the following breaches of Regulation (EU) No 648/2012 of 4 July 2012 shall constitute very serious infringements:

a) Non-compliance with the obligations established in Article 11(1), (2), (3) and (4), and in Titles IV and V of the Regulation, when they jeopardise the solvency or viability of the infringer or its group.

b) Non-compliance with the obligations set out in Articles 4 and 10 of the Regulation, with more than a merely occasional or isolated character or with substantial irregularities.

c) Non-compliance with any of the obligations set out in Article 9 of the Regulation by the financial counterparties as referred to in Article 2(8) of the Regulation and the central counterparties, unless of a merely occasional or isolated nature, or when substantial irregularities are involved.

6. Without prejudice to the types of infringer already envisaged in Article 100 of this Law, the following breaches of Regulation (EU) No 648/2012 of 4 July 2012 shall constitute serious infringements:

a) Breach of the obligations referred to in paragraph 5(a), (b), and (c) above, unless it constitutes a very serious infringement.

b) Breach, unless of a merely occasional or isolated nature, or with substantial irregularities, of any of the obligations set out in Article 9 of the Regulation by non-financial counterparties referred to in Article 2(9) of the Regulation.

7. Failure to send on time to the CNMV any documents, data or information due to be sent to it in the exercise of the functions assigned to it under delegation or through cooperation

with other competent authorities shall constitute minor infringements under Regulation (EU) No 648/2012 of 4 July 2012, as shall breach of the duty to cooperate in the CNMV's supervisory actions, including failure to attend when summoned to give a statement, unless this conduct constitutes a serious or very serious infringement as provided in the preceding paragraphs.

Breach of the obligations arising out of Regulation (EU) No 236/2012 of 14 March 2012 and Regulation (EU) No 648/2012 of 4 July 2012, shall also be considered minor infringements unless they constitute a serious or very serious infringement under the provisions of the foregoing paragraphs.

8. The CNMV shall request a prior report from the Banco de España or the Directorate General for Insurance and Pension Funds, as applicable, before taking any of the following decisions in relation to counterparties subject to its prudential supervision:

a) Decisions concerning the existence of risk management procedures and the capital adequacy of financial counterparties for the purposes of Article 11(3) and (4) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012.

b) The application of the exemptions for intragroup transactions referred to in Article 4(2) and paragraphs 5 et seq. of Article 11 of the aforementioned Regulation.

The decisions the CNMV may take as referred to in point (a) above shall, in all cases, be based on the report issued by the authority responsible for the prudential supervision of the corresponding entity.

The CNMV may require from the Banco de España and the Directorate General of Insurance and Pension Funds all such information as is necessary for it to exercise the supervision, inspection and disciplinary powers regarding the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012.

9. The infringements provided for in this Article shall be penalised in accordance with the penalty system provided for in this Law.

10. The fines and penalty payments adopted by the European Securities and Markets Authority under Articles 65 and 66 of Regulation (EU) No 648/2012 of 4 July 2012 shall be subject to an authenticity analysis by the CNMV prior to their enforcement."

Fifty-two. A Fourteenth transitional provision has been added, which shall read as follows:

"Fourteenth transitional provision. General viability plan.

The general viability plan provided for in Article 70 ter(2)(g) shall be required from entities after six months have elapsed since the implementing regulations specifying its content have been completed."

Fifty-three. The third subparagraph of Seventeenth additional provision(1) has been amended to read as follows:

"The CNMV shall be responsible for authorising the articles of association or other constitutional documents governing these acquiring entities and their amendments, with the exceptions established in the regulations, and for authorising the appointment of members of their board of directors or general managers, who must meet the requirements set out in Article 67(2)(f) hereof. If the acquiring entity does not have its registered office in Spain and its constitutional documents and amendments and requirements of the members of their board of directors or general managers have been verified by the competent authority of another European Union Member State or the supervisory authority of a non-EU country whose system of organisation and functioning is similar to that of the CNMV, it shall be incumbent on this latter authority to perform these verifications."

Fifty-four. The Fourth final provision is amended as follows:

"Fourth final provision.

1. The CNMV shall be the competent authority in Spain for the purposes of Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.

2. The National Securities Market Commission shall also be the competent authority in Spain for the purposes of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. This Commission shall carry out supervisory inspections and discipline for the activities of central counterparties, financial counterparties and non-financial counterparties.

The Banco de España and the Directorate General for Insurance and Pension Funds shall immediately inform the CNMV of any effective non-compliance, or the existence of well-founded indications of likely non-compliance with the obligations established in Article 11(3) and 11(4) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012."

### **Second final provision.**

#### **Amendment of Law 13/1989 of 28 July 1988 on credit cooperatives.**

Article 7(4) of Law 13/1989 of 28 July 1988 on credit cooperatives is amended as follows:

"4. The contributions shall be repaid to the members when the conditions stipulated by the regulations are met, subject in all cases to the authorisation of the Governing Board. In



no event shall such refund be authorised when it results in insufficient coverage of the mandatory share capital, reserve or solvency ratio requirements.

No privilege may be granted to any contributions in terms of their priority in the event of the cooperative's insolvency or winding-up.”

**Third final provision.**

**Amendment of Law 1/1994 of 11 March 1994 on the legal regime for mutual guarantee companies.**

Article 59(1)(e) of Law 1/1994 of 11 March 1994 on the legal regime for mutual guarantee companies is amended as follows:

“e) If the paid-up share capital or eligible own funds fall below the minimum amounts required under this Law.”

**Fourth final provision.**

**Amendment of Law 41/1999 of 12 November 1999 on payment and securities settlement systems.**

Article 8(g) of Law 41/1999 of 12 November 1999 on payment and securities settlement systems has been amended as follows:

“g) The central counterparty BME Clearing S.A.U., and the derivative securities and financial instruments clearing and settlement system managed by MFAO, Sociedad Rectora del Mercado de Futuros del Aceite de Oliva, S.A., authorised by the Minister for Economic Affairs and Competitiveness pursuant to Securities Market Law 24/1988 of 28 July 1988.”

**Fifth final provision.**

**Amendment of Law 36/2003 of 11 November 2003 on economic reform measures.**

The first subparagraph of Article Nineteen(2) of Law 36/2003 of 11 November 2003 on economic reform measures shall now read as follows:

“2. The entities referred to in the preceding paragraph shall offer applicants for variable interest rate mortgage loans at least one instrument, product or system to hedge against

interest rate rises, provided this is appropriate for the customer, pursuant to Article 79 bis of Securities Market Law 24/1988 of 28 July 1988.”

### **Sixth final provision.**

#### **Amendment of the consolidated text of the Private Insurance Law, enacted by Royal Legislative Decree 6/2004 of 29 October 2004.**

The consolidated text of the Private Insurance Law, enacted by Royal Legislative Decree 6/2004 of 29 October 2004 is amended as follows:

One. Article 20(3)(a) shall read as follows:

“a) A group of financial institutions shall be deemed to form a consolidable group of insurance companies, the regulations determining the types of institutions of which it is comprised, when any of the following circumstances arise:

- 1.- That an insurance company controls the other entities.
- 2.- That the parent entity is an entity whose main business consists of having holdings in insurance companies.
- 3.- That a company whose main business consists of having holdings in financial institutions, a mixed financial holding company, a natural person, a group of persons acting systematically in concert, or a non-consolidable entity pursuant to this Law, controls several financial institutions, of which at least one is an insurance company, and provided that the insurance companies are those of largest relative size among the financial institutions, in accordance with the criteria laid down to this end by the Minister for Economic Affairs and Competitiveness.

When either the second or third of the foregoing circumstances arises, the Directorate General for Insurance and Pension Funds shall designate the person or entity obliged to formulate, approve and deposit the consolidated annual accounts and management report and to appoint the auditors. For the purposes of the aforementioned designation, insurance companies belonging to the group must notify the Directorate General for Insurance and Pension Funds of their existence, stating the name of the controlling entity and, in the case of a legal person, its registered office.

When the parent entity of a consolidable group of insurance companies is a mixed financial holding company subject to this Law, and supervision standards equivalent to those set out in Article 4(1) of Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector legislation and in its implementing regulations are applicable to it, the Directorate General for Insurance and Pension Funds, after consultation with the other authorities responsible for the supervision of the branches of the

mixed financial holding company, may decide that only the provisions of Law 5/2005 of 22 April 2005 and its implementing regulations apply to this company, or that the provisions regulating the most important financial sector of the mixed financial holding company apply.

The Directorate General for Insurance and Pension Funds shall inform the European Insurance and Occupational Pensions Authority of the decision taken under the preceding subparagraph.”

Two. A new paragraph 6 is added to Article 71, reading as follows:

“6. The Directorate General for Insurance and Pension Funds may prepare technical guides addressed to the institutions and groups under its supervision, indicating the criteria, practices or procedures considered suitable for compliance with supervisory regulations. These guides, which must be made public, may include the criteria to be followed by the Directorate General for Insurance and Pension Funds in the exercise of its supervisory activities.

To this end, the Directorate General for Insurance and Pension Funds may adopt as its own and convey as its own, or develop, supplement or adapt, any guidelines approved by international agencies or committees involved in the regulation or supervision of insurance or pension plans that are addressed to the entities under its supervision.”

### **Seventh final provision.**

#### **Amendment of Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector legislation.**

Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector legislation is amended as follows:

One. The sixth and seventh paragraphs of the preamble shall read as follows:

“This Law therefore responds to the fundamental aim of providing for a specific prudential regime applicable to financial conglomerates. However, it also has a secondary aim: namely to advance towards greater consistency between the different sector-specific legislation applicable to “uniform” groups, and between such legislation and that applicable to financial conglomerates. This sector-specific legislation, to which the text of this Law makes continual references, is Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions, in the case of financial institutions; Securities Market Law 24/1988 of 28 July 1988, in the case of the securities market; the consolidated text of the Law on the organisation and supervision of private insurance, passed by Royal Legislative Decree 6/2004 of 29 October 2004, in the case of the insurance industry; Law 35/2003 of 4 November 2003 on collective

investment institutions in the case of fund management companies; and Law 25/2005 of 24 November 2005 regulating venture capital entities and their management companies in the case of venture capital management companies. To these should be added the consolidated text of the Law regulating pension schemes and pension funds, enacted by Royal Legislative Decree 1/2002 of 29 November 2002.

Chapter I is devoted to the first of the aforementioned objectives: namely the design of a new system of supervision to which credit institutions, investment firms, insurance and reinsurance companies, management companies of collective investment institutions, venture capital management companies, and pension fund management entities (which both Directive 2011/89/EU of 16 November 2011 and the Law refer to generically as “regulated entities”) forming part of a financial conglomerate are to be subject. Thus, a definition of a financial conglomerate is first given, based on the classic definition of a group offered by Article 4 of Law 24/1988 of 28 July 1988. The pillars of this supervision are then listed: solvency, capital adequacy policies, risk concentration, intragroup transactions and risk management procedures and internal control mechanisms.”

Two. Article 2(2), (3) and (5) and the first subparagraph of Article 2(6) shall read as follows:

“2. For the purposes of this Law, the definition of a group of companies established in Article 42 of the Commercial Code shall apply.

A holding shall be understood to mean any right over the capital of other companies that, creating a lasting bond with them, is intended to contribute to the business of the company, and in any event, the direct or indirect holding of at least 20% of the capital or voting rights.

The group will include all the entities that have links between them as indicated in the two preceding subparagraphs, whatever their country of registration, residence or legal nature, and irrespective of the country in which they conduct their business.

3. For the purposes of this Law, regulated entities shall include credit institutions, investment firms, management companies of collective investment institutions, venture capital management companies, pension fund management entities and insurance and reinsurance companies.

Regulated entities shall include:

a) Spanish entities inscribed in the special registers held by the Banco de España, the CNMV, and the Directorate General for Insurance and Pension Funds.

b) Those authorised in other European Union Member States.

c) Agencies or companies, whether public or private, that have been authorised in non-European Union countries, when they perform activities reserved to credit institutions, investment firms, insurance and reinsurance companies, management companies of collective investment institutions, venture capital management companies, and pension fund management entities.”

“5. Activities in a financial sector are deemed significant when the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group exceeds 10%.

The requirement envisaged in paragraph 1(c) will also be considered to have been met if the balance sheet total of the group’s smallest financial sector exceeds €6 billion. If only one of the two thresholds envisaged in this and the previous subparagraph is exceeded, without simultaneously exceeding the other, then the circumstances in which the group may be considered not to be a financial conglomerate or the provisions established in Article 4(1)(c), (d) and (e) may be deemed not to apply will be determined by the regulations.

For the purposes of this Law, the smallest financial sector in a group is the sector with the lowest average and the most important financial sector is that with the highest average. To calculate the smallest and most important financial sector, the banking and investment services sectors will be taken together and management companies of collective investment institutions and venture capital management companies will be added to the sector they belong to within the group. If the latter do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

6. In those cases determined by the regulations, and in accordance with the requirements therein, the balance sheet total may be replaced or supplemented by one of the following parameters in the ratios envisaged in paragraphs 4 and 5:

a) Income structure.

b) Off-balance sheet activities.

c) Total managed assets.”

Three. Article 3(2)(b) and (d) have been reworded as follows:

“b) Mixed financial holding companies with registered office in Spain that are the parent of financial conglomerates indicated in point (a) above.

d) Regulated entities of financial conglomerates to which the exemptions listed in the second subparagraph of Article 2(5) under the terms envisaged in Article 4(3) of this Law apply.”

Four. Article 4(2) and (3) shall read as follows:

“2. When the parent entity of the financial conglomerate is a mixed financial holding company to which sector-specific rules equivalent to those set out in the preceding paragraph and its implementing regulations apply, the coordinator, following consultation with the other relevant competent authorities, may decide that only the provisions of this Law and its implementing regulations or the regulatory provisions of the financial conglomerate's most important financial sector shall apply.

The consolidating supervisor shall inform the Joint Committee of the European Supervisory Authorities of the decision taken under this paragraph.

3. Some or all of the obligations established in paragraph 1(a) may be extended by the regulations to those groups meeting all the requirements envisaged in Articles 2 and 3, even if the exemption envisaged in the second subparagraph of Article 2(5) applies.

Articles 5, 6 and 7 shall also be applicable to groups subject to the aforementioned obligations, on the terms laid down in the regulations.”

Five. Article 5(3) shall read:

“3. The functions of the coordinator in relation to the supplementary supervision of a financial conglomerate's regulated entities shall be:

a) Coordinating the gathering and dissemination of relevant or essential information including the dissemination of information which is of relevance for a competent authority's supervisory task under sector-specific rules.

b) General supervision and assessment of the financial situation of a financial conglomerate.

c) Assessment of the fulfilment of the obligations envisaged in the preceding Article and its implementing regulations.

d) Assessment of the financial conglomerate's structure, organisation and internal control systems.

e) Planning and coordination of supervisory activities when necessary for the purposes of supplementary supervision and, in any event, in critical situations.

f) Identification of the legal structure and governance and organisational structure.

g) Conducting periodic stress testing at the financial conglomerate level.

h) Such other functions as may be assigned by this Law and its implementing provisions.”

Six. The final subparagraph of Article 6(2) has been modified and a new paragraph 5 bis has been added to Article 6:

“Without prejudice to European Union legislation and confidentiality requirements, competent authorities must also enter into the aforementioned agreements when they are requested to do so by the authorities of other Member States or non-European Union countries performing the functions described in the first subparagraph of this paragraph.

The coordination agreements referred to in this paragraph shall be listed separately in the provisions set out in writing as referred to by Article 66 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions and in Article 91 septies of Securities Market Law 24/1988 of 28 July 1988.”

“5 bis. The functions established in Article 5 and the cooperation required under this Article and Article 5 shall be carried out through colleges of supervisors established in accordance with the provisions of Article 64 of Law 10/2014 on regulation, supervision and solvency of credit institutions and Article 91 septies of Securities Market Law 24/1988 of 28 July 1988. In such cases, the college's provisions on conglomerates must be set out separately from the other provisions.

Moreover, without prejudice to European Union legislation and confidentiality requirements, these colleges shall also be responsible for the adequate coordination and cooperation with supervisory authorities of non-European Union countries.

The coordinator, when acting as the chair of a college, shall decide what other competent authorities shall take part in the college's activities for the purposes of applying this Law and its implementing regulations. Likewise, it shall ensure adequate coordination and cooperation are established with the competent authorities of non-European Union countries.

Notwithstanding the foregoing, in the absence of sector colleges of supervisors, the coordinator of the supervision of a financial conglomerate shall create a college to carry out the tasks and the cooperation mentioned in the first subparagraph of this paragraph, under the terms established in the regulations.”

#### **Eighth final provision.**

#### **Amendment of the consolidated text of the Audit Law, enacted by Royal Legislative Decree 1/2011 of 1 July 2011**

The consolidated text of the Audit Law, enacted by Royal Legislative Decree 1/2011 of 1 July 2011 is amended as follows:

One. Paragraphs 4 to 7 have been added to Article 29:

“4. Any information or data that the ICAC (Spanish Institute of Accounting and Auditing) obtains during the exercise of its public supervision and monitoring of the account auditing activity pursuant to this Law shall be confidential and may not be disclosed or furnished to any person or authority.

Without prejudice to the provisions of this Article and the cases envisaged in criminal law, no confidential information that it may receive in the performance of its tasks may be disclosed to any person or authority whatsoever.

5. All persons who perform or have performed activity for the ICAC and who have become aware of confidential information shall be obliged to keep it secret. Breach of this duty shall give rise to criminal and other liabilities provided for by law. Such persons may not make declarations or give evidence regarding, or publish, communicate or exhibit, confidential information or documents, even when they are no longer in the service of the ICAC, unless express permission is granted by the latter. If no such permission is granted, the person concerned shall maintain secrecy and shall be exempt from any liability arising therefrom.

6. The following exceptions shall be made to the obligation of secrecy regulated in this Article:

a) When the interested party expressly consents to the disclosure, publication or communication of the information.

b) Publication of aggregate data for statistical purposes, or disclosures in summary or aggregate form that do not allow identification of the account auditors and audit firms, in accordance with the fifth additional provision.

c) Information requested by competent judicial authorities or the public prosecutor's department in criminal or civil proceedings.

d) Information that, in the context of administrative or jurisdictional proceedings brought regarding administrative decisions issued in the exercise of the powers to impose penalties referred to in Article 30, may be requested by the competent administrative or judicial authorities.

e) Information published by the ICAC under the provisions of Articles 7 and 38.

f) The results of quality control activities performed individually on account auditors and audit firms.



7. Notwithstanding the provisions of paragraphs 4 to 6 of this Article, the ICAC may furnish confidential information to the following persons and entities to facilitate the performance of their respective tasks. These persons shall in turn be obliged to maintain the secrecy of the information as established in this Article:

- a) Parties appointed by a court ruling.
- b) Parties authorised by law.
- c) The Banco de España, the CNMV and the Directorate General for Insurance and Pension Funds, and regional bodies with competencies over the regulation and supervision of insurance companies.
- d) The authorities responsible for the fight against money laundering and terrorist financing, and exceptional disclosures that may be made in accordance with Section 3 of Chapter I of Title III of General Tax Law 58/2003 of 17 December 2003.
- e) The competent authorities of European Union Member States and non-European Union countries under the terms referred to in Articles 42 and 43, respectively.”

Two. A new paragraph has been added after point (c) of the first final provision, worded as follows:

“Unless prevented by significant and substantiated reasons, this communication will simultaneously be forwarded to the entity's governing body. In any event, it will be understood that such communication is not possible when the governing body has been or may have been involved in the facts underlying the aforementioned communication.”

#### **Ninth final provision.**

#### **Amendment of Royal Decree-Law 16/2011 of 14 October 2011 creating the Credit Institution Deposit Guarantee Fund (DGF).**

Article 7 of Royal Decree-Law 16/2011 of 14 October 2011 creating the Credit Institution Deposit Guarantee Fund (DGF), is hereby amended to read as follows:

“Article 7. Management Committee.

1. The Deposit Guarantee Fund (the “Fund”) shall be governed and administered by an 11-member Management Committee with one representative of the Ministry of Economic Affairs and Competitiveness, one from the Ministry of Finance and Public Administration, four appointed by the Banco de España, and five by the associations representing the member credit institutions, under the terms laid down in the regulations.

2. The representative of the Ministry of Economic Affairs and Competitiveness shall be the General Secretary for the Treasury and Financial Policy, who shall serve as Deputy Chair of the Management Committee and shall stand in for the Chair in the event of vacancy, absence or illness.

The representative of the Ministry of Finance and Public Administration shall be the Auditor General.

The representatives of the Banco de España shall be appointed by its Executive Commission. One of them will be the Deputy Governor, who shall chair the committee.

Three of the representatives of member institutions shall be appointed by associations representing banks, one by those representing savings banks and one by those representing credit cooperatives, under the terms laid down in the regulations.

The persons appointed by member institutions shall be of good commercial and professional repute and shall possess the knowledge and experience necessary to perform their duties. To determine that these conditions are met, the criteria laid down in Article 2 of Royal Decree 1245/1995 of 14 July 1995 on the creation of banks, cross-border activity and other issues relating to the legal regime of credit institutions, shall be applied.

The heads of the relevant ministerial departments shall appoint one alternate representative for the Ministry of Economic Affairs and Competitiveness and one for the Ministry of Finance and Public Administration. Two alternate representatives shall also be appointed by the Banco de España by the same procedure envisaged above, and one for each of the representatives designated by the member institutions, who shall stand in for the representative in the event of vacancy, absence or illness. In the case of representatives of the institutions, they shall also be substituted on the instructions of the chairman of the Fund Management Committee when the Management Committee is due to deal with issues directly affecting an institution or group of institutions with which the representative is associated as a director, executive, or employee or agent under labour, civil or mercantile law, or has any other form of relationship with it that may undermine the objectivity of the representative's decisions thus forcing the abstention thereof.

3. Management Committee members' term of office shall be four years and may be renewed.

4. Representatives of credit institutions belonging to the fund will vacate their posts in the following circumstances:

- a) Expiry of their term of office.
- b) Resignation.

c) Dismissal decided upon by the Management Committee as a result of serious breach of their obligations, permanent incapacity to perform their tasks, or a supervening lack of good repute.

5. The meetings of the Management Committee must be attended by at least half its members in order to have a quorum. It shall take its decisions by a majority of its members.

However, a two-thirds majority shall be required to agree to establish an obligation to make payments over and above the ordinary annual contributions or to bring forward payment of these ordinary contributions, and for measures envisaged in the context of the resolution plans referred to in Article 11.

6. The Management Committee shall establish its own rules of procedure for the proper exercise of its functions.

7. Membership of the Management Committee shall not entitle members to any financial compensation whatsoever.”

#### **Tenth final provision.**

#### **Amendments to Law 26/2013 of 27 December 2013 on savings banks and banking foundations.**

Law 26/2013 of 27 December 2013 on savings banks and banking foundations has been amended as follows:

One. The twelfth, thirteenth and fourteenth paragraphs of section II of the preamble have been replaced by the following paragraphs:

“Within the supervisory regime, the rules for the banking foundations’ oversight have been defined, with competence assigned to either the State or the corresponding regional government, depending on their main area of activity and their share of ownership of the credit institution.

As regards their area of activity, the defining characteristic of foundations of this type is that, under Article 32(2), their main activity is both to attend to and carry out welfare activities and to manage their holding in a credit institution appropriately. The second of these criteria being new and specific to banking foundations, as opposed to ordinary foundations, it is worth clarifying in the Law, to avoid any uncertainties over its interpretation, when this area of activity is deemed to extend beyond a single region. The defining activity of banking institutions being the taking of repayable funds from the public, the most natural criterion would seem to be the territorial distribution of deposits, while avoiding any extension outside a single region, no matter how minor, leading to the oversight being considered national in scope. The criterion of

40% of deposits outside the region is considered to clearly indicate that the main area of activity is supra-regional.

As regards the criterion corresponding to welfare activities, as it is not, strictly speaking, a new addition to the criteria that have been applied to foundations in general, it does not seem necessary to add any further specific details for banking foundations. Moreover, as Article 45 establishes, the Ministry of Economic Affairs and Competitiveness (in those cases where it has competence for the exercise of the oversight) must obtain a report on this matter from the governments of the regions in which the foundations carry out their welfare activities.

In any event, if the banking foundation's main area of activity extends beyond a single region, it will be necessary, in order for the State to exercise the oversight, that the banking foundation's holding in the credit institution be at least 10%, or that if it is less than this percentage, it is the main shareholder.

Additionally, in order to guarantee stability in the exercise of the oversight functions, avoiding occasional changes in the conditions described in Article 45 changing competence, it is envisaged that this will be left unchanged unless a substantial modification takes place.

Additionally, for those cases in which the oversight comes under the Ministry of Economic Affairs and Competitiveness, certain special features of the functions envisaged in Article 35(1) of Law 50/2002 of 26 December 2002 on foundations are regulated.

Finally, the Law contains a further series of provisions including the establishment of a special system in the case of a capital increase by banking institutions in which banking foundations have a holding, and for the distribution of dividends. In particular, as regards increases in the holding of banking foundations that have control over a credit institution, the eighth additional provision prevents the exercise of the voting rights of the shares subscribed in the credit institution's capital increases. Nevertheless, at the same time it guarantees that those foundations acquiring shares in a capital increase will be able to exercise the voting rights necessary to avoid dilution further than is indispensable for their holding to be below 50% or the controlling position over the entity.

For its part, the first transitional provision provides for the transformation of indirectly exercised savings banks into banking foundations within one year of the coming into force of the Law, and the second transitional provision sets out the transitional arrangements for the incompatibility established in the second point of Article 40(3).

In the final provisions it is specified which Articles are deemed basic, the necessary regulatory authorisations to implement the Law are enacted, and the tax law is amended in order to extend the tax treatment of savings banks to future banking foundations."

Two. Article 26(1)(g) shall henceforth read as follows:

"g) Requiring the chair to convene an extraordinary general assembly, in the case envisaged in point (c)."

Three. Article 45 shall read as follows:

“1. The oversight authority shall be responsible for ensuring the legality of banking foundations’ creation and operations, without prejudice to the functions assigned to the Banco de España.

2. In the case of banking foundations with a main area of activity that extends beyond a single region, the oversight will be exercised by the Ministry of Economic Affairs and Competitiveness, when the foundation's main activity extends beyond a single region, provided it individually holds a direct or indirect share of at least 10% of the credit institution or institutions' capital or voting rights, or when having a smaller percentage, the banking foundation is the largest shareholder. The oversight shall be exercised by the corresponding region otherwise.

In any event, in relation to the provisions of Article 32(2) it is understood that the banking foundation's main area of activity extends beyond a single region when 40% of the activity of the credit institutions in which it has a direct or indirect holding, considering the territorial distribution of its customers' deposits, takes place outside of the region in which the foundation has its headquarters.

3. The competence to exercise the oversight shall remain unchanged unless there is a substantial alteration in the circumstances of the banking foundation's main area of activity as envisaged in this Article, where this is understood to mean that this alteration has been maintained over a period of nine consecutive or alternate months within the same financial year.

The assignment of the new oversight authority will take place in the financial year following that in which the substantial change in circumstances takes place.

4. When the Ministry of Economic Affairs and Competitiveness takes over the oversight of banking foundations, it shall exercise the functions envisaged in Article 35(1) of Law 50/2002 of 26 December 2002 on foundations, with the following particularities:

a) For the exercise of the verification functions envisaged in point (f) relating to the application and distribution of funds the banking foundation may devote to its welfare activities, it shall obtain a binding prior report from the competent region based on the territorial scope of the verification. This report shall replace the expert report envisaged in the aforementioned Article 35(1)(f).

b) When it provisionally exercises the functions of the governing body of the banking foundation under the terms of point (g), it shall obtain a prior report from the regions in which the foundation conducts its welfare activities.

c) When, pursuant to point (h), it is to appoint new trustees, it shall seek to ensure that the regions in which the banking foundation conducts its community welfare activities are represented.”

Four. Paragraph 2 of the first additional provision is worded as follows:

“2. Foundations that, at the time of entry into force of this Law, have a holding in a credit institution that reaches the levels envisaged in Article 32 shall only be converted into banking foundations if they increase their holding in the credit institution. If they do so, this transformation is to take place within six months of the increase in the holding or, if they originated from savings banks, within nine months of the entry into force of this Law.”

Five. Paragraph 3 of the first transitional provision shall be worded as follows:

“3. Savings banks that have begun the process of conversion into a special foundation, provided they are not in court proceedings as a result, shall continue the procedure and be converted into a banking foundation or ordinary foundation, as applicable, without this process extending for more than six months from the entry into force of this Law. If this time limit is exceeded without the conversion having been completed, the provisions of the following paragraph shall apply.”

Six. Subparagraph (c) of the second transitional provision shall read as follows:

“c) The compatibility of each member shall be maintained until no later than 30 June 2016.”

Seven. The fourth final provision shall read as follows:

“Fourth final provision. Amendment of Law 50/2002 of 26 December 2002 on Foundations.”

A new eighth additional provision is added to Law 50/2002 of 26 December 2002 on Foundations, worded as follows:

“Eighth additional provision. Banking foundations.

Banking foundations will be governed by the provisions of Law 26/2013 of 27 December 2013 on savings banks and banking foundations.”

#### **Eleventh final provision.**

#### **Enabling provisions.**

1. This Law is issued under the provisions of Articles 149(1)(11) and (13) of the Spanish Constitution, which give the State competency over the rules of organisation for credit, banking and insurance, and coordination of the general planning of economic activity, respectively.

2. Without prejudice to the foregoing, the third and tenth additional provisions, the thirteenth transitional provision and the first final provision of this Law are also issued under Article 149(1)(6) of the Spanish Constitution, which gives the State sole competency over commercial legislation. Also, the first additional provision and the second transitional provision are issued pursuant to Article 149(1)(14) of the Spanish Constitution, which gives the State sole competency over public finances and government debt.

3. The provisions of the foregoing paragraphs are understood without prejudice to the competencies attributed to the regions regarding the supervision of credit institutions and within the framework established by European Union law.

#### **Twelfth final provision.**

##### **Incorporation of European Union legislation.**

This Law partially incorporates into Spanish legislation Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

#### **Thirteenth final provision.**

##### **Implementing regulations.**

1. The government may issue any regulations necessary to implement the provisions of this Law.

2. The Minister for Economic Affairs and Competitiveness is authorised to issue the necessary provisions to amend the Annex to this Law in line with what is decided on the matter in European Union legislation.

3. Without prejudice to this Law, the Banco de España and the CNMV may make use, under their respective competencies, of the options conferred on national competent authorities by Regulation (EU) No 575/2013 of the European Parliament and of the Council, of

26 June 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

### **Fourteenth final provision.**

#### **Entry into force.**

1. This Law shall enter into force on the day following its publication in the Official State Gazette.

2. Without prejudice to the foregoing, the following provisions shall be enforceable as of the dates indicated below, such that entities must comply with all the legal or statutory requirements by these dates:

a) As of 31 October 2014:

1.-) The provisions of Articles 26(1), (2), (3) and (4), 29(4), 34(1)(d), (g) and (i), and 38(2) and (3) of this Law and in Article 70 ter(Three)(4) introduced in Securities Market Law 24/1988 of 28 July 1988 by this Law.

2.-) The provisions of Articles 67 bis and 70 ter(7)(e) introduced in Securities Market Law 24/1988 of 28 July 1988 by this Law, and Article 34(1)(d), (g) and (i) of this Law, in its application to investment firms, under the provisions of Article 70 ter(Two)(5) also introduced in Securities Market Law 24/1988 of 28 July 1988 by this Law.

b) The provisions of Articles 31 and 36 of this Law and in Articles 70 ter(One) and 70 ter(Two)(6) introduced in Securities Market Law 24/1988 of 28 July 1988 by this Law, as of 31 October 2014, except for those entities that, prior to the entry into force of this Law, were already obliged, under the previous regulations, to establish an appointments committee, a remuneration committee, or a joint appointments and remuneration committee.

## **ANNEX**

### **List of activities subject to mutual recognition**

1. Taking deposits and other repayable funds.
2. Lending, including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.



4. Payment services, as defined in Article 1 of Law 16/2009 of 13 November 2009 on payment services.

5. Issuing and administering other means of payment, such as credit cards, travellers' cheques and bankers' drafts, insofar as such activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following:

a) Money market instruments (cheques, bills, certificates of deposit, etc.).

b) Foreign exchange.

c) Financial futures and options.

d) Exchange and interest-rate instruments.

e) Transferable securities.

8. Participation in securities issues and the provision of services relating to such issues.

9. Advice to undertakings on capital structure, business strategy and related questions, and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Article 63 of Securities Market Law 24/1988 of 28 July 1988, when referring to the financial instruments provided for in Article 2 of said Law, are subject to mutual recognition in accordance with this Law.