
Financial Iberian Newsletter

Banking and Financial Institutions

July – September 2017



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SPAIN

Banking

Regulation

Circular 1/2017, of 30 June, of the Bank of Spain, amending Circular 1/2013, of May 24, on Risk Information Center (*Central de Información de Riesgos*). [Access Link.](#)

The purpose of this Circular is the collection, through the Risk Information Center, of the information that the Bank of Spain must request to declaring institutions in order to report it to the European Central Bank under Regulation EU 867/2016.

Proposals

Draft of Bank of Spain's Circular on public financial information and forms of financial statements. [Access Link.](#)

The aim of this Circular is to ensure the compatibility between the accounting regime of the Spanish credit institutions with the one applicable to European Union entities, as a result of the amendment of the accounting criteria related to incomes arising in the course of ordinary activities and financial instruments upon the approval of IFRS 15 and 8, in force from January 1, 2018.

Securities markets and collective investment

Regulation

Royal Decree 827/2017, of September 1, amending Royal Decree 878/2015, on clearing, settlement and registration of transferable securities represented electronically, the legal regime of central securities depositories and central counterparties, and transparency requirements of issuers of listed securities. [Access Link.](#)

This reform of the post-trading regime, in force from September 18, 2017, extends the adaptation of the Spanish securities clearing, settlement and registration system in order to integrate the fixed income system to the pan-European platform TARGET2-Securities, already implemented for equity securities.



Proposals

Drafts of Law on Securities Market and amendment of Royal Decree 217/2008 on investment firms (implementation of MiFID II in Spain). [Access Link \(Draft of Law\)](#) / [Access Link \(Draft of Regulation\)](#)

The drafts of Law on Securities Market and amendment of Royal Decree 217/2008 on investment firm are related to the implementation of Directive 2014/65/EU (MiFID II) in Spain. They were submitted to public consultation until September 18.

The purpose of these regulations is to reinforce the investor protection by establishing stricter requirements in terms of investment advice, commercialization of financial products, transparency and efficiency in financial markets.

The entry into force of the MiFID II Directive is January 3, 2018, but these drafts provide a transitional period of 6 months for the adaptation of the Spanish firms.

Draft of CNMV's Circular on the obligation to publish corporate governance and remuneration information in the website of investment firms. [Access Link.](#)

This Circular will specify certain information which should be disclosed in the website of the investment firms, in relation to corporate governance and remuneration policy, depending on its nature, scale and complexity.

The Circular will also amend Circular 7/2008 on accounting rules in order to include a new treatment for non-tangible assets.

Draft of CNMV's Circular on information of foreign collective investment schemes. [Access Link.](#)

On September 25, the CNMV started a public consultation regarding the approval of a Draft Circular amending Circular 2/2011, of June 9, on information of foreign collective investment schemes. The consultation period finished on October 16, 2017 and the Draft Circular would be applicable from January 1, 2018.

Circular 2/2011 currently provides the information and documentation which must be disclosed to the CNMV relating to foreign UCITS and non-UCITS (AIFs) commercialized in Spain.

The Draft Circular modifies this Circular 2/2011 by widening the scope of the information which must be disclosed to the CNMV. Specifically, it extends the information required to fill in the statistical statements (i.e., the A01 form) on a quantitative and qualitative basis.



Furthermore, the Draft Circular provides that A01 form must be also completed by AIFs, which shall be required to identify the entity representing them for the purpose of filing in A1 form and notifying the CNMV on the registration and cancellation of Spanish distributors. Spanish distributors of AIFs shall also file the A1 form.

Supervisor criteria

Transaction reporting under MiFIR. SCORE/CNMV: test plan. [Access Link.](#)

The CNMV has published the test plan for the Score System (System for Collecting Operations Reported by Entities) for the transaction reporting under MiFIR.

Under this plan, firms may test in advance (i.e., before January 3, 2018) the systems for generating, validating and reporting the relevant files to the CNMV, as well as the reception of feedback files, under the specifications of the Spanish and European supervisors.

PORTUGAL

Banking

Regulation

Decree-Law No. 81-C/2017 – Official Gazette No. 130/2017, Series I, of July 7, 2017. [Access Link.](#)

In the exercise of the legislative authorization granted by Law No. 46-A/2017, July 5, this Decree-law approves the legal regime establishing the access and exercise requirements of the credit intermediary activity and of the provision of advisory services regarding credit agreements, transposing partially the Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property.

Law No. 83/2017 – Official Gazette No. 159/2017, Series I, of August 18, 2017. [Access Link.](#)

This Law establishes preventive and repressive measures for the fight against money laundering and terrorism financing and, transposing partially the Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as well as the Council Directive 2016/2258/EU of 6 December 2016 amending the Directive 2011/16/EU, with regard to the access to anti-money-laundering information by tax



authorities. It also establishes the national measures required to the effective implementation of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and amends the Portuguese Penal Code and the Portuguese Industrial Property Code. This decree revoked Law No. 25/2008, of June 5, establishing, therefore, a new legal regime of prevention of money laundering and terrorism financing.

Law No. 89/2017 - Official Gazette No. 160/2017, Series I, of August 21, 2017. [Access Link](#)

The Law approves the Legal Regime of the Central Register of Beneficial Ownership, provided for in Law n°. 83/2017, of August 18, transposes Chapter III of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amends several Codes and other legislation.

Notice of the Bank of Portugal No. 4/2017. [Access Link](#)

By the Notice No. 4/2017 (“**Notice**”), the Bank of Portugal intends to specify the procedures and criteria to be observed by the lenders (entities entitled to carry out, on a professional basis, the activity of credit granting in Portugal) in the assessment of the consumers’ creditworthiness, both in the scope of the granting of housing credit and of credits secured by mortgage or equivalent, as regulated in Decree-Law No. 74-A/2017, of June 23, and in the scope of consumer credit agreements covered by Decree-Law No. 133/2009, of June 2.

Only the so-called credit overrunning and the credit agreements designed to prevent or to regularize events of default (namely through refinancing or consolidation of other credit agreements, as well as through amendment of the terms and conditions of existing credit agreements) are excluded from the scope of the Notice.

Court Decisions

Évora Court of Appeal Decision of September 14, 2017 (Court Suit No. 2829/16.9)

In the present proceeding, it was in question a requested to lift the banking secrecy within an interim enforcement procedure of enrollment, prior to a divorce case. Once the necessary steps have been taken for enforcing the enrollment procedure related to the bank accounts, the requested elements were not provided because they were covered by banking secrecy, according to Article 78 of Decree-Law no. 298/72, of December 31 (General Regime of Credit Institutions and Financial Companies), and because none of the exceptions established in Article 79 of the same decree were applied.



The Court held that the banking secrecy's right is not an absolute right, and may, as a consequence, waive when there is a relevant interest to attend, namely, the existence of a necessity to safeguard the right of access to justice and to judicial protection. Thus, in the concrete case, the applicant intended to delimit the establishment of the marital assets, in order to protect the individual patrimony or the assets that belong to both spouses. The Court considered that the risk of a damage serious and difficult to repair could only be mitigated by this establishing of the assets of the general patrimony, being this purpose of conserving the assets dependent on the banking secrecy's specific sacrifice. Therefore, the Court concluded that the exceptional measure of breaching of banking secrecy is justified, since, in the particular case, the interest in cooperation for discovering the trust prevailed.

Securities markets and collective investment

Regulation

Law No. 62/2017 - Official Gazette No. 147/2017, Series I, of August 1, 2017. [Access Link.](#)

This Law establishes the regime of the balanced representation of women and men in the administrative and supervisory bodies of public business sector' entities and of listed companies.

For additional information, please contact your usual contact person at Cuatrecasas.

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