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Draft bill of the Consumer Credit Contracts Act and implementing regulation

Key changes to the Spanish consumer-credit regime

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KEY ASPECTS

- Spain is introducing a **reserved-activity regime** for professional consumer credit provision, requiring Bank of Spain authorization and registration in the relevant official register. Non-compliance will trigger significant administrative penalties, and may also affect the credit agreements themselves, both in civil and procedural terms. To this end, two new types of intermediaries are introduced: the "**high-cost lender**", for certain types of specialized high-cost credit; and a new category of credit institution, the "**limited-activity credit finance institution**" (or "**EFCAL**"), with a more restricted scope of permitted activities.

- A general **cap on interest** is established, together with a specific regime for high-cost credit. Non-compliance with these caps have civil-law consequences and may result in the agreement's absolute **nullity**.

- New rules are introduced on **credit intermediation**, debt advisory services, **credit granted on an ancillary basis** (i.e., provided in connection with the sale of goods or the supply of services), and **ancillary intermediation**.

- In the area of **insurance**, the draft law incorporates a systematic regulatory framework on **tying practices** and **bundling practices**.

- The rules on **linked credit agreements** and the right of **withdrawal, early repayment, early maturity and assignment of credit** are reinforced, among other changes.

Context and purpose

The draft bill of the Consumer Credit Contracts Act (the "**Draft Bill**") was approved by the Council of Ministers on January 7, 2026, and is currently undergoing public consultation until January 30. Once the consultation period ends and the mandatory reports have been issued, the Council of Ministers will approve the text as a government bill, incorporating any amendments it deems appropriate. This bill will then be submitted to Parliament for **legislative processing**.

The Draft Bill is accompanied by a draft **implementing Royal Decree**, which is also open for public consultation until the same date.

The purpose of the Draft Bill is to transpose into Spanish law the Consumer Credit Directive ("**CCD**") (Directive (EU) 2023/2225 of 18 October 2023) and the Directive on **financial services contracts concluded at a distance** (Directive (EU) 2023/2673 of 22 November 2023).

The text of the Draft Bill is **complex** due to the broad range of issues it regulates, the scope of some of its provisions, the creation of **new categories of financial operators**, and the extensive set of existing regulations it affects. This publication does not aim to provide an exhaustive analysis of the Draft Bill, but rather to highlight and explain the key aspects that are expected to have the greatest impact.

Scope of application, exclusions and mandatory nature

The Draft Bill applies to all consumer credit agreements, including those for amounts below €200 ("**microcredits**") and up to €100,000. It also covers **rental agreements and finance leases, both with a purchase option**.

The scope of application further includes the provision of credit to consumers and intermediation services offered by providers of **crowdfunding credit services**.

Moreover, the Draft Bill applies to credit agreements above €100,000 that do not involve mortgage collateral when the credit is used to renovate a residential property.

The **concept of consumer** under the Draft Bill includes **natural persons, legal persons**, and unincorporated entities acting on a non-profit basis in a context unrelated to any commercial, business or professional activity.

Consumer-protection rules will also apply to **contracts governed by foreign law**, provided they show a sufficiently close connection with an EEA Member State.

Under the transitional regime, the new rules will not apply to **agreements entered into before** the new act enters into force, unless they are amended. However, certain provisions—such as those on contract modifications, conduct rules and dispute resolution—will apply to pre-existing agreements.

The Draft Bill provides a detailed list of exclusions. Notably, it excludes **loans secured by real estate** and loans **granted to finance the acquisition** or preservation of property rights over land or buildings—whether completed or under construction—including premises for commercial, business or professional use. These agreements fall under the **Mortgage Credit Directive ("MCD")** (Directive 2014/17/EU of the European Parliament and of the Council) and, in Spain, under Act 5/2019, of March 15, governing real estate credit agreements ("**Act 5/2019**"). That said, the Draft Bill does affect entities engaged in granting this type of credit in relation to the reserved-activity regime described below.

The Draft Bill also excludes **deferred debit cards**, meaning credit cards on which the total amount of transactions is charged to the account at a predetermined date—usually monthly—without interest.

Credit agreements entered into **with investment firms** or credit institutions for operations involving certain financial instruments are also excluded, where the investment firm or credit institution granting the credit participates in those operations.

Another relevant exclusion concerns deferred payments offered directly by suppliers of goods or services, provided no third party is involved and certain cost and time limits are met.

Furthermore, some rules on advertising and pre-contractual information do not apply to microcredits, interest-free and cost-free credits, or credits to be repaid within three months with limited charges.

The provisions of the Draft Bill are **mandatory**, and non-compliance can lead to **civil consequences** in certain cases.

New reserved-activity regime

The professional activity of **granting** credit and **intermediating** credit agreements falling within the scope of the future law will be subject to **authorization, registration and supervision** by the Bank of Spain.

This is a significant development aimed at ensuring a market of professionalized lenders—including those specializing in high-cost credit—under the effective and centralized supervision of the Bank of Spain.

In this area, the Draft Bill incorporates into Spanish law the rule set out in **article 37 of the CCD**. This represents a major shift in Spain: traditionally, granting credit has not been a reserved activity. In practice, this exception will largely remain only for corporate credit.

The granting of credit between **private individuals** will not infringe the licensing requirement provided it is not carried out on a **habitual basis**.

In transposing the CCD, Spain's approach is to exempt **micro-enterprises and SMEs** acting as lenders or credit intermediaries on an **ancillary basis** (i.e., offering deferred-payment credit for the purchase of their own goods or services) from strict recognition and registration requirements, provided that the credit is granted interest-free and involves only limited default charges.

Granting credit without the required authorization—and registration, where applicable—will **render the agreement null and void**. Once nullity is declared, the Draft Bill provides restitution rules that favor the consumer and facilitate repayment of any sums owed.

The new "high-cost lender"

The Draft Bill creates a new category of operator: the high-cost lender (*prestamista de alto coste*), which is subject to prior authorization by the Bank of Spain and must be recorded in a special register before carrying out any lending activity.

Its permitted activities are limited to granting **high-cost credit** and certain **ancillary** restructuring or renegotiation **actions**. High-cost lenders are not permitted to engage in **credit intermediation**. Additionally, restrictions are imposed on the use of tied credit intermediaries to prevent conflicts of interest or attempts to circumvent conduct-of-business rules.

To obtain authorization, the applicant must be incorporated as a **limited liability company (*sociedad de capital*)**; hold a **minimum share capital of €300,000**; have its registered office and effective management in Spain; demonstrate the honesty, knowledge and experience of its management body and senior management; and have adequate internal **control systems**, among other requirements.

Finally, once authorized, any acquisition of a qualifying holding in a high-cost lender will also require prior approval from the Bank of Spain.

Impact on the legal regime of real estate lenders

Although the Draft Bill does not amend the legal regime applicable to real estate loans governed by Act 5/2019—which are expressly excluded from its scope—it does affect the regime applicable to **real estate lenders** regulated under that law, who are currently subject only to a simple registration system.

While the Draft Bill is not straightforward to interpret in this respect, and without prejudice to the transitional provisions, it appears that existing **real estate lenders will need to adopt the new status**—at least—of a limited-activity credit finance institution (***Establecimiento Financiero de Crédito de Actividad Limitada*** or "**EFCAL**") **to continue carrying out their business**. We discuss this category in more detail below.

New general regime on cost limitations

The Draft Bill introduces a general cap on the total cost of consumer credit, based on the **annual percentage rate** (**TAE**), except in the following cases:

- High-cost credit, for which specific parameters are set, as explained below.
- Tacit overdrafts, which may not generate interest or fees resulting in an effective annual rate exceeding 2.5 times the statutory interest rate.

In general terms, maximum APR limits are set by adding **specific spreads**—defined for different credit segments—to the **average interest** rate of consumer-credit agreements.

The implementing Royal Decree will detail the methodology for setting these maximum rates, including the segmentation and the method for determining the applicable spreads.

Pending the entry into force of this implementing regulation, a **temporary** maximum interest rate of **22 percentage points** will apply. This cap will also apply to **pre-existing agreements** that are amended after the new law enters into force, as well as to agreements that are **open-ended or automatically renewable**.

Breaching the cost limits will render the relevant obligation **null and void**, with the consumer's liability limited to repayment of the principal on the agreed schedule.

Specific regime for "high-cost credit" and its cost limitations

High-cost credit refers to credit granted by an authorized high-cost lender, under remuneration conditions set out in the Draft Bill. No additional charges may be imposed, and collection and recovery costs in case of default are capped.

Granting high-cost credit is subject to a special cost-limitation regime, designed to effectively prevent abusive practices and ensure that consumers are not charged excessively high borrowing rates, annual percentage rates or total credit costs.

Under this regime, the economic conditions of high-cost credit include a **maximum monthly interest rate**, and a **predetermined opening or assessment fee**. The total cost may not exceed the cost benchmark corresponding to a **12-month** equivalent credit, within the amount segment published quarterly by the Bank of Spain. The Draft Bill also introduces a specific transitional regime, applicable from the entry into force of the high-cost lender regime until the implementing regulation becomes effective.

Breaching these cost limits will render the agreement **null and void**. Where the credit term is shorter than three months, repayment must be made in monthly installments, in amounts decided by the borrower, provided that each installment is not less than 3% of the total amount owed.

Entering into a high-cost credit agreement requires, among other things, providing the borrower with a binding offer at least 24 hours in advance, and delivering a **high-cost credit information sheet (*ficha informativa del crédito de alto coste*** or **FICAC**).

Borrowers must also be offered the option to repay in monthly or level installments, with maturities between three and twelve months.

The Draft Bill further restricts granting new high-cost credit while another credit of the same nature remains outstanding, and it also limits refinancing operations.

Moreover, specific **advertising restrictions** apply to these products.

Finally, lenders must check the consumer's **credit history** in advance, including verification of any existing high-cost credit granted by other lenders.

The new limited-activity credit finance institution (EFCAL)

The Draft Bill amends Act 5/2015, of April 27, on the promotion of business financing, to introduce a new type of credit institution (*establecimientos financieros de crédito* or *"EFC"*)": the EFCAL. Its scope of activity is restricted to **granting mortgage loans or credit**, including those subject to Act 5/2019, and **non-mortgage loans or credit**, including those within the scope of the Draft Bill, while explicitly banning them from other core activities permitted to credit institutions under article 6 of Act 5/2015.

EFCALs will require authorization and supervision by the Bank of Spain and must meet a **minimum share capital requirement of €5 million**. They must take the form of a limited liability company, but unlike standard EFCs, they will not be subject to prudential requirements.

Other key matters

The Draft Bill and its implementing regulation address a wide range of additional matters. Key highlights include:

- In terms of insurance, the Draft Bill expressly and systematically regulates tying practices and bundling practices for financial products.

  Tied selling is generally prohibited unless the financial product or service offered cannot be separated because it is an integral part of the credit. As a relevant exception, lenders may require the borrower to take out an "appropriate" insurance policy to guarantee repayment of the credit or to protect the value of the security. Borrowers must be allowed to provide **equivalent alternative policies** from **other insurers**. In these cases, the lender may not alter the credit conditions or charge **a fee** for reviewing the alternative policies, either at origination or at renewal.

  Bundled selling is generally allowed. Combined packages of financial products or services may be offered, subject to reinforced transparency requirements regarding itemized pricing (package vs. standalone products). A **presumption** of tied selling applies to renegotiations or refinancings offered to consumers facing **financial difficulties**.

For both tied and bundled selling, a minimum **three-day reflection period** must be provided for borrowers to compare insurance offers before purchasing a policy. Borrowers may choose to proceed earlier, but never before the credit agreement is formalized.

- The Draft Bill introduces new **credit assignment rules**, including a requirement to **notify the assigned debtor**, unless the assigning lender continues to manage the loan for the borrower. This exception does not apply where the debtor is considered vulnerable.

- A new regime is established for "**ancilliary credit providers**." The Draft Bill defines their nature, governance and requirements, and creates a national registry in which they must be listed.

- The Draft Bill regulates **buy now, pay later** schemes—where credit is granted exclusively for purchasing goods or services from the supplier—as well as other deferred-payment formulas, subject to specific cost and duration limits.

- The rules on **linked credit agreements**, i.e., credit offered in connection with the supply of goods or services to which it is functionally connected, are enhanced.

- **Advertising standards** are reinforced, and requirements for **basic pre-contractual information and binding offers** are strengthened. The Draft Bill also introduces conduct-of-business rules applicable to the provision of consumer credit.

- It reinforces the requirements for assessing a consumer's **solvency and creditworthiness**, including access to databases. Importantly, it also prohibits unsolicited credit.

- New rules govern the **form and content of credit agreements** and their subsequent amendments, with consequences for contractual **validity and effectiveness**.

- Consumers' rights relating to **overdraft facilities** and **tacit overdrafts** are clarified and reinforced.

- The Draft Bill strengthens the **consumer's right of withdrawal** and **early repayment**, including rules on applicable costs and timeframes.

- New rules apply to **debt restructuring, refinancing**, and the provision of **debt-advice services**.

- Lenders must have a **customer service department**, and complaints must be forwarded to the **Independent Administrative Authority for the Protection of Financial Customers** once it becomes operational. A transitional period is foreseen during which complaints will continue to be handled by the Bank of Spain's Complaints Service.

- The Draft Bill develops the **supervisory powers** over regulated entities and sets out the applicable **sanctions regime**.

- The Draft Bill seeks to avoid overlap with sector-specific rules in the area of **distance financial services**, and regulates **withdrawal rights** for distance contracts concluded via **online interfaces**. It also introduces the possibility of layered information in distance contracting processes and establishes anti–**dark-pattern** measures for digital contracting interfaces.

Entry-into-force timeline

The future Act will enter into force under the general rule: **20 days** after its publication in the Official Gazette of the Spanish State. As an exception, certain obligations relating to information and marketing, the authorization and operating regime for high-cost lenders, and the cost-limitation system described above will enter into force **three months** after publication.

Position within the broader legal framework on consumer credit

Once approved, the new act will replace and repeal Act 16/2011, of 24 June, on consumer credit agreements. However, until the implementing regulation of this act is adopted, some provisions of Act 16/2011 will remain in force.

It will also repeal Act 22/2007, of 11 July, on distance marketing of financial services to consumers.

In addition, the Draft Bill introduces numerous amendments to various pieces of legislation that affect the consumer-credit framework.

The Draft Bill also sits within a broader regulatory landscape concerning financial-customer protection and is closely connected with several other initiatives:

- The Customer Service Act, recently approved, whose impact is analyzed in our Legal Flash | Impact of the new Customer Service Act on the financial and insurance sectors.
- The Draft Bill creating the Independent Administrative Authority for the Protection of Financial Customers, which will handle out-of-court dispute resolution between financial institutions and their customers (see Legal Flash | Administrative Authority for the Protection of Financial Customers).
- The Draft Bill on Credit Servicers and Credit Purchasers, which will strengthen information obligations, standards of diligence and complaint mechanisms for retail borrowers (see Legal Flash | Draft Bill on credit servicers and credit purchasers).

For additional information, please contact our Knowledge and Innovation Group lawyers or your regular contact person at Cuatrecasas.