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# Financial Iberian Newsletter

Banking and Financial Institutions

October – December 2018



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## SPAIN

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### Banking

**Royal Decree-Law 19/2018, of November 23, on payment services and other urgent measures on financial matters.** [Access Link](#)

The main purpose of this Royal Decree-Law is to implement the new European framework on payment services into Spanish law, following the approval of the new Directive (EU) 2015/2366 of the European Parliament and of the Council (PSD2), whose transposition period ended on January 13, 2018.

On the new aspects of the regulation, it is worth noting the regulation on (i) the new information payment services about account information and payment initiation, which require institutions to allow third parties to access to their clients' accounts (or to information about them); (ii) the requirements for the authentication of the client for the purpose of performing payment transactions (aspects that are developed in more detail in the Delegated Regulation (EU) 2018/389); (iii) the new requirements for management and reporting of fraud and security measures, and (iv) the new regulation of the alternative resolution of conflicts regarding payment services.

**Circular 2/2018, of December 21, of the Bank of Spain, modifying Circular 4/2017, of November 27, of financial institutions, on public/reserved information regulations, and financial statements models, and Circular 1/2013, of May 24, on the Risk Information Center (“Central de Información de Riesgos”).** [Access Link](#)

By virtue of this new Circular, the Bank of Spain's Circular 4/2017, on public and reserved information, is adapted to Commission Regulation (EC) No 1126/2008, adopting certain international accounting standards, corresponding to the International Financial Reporting Standard (IFRS-EU) 16 on leases.

Certain new features are introduced on the accounting standards of leases, especially with respect to the lessee. With these new criteria, the lessee must keep a record of the lease contracts on its balance sheet, recognizing, on the one hand, a liability for lease and, on the other hand, an asset for right of use, similar to what was required for leasing. Other changes are also introduced regarding sales operations with leasebacks.

Rule 4 of Circular 4/2017 is also modified so that the frequency of reporting of the individual public balance is amended from a monthly basis to a quarterly basis.



Circular 1/2013 is modified on the Risk Information Center (RIC), incorporating minor changes to add some clarifications and improvements in wording.

The Circular, together with IFRS-EU 16, enters into force on January 1, 2019.

### Proposals

**Draft Circular of the Bank of Spain, on the requirements of fees and the fee statement information document, the comparison websites of payment accounts and that partially modifies Circular 5/2012, of June 27, of the Bank of Spain to credit institutions and payment service providers, on the transparency of banking services and the responsibility for granting loans.** [Access Link](#)

The purpose of this Circular will be to develop Royal Decree-law 19/2017 on basic payment accounts and the Ministerial Order (still in process) supplementing it.

The content of the fee information document is developed, which must be delivered to the clients before entering into a contract of payment accounts, using the template provided by the Delegated Regulation (EU) 2018/34. It also regulates the information that should be published in the corresponding commercial establishments and on webpages (replacing what is currently foreseen in Circular 5/2012).

The content of the state of fees is also developed, which, each year in January, must be provided to the clients on the accrued commissions in relation to a payment account.

The Bank of Spain must publish on its website the corresponding comparative information on fees corresponding to each type of account, depending on the information provided by the institutions.

It also regulates the activity of website operators who intend to publish comparative information on fees, which must provide the Bank of Spain with a responsible declaration on compliance with the requirements provided in the Circular.

The term of the public consultation expired on January 11, 2019.



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## Securities market and collective investment

Royal Decree 1464/2018, of December 21, on implementation of MiFID II in Spain. [Access Link](#)

By virtue of this Royal Decree, the incorporation of the MiFID II regulatory framework into Spanish Law is completed. The key aspects of the Royal Decree are the following:

### Limitation of the collection of inducements or retrocessions

> It will be considered that inducements or retrocessions received in relation to the provision of an investment service or an ancillary service are designed to enhance the quality of the relevant service to the client if all the following conditions are met:

- a) It is justified by the provision of any of the following additional or higher level services to the relevant client, proportional to the level of the inducements received:
  - Non-independent investment advice, with respect to a wide range of suitable financial instruments, including an appropriate number of third party product providers having no close links with the investment firm.
  - Non-independent investment advice combined with either an offer to the client to assess, at least annually, the continuing suitability of the financial instruments in which the client has invested, or with another on-going service that is likely to be of value to the client.
  - Offer, at a competitive price, a wide range of financial instruments likely to meet the needs of the client, including an appropriate number of third-party products lacking having no close links with the investment firm, together with the provision of value-added tools, such as objective information tools helping the client to take investment decisions or enabling him to monitor, model and adjust the range of financial instruments in which he has invested, or the provision of periodic reports on performance and costs and charges associated with the financial instruments.

**In the above cases, it will be considered an appropriate number of financial instruments of third parties if at least two third-party instruments are offered for each category and if at least 25% of the total products offered to client are third-party products.**



- b) It does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client.
- c) It is justified by the provision of an on-going benefit to the client in relation to an on-going inducement.

To restrict the possibility of implementing vertical integration strategies, it is assumed that inducements are received if financial instruments designed or managed by institutions of the same group are commercialized by receiving no remuneration or a remuneration lower than fair value.

### Strengthening client protection

- > Specific obligation of institutions to ensure that clients who request to be treated as professional clients meet the relevant requirements.
- > A new legal framework is established whereby investment firms designing financial instruments for commercialization must implement a prior approval process for each instrument for the purpose of identifying a target market of for such instruments.
- > Development of the distributors' obligation to ensure that financial instruments are traded on terms compatible with the target market.

### Increase in transparency and information available to supervisors and public in general regarding operations with financial instruments in the stock market

- > Phone conversations and electronic communications related to the execution of orders and with the provision of the service of reception and transmission must be duly recorded.

### Changes in the legal framework of investment firms

- > Investment firm may have the legal form of a limited liability company (sociedad limitada, S.L.), in addition to that of a public liability company (sociedad anónima, S.A.).
- > Advisory firms ("EAFIs") may appoint agents for the promotion and marketing of their services, although said agents may not provide the advisory service as such.
- > Authorization regime of the institutions of third States in the event that they intend to operate in Spain, as well as the possibility of providing services in Spain at the exclusive initiative of the client.



**Royal Decree-Law 27/2018 of December 28, by which certain measures in tax and cadastral matters are adopted.** [Access Link](#)

This Royal Decree-Law provides the reclassification of shares and units of collective investment schemes to cheaper classes in compliance with MIFID II Directive. Such reclassification may be carried out without the client's consent and with no tax implications.

The reclassification may be executed from 3 January de 2018 until the three months following the entry into force of the Royal Decree-Law, which took place on 30 December 2018.

**Circular 5/2018, of November 26, of the CNMV, by which Circulars 4/2008, 7/2008, 11/2008 and 1/2010 are modified, on public and periodic information of Collective Investment Institutions ("IICs"), accounting standards, annual accounts and reserved information statements of Private Equity Institutions, Management Companies of Collective Investment Institutions ("SGIICs") and Private Equity Institutions ("ECRs") and branches of European Management Companies established in Spain.** [Access Link](#)

With this Circular, the CNMV pursues the introduction of necessary improvements for supervisory practice, which will come into force on June 30, 2019. The following improvements should be highlighted:

Main changes with respect to management companies of private equity institutions

- > Management companies will have to provide the CNMV with further information about their fees on financial advice and incomes, the type of investors of private equity institutions, etc.
- > Management companies will have to provide information to the CNMV electronically.

Main changes on branches of management companies

- > An annual report is introduced, which must be submitted to the CNMV within the first two months of each calendar year, on information related to the activities of the branch, types of customers and income from service and commercial segment.
- > Such report must be submitted via CIFRADO (the CNMV's electronic system) in the format provided in the Circular.



## Supervision criteria

### **Communication on strengthening transparency in relation to the type of management carried out by collective investment institutions.** [Access Link](#)

In this communication issued by the Spanish Market Securities Commission (“CNMV”), this warns investors, as well as institutions marketing or recommend collective investment institutions, about funds that are presented as active management funds in which, however, its management strategy is very close to an index of reference and, therefore, requires a smaller amount of resources.

Accordingly, the CNMV requests institutions to specify, in the Key Information Investor Document (KIID), whether a reference index is included for informative or comparative purposes only, or, however, the management is linked to such index.

In addition, information should be provided on the degree of discretion in the management, and in the case of being linked to an index, detail the evolution of the fund in relation to that of the benchmark.

## Proposals

### **Public consultation on the proposal of the CNMV for intervention measures regarding binary options and financial contracts for differences (CFD).** [Access Link](#)

The purpose of the CNMV proposal is to implement in Spain the prohibition of the commercialization, distribution and sale of binary options to retail investors and the restriction of the commercialization, distribution or sale of financial contracts for differences (CFDs) to retail investors, on an indefinite basis (without prejudice to its revision in the event of changes in the market circumstances or its reconsideration at European level).

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## Common

### Proposal

### **Public consultation on the amendment of Law 10/2010, of April 28, on prevention of money laundering and the financing of terrorism.** [Access Link](#)

The purpose of the public consultation is to gather the opinions and proposals of the persons and institutions that could potentially be affected by the amendment of the anti-money laundering regulation.



The purpose of the amendment of Law 10/2010 is to incorporate the content of Directive 849/2015 (Fifth Directive on Prevention of Money Laundering) - whose transposition deadline ends in January 10, 2020 - by improving availability of information for the bodies in charge of the prevention and fight against money laundering and the financing of terrorism, as well as to specify the manner in which the requirements of Articles 30 and 31 of the Directive will be fulfilled, related to the databases of beneficial owners.

The amendment of said Law also foresees changes in the obliged subjects, particularly in the field of virtual currencies.

The deadline for submitting comments expired on 27 November 2018.

## PORTUGAL

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### Banking

#### Legislation and Instruction

##### **Decree-Law No. 91/2018, of 12 November – Official Journal No. 217/2018, Series I of 12-11-2018**

Approves the new Legal Framework of Payments Services and Electronic Money, implementing into national law Directive (EU) 2015/2366, revoking the former legal framework on this subject set forth in Decree-Law No. 317/2009, of 30 October 2009. [Access link](#)

##### **Order No. 310/2018, of 12 December – Official Journal No. 238/2018, Series I of 11-12-2018**

Regulates article 45 of Law No. 83/2017, of 18 August 2017, which establishes the measures of preventive and repressive nature on the prevention of money laundering and terrorist financing, in respect of the systemic communications of transactions to the competent authorities by the obliged entities. [Access link](#)

#### Bank of Portugal Regulations

##### **Regulation No. 3/2018 – Official Journal No. 251/2018, Series II of 31-12-2018**

Transposes into the regulatory framework of the Bank of Portugal the «Guidelines specifying the conditions for group financial support» of the European Banking Authority (EBA/GL/2015/17) which detail the requirements provided for in paragraphs b), d), e), f), h), i) and j) of article 116-V of the LFCIFC, approved by Decree-Law No. 298/92, of 31 December.

[Access link](#)





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## Securities markets and collective investments

### Legislation and Instruction

**SMC Regulation No. 7/2018 – Official Journal No. 233/2018. Series II of 04-12-2018**  
Information Duties of the Financial Intermediaries. [Access link](#)

**SMC Regulation No. 8/2018 – Official Journal No. 246/2018, Series II of 21-12-2018**  
Marketing and informative duties relative to PRIIPs. [Access link](#)

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

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