
Iberian Financial Newsletter

Banking and Financial Institutions

October – December 2019



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SPAIN

Banking

Legislation

Royal Decree 736/2019, of December 20, on the legal regime for payment services and payment institutions. [Access Link](#)

On December 24, 2019, the Royal Decree 736/2019 on payment services and payment institutions was published in the Official Gazette in order to continue with the transposition of the EU Directive 2015/2366 (PSD2).

A new regime is established for the creation of payment institutions, the authorization and amendment of their activities and structure, with the Bank of Spain (*Banco de España*) becoming the new competent authority for their authorization. It also provides the legal regime for the cross-border activity of both payment institutions based in an EU Member State in Spain and Spanish payment institutions in other EU Member States.

The Royal Decree also allows the hiring of agents, maintaining the concept of agent provided for in Royal Decree-law 19/2018 on payment services, and the outsourcing of functions of payment institutions which, under no circumstances, may affect the quality of the internal control functions.

It also develops the regime on solvency and customers protection and the provisions related to hybrid payment institutions (i.e., those also rendering additional services).

Order ECE/1263/2019, of December 26, on transparency of conditions and information requirements applicable to payment services. [Access Link](#)

The purpose of this Order ECE/1263/2019 is to regulate the transparency regime applicable to payment services in line with the provisions of Royal Decree-law 19/2018 of November 23, on payment services and other urgent financial measures.

It provides the regulation of both single payment transactions and those subject to a framework contract, specifying, on the one hand, the information requirements applicable to foreign



exchange services and, on the other hand, the information regarding additional charges or reductions that payment institutions have to offer for the use of a given payment instrument. Furthermore, it establishes information obligations to which payment services providers are subject in single payment transactions and in relation to framework contracts, including the minimum information that must be provided to customers prior to entering into any contractual relationship.

This Order shall enter into force on July 1, 2020, except for paragraphs 1 to 3 of the second additional provision, which shall enter into force 20 days after its publication in the Official Gazette.

Bank of Spain Circular 4/2019 of November 26 to specialized credit institutions on standards of public and confidential financial information and templates of financial statements.

[Access link](#)

On December 2, 2019, Circular 4/2019 was published in the Official Gazette establishing the new accounting regime for specialized credit institutions (*establecimientos financieros de crédito*), to align it with international accounting standards, including EU-IFRS 9 (which contains the expected loss approach for the estimation of credit risk coverage).

This Circular introduces, on the one hand, specific criteria applicable to the specific information that must be contained in the annual accounts and public financial statements prepared by these entities and, on the other hand, establishes the criteria for the preparation of reserved information financial statements and reserved statements that must be submitted to the Bank of Spain.

The Circular entered into force on 1 January 2020, although it will apply retroactively to all institutions within its scope in respect of certain issues.

Proposals

Proposal of Order amending Order EHA/2899/2011, of October 28, on transparency and protection of customers of banking services, to establish information obligations on open-ended credits associated with payment instruments. [Access Link](#)

Through the enactment of this proposal, the Ministry of Economy and Business seeks to establish a series of regulatory provisions to improve the position of those individuals who hold payment instruments associated with a revolving credit, including revolving credit cards.



According to the proposal, annual installments in revolving credit agreements must imply the amortization of at least 25% of the credit limit; while annual installments must not be higher than 40% of the net incomes of the borrower. Further information must be attached to the precontractual information documents as well, in particular an example of two financing alternatives using different minimum installments.

Ongoing information must be provided to the borrower on a quarterly basis (including credit limit that has been disposed, estimate of the date on which the credit will be fully paid considering the amount of the installments, etc.).

The public consultation ended on November 18, 2019.

Public consultation on the transposition of Directive (EU) 2019/713 of the European Parliament and of the Council of April 17, 2019 on combating fraud and counterfeiting of non-cash means of payment. [Access Link](#)

On November 29, 2019, the Ministry of Justice held a public consultation on the transposition of European Directive 2019/713, which aims to improve security and strengthen user confidence in the digital market.

Given the very diverse criminal law treatment of payment fraud between Member States, the European Union considers that it is necessary to pursue the harmonization of minimums by laying down common definitions and minimum penalties. This would fill the gaps resulting from digital developments and facilitate criminal legal assistance between Member States when investigating and prosecuting cross-border cases.

Interested stakeholders could submit their views until December 16, 2019.

Supervision criteria

Frequently asked questions on applications for registration of real estate credit intermediaries and real estate lenders published by the Bank of Spain. [Access Link](#)

This guide, in the form of Q&A, provides clarification on the registration regime of legal entities that, in a professional manner, carry out the activity of granting or managing loans included in the scope of application of Law 5/2019, of March 15, regulating real estate credit contracts.

The Bank of Spain clarifies that the lack of registration of real estate lenders affects the effectiveness of real estate loan guarantees, as the Land Registrar will refuse to register mortgages as a guarantee for loans granted by unregistered real estate lenders.



Similarly, it reiterates that, as established in the Second Transitory Provision of Law 5/2019, real estate lenders and real estate credit intermediaries (and their designated representatives) who, at the time the law came into force, were carrying out the activities covered by the regulation, will have a period of 6 months to apply for recognition. This period ended on December 16, 2019.

Finally, the guide offers two checklists of the documentation that must accompany the registration application, both for real estate credit intermediaries and real estate lenders.

Instruction from the General Directorate of Registries and Notaries (*Dirección General de los Registros y del Notariado*) of December 20, 2019, on notarial and registry actions in the face of various queries on the application of Law 5/2019 of March 15, regulating real estate credit contracts. [Access Link](#)

In response to the binding consultations submitted by the General Council of Notaries (*Consejo General del Notariado*) and the College of Registrars (*Colegio de Registradores*), in addition to informal consultations from various operators, the General Directorate of Registries and Notaries (*Dirección General de los Registros y del Notariado*; DGRN) decided to issue an Instruction on December 20, 2019 in response to the queries raised regarding the application of the Law 5/2019

Specifically, the DGRN proceeds to resolve the queries regarding the scope of application of Law 5/2019 on personal loans, mortgage loans on property that is not residential and loans subject to foreign law when the property is located in Spanish territory; on the concept of loans granted by an employer and loans in foreign currency; and on the requirement of the pre-contractual information statement in cases of active and passive non-business subrogation or increase in the APR as a result of an objective novation.

The DGRN also clarifies other formal issues regarding the issuance of the pre-contractual information statement and the insertion of the notary's statements on compliance with the requirements of Order EHA/2899/2011 in the mortgage loan deed.

This Instruction is binding on all Notaries and Property and Commercial Registrars.



Securities market and collective investment

Legislation

Technical Guidelines 3/2019 on procedures for the authorization of new entities (ESI, SGIIC, SGEIC y PFP). [Access Link](#)

On November 28, 2019 the National Securities Market Commission (CNMV) published Technical Guidelines 3/2019 with the aim of making the authorization process for new entities, such as ESI, SGIIC, SGEIC and PFP, easier, more agile and efficient. Thus, these Guidelines offer the sponsors of entities the possibility of more structured initial contacts with the CNMV, aimed at facilitating the identification of the most relevant aspects for the processing of their authorization application prior to the start of the formal processing of the application.

In addition to the guidelines, handbooks and standard forms that the CNMV has made available to sponsors on its website, the Technical Guidelines introduce the pre-notification form that may be submitted in order to hold one or more meetings prior to the submission of the application for formal authorization for the purposes of commenting on and preliminarily analysis of the project and the documentation to be submitted to the CNMV.

These Guidelines also provide for the possibility of applying certain additional requirements to each individual entity in a proportionate manner.



PORTUGAL

Banking

Legislation

Ordinance No 356/2019 – Official Journal No 193/2019, Series I of 08-10-2019. [Access Link](#)

It regulates the electronic communications of the judicial courts to the Bank of Portugal (“BoP”) in the context of the proceedings regulated by the Insolvency and Corporate Recovery Code, approved by Decree-Law No 53/2004, of 18 March 2004, determining that it shall be henceforth communicated to the BoP, via electronic mean, the declaration of insolvency, for the purposes of inscription in the credit risks’ central, as well as the decision to close proceedings.

Regulation No 3/2019 of the Bank of Portugal – Official Journal No 212/2019, Series II, Part E, of 05-11-2019. [Access Link](#)

It amends Regulation No 11/2014 of the BoP, which regulates the application of the prudential requirements established in Regulation (EU) 575/2013, now encompassing, in its scope, the branches in Portugal of financial institutions with registered office in another Member State.

Instruction No 21/2019 of the Bank of Portugal – Official Bulletin No 11/2019, Supplement, of 25-11-2019. [Access Link](#)

It regulates the duty of reporting to the BoP the cybersecurity incidents qualified as significant or severe, by entities supervised by the BoP and by significant credits institutions with registered office in Portugal supervised by the European Central Bank.

Instruction No 20/2019 of the Bank of Portugal – Official Bulletin No 11/2019, of 15-11-2019. [Access Link](#)

It establishes uniform templates for the disclosure of information on non-performing exposures, restructured exposures and enforced assets which the institutions shall use for the purposes of complying with the disclosure requirements established in Regulation (EU) 575/2013. It also amends Instruction No 5/2018, which implemented the European Banking Authority guidelines on (i) disclosure requirements under Part Eight of Regulation (EU) No 575/2013 and (ii) LCR disclosure to complement the disclosure of liquidity risk management under Article 435 of Regulation (EU) No 575/2013.



Instruction No 18/2019 of the Bank of Portugal – Official Bulletin No 10/2019, 2nd Supplement, of 05-11-2019. [Access Link](#)

It amends Instruction 5/2017, which regulates the reporting of information for supervision purposes, on an individual basis, for some entities, starting to include branches in Portugal of financial institutions with registered office in another Member State.

Bank of Portugal Circular Letter No CC/2019/ 00000083 – Official Bulletin No 12/2019, Supplement, of 23-12-2019. [Access Link](#)

It disseminates the good practices to be followed by credit institutions and other payment services' providers in the offer to their clients of the commissions' statement through digital channels and electronic mail.

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

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IS 713573