FINANCIAL REGULATION: 2010 Q3

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Introduction

In 2010 Q3 relatively few new financial provisions were promulgated in comparison with previous periods.

Notable in the field of credit institution regulation are the new legal regime for savings banks, the new legal provisions on solvency and liquidity to bolster credit institutions' own funds and the fiscal legislation applicable to the credit institutions resulting from restructuring processes. In addition, certain amendments were made to financial reporting rules and to reporting on credit institutions' agents and agreements to provide financial services.

With regard to the securities market, the Regulations on the Securities Registration, Clearing and Settlement Systems Management Company (also known as the Systems Company or IBERCLEAR) were updated, and certain amendments were made to securities market and audit legislation. Also, a circular regulating the confidential information which investment firms have to report to the CNMV was issued, and the legislation on identification numbers of securities and other financial instruments was updated.

In the EU, the legislation applicable to undertakings for collective investment in transferable securities (UCITS) as regards fund mergers, master-feeder structures and notification procedures was supplemented by implementing provisions.

Finally, new measures to combat delinquency in inter-company loans and in loans to the public sector were set in place and recast legislation on share capital companies were promulgated.

New legal regime for savings banks

Royal Decree-Law 11/2010 of 9 July 2010 (BOE of 13 July 2010)[1] on governing bodies and other aspects of the legal regime of savings banks amended Law 13/1985 of 25 May 1985[2] on the investment ratios, own funds and reporting obligations of financial intermediaries in respect of equity units and Law 31/1985 of 2 August 1985[3] on regulation of the basic rules on governing bodies of savings banks.

The Royal Decree-Law has various purposes: to improve savings banks' possibilities of raising capital by reforming the legal regime for equity units, to promote the professionalisation of their governing bodies, to adapt certain aspects of institutional protection schemes (IPSs) formed by savings banks and to design a new organisational model of savings bank financial activity.

Table 1 compares, in summary form, the main aspects of the Royal Decree-Law and of the previous legislation.

AMENDMENT OF LEGISLATION ON EQUITY UNITS

The main new development is the recognition, in addition to dividend rights, of voting rights attaching to equity units (hereinafter "units"). Voting rights are manifested in three main ways: 1) right of unit-holders to be represented in the governing bodies of savings

1. The Royal Decree-Law was recognised by a resolution passed by Spanish Congress on 21 July 2010. **2.** See "Regulación financiera: segundo trimestre de 1985", *Boletín Económico,* July-August 1985, Banco de España, pp. 51 and 52. **3.** See "Regulación financiera: tercer trimestre de 1985", *Boletín Económico,* October 1985, Banco de España, pp. 61 and 62.

NEW LEGAL REGIME FOR SAVINGS BANKS

TABLE 2

Equity units	
LAW 13/1985 OF 25 MAY 1985	**ROYAL DECREE-LAW 11/2010 OF 9 JULY 2010**
The volume of outstanding equity units may not exceed 50% of a savings bank's equity.	No significant changes.
The freely distributable surplus of a savings bank is distributed on the basis of the ratio of the volume of outstanding equity units to its equity plus outstanding equity units.	No significant changes.
Not envisaged.	The following voting rights are recognised: 1) right to be represented in governing bodies; 2) right to challenge resolutions adopted by the General Assembly and by the Board of Directors, and 3) general right to information.
Nobody may directly or indirectly hold equity units for an amount exceeding 5% of the total outstanding units. If this limit is exceeded, all the dividend rights of the units acquired by the person or economic group will be suspended.	The limit is removed. However, unit-holders will be subject to the regime for qualifying holdings in credit institutions.
Not envisaged.	Unrestricted issuance of units is expressly permitted without need for prior administrative authorisation.
Treasury stock: the direct acquisition of units by the savings bank or its economic group is prohibited. Indirect acquisition is permitted, provided that the holding does not exceed 5% of the outstanding units.	Continues to be prohibited. If this limit is exceeded, the savings bank has to dispose of or redeem the excess within a maximum of three months. As an exception, this limit does not apply when the units are purchased by the central entity of the IPS to which the issuing savings bank belongs.
In the event of merger, the issuing savings bank shall grant unit-holders a minimum of one month so that they can, if they wish, sell their units to the savings bank.	Same treatment as that of shares of public limited companies, i.e. the units to be cancelled are exchanged for units of the post-merger entity so that the economic value of their dividend rights is unchanged.
Not envisaged.	The remuneration of units shall not require any administrative authorisation in the area of credit regulation, save that which may correspond to the Banco de España in the exercise of its functions.

Governing bodies	
LAW 31/1985 OF 2 AUGUST 1985	**ROYAL DECREE-LAW 11/2010 OF 9 JULY 2010**
Governing bodies: General Assembly, Board of Directors and Control Committee.	To the previously existing ones are added the Chief Executive Officer, the Compensation and Appointments Committee and the Welfare Projects Committee.
Not envisaged.	Specific provisions are introduced to adapt the governing bodies and collective representation mechanisms to those cases in which savings banks indirectly conduct their business through a commercial bank.
Not envisaged.	Voting rights of unit-holders in governing bodies are based on the ratio of their equity units to the total net equity of the savings bank.
Not envisaged.	Membership of a savings bank governing body is incompatible with holding an elected political position or a senior post in general government or in public or private law public sector entities that are related to or are investees of general government agencies.
The presence of general government and public-sector entities and corporations in the governing bodies of savings banks may not exceed 50% of the total voting rights.	Lowered from 50% to 40%.
The number of members of the Board of Directors may not exceed 17. The duration of their mandate may not exceed 12 years.	The limit on the number of directors is raised to 20 for those cases in which the Board includes representatives of unit-holders' interests. Their mandate may not exceed 12 years, except that directors designated by unit-holders may serve indefinitely.
Not envisaged.	Savings banks have to make public an annual corporate governance report.

Indirect exercise of financial activity and the regime governing transformation of savings banks	
Not envisaged.	Savings bank may indirectly pursue their through a commercial bank, to which they shall transfer all their financial operations. If the savings bank reduces its holding below 50% of the voting rights in the commercial bank, it has to give up its authorisation to operate as a credit institution and transform itself into a "special foundation".
Not envisaged.	A savings bank may decide to separate its financial activity from its welfare activity. To do so it shall transfer all the assets and liabilities used in its financial activity to another credit institution in exchange for shares of the latter and transform itself into a "special foundation".

SOURCES: BOE and Banco de España.

banks (General Assembly, Board of Directors and Control Committee) in proportion to the share of the units in the savings bank's equity, subject to a maximum limit of 50% of that equity;[4] 2) right to challenge resolutions adopted by the General Assembly and by the Board of Directors on the same terms and conditions as shareholders may contest the corporate resolutions of a public limited company; and 3) general right to information on any matter of interest to the unit-holders representing 5% or more of the total outstanding units.

The Royal Decree-Law lays down the principle of unrestricted issuance of units without need for prior administrative authorisation and stipulates that listing in secondary markets is compulsory when an issue is targeted at the general public.

Any limit on the units that can be held by a single person or group is removed (previously nobody could directly or indirectly hold units for an amount exceeding 5% of the total outstanding units), although they will not be subject to the regime governing takeover bids.[5] However, unit-holders will be subject to the regime for qualifying holdings[6] in credit institutions established by Law 26/1988 of 29 July 1988[7] on credit institution discipline and intervention.

The acquisition of its own units in the primary market by the savings bank itself or its economic group continues to be prohibited. Acquisition of own units in the secondary market[8] is permitted, provided that the holding does not exceed 5% of the outstanding units. The new Royal Decree-Law provides that, if this limit is exceeded, the savings bank has to dispose of or redeem the excess within a maximum of three months. As an exception, this limit does not apply when the units are purchased by the central entity of the IPS[9] to which the issuing savings bank belongs.

The treatment of units in mergers is made equal to that of shares of public limited companies, i.e. the exchange for units of the post-merger entity without alteration of their economic value.

Lastly, it is stipulated that the annual remuneration of units and the distribution thereof must be approved by the General Assembly, which has to take into account the savings bank's solvency ratio when making that distribution. Without prejudice to the powers of the Banco de España, this distribution shall not require any administrative authorisation in the area of credit regulation.

GOVERNING BODIES OF SAVINGS BANKS

In respect of savings bank governing bodies, to the General Assembly, the Board of Directors and the Control Committee, are added the Chief Executive Officer[10] and two committees, namely the Compensation and Appointments (previously simply "Compensation") Committee and the Welfare Projects Committee.

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4. The volume of outstanding units may not exceed 50% of a savings bank's equity, the same as under the previous legislation. **5.** Takeover bids are regulated in Chapter V of Title IV of Securities Market Law 24/1988, the implementing regulations of which are contained in Royal Decree 1066/2007 of 27 July 2007 on takeover bids. This legal regime makes it compulsory, inter alia, to make a takeover bid when control of a company is achieved, whether it be in a direct, or in an indirect or incidental, manner. **6.** From a quantitative standpoint, a qualifying holding is defined as at least 10% or more of the institution's capital or voting rights or when a notable influence can be exercised in the acquired entity. **7.** See "Regulación financiera: tercer trimestre de 1985", *Boletín Económico,* October 1988, Banco de España, pp. 56-58. **8.** That is to say, the purchase by a savings bank of its own units (treasury stock). **9.** IPSs are regulated by Royal Decree-Law 6/2010 on measures to promote economic recovery and employment. IPSs are set up in common by various credit institutions in order to obtain the status of consolidatable groups of credit institutions. Among other things, there must be a central credit institution that is responsible for complying with IPS regulatory requirements on a consolidated basis and establishing a binding business strategy, and a contractual agreement which must include a mutual commitment on solvency and liquidity between the institutions composing the IPS. **10.** Under the previous legislation, the Chief Executive Officer was strictly limited to a professional and management role, his relationship with the savings bank's representative and decision-making bodies being clearly defined.

Greater importance is given to the required commercial and professional integrity of members of savings bank governing bodies. Expressly excluded from holding such posts are, inter alia, those persons with a police record for deliberate crimes and those disqualified from holding public office or financial institution management positions. It is also expressly specified that membership of a savings bank governing body is incompatible with holding an elected political position or a senior post in general government or in public or private law public sector entities that are related to or are investees of general government agencies.

Along the same lines, the ceiling on the presence of general government and public-sector entities and corporations in the governing bodies of savings banks is lowered, such that, overall, they may not now exceed 40% of the total voting rights (previously 50%). The possible participation of regional (autonomous) governments in savings bank governing bodies shall be through members designated solely by regional parliament and whose standing and professionalism are generally acknowledged.

A new power conferred on the General Assembly is that of decision-making in the event of indirect exercise of a savings bank's financial activity through a commercial bank or the transformation of the savings bank into a "special" foundation. Approval in such cases shall require qualified quorums, specifically the attendance of a majority of voting members (general assembly members and unit-holders) and the vote in favour of two-thirds of those present.

Officers of other credit institutions may be appointed as general assembly members of a savings bank provided that such appointment is not as a representative of the savings bank or sponsored by it. This compatibility is conceived for those cases in which the savings bank operates indirectly through a commercial bank or forms part of an IPS.

Regarding the Board of Directors, the limit on the number of directors is raised to 20 (previously 17) for those cases in which the Board includes representatives of unit-holders' interests. The maximum duration of the mandate of Board members remains unchanged at 12 years. However, as a new development, directors designated by unit-holders may serve indefinitely.

The main new developments regarding the Control Committee are, in addition to the inclusion of representatives of unit-holders, the removal of the representative elected by regional (autonomous) governments.

The technical training and experience required to hold the post of general manager are increased, and the retirement age is raised from 65 to 70 years of age.

The Compensation and Appointments Committee represents a broadening of the scope of the former Compensation Committee to encompass other functions relating to the control of appointments. It will be formed by five Board members elected by the General Assembly.

The Welfare Projects Committee is entrusted primarily with ensuring that welfare projects are carried out properly, irrespective of the savings bank's business model. The Committee shall consist of the members nominated by the General Assembly and may include representatives of the regions in which the savings bank has its registered office and in which it has obtained at least 10% of its total deposits.

Certain special features of the governing bodies of savings banks which carry on their financial activity indirectly through a commercial bank are defined. In this case the savings bank's governing bodies shall be only the General Assembly, the Board of Directors and the Control

Committee. Also, it is expressly stipulated that the savings bank may designate its representatives on the commercial bank's Board of Directors, taking into account for such purposes the representation of the different groups on its own Board.

Further, as in credit institutions, a compulsory annual corporate governance report to be submitted to the CNMV, the Banco de España and the competent regional authorities is introduced to strengthen savings bank transparency and market discipline. The report's content and structure should be such as to provide a detailed explanation of the structure and workings of the savings bank's corporate governance system. It should include a reference to any possible conflicts of interest between members of the savings bank's governing bodies and its welfare function.

Lastly, the rules on savings bank mergers are amended to provide that mergers may only be rejected through a reasoned decision when the resulting entity might fail to meet the objective requirements set out in regional legislation.

SAVINGS BANK INSTITUTIONAL PROTECTION SCHEMES

In general, the existing regulation for credit institutions whereby IPSs are structured around a central credit institution remains unchanged. Responsibility for the regulatory requirements being met by the IPS on a consolidated basis lies with this central credit institution.

The most significant new development in ISPs composed of savings banks is that the central entity must necessarily be at least 50%-owned by the member savings banks and be a public limited company. This arrangement ensures that the legal status of the savings banks forming the IPS is not indirectly impaired through loss of control of their central entity. In the cases in which the savings banks forming an IPS could lose their 50% share of the central entity, the savings banks have to transform themselves into a "special foundation" and transfer their banking operations.

Another new development is the strengthening of the IPS members' commitment to a long-term presence and stability.[11] For this purpose, the Banco de España is empowered to carry out an assessment before an IPS member withdraws to ascertain whether the member individually and the scheme as a whole will be viable after the envisaged withdrawal.

NEW ORGANISATIONAL MODEL OF SAVINGS BANKS

A new organisational model additional to that in place is introduced. It is based on an alternative between: 1) the indirect exercise of the savings bank's financial activity through a commercial bank or 2) the transformation of the savings bank into a "special foundation" and transfer of its business to another credit institution.

In the indirect exercise of financial activity, savings banks may pursue their declared purpose as a credit institution through a commercial bank to which they transfer all their financial operations. Also, they may transfer all or part of their non-financial assets to it. In its company name and in its activity, the recipient bank may use expressions which indicate that it is acting as a financial vehicle, including the names reserved to the savings bank which controls it.

As in IPSs, if the savings bank reduces its holding below 50% of the voting rights in the commercial bank, it has to give up its authorisation to operate as a credit institution and transform itself into a "special foundation".

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11. Institutions must remain in the IPS for a minimum period of 10 years and give at least 2 years' notice of their intention to leave it upon expiry of that period. The contractual agreement must include a system of penalties for withdrawal from the IPS which encourages the continued presence and stability of institutions in the IPS.

This same exercise of indirect activity is also allowed in those savings banks which jointly carry on their financial activity through the central entity of an IPS.

A savings bank which transforms itself into a "special foundation" shall do so by separating its financial activity from its welfare activity. It shall transfer the assets and liabilities used in its financial activity to another credit institution in exchange for shares of the latter and transform itself into a "special foundation", forfeiting its credit institution status.

The foundation shall focus its activity on attending to and carrying out its welfare projects, for which purpose it may engage in the management of its securities portfolio. The foundation must allocate to its social welfare purpose the revenue from the funds, holdings and investments owned by it.

Credit institutions: new solvency, liquidity and fiscal provisions

Royal Decree-Law 11/2010 of 9 July 2010, referred to above, introduces new provisions on credit institution solvency and liquidity,[12] as well as the fiscal rules applicable to the entities resulting from restructuring processes.

To avoid potential liquidity imbalances or tensions which may impair an institution's financial position or put it at risk, the Royal Decree-Law makes it compulsory to hold a minimum amount of liquid assets to cater for potential outflows of funds derived from liabilities and commitments, including in situations of stress, and, furthermore, to have in place an appropriate funding structure and a suitable maturity structure of assets, liabilities and commitments.

Also, an upper limit is set on leverage, i.e. the ratio of an institution's own funds to the total value of its exposure to the risks derived from its activity. The regulations implementing these new requirements have yet to be enacted.

Further, it is provided that the Fund for the Orderly Restructuring of the Banking System (FROB) may purchase securities issued by individual credit institutions that, although solvent and viable, may not be sufficiently resilient in situations significantly more adverse than the current one. Their capital is thereby strengthened and market confidence in them increased.

These purchases will be dependent on the formulation of a recapitalisation plan the objectives, measures and commitments of which have to coincide with those set out in Royal Decree-Law 9/2009 of 26 June 2009 on bank restructuring and strengthening of own funds of credit institutions. The plan must be approved by the Banco de España, which will place particular emphasis on the institution's ability to achieve its stated objectives without having to merge with other entities.

The credit institutions resulting from restructuring processes shall be subject to the special fiscal regime established in the Corporate Income Tax Law[13] for asset and liability transfers carried out in the framework of such restructurings. This allows, inter alia, the deferral of tax on gains arising from such transfers, even if the transactions involved are not those specified in that special fiscal regime, provided that the economic result is equivalent.

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12. These new measures stem from the decisions taken by the Basel Committee on Banking Supervision, also known as Basel III, which, among other things, establishes a quantitative framework for liquidity risk measurement and coverage in the form of a short-term ratio (Liquidity Coverage Ratio), the purpose of which is to ensure that institutions have highly liquid assets to cover their liquidity needs in a possible situation of stress lasting 30 days, and a long-term ratio (Net Stable Funding), of a more structural nature, to cover the institution's liquidity needs with more stable sources of funding, the basic purpose of which is to avoid the short-term financing of long-term assets. Also, provision is made to introduce a leverage ratio as a supplementary measure to the Basel II solvency ratio. **13.** Specifically, in Chapter VIII of Title VII of the consolidated text of the Corporate Income Tax Law enacted by Legislative Royal Decree 4/2004 of 5 March 2004 regulating the special regime for mergers, divisions, asset contributions, share exchanges and change of registered office of a European firm or a European cooperative from one Member State to another in the European Union.

Also, this deferral regime is extended to the gains on asset and liability transfers carried out in compliance with an IPS's agreements. Thus, the exchange of these assets or liabilities is permitted between the credit institutions belonging to an IPS, subject to the condition that each acquiring institution values, for fiscal purposes, the acquired items at the same value that they had previously in the transferring institution. This valuation shall serve to determine the gains to which those items may subsequently give rise.

In the specific case of savings banks, the relevant legal amendments are made to ensure the neutral tax treatment of welfare projects regardless of the organisational model adopted.

The Royal Decree Law came into force on 14 July 2010.

Credit institutions: public and confidential financial reporting rules and formats

CBE 3/2010 of 29 June 2010 (BOE of 13 July 2010) amended CBE 4/2004 of 22 December 2004[14] on public and confidential financial reporting rules and formats. The most notable features of the Circular as set out below.

UPDATE OF POLICIES AND PROCEDURES FOR THE GRANTING OF LOANS

The Circular broadens the policies, methods and procedures to be applied by credit institutions in the granting of loans and in the identification of their impairment and calculation of the amount needed for credit risk allowances and provisions.

In addition to meeting the stipulations of CBE 4/2004, credit standards must primarily be attuned to borrowers' ability to pay, as and when required, all their financial obligations out of their regular income. Only secondarily shall guarantors, sureties or collateral be used as a means of recovery when this first financial claim fails.

There must be a loan repayment schedule with regular due dates attuned to borrowers' primary sources of income generation and, if appropriate, to the useful life of collateral. In lending to individuals, the repayment schedules should ensure that debt servicing (including all recurring payments on loans from the entity and on other debt) is as closely attuned as possible to the recurring disposable income of borrowers. In no case may the disposable income remaining after debt service be such as to manifestly limit the ability to cover the living expenses of borrowers' families.

In loans collateralised by real estate, entities shall use their own professional judgement, assessing the degree of potential liquidity of real estate assets. However, they should exercise extreme prudence in how appraisal values and any other external professional services are used in loans collateralised by real estate. Also, banks should establish a minimum frequency for reviewing loan collateral and update the appraisals by linking them to changes in the market for the asset received as collateral or, where applicable, acquired in payment of debt.

Finally, among other things, banks should also have in place the credit conditions of real estate development projects and a debt restructuring policy approved by their most senior governing body.

AMENDMENT OF CRITERIA FOR DOUBTFUL ASSETS

The different provisioning schedules[15] for assets classified as doubtful due to customer arrears are unified in a single schedule. The new schedule substantially shortens the pe-

14. See "Financial Regulation: 2004 Q4", Economic Bulletin, January 2005, Banco de España, pp. 3-7. **15.** The previous circular established three provisioning schedules: the first, for unsecured transactions, sets various provisioning precentages depending on whether the customer is a firm or otherwise; the second is for first mortgages on completed houses; and the third is for other secured transactions.

riod of time for provisioning loans, such that credit risk must be fully provisioned once 12 months have elapsed from the date of the first missed payment that remains unpaid on any single transaction.[16] This scale shall also apply from the date of the oldest missed payment that remains unpaid , or that of the classification of the assets as doubtful, whichever is earlier.

Within real estate mortgage loans, certain criteria are established for estimating the impairment of financial assets classified as doubtful.[17] They vary according to the type of asset subject to the right in rem, provided that this derives from a first mortgage:

For completed housing constituting the borrower's principal residence, the estimated value of the security interest shall, at a maximum, be 80% of the lower of the cost of the completed house and its appraised value in its current condition.

For other completed housing (not the borrower's principal residence), this percentage is lowered to 60%.

In rural property in use and completed multi-purpose offices and commercial and industrial premises, this percentage shall, at a maximum, be 70% of the lower of the cost of the rural property or multi-purpose building and its appraised value in its current condition.

In land parcels, building plots and other real estate assets, this percentage is lowered to 50%.

ASSETS FORECLOSED OR RECEIVED IN PAYMENT OF DEBT

New rules are introduced on assets foreclosed or received in payment of debt. Their aim is to encourage banks to look for management solutions for these assets which release the funds invested in them to the benefit of credit institutions' core activities.

The value of these assets shall be the lower of the carrying amount of the financial assets applied, taking into account the estimated impairment (a minimum of 10%), and the appraised market value of the asset received less estimated costs to sell (a minimum of 10% of the appraised value). The net amount of the two items shall be deemed to be the initial cost of the asset received.

Save in exceptional circumstances, the receipt of assets in payment of debt shall not give rise to recognition of gains or to the reversal of any allowances recorded for financial assets if these had previously been classified as doubtful assets.

Banks have to take into account the impairment of assets received in payment of debt, for which purpose they have establish a provisioning schedule based on the time the assets remain on the balance sheet. The impairment recorded shall in no case be less than 10% and shall rise to 30% for assets remaining on the balance sheet for 24 months. For the assets that remain on the balance sheet for more than 24 months, the entities shall have procedures to ensure that the appraised market values used are adjusted to reflect actual market conditions in the area in which the assets are located.

The Circular came into force on 30 September 2010.

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16. Under the previous circular, full provisioning of credit risk was reached at 24 months in arrears for unsecured loans and at six years for loans secured by a first mortgage on completed houses. **17.** Previously, collateral was indirectly taken into account by applying the the two existing schedules.

Credit institutions: agents and agreements for the provision of financial services

CBE 4/2010 of 30 July 2010 (BOE of 4 August 2010) replaces and repeals CBE 6/2002 of 20 December 2002[18] on information about the agents of credit institutions and the agreements entered into for the regular provision of financial services. The Circular updates the previous circular in view of the regulatory changes since that date, by specifying more clearly the agreements and agents subject to the reporting requirement, particularly if these belong to the networks of other supervised institutions. In addition, it clarifies various matters relating to the names and activities of agents.

As before, a credit institution has a period of 15 calendar days to report to the Banco de España information on those persons to whom it has granted powers to arrange, in the name and for the account of the institution, all or any of the services provided by it, including investment services. This communication shall not include: correspondents; persons granted power of attorney for a single specific transaction; persons employed by the institution; persons empowered only to attract business but not to negotiate or execute transactions; or the representatives, attorneys-in-fact or employees of legal entities that are agents.

As a new development, the Circular now excludes natural or legal persons forming part of the commercial networks of investment firms, of collective investment institution (CII) management companies, or of pension funds or insurance companies declared to be agents of credit institutions, provided that such persons are already registered as agents of the investment firm or CII management company in the registers of the CNMV or as agents of the pension fund or insurance company in the registers of the Directorate General of Insurance and Pension Funds.

The time period for notifying the cancellation of powers to act as representatives or any change in previously communicated data remains at 15 days.

The Circular adds the obligation for Spanish credit institutions and for the branches in Spain of foreign credit institutions to communicate to the Banco de España, as at the last day of each calendar half, the natural and legal persons designated to carry out professionally, on a regular basis and in the name and for the account of the institution, the activities of promotion and marketing of transactions or services typical of the business of credit institutions, including investment and ancillary services provided by the institution.

The Circular removes the specific obligation to submit periodically a list of agents in an annex to the annual accounts, since institutions already have to submit it to the Banco de España under CBE 4/2004 of 22 December 2004 on public and confidential financial reporting rules and formats. In any event, the public nature of the information submitted to the Banco de España remains in place.

With regard to the disclosure of agreements between Spanish and foreign credit institutions for the regular provision of financial services, whether it be in Spain in the name of the latter or the converse, the new Circular retains the same obligations on the same terms as under the repealed circular. Thus, Spanish credit institutions which have entered into agreements with foreign credit institutions for the regular provision in Spain of financial services to customers, in the name and for the account of the foreign institution, shall so notify the Banco de España within a period of one month.

In the case of agreements with foreign credit institutions for the mutual provision of financial services, the powers granted to the foreign institution to act in the name and for the account

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18. See "Financial Regulation: 2003 Q1", *Economic Bulletin,* April 2003, Banco de España, pp. 84 and 85.

of the Spanish institution must be reported by the same procedure and within the same time period as stipulated for agents (maximum of 15 days). Those granted to the Spanish institution to operate in Spain in the name and for the account of the foreign institution have to be reported in the same way as agreements with foreign institutions (maximum of one month).

Regarding the recruitment of agents, the Circular requires credit institutions to introduce appropriate control measures to promote the professional abilities of agents and ensure they meet legal requirements in their dealings with customers. Further, it is clarified that the notarial execution of powers shall, without prejudice to the requirements of any other applicable legal provisions, be optional for the credit institution.

Lastly, it is specified that exclusivity in the agent relationship shall only prevent the establishment of similar relationships with other credit institutions, but not with other entities, including regulated ones, unless prohibited by the sectoral legislation applicable to them. Nevertheless, credit institutions shall take care that the other activities carried on by their agents do not conflict with the proper performance of the representation role entrusted to them.

The Circular will come into force on 4 November 2010.

Amendment of the Regulations on the Securities Registration, Clearing and Settlement Systems Management Company

Ministerial Order EHA/2054/2010 of 26 May 2010 (BOE of 29 July 2010) amended the Regulations on the Securities Registration, Clearing and Settlement Systems Management Company (IBERCLEAR) adopted by Ministerial Order ECO/689/2003 of 27 March 2003.[19]

The Ministerial Order adds two new chapters to the Regulations: 1) settlement and registration of transactions in securities admitted to stock-exchange trading that are executed outside the computerised trading system (SIBE), and 2) the conclusion of agreements with entities engaging in similar functions, central counterparties, regulated market operators, multilateral trading facilities and other similar systems or entities.

IBERCLEAR will provide the members of the Securities Clearing and Settlement System ("SCLV" by its Spanish initials) with settlement and registration services for those purchases and sales of securities admitted to trading on stock exchanges which are made outside stock exchange markets. Among other things, the Ministerial Order also sets out: the principles under which settlement services will be provided (bilateral settlement principles, delivery versus payment and financial neutrality) and the transaction settlement terms and notification periods.

IBERCLEAR may also provide these services to central counterparties and to any other entities performing similar functions with which it has entered into an agreement. To do so it will require the approval of the CNMV. The main aspects regulated by CNMV include: 1) how the central counterparty accesses such services; 2) the specific reporting, assessment and risk management procedures aimed at enabling the actions of the Systems Company to be duly coordinated, and 3) the procedures applicable by central counterparties or entities offering equivalent guarantee mechanisms which may intervene in the transactions being settled and registered.

The Ministerial Order regulates other agreements which IBERCLEAR may enter into with entities performing similar functions[20] so as to carry out certain activities, such as: the opening and

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19. See "Financial Regulation: 2003 Q1", *Economic Bulletin,* April 2003, Banco de España, pp. 85 and 86. **20.** Central counterparties, regulated market operators, multilateral trading facilities and other similar systems or entities.

keeping of accounts, or other activities and services of the Systems Company, including the settlement of all or part of the transactions arranged in securities and financial instrument trading markets and systems. Settlement may take place through the procedures established or designed for the purpose by IBERCLEAR, which may include versus-payment or free-of-payment processes, with settlement in euro or other currencies.

The conclusion of these agreements shall be subject to the prior approval of the CNMV, having regard to certain considerations such as the timeliness of the service in question, the general interest of the markets and reciprocity by the other entity.

Also, IBERCLEAR shall prepare the provisions required for properly regulating matters relating to the scope of these agreements and the procedure for drafting them, which shall also be subject to the prior authorisation of the CNMV.

The Ministerial Order came into force on 18 August 2010.

Amendment of securities market and audit legislation

Law 12/2010 of 30 June 2010 (BOE of 1 July 2010) amended Audit Law 19/1988 of 12 July 1988,[21] Securities Market Law 24/1988 of 28 July 1988[22] and the consolidated text of the Public Limited Companies Law enacted by Legislative Royal Decree 1564/1989 of 22 December 1989 to adapt them to Community law.

SECURITIES MARKET

As established, listed public limited companies must comply with their disclosure obligations by any technical, IT or electronic means, without prejudice to shareholders' right to request the information in print. For this purpose, they must have a website to meet these disclosure obligations and to disseminate significant information.

As a new requirement, a company's website must now include an electronic shareholders' forum to which both individual shareholders and any voluntary associations set up to expedite communication can gain access before general meetings are held. The forum can publish proposals intended to be submitted as supplementary items to the agenda announced in the notice of meeting, calls to support such proposals, initiatives to gather sufficient votes to reach the percentage required to exercise minority rights envisaged in law, and voluntary proxy offers or solicitations.

The shareholders of listed companies are allowed to set up specific voluntary associations to exercise their rights and better protect their common interests. The regulations forming a legal regime for shareholders' associations shall be promulgated. They shall include at least the requirements for and limits on the creation of such associations, specifications for their organisational structure, operating rules, and their rights and obligations, particularly vis-à-vis the listed company.

Lastly, the provisions relating to audit committees (which must be present in all entities issuing securities admitted to trading on official secondary securities markets) are brought into line with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006[23] on statutory audits of annual accounts and consolidated accounts. Specifically: 1) the powers of audit committees and the rules governing their functioning are broadened in accordance with

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21. See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico,* October 1988, Banco de España, p. 63. **22.** See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico,* October 1988, Banco de España, pp. 61 and 62. **23.** Directive 2006/43/EC amended Council Directives 78/660/EEC and 83/349/EEC and repealed Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting.

Community law, and 2) it is stipulated that at least one member of the audit committee shall be independent and shall be appointed on the basis of his/her knowledge and experience of accounting and/or auditing.

STATUTORY AUDIT

Audit Law 19/1988 of 12 July 1988 was amended to adapt it to Directive 2006/43/EC. At the same time, certain aspects of the regulation contained in that Law were amended to incorporate, first, the changes to corporate legislation introduced by Law l6/2007[24] of 4 July 2007 on reform and adaptation of accounting-related corporate law for international harmonisation according to European Union law and, second, the technical improvements considered advisable in light of the experience and practice since it came into force.

The definition of statutory audit is updated to take account of the new accounting statements included in financial statements pursuant to Law 16/2007, namely the statement of changes in equity and the cash flow statement, since these must also be audited.

The minimum content of the audit report is adjusted to that adopted by Directive 2006/43/EC, so as to make it more readily comparable in the international economic environment. Among other things, express mentions in the audit opinion to compliance with the consistency principle and to the circumstances which generally affect the going concern principle are discontinued, although they may be included in certain situations.

The period of public consultation to which proposed audit standards are subject before publication by the Spanish Accounting and Audit Institute is reduced from six to two months.

Certain changes are made to the regime governing infringements and penalties. New infringements are defined, such as non-compliance with the obligation to duly keep the documentation relating to each audit; failure to follow up the recommendations or requirements which may be made in the exercise of quality control; failure to publish, or to publish correctly, the annual transparency report by the auditors or audit firms of public-interest entities or by third-country auditors or audit firms; and the failure to apply internal quality control systems by auditors or audit firms.

Certain aspects of the penalty regime are changed to correct undesired effects of the current regime. To do this, special rules are introduced for those cases in which a public-interest entity is being audited. Also, penalties are set for the newly defined infringements, which should be duly made public.

In accordance with Directive 2006/43/EC, the scope and purpose of the activity of statutory auditing are delimited. The Spanish Accounting and Audit Institute is authorised to publish the action plans, the supervision system activity reports and the general results achieved in the exercise of quality control.

The system of supervision shall be accompanied by effective cooperation with third-country authorities and the Spanish Accounting and Audit Institute's powers of control over third-country auditors and audit firms shall be regulated, provided always that there is reciprocity and the regulatory agreements so require.

Lastly, stricter requirements are established for the auditors of public-interest entities. Specifically, there are required to publish an annual transparency report and higher penalties are set for infringements concerning the audit of a public-interest entity.

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24. See "Financial Regulation: 2007 Q3", *Economic Bulletin,* October 2007, Banco de España, pp. 149-151.

The Law, save certain exceptions, came into force on 2 July 2010.

Confidential reporting by investment firms

CNMV Circular 1/2010 of 28 July 2010 (BOE of 16 August 2010) regulates confidential reporting by investment firms[25] to this supervisory body.[26]

Its scope of application includes all Spanish and foreign (EU and non-EU) entities authorised to provide investment services either through branches or under the freedom to provide services.

The confidential reporting formats comprise returns T1 to T15[27] included in the annex to the Circular. They have to be submitted online to the CNMV yearly in the first two months of the following financial year.

Also, certain specific points are clarified. Thus the Circular opts not to require the submission of all confidential returns by certain entities. In the case of investment firms, the Circular excludes certain returns which are similar to others that already have to be submitted to the CNMV. Financial advice firms only have to submit the return relating to the provision of investment advice services and that relating to the profiles of customers the suitability of which has been assessed.

The Circular came into force on 17 August 2010.

Identification numbers and numbering procedures for securities and other financial instruments

CNMV Circular 2/2010 of 28 July 2010 (BOE of 30 September 2010) replaces and repeals CNMV Circular 6/1998 of 16 December 1998 on identification numbers and numbering procedures for securities and other financial instruments.[28] The Circular introduces the new financial instruments and practices arising since the previous circular was issued.

Within the financial instruments qualifying for an identification number, the limit on the shares of public limited companies has been removed (previously, for shares to qualify for an identification number, the companies had to have share capital exceeding €150,000). Also, Treasury bills are added to the list of financial instruments qualifying for an identification number and the CNMV retains its power to include any other instrument which, in view of its characteristics and significance, requires an identification number for processing purposes.

Regarding the assignment of identification numbers to new securities issues or to existing unnumbered ones, the Circular updates the type of entities which can request a number from the CNMV. Also, to the entities listed in the previous circular[29] are added the remaining investment firms (portfolio management companies and financial advice firms) and venture capital companies.

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25. The entities that may provide investment services are: investment firms, credit institutions and CII management companies. Investment firms include securities brokers and dealers, portfolio management companies and financial advice firms. **26.** Under the powers granted by Royal Decree 1820/2009 of 27 November 2009. **27.** Returns T1 to T3 request descriptive data about the entity and contact persons, as well as information about the number of customers of the entity, broken down by investment or ancillary service, by business segment and by risk profile; Returns T4 and T5 gather information about the entity's gross income broken down by investment service; Returns T6 to T10 require detailed information about discretionary portfolio management services, investment advice, placement of financial instruments and the reception, transmission and execution of client orders. Finally, Returns T11 to T15 collect diverse information regarding, inter alia, distribution channels, number of complaints lodged, transactions that might constitute market abuse and the significance of third-country investment services provided through branches established in Spain. **28.** Royal Decree 1310/2005 of 4 November 2005, which implements Securities Market Law 24/1988 of 28 July 1988 in respect of the admission to trading of securities on official secondary markets, public and subscription offerings and the prospectus required for such purposes, assigned to the CNMV the task of numbering marketable securities, specifying that it has sole competence in this respect. **29.** The issuing entity, credit institutions, securities brokers and dealers, securities clearing and settlement services and collective investment institutions.

Concerning the reassignment and deregistration of fixed-income securities identification numbers, the Circular addresses the case of a change in the central securities depository, distinguishing between physical securities and book-entry securities. If the instruments involved were physical securities, and new securities were issued to be exchanged for the old ones, they would be assigned new identification numbers, although the previous ones would be retained until the outstanding transactions had been settled. In book-entry securities, the identification numbers would not be changed.

The Circular came into force on 1 October 2010.

Undertakings for collective investment in transferable securities (UCITS):*[30] *implementing directives

Commission Directive 2010/42/EU of 1 July 2010 (OJ L of 10 July 2010) implementing certain provisions of Directive 2009/65/EC[31] of the European Parliament and of the Council of 13 July 2009[32] on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) as regards mergers between UCITS, master-feeder structures and the notification procedure was adopted.

Also adopted was *Commission Directive 2010/43/EU of 1 July 2010* (OJ L of 10 July 2010) implementing certain provisions of Directive 2009/65/EC of as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

FUND MERGERS

General rules are set regarding the content of information to be furnished to unit-holders. This information must take into account certain requirements, including the following: 1) it must be written in a concise manner that enables unit-holders to make an informed judgement of the impact of the proposed merger on their investment; 2) it must include details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect; 3) it must compare all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information; and 4) it must explain whether the management or investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.

That information aims to enable unit-holders to make an informed judgement about whether they want to continue investing or request redemption, where a UCITS is either part of a merger, converts into a feeder UCITS or changes the master UCITS. The information should be personally addressed to unit-holders either on paper or in another durable medium such as e-mail.

MASTER-FEEDER STRUCTURES

Another part of Directive 2010/42/UE sets out rules on master-feeder structures, specifying the content of the agreement between master UCITS and feeder UCITS.[33] It must set out, inter alia, how and when the master UCITS provides the feeder UCITS with 1) a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof; 2) internal operational documents, such as its risk management process and its compliance reports; and 3) information about the feeder UCITS's actual exposure to financial derivative instruments, where these are used by it.

Other matters also have to be indicated, as follows: 1) procedures to ensure enquiries and complaints from unit-holders are handled appropriately; 2) the basis of investment and divest-

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30. Similar to Spanish collective investment institutions. **31.** Directive 2009/65/EC replaced Council Directive 85/611/EEC of 20 December 1985 and the subsequent amendments thereto. **32.** See "Financial Regulation: 2009 Q4", *Economic Bulletin,* January 2010, Banco de España, pp. 158-162. **33.** A feeder UCITS invests at least 85% of its assets in the master UCITS.

ment by the feeder UCITS, including the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS;[34] and 3) the law applicable to the agreement, which may be either that of the Member State in which the feeder UCITS is established or that of the master UCITS. In any event, both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

The Directive specifies the applicable procedures and notification deadlines in cases of liquidation, merger or division of the master UCITS. In any of these cases, the feeder UCITS must be liquidated unless the competent authorities of the feeder UCITS's home Member State authorises other options. Thus, in the case of liquidation of the master UCITS, the feeder UCITS may be authorised to invest at least 85 % of its assets in units of another master UCITS or to amend its fund rules or instrument of incorporation so that it can convert into a UCITS that is not a feeder UCITS.

In cases of merger or division of the master UCITS, the home Member State of the feeder UCITS can authorise the latter to continue to continue to be a feeder UCITS of the same master UCITS, or to become a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS, or to invest at least 85 % of its assets in units of another master UCITS not resulting from the merger or division, or to amend its fund rules or instrument of incorporation so that it can convert into a UCITS that is not a feeder UCITS.

The Directive stipulates the content of the information-sharing agreement either between depositaries or between the auditor of the master UCITS and the auditor of the feeder UCITS to enable the latter to receive all the relevant information and documents needed for it to meet its obligations.

Special mention is made of the reporting by the depositary of the master UCITS of any irregularities which it detects in the performance of its functions and which may have a negative impact on the feeder UCITS. Such reporting shall be immediate, indicate possible solutions to the irregularities and how they were remedied.

Lastly, with regard to UCITS which market their units in Member States other than those in which they are established, the Directive stipulates the scope and detailed content of the information to be furnished to investors, ensuring that it is available remotely and by electronic means. Also, a procedure is established for electronically informing the competent authorities of the UCITS's home Member State of any changes in that information.

MANAGEMENT COMPANIES: ORGANISATIONAL REQUIREMENTS, CONFLICTS OF INTEREST, CONDUCT OF BUSINESS AND RISK MANAGEMENT

Commission Directive 2010/43/EU implements Directive 2009/65/EC as regards organisational requirements, conflicts of interest, conduct of business and risk management of management companies.[35]

Management companies may make arrangements for third parties to carry out some of their activities. The third party has to fulfil all the organisational and conflicts of interest requirements in relation to the activity to be carried out and, in addition, have all the skills and knowledge needed to perform those functions. For its part, the management company has to verify that

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34. Unless this is prohibited under national law or incompatible with the fund rules or instruments of incorporation of either the master UCITS or the feeder UCITS. **35.** A management company is any company the regular business of which is the management of UCITS in the form of unit trusts/common funds and/or of investment companies. Investment companies which have not designated a management company are subject to the same rules of conduct and provisions regarding conflicts of interest and risk management as management companies.

the third party has taken the appropriate measures in order to comply with said requirements and monitor effectively the compliance by the third party with these requirements.

Directive 2009/65/EC requires management companies to have a well-documented organisational structure that clearly assigns responsibilities and ensures good flows of information between all parties involved. Management companies should also establish systems to safeguard information and ensure business continuity and which are sufficient to allow them to discharge their obligations in cases where their activities are performed by third parties.

Management companies shall be required to adopt, apply and maintain an effective and adequate strategy for the exercise of voting rights attached to the financial instruments held by the UCITS they manage. Information related to the strategy and its application shall be freely available to investors, including via a website.

When executing orders on behalf of a UCITS, management companies shall take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

Regarding cross-border activities, the Directive spells out the main elements of the agreement between the UCITS' depositary and the management company, where that management company is established in a Member State other than the UCITS' home Member State, setting out certain precepts to provide for conflict of law.

To ensure that a management company has an adequate control mechanism, a permanent compliance function and an internal audit function are necessary. The compliance function should be designed in such a way as to ensure that it may detect any risk of failure by the management company to comply with its obligations under Directive 2009/65/EC. The audit function should aim at verifying and evaluating the different control procedures and administrative arrangements the management company has put in place.

Pursuant to Directive 2009/65/EC, criteria are established for assessing the adequacy of a management company's risk management process. The organisation of the risk management policy should be adequate and proportionate to the nature, scale and complexity of the management company's activities and of the UCITS it manages.

As an essential element in the criteria for assessing the adequacy of risk management processes, proportionate and effective risk measurement techniques should be adopted by management companies in order to measure at any time the risks which the UCITS they manage are or might be exposed to.

Accordingly, certain parameters are introduced to ensure that the risk management system is designed so that the investment limits set by Directive 2009/65/EC, such as limits on global exposure and exposure to counterparty risk, are respected by the management companies. In laying down such criteria, the Directive clarifies how the global exposure can be calculated, including by using the commitment approach, the value at risk approach or advanced risk measurement methodologies.

Also laid down are the main elements of the methodology according to which the management company should calculate the counterparty risk. In applying those rules, account should be taken of the conditions under which those methodologies are used, including the principles to be applied to such collateral arrangements to reduce the UCITS' exposure to counterparty

risk as well as the use of the hedging and netting arrangements, as developed by competent authorities working within the Committee of European Securities Regulators.

In accordance with Directive 2009/65/CE, detailed rules are set on how management companies have to calculate the value of over-the-counter (OTC) derivatives and of those instruments which expose UCITS to valuation risks equivalent to those raised by OTC derivatives.

Also, management companies have to provide the relevant competent authorities with information on the types of derivative instruments in which a UCITS has been invested, the underlying risks posed, applicable quantitative limits and methods chosen for estimating the risks associated with such transactions.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with both Directives by 30 June 2011, except for certain precepts of Directive 2010/42/EU, which shall be applied by 31 December 2013.

Measures to combat late payment in commercial transactions: amendment of legislation

Law 15/2010 of 5 July 2010 (BOE of 6 July 2010) amended Law 3/2004 of 29 December 2004[36] on measures to combat late payment in commercial transactions and Law 30/2007 of 30 October 2007 on public sector contracts.

As explained in the preamble to this law, it aims to correct imbalances and take advantage of firms' conditions to foster competitiveness and achieve balanced growth of the Spanish economy, in line with a strategic view of the sustainable economy.

In the public sector, the maximum term for payment of debts is reduced from 60 to 30 days. Once this period has elapsed, contractors can demand in writing that the contracting government honour its payment obligation and, where applicable, can claim interest for late payment. Also, an effective and flexible procedure is set in place for payment of public authorities' debts and transparency mechanisms are established regarding compliance with payment obligations, this being done through regular reports at all government levels and the creation of a new invoice register in local government. For the application of the aforementioned term, the Law establishes a transition period which will end on 1 January 2013.[37]

A maximum period of 60 days is set for payments by firms to their suppliers (previously agreements between the parties prevailed). This payment term cannot be extended by agreement between the parties giving rise to unjustified increases in the payment term. Similarly, a transition period is established which will end on 1 January 2013.[38]

Lastly, the right to be compensated when debtors default is strengthened, it is made simpler for associations to file complaints against abusive practices on behalf of their members and the adoption of codes of good business practice is fostered in respect of payments.

The Law came into force on 7 July 2010.

Share capital companies

Legislative Royal Decree 1/2010 of 2 July 2010 (BOE of 3 July 2010) enacted the consolidated text of the Share Capital Companies Law. This consolidated text replaces Private Limited

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36. See "Financial Regulation: 2004 Q4", *Economic Bulletin, January* 2005, Banco de España, pp. 138 and 139. **37.** Thus, between 1 January 2011 and 31 December 2011, the term will be 50 days; between 1 January 2012 and 31 December 2012, it will be 40 days; and from 1 January 2013, it will be 30 days. **38.** Thus, between 7 July 2010 and 31 December 2011, the term will be 85 days; between 1 January 2012 and 31 December 2012, it will be 75 days; and from 1 January 2013, it will be 60 days.

Companies Law 2/1995 of 23 March 1995,[39] Legislative Royal Decree 1564/1989 of 22 December 1989 enacting the consolidated text of the Public Limited Companies Law, Title X of Securities Market Law 24/1988 of 28 July[40] relating to listed companies, and Book II, Title I, Section 4 of the Commercial Code enacted by decree of 22 August 1885.

The Legislative Royal Decree takes the actions envisaged in the seventh final provision of Law 3/2009 of 3 April 2009 on structural changes to companies, which empowers the government, within a period of twelve months, to consolidate in a single text entitled *Share Capital Companies Law*, the legislation on limited stock partnerships, public limited companies, private limited companies and listed public limited companies.

The consolidated text contains the whole of the legislation which has been recast, although it unifies and updates the terminology and resolves those problems of interpretation posed by the legislation before it was recast.

Also, the consolidated text generalises or extends the solutions which were originally conceived for only one type of share capital company. This harmonisation is particularly necessary regarding the determination of the powers of the general meeting and, above all, regarding the winding up and liquidation of share capital companies.

The regulation of listed companies is systematised by this consolidated text addressing eminently corporate economic matters and the Securities Market Law 24/1988 of 28 July 1988, which regulates the financial side of these companies, basically guided by the principle of transparency to ensure that markets function smoothly and investors are protected.

The Legislative Royal Decree came into force on 1 September 2010, except for Article 515 on when clauses that limit voting rights are null and void,[41] which will apply from 1 July 2011.

5.10.2010.

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39. See "Regulación financiera: primer trimestre de 1995", *Boletín Económico,* April 1995, Banco de España, pp. 77 and 78. **40.** See footnote 22. **41.** The Legislative Royal Decree stipulates that a clause in the articles of association of listed public limited companies is null and void if it directly or indirectly fixes on a general basis the maximum number of votes that can be cast by a single shareholder or by companies belonging to the same goup.