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# Iberian Financial Newsletter

Banking and Financial Institutions

April – June 2020



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# SPAIN

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## Banking

### Legislation

**Royal Decree-Law 19/2020, of May 26, adopting additional measures on agriculture, science, economic matters, employment and social security, and tax to mitigate the effects of COVID-19 (only Spanish version).** [Access Link](#)

On 27 May 2020, the Royal Decree Law 19/2020 was published in the Official State Gazette, approved by the Council of Ministers for complementary measures in agricultural, scientific, economic, employment and social security and tax matters (“**RDL 19/2020**”).

In relation to the new measures established in the area of the debt moratorium, the following can be pointed out:

#### **Modification of the scope of non-mortgage-backed legal moratoriums**

The scope of application of non-mortgage-backed legal moratoriums, initially limited to loans and credits, now extends to financial leasing transactions, given the importance of this financing instrument for the economic activity of self-employed workers.

#### **Regulation of “moratoriums by agreement”**

As a complement to “legal moratoriums”, RDL 19/2020 introduces the so-called “moratorium by agreement”, establishing a special system for agreements reached between financial institutions and their clients that are subject to the provisions of sectorial framework agreements between financial institutions through their representative associations.

Moratoriums by agreement require, as a premise, that the financial institution must adhere to a sectorial framework agreement, that must be notified to the Bank of Spain and be published on its website. Also, the financial institution must assume certain reporting duties towards this regulatory authority, and fulfill certain organizational and disciplinary rules that allow compliance be monitored.

Moratoriums by agreement cover all kinds of loans, credits and financial leases, and they may involve redistributing payments without changing the maturity date, or extending that maturity date by a period equivalent to the length of the moratorium.



The rule does not allow the amendment of certain aspects of the financing transaction that is the purpose of the potential moratorium agreement. Specifically, the moratorium cannot result in:

- > An adjustment of the agreed interest rate;
- > The collection of expenses or fees;
- > Joint marketing alongside another linked or combined product; or
- > The establishment of additional guarantees, whether personal guarantees or security *in rem*.

Exceptionally, it is possible to renew insurance taken out for credit protection (in the case of unemployed debtors and those on temporary disability leave) or for loan repayment (in case of death or disability) when this insurance is linked to the financing transaction, subject to the corresponding cost increase.

If, simultaneously or successively, a legal moratorium and a moratorium by agreement are granted for the same financing transaction, the effects of the moratorium by agreement will begin once the legal moratorium has ended. This means that for the three months the legal moratorium lasts, no ordinary or default interest will accrue.

Moreover, if the moratorium by agreement must be formalized in a notarial public document, this may be carried out unilaterally by the financial institution, as long as it only involves postponing the maturity date by deferring the payment of the principal or the principal and interest, and subject to certain formal requirements set and verifications made by the authorizing notary as regards the duty to provide simplified precontractual.

### **Facilities and incentives for all types of moratoriums**

To expedite the processing of moratoriums by agreement and legal moratoriums (in this latter case, retroactively), considering the restrictions on movement resulting from the state of emergency, the rule fosters the use of online channels and electronic signatures to execute moratorium agreements, and it eases the procedure, establishing a simplified precontractual information system, which entails waiving some of the precontractual information rules set out under Spanish Act 5/2019, of March 15, regulating real estate loan agreements.

Public deeds executed for legal moratoriums and moratoriums by agreement are expected to benefit from the gradual payment of stamp duty, which implies amending the consolidated text of the Spanish Transfer Tax and Stamp Duty Act approved under Royal Legislative Decree 1/1993, of September 24.



RDL 19/2020 also amends article 6 of Royal Decree 877/2015, of October 2, regulating the reserve fund to provide for contingencies, which certain banking foundations are required to establish if they have a controlling interest in a credit institution. This reserve fund must be established, under applicable sectorial law, within eight years through equal annual endowments.

Taking into account the Recommendation of the European Central Bank of March 27, 2020, asking credit institutions to refrain from distributing dividends at least until October 1, 2020, and the fact that the dividends of investee credit institutions are the main source of income of the aforementioned banking foundations (and that banking institutions must allocate at least 50% of this income to the reserve fund), the Spanish government considers it necessary to suspend the requirements related to endowments to these funds in 2020, and to the eight-year period to establish them (which means that, as a rule, the period to establish the fund would be extended to 2024).

**Bank of Spain Circular 2/2020 of 11 June amending Circular 4/2017 of 27 November to credit institutions on public and confidential financial reporting standards and financial statement formats (only Spanish version).** [Access Link](#)

On June 16, 2020, Bank of Spain Circular 2/2020 was also published in the Official State Gazette, amending Circular 4/2017 with the main objective of implementing changes in the international regulations on information requirements for credit institutions.

Thus, the information to be submitted by entities on non-performing and restructured exposures and on foreclosed collateral is expanded, the information on operating and administrative expenses is supplemented and some minor changes are incorporated into the information available on leases, as a result of the entry into force of the International Financial Reporting Standard on Leases (IFRS 16).

Furthermore, in order to comply with the Recommendation of the European Systemic Risk Board on the elimination of gaps in data on real estate, it introduces changes to the information required from credit institutions regarding loans on real estate (commercial and residential) and, with the aim of improving transparency, assigns the dissemination of public statements to the Bank of Spain, although this may also be done by associations of credit institutions, as has been the case up to now.

Finally, the Circular incorporates the latest developments in international financial reporting standards and other standards adopted and approved by the European Union (modifying the definition of business in IFRS 3), simplifies some of the information requirements for credit institutions and takes the opportunity to update the information requested in different financial statements.



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## Securities market and collective investment

### Supervision criteria

**Communication from the Spanish National Security Market Commission (CNMV) on the non-renewal of the ban on the creation or increase of net short positions.** [Access Link](#)

On 18 May 2020, the CNMV communicated its decision not to renew the ban on creating or increasing net short positions which was adopted on 16 March 2020. That decision entered into force on 19 May 2020 at 00:00 hours.

However, the CNMV recalls that the threshold of 0.1% of the issued share capital will continue to apply for the purposes of the obligation to notify the CNMV of short positions.

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## Common

### Legislation

**Royal Decree-Law 15/2020, of April 21, adopting a new set of additional emergency measures to support the economy and employment (only Spanish version).** [Access Link](#)

On 22 April 2020, the Official State Gazette (BOE) published Royal Decree Law 15/2020, which includes a new package of urgent complementary measures to support the economy and employment (“**RDL 15/2020**”).

Regarding the moratorium period for debts (mortgage debt and credit and loans not secured by a mortgage) that was approved by the Royal Decree-law 8/2020, of March 17 and Royal Decree-law 11/2020, of March 31, the RDL 15/2020 provides some clarifications in view of the provisions of Act 5/2019, of March 15, regulating real estate loan agreements. Specifically, it provides that:

- › entitlement to the moratorium period for mortgage debt is not subject to that Act;
- › the financing entity has the one-sided obligation to formalize this entitlement to the moratorium period for mortgage debt in a public deed, so that it can be registered in the land registry; and
- › the financing entity has the one-sided obligation to ensure the execution of the notarized deed or public deed documenting the entitlement to the moratorium on



loans or credits not secured by a mortgage, so they can be entered in the movable property registry (as the case may be).

It also establishes that novation agreements entered into to formalize the moratorium and that involve loans and credits not secured by a mortgage, as the case may be, will also benefit from allowances for notary public fees and registration fees, which the creditors must cover.

RDL 15/2020 regulates the terms and conditions to enforce the vested rights in pension plans and other social welfare systems under the twentieth additional provision of Royal Decree-law 11/2020. In this regard:

- It specifies that available vested rights will be those corresponding to the following social welfare instruments:
  - (a) Individual and associated pension plans.
  - (b) Defined contribution or mixed employment system pension plans, for contingencies specified in the defined contributions scheme.
  - (c) Defined benefit or mixed employment system pension plans, for contingencies specified in the defined benefit scheme or linked to that benefit, when allowed by the pension commitment and provided under the plan specifications approved by the oversight committee under the terms established in the specifications.
  - (d) Insured pension plans.
  - (e) Employer complementary social security plans.
  - (f) Mutual insurance companies. Mutual insurance companies acting as an alternative system to registering with the Special Social Security Regime for Self-Employed Workers will not be able to enforce the economic rights of products or insurance policies used to fulfill that alternative role.
- It lists the documents the interested party must submit to the pension plan management company (or to the insurance company or mutual insurance company, where appropriate) to justify fulfillment of the requirements to enforce the vested rights (company certificate, statement of compliance or tax certificate, where appropriate).



- > The **maximum available amount** will be the lower of the following two amounts, calculated based on the set of social welfare instruments the holder has, according to the cases provided for by law:

## Maximum available amount

Employees that are legally unemployed due to an ERTE implemented due to the public health crisis caused by COVID-19

The lower of the following amounts:

- (a) Net salaries that were not paid while the ERTE was in force, with a maximum calculation period equal to the time the state of emergency is in force plus one month, justified with the last payroll before this situation arose.
- (b) The result of apportioning the annual multi-purpose public income index (*indicador público de renta de efectos múltiples*, or "IPREM") for 12 monthly installments in force for 2020 multiplied by 3 in the proportion corresponding to the duration of the ERTE. The maximum period of time to be calculated is the time the state of emergency is in force plus one month.

Entrepreneurs that own establishments that are not allowed to open to the public under article 10 of Royal Decree 463/2020

The lower of the following amounts:

- (a) Net income that was not received owing to the establishment not being allowed to open to the public, the maximum calculation period being the time the state of emergency is in force plus one month. This can be justified through the annual personal income tax return for 2019 and, as the case may be, the installment payment return of personal income tax and value added tax for the last quarter.
- (b) The result of apportioning the annual IPREM for 12 monthly installments in force for 2020 multiplied by 3 in the proportion corresponding to the time the establishment was not allowed to open to the public. The maximum period of time to be calculated is the time the state of emergency is in force plus one month.

Self-employed workers that were previously under a social security regime or an alternative mutual insurance arrangement and can no longer carry out their activity due to the COVID-19 health crisis.

The lower of the following amounts:

- (a) (a) Net income estimated not to have been received owing to the activity being suspended for a maximum calculation period equal to the time the state of emergency is in force plus one month, estimated based on the annual personal income tax return for 2019 and, as the case may be, the installment payment return of personal income tax and value added tax for the last quarter.
- (b) The result of apportioning the annual IPREM for 12 monthly installments in force for 2020 multiplied by 3 in the proportion corresponding to the time the activity was suspended. The maximum period of time to be calculated is the time the state of emergency is in force plus one month.



## Proposals

**Draft bill amending Law 10/2010 of 28 April on the Prevention of Money Laundering and the Financing of Terrorism and transposing European Union directives on the prevention of money laundering and the financing of terrorism (only Spanish version).** [Access Link](#)

The draft bill amending Law 10/2010 seeks, in particular, to transpose Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (known as the "**V Directive**") into Spanish law.

One of the main new developments arising from the V Directive is the inclusion of new regulated subjects that must comply with the measures for the prevention of money laundering and the financing of terrorism, such as providers of virtual currency services, including services for the exchange of virtual currency for legal tender or vice versa, or for the exchange between virtual currencies, and providers of electronic purse custody or key protection services.

Another development is the strengthening of the system of identification of the beneficial owners of legal entities, for which a single registration system is created that will include the information of the beneficial owners already existing in the Commercial Registry and in the notary databases, and will incorporate the obligatory registration of trusts and entities of a similar nature operating in Spain and of their beneficial owners. Regulated entities shall access to this registry in their business relationships with legal entities, while legal entities and entities without legal personality have to maintain and update this information.

In addition, it includes the approval of a new system of responsibility for external experts, who are responsible for preparing the mandatory reports on the adequacy of the prevention measures applied by the regulated entities in relation to the requirements of the regulations.

The deadline for the submission of observations was set at June 23, 2020.





# PORTUGAL

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## Banking

### Legislation

#### **Decree-Law 6/2020, of 16 June**

Government has approved, a set of amendments to the special rules on the public moratoriums on financing approved by Decree-Law 10-J/2020, of March 26, 2020. These amendments are essentially intended to: (i) allow the extension of the public moratoriums until March 31, 2021; (ii) broaden the group of potential beneficiaries; and (iii) broaden the scope of credit transactions eligible for the public moratoriums.

#### **Bank of Portugal Instruction 15/2020, of June 4, 2020**

It discloses the maximum rates to be applied to consumer credit agreements, under Decree-Law 133/2009, of June 2, 2009, in the third quarter of 2020.

#### **Bank of Portugal Circular Letter CC/2020/00000035, of June 1, 2020**

It warns financial entities that, as part of their customer due diligence procedures associated with establishing business relationships and updating procedures, they need to make available to their customers the technological means and services that allow the use of means of proof listed in article 25(2) of Law 83/2017, of August 18, 2017, which establishes the measures on the prevention of money laundering and terrorist financing.

#### **Bank of Portugal Circular Letter CC/2020/00000029, of May 6, 2020**

It states the EBA Guidelines on information and communication (ICT) and security risk management (EBA/GL/2019/04) and discloses the Bank of Portugal's expectation that those requirements will be met by payment service providers, credit institutions and investment firms from June 30, 2020.



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## Capital Markets

### Legislation

#### Decree-Law 12/2020, of April 6, 2020

It establishes the legal framework applicable to trading the greenhouse gas emission allowance for the 2021-2030 period, implementing Directive (EU) 2018/410 into domestic law.

#### Portuguese Securities Market Commission Regulation 5/2020, of April 27, 2020

Regulation 5/2020 regulates the business of Credit Specialized Alternative Collective Investment Undertakings (“**Loan Funds**”), providing for amendments to the requirements to be met by Loan Funds from both a prudential and a behavioral perspective, as summarized below.

#### Prudential Scope

##### *Composition of Loan Funds portfolio*

Within the scope of their activity, Loan Funds can grant credits (loan origination) and participate in loans acquired from the credit’s originator or from third parties (loan participation) that comprise the main type of assets in these funds’ portfolios. Note that the maturity of the credits held by Loan Funds cannot exceed the duration of the Loan Fund itself.

Regarding the composition of Loan Funds’ portfolios, the following types of assets can be identified under the applicable regulation:

- › Liquidity: up to 20% of the Loan Fund’s assets, and only after the first six months of activity, which must consist of (i) bank deposits that can be called up at any time; (ii) deposit certificates; (iii) participation units of collective investment undertakings in the money market or short-term money market; and (iv) financial instruments issued or guaranteed by a Member State with a residual maturity below 12 months;
- › Debt securities: up to 20% of the Loan Fund’s assets, issued by eligible lenders (*i.e.*, those to whom the granting of credit is not barred under article 5-C(b) of the VCSESI Framework); and
- › Other assets: arising from payment of the credits (*e.g.*, transfer in lieu of payment) or which are required to maximize payment (*e.g.*, conversion of credits into equity under a special revitalization proceeding (*Processo Especial de Revitalização*)).



Regulation 5/2020 further imposes rules on the diversification of the assets held by the Loan Funds after their first year of activity, establishing a maximum credit threshold of 20% of their total assets regarding any entity or group of entities in a control or domain relationship.

### Assessment and monitoring of credit risk

Management entities must have in place risk management systems that analyze credit quality and risk (e.g., through management procedures for credit default, restructuring and extension of credits), and they must implement procedures to monitor quality changes in each credit.

### Stress tests

Management entities must ensure that the Loan Funds stress tests carried out under article 59(2) of the VCSESI Framework are done at least on a quarterly basis.

### Corporate governance of the managing entities

Under Regulation 5/2020, the board of directors of the Loan Fund's managing entity must include at least one member with proven experience in granting credit and credit risk management activities.

### Annual information on the Loan Funds

New information obligations have been imposed on the Loan Funds relating to the annual report to the Portuguese Securities Market Commission under article 15(2) of Regulation 3/2015, which will now include information on:

- > the breakdown of the credits held as secured preferential debt, subordinated debt and mezzanine debt;
- > the breakdown between the credits reimbursed under a payment plan and the credits reimbursed in a single instalment;
- > the breakdown of the ratio between the value of the loan and the value of the security for each of the credits held;
- > the non-performing exposures and the renegotiation, restructuring and extension of credits; and
- > significant changes in the assessment of credits and monitoring procedures.



## Behavioral Scope

### Obligations of management entities towards borrowers

Management entities are further subject to complying with certain information obligations regarding the services offered, whether requested or provided, when this information is necessary for an informed and reasoned decision.

These obligations include providing information on:

- › the management entity and the services rendered;
- › the risks involved in the transactions to be carried out; and
- › the cost of the service to be rendered.

### **Portuguese Securities Market Commission Circular of June 26, 2020**

It expresses the Portuguese Securities Market Commission's understanding that proper compliance with the obligation provided under article 50(10)(a) of Commission Delegated Regulation (EU) 2017/565, regarding organizational requirements and operating conditions for investment firms, can be ensured by disclosing to retail investors, before the investment decision, the net internal rate of return (IRR), assuming that the investment is maintained until maturity, and the results of the simulation of costs and charges.

### **Portuguese Securities Market Commission Circular, of May 22, 2020**

Circular on conducting tests concerning the initial training provided for in Article 2(2) of Portuguese Securities Market Commission Regulation 3/2018, pursuant to which Portuguese Securities Market Commission enables off-site tests. To this purpose, the training entity shall ensure (i) the quality of the evaluation, and (ii) the access to the tests by candidates must be made through an authentication system that identifies them.



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