

## **DISCIPLINE AND INTERVENTION OF CREDIT INSTITUTIONS**

**Law 26/1988, of 29 July**  
**(BOE day 30)**

*(Correction of errors, BOE of 4 August 1989 )*

Numerous experiences accumulated over many years internationally and in Spain herself have demonstrated the absolute need for financial institutions to be submitted to a special regime of administrative supervision that is, in general, much more intense, than the regulatory framework borne by most other sectors of the economy. These institutions raise financial resources from a very broad public that is largely lacking in the necessary information and expertise for making its own evaluation of the solvency of the institutions. Public regulation and supervision aspire to palliate the effects of this lack of information and expertise and promote confidence in financial institutions, an indispensable condition for the development and proper functioning of institutions which are essential not just for depositors of funds, but for the economy as a whole, given the pivotal role they play in payment systems.

These problems are usually dealt with in all parts by articulating special supervisory provisions for these institutions. The mechanisms basically consist of a set of rules aimed at providing supervisory authorities with full information on the situation and evolution of financial institutions, and of another set or rules intended to restrict or prohibit those practices or operations that augment risks of insolvency or lack of liquidity, and to strengthen the capital with which the institutions can handle those risks without causing harm to depositors. The effectiveness of the rules will obviously depend on the delegation of sufficient enforcement powers to the supervisory authorities for financial institutions. This regulatory system must be complemented by the development and implementation of those powers in the form of an adequate system of administrative sanctions.

Our legal system contains many laws and regulations establishing rules inspired in the criteria set out above for different types of financial institution and laying down administrative penalties for violation of those rules. That regulatory framework has very serious deficiencies, however, which may be grouped into two categories: those that obscure the proper application of the rule of no crime or punishment without prior law applicable to the essential elements of enforcement rules (delegation of enforcement powers to the authorities, precise definition of infractions and sanctions); and those which arise from the enormous dispersion and variety of the instruments in which the laws are set out, with the attendant voids and lack of coordination.

In order to address these deficiencies, and at the same time following the policy promoted by the EEC on fostering the creation of a common supervisory framework for financial institutions, it is necessary to publish the present Law. The objective is to adapt the enforcement powers for these matters to the constitutional norms applicable to the relevant doctrine laid down by the Spanish Constitutional Court and also to cover the broadest possible group of financial institutions, thereby generalising this facet of their regulatory framework.

By way of summary of the content of this law, the most notable principles and solutions are:

I. Common enforcement rules are established for a group of credit institutions (entidades de crédito), a name more consistent with our juridical tradition than the term “credit establishments” (establecimientos de crédito) that it replaces and which, moreover, extends to other types of financial institutions that essentially pursue the activity that defines a credit institution.

II. The parties subject to the enforcement provisions are clearly determined, by involving the infringing entity and those persons holding directorships or powers of management or control, where such persons are accountable within the entities.

III. The infractions are defined with the aim of defining the punishable conducts, having regard to their gravity, striking a balance between the indispensable level of specificity and the necessary degree of generality, so as to avoid the law being rendered unenforceable in the future and without relying on an excessively exhaustive list of prohibited acts, given that any such list would be as impossible as it would be useless for an activity undergoing such rapid change.

IV. A range of sanctions scaled to the seriousness of the infractions is established, without detriment to the affected parties’ right to legal certainty and to application of the principle of proportionate punishment.

V. Lastly, in relation to enforcement powers, application of the Law rests with the state, without prejudice to the exercise of the powers delegated to regional governments for these matters. In all events, the regional governments must respect the principles that are declared basic under paragraphs 11, 13 and 18 of article 149.1 of the Spanish Constitution, while powers are reserved to the state in relation to infractions affecting monetary or capital adequacy rules.

Along with the development of these central issues, and of the closely linked procedural questions, this Law is also used to regulate other important aspects bearing relation to enforcement provisions and whose regulation was fragmentary, incomplete or defective: the powers of the administration to safeguard that the names and activities reserved to credit institutions are not used and pursued by natural or legal persons lacking authority to do so; and the measures for intervention and substitution of management bodies which may, in exceptional circumstances, be adopted by the competent authorities. In relation to the important sector of insurance undertakings, this Law does not confine itself to filling legal voids, but opts to bring insurers, with the logical adaptations, within the scope of the sanctioning provisions and solutions in relation to intervention and substitution of directors. The purpose of doing so is to take one more step toward achieving homogeneity of administrative sanctioning provisions for the financial world and to overcome the deficiencies detected in the application of the related provisions of Law 33/1984, enacted on 2 August, on Regulation of Private Insurance. ( Ley de Ordenación del Seguro Privado)

This Law, however, goes beyond the strict regulation of rules governing credit institutions. In the absence of a general law regulating the activity of credit institutions—which is needed but whose complexity precludes it being drawn up

hastily—it has been considered appropriate to use the approval of this Law to resolve certain important substantive problems in the legal regimes governing diverse categories of financial institutions.

Thus, this Law contains provisions that form part of an effort to construct a comprehensive framework for the activities of credit institutions, broadening the scope of this category to include the Instituto de Crédito Oficial, to financial leasing companies and to companies that act as mediators in the money market, and eliminating rules in force prior to this Law that force certain financial institutions to undergo an artificial specialisation or that represent an unnecessary restriction on the activity of others. Noteworthy in this regard is the extension to all credit institutions of the possibility of issuing debentures without limits tied to their capital; the extension to banks of the authority to issue mortgage bonds or, together with savings banks and credit cooperatives, to engage in financial leasing; and the delegation of authority to the government to submit all credit institutions to the rules on cash reserves requirements, investments and capital adequacy. Nevertheless, the unification of treatment of credit institutions is not absolute. In particular, limitations are maintained on the capacity of specified specialist credit institutions to use certain means of raising funds from the public.

Along the same lines, powers to register, monitor and inspect all credit institutions, as well as mutual guaranty companies, are concentrated in the Bank of Spain. This concentration is justified, first, by the similarity of activities and the problems of these entities, which need coordinated treatment; second, by the de facto relations that often exist between credit institutions of different types; and third, in the specific case of official credit entities, by the ICO's disqualification from discharging its previous supervisory functions as a result of its conversion into a holding company of such undertakings.

In other areas, this Law creates a common system for monitoring equity holdings in credit institutions which, while respecting the general principle of freedom of holdings, guarantees transparency in control relations by means of public disclosure and reporting to supervisory authorities. In the particular case of banks, and given their special importance in the financial system, special rules are established requiring persons who acquire significant holdings in banks to report such holdings both to the investee and to the supervisory authority, with acquisitions of holdings representing more than 15% of the bank's capital subject to an authorisation requirement. Exercise of voting and other non-financial rights is subject to such notice or authorisation requirement.

The Law consolidates and generalises the provisions under which financial authorities have been empowered to minimum capital requirements for credit institutions, to determine their accounting statements and to impose minimum provisions in their standard contracts for the sake of ensuring transparency of the credit institutions and protecting the interests of their clientele.

Finally, the Law takes up the general regulation of financial leasing. The provisions in this regard reproduce, improving certain technical aspects, those laid down in previous regulations. But changes are introduced in the tax treatment, which under the previous rules was tantamount to acceptance of an unlimited principles of free

depreciation. Thus, the new provisions stipulate separation of lease charges into a financial charge component and into a component representing recovery of the leased asset's cost by the lessor, which would be equivalent to the concept of depreciation in the case of an outright acquisition. The Law accepts the principle that this second component is an expense which may be amortised by the lessor, but stipulates that the amount thereof must be the same or increase over the term of the lease agreement, in order to avoid amortisable expenses being brought forward by means of decreasing the amounts thereof. At the same time, tax deductibility is rejected in the case of leases of assets which by their nature are not depreciable. These rules, taken together with the government's authority to establish minimum time frames (a possibility already present under the existing legislation, but which has not been used), should allow limits to be placed on practices that would entail abuse of the flexibility that financial leases provide in relation to corporate income tax rules, without eliminating that flexibility.

**TITLE I**  
**Enforcement rules for credit institutions**  
**CHAPTER I**  
**General provisions**

**Article 1**

1. Credit institutions, and persons holding directorships or management offices therein, who violate regulatory and disciplinary provisions shall be liable for administrative sanctions according to the terms of this title.

Such liability shall also be borne by the natural or legal persons who possess a significant holding, within the meaning of title VI below, and by Spanish nationals who control a credit institution of another European Community member state. Liability shall also be borne by persons holding directorships or management offices in the liable entities. **(1)**

2. For the purposes of the provisions of this Law, credit institutions shall be those undertakings set out in article 1.2 of Legislative Royal Decree 1298/1986, of 28 June.

3. The provisions laid down in this Law shall also apply to branches opened in Spain by foreign credit institutions.

4. For the purposes of this Act, management offices in credit institutions are considered to be held by their directors or members of their collective management bodies, their general managers or similar officers, understood as those persons in the institution who have senior management responsibilities and report directly to the board of directors or to executive committees or managing directors appointed by the directors, and the persons who direct Spanish branches of foreign credit institutions.

5. Regulatory and disciplinary provisions are considered to be those laws and general administrative provisions that contain rules specifically referring to credit institutions and of compulsory compliance for those institutions. Such administrative provisions shall be understood to include both those approved by state bodies and those approved, where applicable, by regional authorities with powers for such matters, as

well as the Circulars approved by the Bank of Spain, on the terms laid down in this Law.

### **Article 2**

Exercise of the enforcement powers referred to by this Law shall be independent of any eventual concurrence of criminal offences or faults. Nevertheless, where criminal proceedings are being pursued for the same acts or for others which cannot be rationally separated from those punishable under this Law, the administrative proceeding shall be suspended with respect to the same until a final decision is handed down by the courts. Once the proceeding has resumed, where such is the case, the resolution entered must respect the assessment of facts made in the court ruling.

## **CHAPTER II**

### **Infractions**

### **Article 3**

Violation of the regulatory and disciplinary provisions referred to in article 1 above shall be classified as very serious, serious or minor.

### **Article 4**

The following are very serious infractions:

a) Execution of the acts set out below without authorisation where such authorisation is required or without fulfilling the basic conditions stipulated in the authorisation:

One. Mergers, take-overs or split-ups affecting credit institutions.

Two. Direct or indirect acquisition of shares or other securities representing equity interests, or assignment of voting rights, in:

- Spanish credit institutions by other Spanish or foreign credit institutions or by a corporate subsidiary or parent company of the same.
- Spanish credit institutions by other Spanish or foreign natural or legal persons, where such transaction implies de jure or de facto control of the former, or a change of such control of the same.
- Foreign credit institutions by Spanish credit institutions or by a subsidiary or controlling entity of Spanish credit institutions.

Three. Distribution of booked or hidden reserves.

Four. Opening by Spanish credit institutions of operating offices abroad.

b) Maintenance during six months of capital below the levels required for obtaining authorisation for the type of credit institution in question.

c) Failure by a credit institution, or by the consolidated group to which it belongs, to meet the capital adequacy requirement, when capital falls below 80 percent of the

level stipulated as obligatory minimum, where such is the case, according to the investments made and risks assumed, and remains in such situation for a period of at least six months.

d) Pursuit of activities not included within their legally determined exclusive corporate objects, except on a merely occasional or sporadic basis.

e) Execution of acts or transactions prohibited by regulatory and disciplinary provisions laid down by statute or in violation of the requirements laid down in those provisions, except on a merely occasional or sporadic basis.

f) Failure to maintain the legally required accounting or conducting the accounting with essential irregularities that do not allow the financial and equity position of the entity to be known.

g) Breach of the obligation to submit the annual accounts to audit in accordance with the current legislation on the matter.

h) Rejection of or resistance to inspections requested expressly and in writing.

i) Failure to file with the competent administrative agency all data or documents that must be submitted thereto or are requested in the discharge of the functions of the agency, or mistrust in such filings, where the same hinders assessment of the financial strength of the institution. For the purposes of this subparagraph, a failure to file shall be deemed to occur when the relevant filing is not made within the time period stipulated for such purpose by the competent agency when it served written notice of the obligation or repeated the request.

j) Breach of the truthful reporting duty to members, depositors, lenders and to the public in general, provided such breach may be considered as especially significant due to the number of persons affected or the importance of the information.

k) Execution of fraudulent acts or use of nominee individuals or legal persons for the purpose of achieving a result which if attained directly would imply the commission of at least a serious infraction.

l) Acquisition or increase of significant holdings in violation of the provisions of title VI of this Law. **(2)**

ll) Endangerment of the sound and prudent management of a credit institution by means of the influence exerted by the owner of a significant holding, within the meaning of article 62 of this Law. **(2)**

m) Serious infractions where during the five years preceding their commission a final sanction had been imposed on the credit institution for the same type of infraction.

n)..... **(3)**

## Article 5

The following are serious infractions:

a) Execution of acts or transactions without authorisation where such authorisation is required or without fulfilling the basic conditions stipulated in the authorisation, except in those cases where the same represents commission of a very serious infraction under subparagraph a) of the preceding article.

b) Failure to notify, where such notification is required, in the events set out in subparagraph a) of the preceding article and in the events where the same refers to the composition of the management bodies of the institution or to the composition of its shareholder base.

c) Merely occasional or sporadic pursuit of activities outside the legally determined exclusive corporate objects.

d) Merely occasional or sporadic execution of acts or transactions prohibited by regulatory and disciplinary provisions laid down by statute or in violation of the requirements laid down in those provisions.

e) Execution of acts or transactions in violation of the provisions dictated under article 48.2 of this Law.

f) Execution of acts or transactions prohibited by regulatory and disciplinary provisions laid down by regulation or in violation of the requirements laid down in those provisions, except on a merely occasional or sporadic basis.

g) ..... (4)

h) Failure by a credit institution, or by the consolidated group to which it belongs, to meet the capital adequacy requirement, with continuation of such situation for at least six months, provided this failure is not a very serious violation under the preceding article.

i) Breach of the rules on risk limits or of any other type setting down quantitative limits, absolute or relative, on the volume of certain lending or deposit-taking operations.

j) Breach of the conditions and requirements stipulated in the legal rules on lending transactions that qualify for interest subsidies or other public assistance.

k) Insufficient provisioning to mandatory reserves and to allowances for bad debts.

l) Failure to file with the competent administrative agency data or documents that must be submitted thereto or are requested in the discharge of the functions of the agency, or mistruth in such filings, except where the same is considered a very serious infraction. For the purposes of this subparagraph, a failure to file shall be deemed to occur when the relevant filing is not made within the time period stipulated for such

purpose by the competent agency when it served written notice of the obligation or repeated the request.

m) Failure by the directors to report to the general meeting or assembly those events or circumstances whose notification has been ordered by the administrative agency with authority to do so.

n) Breach of the truthful reporting duty to members, depositors, lenders and to the public in general, where there do not concur the circumstances referred to in subparagraph j) of the preceding article.

o) Execution of fraudulent acts or use of nominee individuals or legal persons for the purpose of achieving a result contrary to regulatory and disciplinary provisions, provided such conduct is not covered by subparagraph k) of the preceding article.

p) Breach of current rules on booking transactions and on preparation of balance sheets, profit and loss accounts, and financial statements of compulsory filing with the competent administrative agency.

q) Minor infractions where during the two years preceding their commission a final sanction had been imposed on the credit institution for the same type of infraction.

## **Article 6**

Minor infractions are violations of compulsory rules for credit institutions contained in regulatory and disciplinary provisions that are not considered serious or very serious infractions under the terms of the two preceding articles.

## **Article 7**

1. Liability shall lapse after five years for very serious and serious infractions and after two years for minor infractions.

2. In both cases the limitation period shall be reckoned from the date on which the infraction is committed. In infractions produced by a continued activity, the starting date for calculating the limitation period shall be the date on which the activity ended or the date of the last act by which the infraction was consummated.

3. The running of the limitation period shall be interrupted by the initiation, with notice to the interested party, of the enforcement proceeding, and shall resume if the proceeding is halted for six months for reasons not attributable to those against whom it is brought.

## **CHAPTER III Penalties**

## **Article 8**

The infractions referred to by the preceding articles shall give rise to the imposition of the sanctions laid down in this chapter.



**Article 9**

The commission of very serious infractions shall be punished, in all events, by imposing one of the following penalties on the infringing credit institution:

- a) Fine for an amount of up to the largest of one percent of its capital or 5.000.000 pesetas.
- b) Revocation of the institution's authorisation.

In the case of branches of foreign credit institutions authorised in another European Community member state, the authorisation revocation sanction for the institution shall be understood to be substituted by the prohibition on its initiating new operations in Spanish territory. **(5)**

**Article 10**

The commission of serious infractions shall be punished by imposing one of the following penalties on the infringing credit institution:

- a) Public reprimand.
- b) .....**(6)**
- c) Fine for an amount of up to the largest of one percent of its capital or 2.500.000 pesetas.

**Article 11**

The commission of minor infractions shall be punished by imposing one of the following penalties on the infringing credit institution:

- a) Private reprimand.
- b) Fine of up to 1.000.000 pesetas.

**Article 12**

1. In addition to the sanction which shall be imposed on the credit institution, the commission of very serious infractions shall be punished by one of the following penalties on the persons who held directorship or management offices in the institutions and were responsible for the infraction according to article 15:

- a) A fine on each such person of not more than 10.000.000 pesetas.
- b) Suspension from exercise of their office for no more than three years.
- c) Removal from office, with disqualification from holding directorships or management offices in the same credit institution during a maximum of five years.

d) Removal from office, with disqualification from holding directorships or management offices in any credit institution during a maximum of ten years.

2. Notwithstanding the provisions of paragraph 1 above of this article, in the event the sanctions provided in subparagraphs c) and d) thereof are imposed, the sanction provided in subparagraph a) may also be imposed simultaneously.

### **Article 13**

1. In addition to the sanction which shall be imposed on the credit institution, the commission of serious infractions shall be punished by one of the following penalties on the persons who held directorship or management offices in the institutions and were responsible for the infraction according to article 15:

- a) Private reprimand.
- b) Public reprimand.
- c) A fine on each such person of not more than 5.000.000 pesetas.
- d) Temporary suspension from office for no more than one year.

2. Notwithstanding the provisions of paragraph 1 above of this article, in the event the sanction provided in subparagraph d) thereof is imposed, the sanction provided in subparagraph c) may also be imposed simultaneously.

### **Article 13 bis (7)**

Irrespective of such sanctions as may be imposed under the foregoing articles of this chapter, serious and very serious infractions committed by those natural or legal persons and directors or officers referred to by the second paragraph of article 1.1 of this Law shall be subject to the fines and disqualifications set out in articles 12 and 13 above, with the possibility of simultaneous imposition of both.

### **Article 14**

1. The penalties applicable in each case for the commission of very serious, serious or minor infractions shall be determined on the basis of the following criteria:

- a) The nature and magnitude of the infraction.
- b) The gravity of the danger occasioned or of the harm caused.
- c) The profits obtained, where applicable, as a consequence of the acts or omissions that constitute the infraction.
- d) The size of the credit institution concerned, measured according to its total assets as recorded on its balance sheet.

e) The unfavourable consequences of the conduct for the national financial system or economy.

f) The fact of the credit institution having proceeded to correct the infraction at its own initiative.

g) In the case of capital inadequacy, the objective difficulties which may have been presented for attaining or maintaining the legally required capital adequacy levels.

h) The prior conduct of the credit institution in relation to the regulatory and disciplinary provisions that affect it, having regard to such final sanctions as may have been imposed thereon during the last five years.

2. To determine which of the penalties provided in articles 12 and 13 are to be applied, consideration shall be given, *inter alia*, to the following circumstances:

a) The degree of responsibility of the person concerned in question for the infractions.

b) The prior conduct of the person concerned, in the same or in another credit institution, in relation to regulatory and disciplinary provisions, taking into consideration in this regard the final penalties imposed thereupon during the previous five years.

c) The representative capacity in which the person is acting.

### **Article 15**

1. Person holding directorships or management offices in the credit institution shall be liable for very serious or serious infractions where such violations are imputable to their negligence or wilful misconduct.

2. Notwithstanding the provisions of paragraph 1 above, liability for very serious or serious infractions committed by credit institutions shall be considered to rest with their directors or members of their collective management bodies, except in the following cases:

a) Where the persons forming part of those collective management bodies did not attend the meetings in question for justified reason or voted against or withheld their vote in relation to the decisions or resolutions that gave rise to the infractions.

b) Where the said infractions are exclusively imputable to executive committees, managing directors, general managers or other similar officers or bodies or other persons with functions in the credit institution.

### **Article 16**

1. Where the infractions defined in articles 14.c and 5.h refer to the compulsory consolidated accounts and directors' report under title II of Law 13/1985 on investment requirements, capital adequacy and reporting obligations of financial intermediaries, the

credit institution obliged to present and approve the said accounts and report, and, where applicable, its directors and officers shall be sanctioned. (8)

2. If the applicable penalty is revocation of the authorisation referred to by article 9.b and the financial institution parent company of the consolidated group does not hold credit institution status, that said parent company shall be punished with mandatory winding-up and opening of the liquidation period.

3. Where under the terms of paragraphs 1 and 2 above or under the provisions of article 4.a.2 of this Law, sanctions are to be imposed on natural persons or entities that do not hold credit institution status, there shall apply for such purpose the provisions laid down in this Law for entities that do hold such status, without prejudice to the terms of paragraph 2 of this article.

### **Article 17**

Where strictly necessary to assure continuity in the administration and management of the credit institution due to the number or class of persons affected by the sanctions of suspension or removal, the sanctioning authority may order the appointment, on a provisional basis, of the members needed so that the collective management body can adopt resolutions or of one or more directors, specifying their functions. Such appointees shall discharge their offices until the competent body of the credit institution, which shall be convened immediately, makes the relevant appointments and the appointees take office, where applicable, until the stipulated suspension ends.

## **CHAPTER IV**

### **Competence for these matters**

### **Article 18 (9)**

Without prejudice to the terms of article 42 of this Law, powers to examine the cases referred to by this title and to impose the applicable sanctions shall be governed by the following rules:

a) The competent authority for conducting the proceedings shall be the Bank of Spain.

b) Power to levy sanctions for serious and minor infractions shall rest with the Bank of Spain.

c) Authority to impose sanctions for very serious infractions shall rest with the Minister of Economy and Finance, at the proposal of the Bank of Spain, except for revocation of authorisation, which shall be imposed by the Council of Ministers.

## **CHAPTER V**

### **Rules of procedure**

#### **Article 19**

The procedure to be followed for imposing sanctions under this Law shall be governed by the terms of articles 133 *et seq.* of the Spanish Administrative Procedure Act , of 17 July 1958, ( Ley de Procedimiento Administrativo) with the particularities laid down in the following articles.

#### **Article 20**

Sanctions for minor infractions may be imposed in a summary proceeding, in which it shall only be required that the interested credit institution be heard.

#### **Article 21**

Sanctions on credit institutions and on their directors or officers arising from one and the same infraction shall be imposed in a single resolution as the result of a single proceeding.

#### **Article 22**

In the decision to initiate the proceeding, or during the course of the proceeding, adjunct examining officers or secretaries may be named where so counselled by the complexity of the case. Adjunct examiners shall act under the instructions of the examiner.

#### **Article 23**

Once the statement of charges has been answered, the examiner may resolve, *ex officio* or at the request of the interested parties filed in their answer to the charges, to hear the additional evidence he deems necessary.

#### **Article 23 bis (10)**

The initiation of proceedings affecting branches of credit institutions authorised in another European Community member state shall be notified to their supervisory authorities so that, without prejudice to the sanctions applicable under this Law, the said authorities may adopt the measures they deem fit in order for the institution to put an end to its wrongful conduct or avoid future repetition thereof. Once the proceeding has been resolved, the Bank of Spain shall notify the decision adopted to the said authorities and, where the resolution involves sanction for serious or very serious infraction, to the Commission of the European Community.

#### **Article 24**

1. In the decision to initiate the proceeding, or during the course of the proceeding, provisional suspension may be ordered of directors or officers of the credit institution presumed to have committed very serious infractions, provided such

suspension is advisable for purposes of protecting the financial system or the economic interests in question. The suspension shall be registered in the Companies Registry or in other relevant registers.

2. Provisional suspensions shall have a maximum duration of six months, unless the proceeding is halted for reasons attributable to the interested party, and may be lifted at any time ex officio or at the request of the interested party.

3. The duration of the provisional suspension shall count toward the fulfilment of sanctions involving suspension.

4. The provisional suspension provided in this article shall be subject to the provisions of article 17 of this Law.

### **Article 25**

1. Sanctions imposed under this Law by the Council of Ministers, the Minister of Economy and Finance, or the Bank of Spain shall be enforceable immediately, without prejudice to the terms of article 116 of the Spanish Administrative Procedure Act and of such suspension as may be resolved by the courts.

2. Bank of Spain resolutions putting an end to the proceeding may be appealed to the Minister of Economy and Finance according to the provisions of articles 122 to 125 of the Spanish Administrative Procedure Act.

3. Notwithstanding the provisions of paragraph 1 of this article, sanctions of public reprimand or suspension imposed by the Bank of Spain under articles 10 and 13 of this Law shall not be enforceable until they have been rendered final within the administrative jurisdiction.

### **Article 26**

1. Where the sanctions consists of a fine, the amount of the fine shall be paid into the public treasury.

2. Where the sanction consists in making non-remunerated compensatory deposits, the deposits shall be made with the Bank of Spain.

3. If the sanction referred to by the preceding paragraph is not complied with in the stipulated time period, the Bank of Spain may levy coercive fines on the persons holding directorships or management offices in the credit institution. These coercive fines may be repeated every seven days, subject to an aggregate maximum amount that shall not exceed ten million pesetas on each occasion.

### **Article 27**

1. The imposition of sanctions, except for private reprimands, shall be recorded in the relevant administrative registers of credit institutions and senior officers.

2. Once they have been rendered enforceable, sanctions involving suspension, removal and removal with disqualification shall also be recorded, where applicable, in the Companies Registry or Registry of Cooperatives.

3. The appointment of provisional members of the management body or directors referred to by article 17 above shall also be recorded in the relevant registers.

4. Once the sanctions imposed on the credit institution or on their directors or management officers are rendered enforceable, they shall be notified to the general meeting or assembly held immediately thereafter.

5. Sanctions for very serious infractions shall be published in the *Boletín Oficial del Estado* (Official State Gazette) once they are final. Public reprimands shall also be published. The authority imposing the rest of the sanctions for serious infractions may also order their publication in the *Boletín Oficial del Estado* once they have been rendered final.

## **TITLE II**

### **Pursuit of activities and use of names reserved to credit institutions**

#### **Article 28**

1. Without prejudice to the provisions of title V below, no Spanish or foreign natural or legal person shall, without obtaining the requisite authorisation and having been registered in the relevant registers, pursue in Spanish territory activities which by law are reserved to credit institutions or use the general names applicable to credit institutions or other names capable of inducing confusion with the same. **(11)**.

2. The following activities shall specifically be deemed to be reserved to credit institutions:

a) The activity defined in article 1.1 of Legislative Royal Decree 1298/1986, of 28 June.

b) Acceptance of repayable funds from the public, for whatever purpose, in the form of deposits, loans, temporary assignment of financial assets or other similar transactions that are not subject to regulatory and disciplinary provisions governing securities markets.

#### **Article 29**

1. Persons or entities who violate the terms of the preceding article shall be punished with a fine of up to five million pesetas. If after being ordered to immediately cease the use of the names or pursuit of the activities, they continue using or pursuing the same, they shall be sanctioned with a fine of up to ten million pesetas, which may be levied again in connection with subsequent orders.

2. The Bank of Spain shall have powers to issue the orders and levy the fines referred to in paragraph 1 above. The orders shall be issued upon prior hearing of the

person or entity concerned and fines shall be levied in accordance with the procedure provided in this Law.

3. The provisions of this article shall be construed without prejudice to such other liabilities, including criminal liability, as may be enforceable.

### **Article 30**

The Companies Registry and all other public registers shall not register those entities whose activity or corporate objects or name contravene the provisions of article 28 above. Where such registrations have been made nonetheless, they shall be absolutely null and void as a matter of law and shall be cancelled ex officio or at the request of the competent authority. This nullity shall not prejudice the rights of third parties acting in good faith that were acquired according to the rules for the registers in question.

### **Article 30 bis (12)**

1. Credit institutions may freely open new offices in Spanish territory. This right shall be construed without prejudice to the prior authorisation rules to which they may be subject under article 11.3 of Law 13/1985, of 25 May, on the regulatory restrictions which may be established on the opening of offices during the initial years of activity of Spanish credit institutions or of branches of institutions authorised in states that are not members of the European Community, and of the restrictions which may be contained in the articles of association of those institutions.

2. Regulations may be promulgated laying down the requirements to be met by those who regularly act as agents in Spain of credit institutions, and the conditions to which they shall be subject in the pursuit of their activities.

3. The establishment of branches or provision of services without a branch in European Community member states shall be subject to the rules laid down in title V of this Law.

4. The establishment of branches in states that are not members of the European Community shall require authorisation from the Bank of Spain in the manner stipulated by regulation. Lack of a resolution within the stipulated time limit shall be deemed denial of the request. Provision of services without a branch shall be notified to the Bank of Spain.

5. Prior authorisation from the Bank of Spain shall also be required for the creation of a foreign credit institution by a Spanish credit institution or group of Spanish credit institutions, or for acquisition of a holding in an already existing institution, where the said foreign credit institution is to be incorporated or has its registered office in a state that is not a member of the European Community. The information that must be included in the authorisation application shall be determined by regulation.

The Bank of Spain shall resolve on the application within three months after receiving all of the information required. Failure to hand down the resolution shall be deemed denial of the request. The request may also be denied where the Bank of Spain, having regard to the financial situation of the credit institution or to its management



capacity, considers that the project may affect it adversely; where, in view of the location and characteristics of the project, effective supervision by the Bank of Spain of the group on a consolidated basis cannot be assured; or where the activity of the controlled credit institution is not subject to effective control by a national supervisory authority.

### **TITLE III**

#### **Intervention and substitution measures**

#### **Article 31**

1. Only where a credit institution is in an exceptionally grave situation such as jeopardises the real value of its capital or its stability, liquidity or solvency, may its intervention or provisional substitution of directors or management be ordered. These measures shall be maintained until the aforesaid situation has been overcome.

2. The provisions of paragraph 1 of this article shall also apply in those cases where there are well-founded indications of the existence of the exceptionally grave situation referred to therein and the real situation of the credit institution cannot be determined from its accounting.

3. The intervention or substitution measures referred to by this article may be adopted during the course of an enforcement proceeding, or independently of the exercise of enforcement powers, where there arises any of the situations provided for in the preceding paragraphs of this article.

#### **Article 32**

1. The intervention or substitution measures referred to by the preceding article shall be resolved by the Bank of Spain, giving a reasoned explanation of their adoption to the Minister of Economy and Finance.

2. Where such resolution is adopted at the reasoned request of the credit institution itself, the request may be submitted not just by the directors of the credit institution, but also by its internal audit body and, where applicable, by a minority of members equal at least to the one required by the applicable statutes for forcing the call of an extraordinary general meeting or assembly.

#### **Article 33**

Intervention or substitution resolutions shall be adopted upon prior hearing of the credit institution concerned during the time period stipulated for such purpose, which shall be no less than five days. Nevertheless, the prior hearing shall not be necessary where the resolution has been preceded by a request from the credit institution itself or where the delay entailed by the prior hearing would seriously compromise the effectiveness of the measure or the economic interests involved. In the latter event, the time limit for resolving on the appeal shall be ten days.

### **Article 34**

1. The resolution shall name the person or persons who are to discharge the intervention duties or act as provisional directors, and shall indicate whether such persons are to act collectively, jointly but not severally, or jointly and severally.

2. The resolution shall be enforceable immediately, be published in the *Boletín Oficial del Estado* and be registered in the relevant public registers. Both the publication and registration shall render the resolution valid as against third parties.

3. Where necessary for enforcing the intervention or substitution of directors resolution, direct compulsion may be used to take possession of the offices, books and relevant documents or to examine such documents.

### **Article 35**

1. In the event of intervention, the acts or resolutions of any body of the credit institution adopted after the date on which the resolution is published in the *Boletín Oficial del Estado* shall be not be valid and may not be carried into effect without the express approval of the designated intervention trustees. An exception to this approval requirement is made for the lodging of claims or appeals by the credit institution in relation to the intervention measure or to the actions of the trustees.

2. The appointed trustee shall be authorised to revoke all powers or delegations conferred by the management body of the credit institution or by its attorneys or delegates prior to the resolution publication date. Once the measure has been adopted, the trustees shall demand return of the documents recording the powers of attorney and arrange to have their revocation registered in the competent public registers.

### **Article 36**

1. In the event of substitution of the management body, the provisional directors appointed shall have trustee status for purposes of the acts or resolutions of the general meeting or assembly of the credit institution, and they shall be subject to the provisions of article 35.1 above.

2. The obligation to prepare the annual accounts of the credit institution and to have those accounts and the institution's management approved shall be suspended, for no longer than one year reckoned from expiry of the legally stipulated time limit for such obligations, if the new management body considers on a reasoned basis that there do not exist reliable and complete data for such purposes.

### **Article 37**

Once the Bank of Spain resolves to end the substitution measure, the provisional directors shall immediately call a general meeting or assembly of the credit institution at which the new management body shall be named. Until the new directors have taken office, the provisional directors shall continue to perform their duties.

### **Article 38**

1. Where a credit institution is wound up, the Minister of Economy and Finance may resolve intervention of its liquidation operations if advisable due to the number of persons affected or the financial position of the institution.

2. The provisions of article 35 of this Law shall apply to the resolution referred to by paragraph 1 of this article, and the provisions of article 36 shall apply to the acts of the liquidators and to the powers of the trustees.

3. The provisions of this article shall not apply to those cases where the winding-up of the credit institution is due to the revocation of its authorisation, in which event there shall apply the provisions of article 57.bis.4 of the Banking Regulatory Act of 31 December 1946 ( Ley de Ordenación Bancaria).

## **TITLE IV Supplementary provision**

### **Article 39**

1. The title of Legislative Royal Decree 1298/1986, of 28 June, on adaptation of current legislation on credit entities to the European Community law is hereby amended henceforth to read as follows:

{change incorporated into the said Legislative Royal Decree}

2. The heading of chapter I of the said Legislative Royal Decree is hereby amended henceforth to read as follows:

{change incorporated into the said Legislative Royal Decree}

3. Article 1 of Legislative Royal Decree 1298/1986, of 28 June, referred to by the following two paragraphs shall henceforth read as follows:

{change incorporated into the said Legislative Royal Decree with the wording contained in article 5 of Law 3/1994, of 14 April.}

4. The rest of the references contained in Legislative Royal Decree 1298/1986, of 28 June, or in other subsequent rules to credit establishments shall be understood to be made to credit institutions.

5. Letter f) of article 57 bis of the Banking Regulatory Act of 31 December 46, introduced into the said Act by virtue of article 4 of Legislative Royal Decree 1298/1986, of 28 June, shall henceforth read as follows:

{change incorporated into the said Act}

## **Article 40**

1. Liability for an administrative offence shall be borne by the members of the control committees (comisiones de control) of savings banks (cajas de ahorro) held liable for the infractions set forth in the following paragraphs, and shall be subject to application of the sanctions laid down in the same paragraphs.

2. The following are considered very serious infractions by members of savings banks control committees:

a) Gross and persistent negligence in the discharge of the functions legally entrusted to them.

b) Failure to propose to the competent administrative authority the suspension of resolutions adopted by the management body where such resolutions manifestly contravene the Law and unfairly and seriously affect the financial position, results, credit of the savings bank or its depositors or clients, or failure, in such events, to request that the chairman call an extraordinary general assembly of the savings bank.

c) Serious infractions where during the five years preceding their commission a final sanction had been imposed on them for the same type of infraction.

3. The following are considered serious infractions imputable to the members of savings banks control committees:

a) Gross negligence in the discharge of the functions legally entrusted to them, where such conduct is not covered by subparagraph 2.a of this article.

b) Failure to submit to the competent administrative authority the data or reports that must be submitted thereto or which are requested by the said authority in the discharge of its functions, or gross delay in submitting the same.

c) Failure to propose to the competent administrative authority the suspension of resolutions adopted by the management body where the committee considers that such resolutions contravene the law or unfairly and seriously affect the financial position, results, credit of the savings bank or its depositors or clients, provided such conduct is not considered a very serious infraction under paragraph 3 above, or failure, in such events, to request that the chairman call an extraordinary general assembly of the savings bank.

4. Minor infractions imputable to the members of savings banks control committees are considered to be breach by the savings banks of any obligations, provided such breach is not considered a very serious or serious infraction, and repeated failure by those members to attend the meetings of the committees.

5. The sanctions applicable to members of savings banks control committees liable for very serious or serious infractions shall be, respectively, those provided in subparagraphs b), c) and d) of article 12, and a), b) and d) of article 13. In addition, the commission of very serious or serious infractions may be sanctioned with a fine of up to one million pesetas and of up to 500.000 pesetas, respectively. The commission of

minor infractions may be sanctioned with a private reprimand or a fine of up to 50.000 pesetas. In determining the specific penalty to be imposed, there shall be taken into account, inasmuch as applicable, the criteria laid down in article 14 of this Law.

6. For the purposes of this article there shall apply the provisions of articles 2, 7, 15, 17 and 18, as well as the provisions of chapter V of title I of this Law.

#### **Article 41**

1. Mutual guaranty companies and re-guaranty companies, as well as their directors and managers, who violate regulatory and disciplinary provisions shall bear administrative liability punishable in accordance with the terms of title I of this Law.

2. In this regard, the provisions considered mandatory for those companies in Royal Decree 1885/1978, of 26 July, in Royal Decree 1695/1982, of 18 June, and in the rest of the general provisions that supersede or supplement those regulations shall be considered regulatory and disciplinary provisions.

#### **Article 42**

1. For the purposes of exercise by Spanish regional governments of the enforcement powers delegated to them in relation to savings banks or credit cooperatives, the provisions contained in articles 20, 21, 22, 23, 25.2 and 26.1, except for the references contained therein to state agencies or entities, are declared as basic provisions within the meaning of subparagraphs 11, 13 and 18 of article 149.1 of the Spanish Constitution. The provisions of this paragraph shall be construed without prejudice, where applicable, to the possible definition by the regional governments of other violations of their own regulatory and disciplinary rules as very serious, serious or minor infractions.

2. In all events, the Bank of Spain or the authorities of the state administration referred to by article 18 shall maintain enforcement powers in relation to savings banks and credit cooperatives for the infractions covered by subparagraphs b), c) and f) of article 4 and in by subparagraphs g), h), i), k) and p) of article 5 of this Law, or, in general, infractions of provisions of a monetary nature or affecting the solvency of credit institutions to the extent warranted by the need for uniform exercise of those powers to achieve proper functioning of the national monetary or credit system.

3. There shall also rest with the Bank of Spain or with the authorities of the state administration referred to by article 18 the enforcement powers for the aforesaid institutions in relation to infractions covered by subparagraphs a), h) and i) of article 4, and by a), b), i) and k) of article 5, or similar minor infractions, to the grant of authorisations or receipt of notices, data or documents incumbent upon those institutions, or to resistance, refusal or obstruction of their inspection activities.

4. Where the Bank of Spain learns of acts that may constitute infractions other than those cited in paragraphs 2 and 3 above, it shall forward the same to the relevant regional government. The Bank of Spain shall proceed in the same manner with respect to infractions included in paragraph 2 if it does not deem there to exist the implications

for the proper functioning of the national monetary or credit system referred to in the same paragraph.

5. Where a regional government has knowledge of deeds which according to paragraphs 2 and 3 of this article may be infractions that must be sanctioned by the authorities referred to by article 18 of this Law, it shall forward the same to the Bank of Spain.

6. Where the infractions are very serious or serious and the case has been examined and processed by a regional government, the proposed resolution must necessarily be informed by the Bank of Spain.

7. Under paragraphs 1, 11 and 13 of article 149.1 of the Spanish Constitution, and for the purposes of exercise by the regional governments of the powers delegated thereto in relation to savings banks and credit cooperatives, the following are declared basic:

a) The provisions laid down in title II of this Law, except for the references contained therein to state agencies or entities.

b) The provisions laid down in title III of this Law.

### **Article 43 (13)**

1. The Minister of Economy and Finance, upon prior report from the Bank of Spain, shall be responsible for authorising the creation of credit institutions, as well as for the establishment in Spain of branches of credit institutions not authorised in a European Community member state. Registration in the relevant registers, and management of those registers, shall rest with the Bank of Spain.

2. Authorisation of a credit institution shall require prior consultation with the supervisory authority of the relevant European Community member state in any of the following circumstances:

a) Where the new institution will be controlled by a credit institution authorised in the said state.

b) Where its control will be exercised by the parent company of a credit institution authorised in that state.

c) Where its control will be exercised by the same natural or legal persons who control a credit institution authorised in that member state.

A credit institution shall be considered to be controlled by another where there exists any of the circumstances provided for in article 4 of Law 24/1988, of 28 July, on the Stock Market Law ( Ley del Mercado de Valores) .

3. In the event of creation of credit institutions that will be controlled directly or indirectly by one or more credit institutions authorised or with registered office in a state that is not a member of the European Community, grant of the requested

authorisation shall be suspended, denied or restricted as to its effects, where Spain has been notified, according to the provisions of article 9 of the Second Council Directive of 15 December 1989, of a decision adopted by the Community verifying that EC credit institutions do not benefit in the said state from a treatment offering the same competitive opportunities as are available to that state's domestic credit institutions and that the conditions of effective market access are not fulfilled.

4. Authorisation for creation of a credit institution shall be denied where the latter does not have the minimum capital, a good administrative and accounting organisation, or adequate internal control procedures that assure sound and prudent management of the institution; where its directors and officers do not have the required commercial and professional good reputation; or where the other requirements laid down by regulation for attainment of authorisation are not met.

5. Authorisation shall also be denied if, having regard to the need to assure sound and prudent management of the institution, the suitability of the shareholders who are going to have a significant holding, within the meaning of article 56 of this Law, is not considered appropriate.

Amongst other factors, suitability shall be assessed according to:

a) The commercial and professional good reputation of the shareholders. Good reputation shall be presumed where the shareholders are government agencies or entities attached to government agencies.

b) The assets available to the shareholders for fulfilling the commitments undertaken.

c) Lack of transparency in the structure of the group to which the credit institution may eventually belong, or the existence of serious difficulties for inspecting or obtaining needed information on the pursuit of its activities.

d) The possibility of the credit institution being inappropriately exposed to the risk of the non-financial activities of its promoters; or, in the case of financial activities, where the stability or control of the institution may be affected by the high risk involved in those activities.

#### **Article 43 bis (14)**

1. Responsibility for overseeing and inspecting credit institutions shall rest with the Bank of Spain. These powers shall extend to any office or centre inside or outside Spanish national territory and, inasmuch as required for the discharge of the functions entrusted to the Bank of Spain, to the companies belonging to the group of the affected credit institution. The Bank of Spain shall also be responsible for supervising consolidated groups of credit institutions, as provided in Law 13/1992, of 1 June, on capital and consolidated supervision of financial institutions ( Ley sobre Recursos Propios y Supervisión en base consolidada de las Entidades Financieras).

2. In the case of branches of credit institutions authorised in other European Community member states, the Bank of Spain may inspect such branches:

a) Pursuant to its own oversight powers, in particular as regards to the liquidity of the branch, execution of monetary policy and proper functioning of the payment system.

b) To collaborate with the supervisory authorities of the member state where the credit institution is authorised, particularly for overseeing the risks undertaken in transactions made in Spanish financial markets.

c) To verify that the activity of the branch is carried on in accordance with the provisions of public interest.

3. For the purposes of adequate discharge of its functions, the Bank of Spain may request of the branches of European Community credit institutions the same information as required from Spanish credit institutions. In accordance with the provisions of article 48.1, there shall be determined the scope of their accounting obligations and of the information they must report for statistical purposes.

4. The administrative rules laid down in this Law for branches of European Community credit institutions shall apply, with the adaptations established by regulation, to the branches of the financial entities provided for in article 55 of this Law.

5. The inspection carried out by the Bank of Spain may likewise extend to the Spanish persons who control credit institutions of other European Community member states, within the framework of collaboration with the authorities responsible for supervising those credit institutions.

6. Without prejudice to the powers that rest with the Spanish Securities Markets Commission , the Bank of Spain shall also have oversight and inspection responsibilities in relation to application of Law 2/1981 , on Regulation of the Mortgage Market ( Ley sobre Regulación del Mercado Hipotecario).

7. The resolutions handed down by the Bank of Spain pursuant to the functions referred to by the foregoing paragraphs shall admit of appeal lodged with the Minister of Economy and Finance.

8. The provisions of this article and of the preceding article shall be construed without prejudice to the powers delegated to the regional governments and to the terms of the agreements between the Bank of Spain and regional governments referred to by paragraph 3 of the first additional provision of Law 31/1985, of 2 August, on the Governing Bodies of Savings Banks ( Ley de Organos Rectores de las Cajas de Ahorros). In all events, registration in the relevant registers of the Bank of Spain and, where applicable, of the competent regional government shall be an indispensable requirement for the credit institutions referred to by this article to be able to pursue their activities.

#### **Article 44**

Article 85 of the General Tax Law ( Ley General Tributaria) shall henceforth read as follows:



{article 85 of the said Law was given a new wording by Law 25/1995 , of 20 July.

#### **Article 45**

Article 5.2 of Law 40/1979, of 10 December, on the Legal Rules Governing Currency Controls ( Ley sobre Régimen Jurídico de Control de Cambios) shall henceforth read as follows:

{text incorporated into the said Law.}

#### **Article 46**

The government shall periodically update the upper limits on the monetary fines provided in title I and in article 40 of this Law, and in the first additional provision, in accordance with the variation recorded in the consumer price index.

#### **Article 47**

1. With the aim of guaranteeing the liquidity and solvency of credit institutions for the optimum pursuit of monetary policy and of the function those institutions are called on to play in the national economy, the government is authorised to:

a) Establish and modify, upon prior report from the Bank of Spain, the minimum share capital or, as applicable, the minimum endowment capital which credit institutions must have subscribed, as well as the degree to which the said capital must be paid in, in order to obtain their authorisation and registration in the relevant special registers and maintain the said authorisation and registration.

b) Extend to all the credit institutions set forth in article 2 of Legislative Royal Decree 1298/1986, of 28 June, as worded according to the provisions of this Law, the rules provided in Law 26/1983, of 26 December, on cash reserve requirements of financial intermediaries and in titles one and two of Law 13/1985, of 25 May, on investment requirements, capital adequacy and reporting obligations of financial intermediaries.

2. The provisions approved by the government under paragraph 47.1 above shall be considered basic for the purposes provided in subparagraphs 1, 11 and 13 of article 149.1 of the Spanish Constitution.

#### **Article 48**

1. The Minister of Economy and Finance is authorised to establish and modify the accounting standards and forms to be used for the balance sheet and profit and loss account of credit institutions, as well as for the consolidated balance sheets and profit and loss accounts provided for in Law 13/1985, of 25 May, stipulating the frequency and the degree of detail with which the corresponding data must be supplied to the administrative authorities responsible for their oversight and made public in general by the credit institutions themselves. Pursuant to this authority, which may be delegated by the Minister to the Bank of Spain, there shall not exist any restrictions other than the requirement that the publicity criteria be homogeneous for all credit institutions

belonging to the same category and similar for the various categories of credit institutions.

Establishment and modification of the aforesaid standards and forms, with the exception of the reserved accounting statements shall require a prior report from the Spanish Accounting and Auditing Institute ( Instituto de Contabilidad y Auditoría de Cuentas). **(15)**

2. With the aim of protecting the legitimate interests of credit institutions' loan and deposit clientele, and without prejudice to the freedom to contract which, in its substantive aspects and with such limitation as may emanate from other legal provisions, must govern the relationships between credit institutions and their clientele, the Minister of Economy and Finance is authorised to:

a) Mandate that the relevant contracts be formalised in writing and dictate the precise rules for assuring that those contracts reflect explicitly and with the requisite detail the commitments undertaken by the parties and their rights in the events appropriate to each class of transaction. For such purpose, the Minister may determine the issues or events which contracts referring to typical financial transactions with their clients must address or provide for expressly, demand that the credit institutions establish forms for those transactions, and impose some type of administrative monitoring of those forms.

b) Make it obligatory for clients to be given a copy of the contract duly signed by the credit institution.

c) Mandate that credit institutions must report to the administrative authorities responsible for their oversight and notify to their clientele any conditions regarding the lending or deposit-taking operations, with the obligation to apply those conditions until their modification has been reported or notified.

d) Dictate the necessary rules so that the publicity, by any means, of lending and deposit-taking operations of credit institutions includes all necessary elements for assessing their genuine conditions, regulating the classes of administrative control of that publicity, and with authority to establish, amongst those classes, the prior authorisation system.

e) Carry on, directly or through the Bank of Spain, the regular official publication of certain base interest rates or indices that may be applied by credit institutions to floating rate loans, especially in the case of mortgage loans.

Without prejudice to the freedom to contract, the Minister of Economy and Finance may establish special requirements in relation to the information contained in the contract clauses defining the interest rate and to notification to the debtor of the rate applicable in each period, for those floating rate loan contracts in which there is covenanted the use of base interest rates or indices other than the official ones referred to in the preceding paragraph. **(16)**

f) Extend the scope of application of the rules dictated under the foregoing paragraphs to any contracts or operations of the nature provided for in the said rules, even where the undertaking involved does not hold credit institution status. **(16)**

3. The rules approved under number 1 of this article shall be considered basic for the purposes of subparagraphs 1, 11 and 13 of article 149.1 of the Spanish Constitution. The provisions which the regional governments may dictate under the powers delegated to them in relation to the matters referred to by number 2 of this article may not offer a lower level of protection of the clientele than offered by the provisions approved by the Minister of Economy and Finance under that number.

## **TITLE V (17)**

### **Pursuit of lending activities in European Community member states CHAPTER I**

#### **Opening of branches and freedom to provide services in other European Community member states by Spanish credit institutions**

##### **Article 49**

1. Where a Spanish credit institution intends to open a branch in another member state of the European Community, it shall file a prior application to such effect with the Bank of Spain. The application shall be accompanied by the following information:

- a) A programme of activities specifically indicating the operations it proposes to carry on and the branch organisational structure.
- b) The name and background of the branch's senior officers.

2. The Bank of Spain shall resolve on the application in a reasoned decision no later than three months after receiving all of the information. The Bank of Spain shall approve the application unless the programme of activities presented includes activities for which the credit institution is not authorised or the Bank of Spain has reason to doubt, in view of the proposal in question, the adequacy of the administrative structures or of the financial situation of the credit institution.

3. The resolutions handed down by the Bank of Spain in the discharge of the functions provided in the foregoing paragraphs and in titles V and VI shall admit of an ordinary appeal before the Minister of Economy and Finance.

##### **Article 50**

When a Spanish credit institution wishes to pursue for the first time, under the freedom to provide services, some type of activity in another EC member state, it shall give prior notice of such intention to the Bank of Spain. No later than one month after receiving this notice, the Bank of Spain shall forward it to the supervisory authority of the member state in question.

The administrative regime laid down in chapter I of title V of Law 26/1988 , of 29 July, on Discipline and Intervention of Credit Institutions ( Ley sobre Disciplina e

Intervención de Entidades de Crédito) may be applied, with the adaptations established by regulation, to the opening of branches or to the freedom to provide services by Spanish financial entities that conform to the regime set out in article 55.

The adaptation shall take into account the specific legislation for those entities, and, where applicable, the powers of non-bank supervisory authorities.

## **CHAPTER II**

### **Opening of branches and freedom to provide services in Spain by credit institutions from another European Community member state**

#### **Article 51**

1. Credit institutions authorised in another member state of the European Community may pursue in Spain the activities indicated in article 52, either by opening a branch or under the freedom to provide services. An indispensable condition for this purpose shall be that the authorisation, articles of association and legal regime governing the institution must authorise it to pursue the proposed activities.

2. The credit institutions referred to by the preceding paragraph shall in the pursuit of their activities in Spain abide by the provisions dictated in the public interest at the state, regional or local level, and by such regulatory and disciplinary provisions for credit institutions as may be applicable to them.

#### **Article 52**

The activities referred to by the preceding article and which benefit from mutual recognition inside the European Community are the following:

a) Acceptance of deposits or other repayable funds, in accordance with the terms of article one of Legislative royal Decree 1298/1986 of 28 June 1986 on adaptation of current law on credit institutions to European Community law.

b) Lending and credit facilities, including consumer loans, mortgage credit and financing of commercial transactions.

c) Factoring, with or without recourse.

d) Financial leasing.

e) Money transmission services, including, amongst others, payment and transfer services.

f) Issuing and administering means of payment, such as credit cards, travellers' cheques and bankers' drafts.

g) Grant of guarantees and similar commitments.

h) Money broking.

i) Trading for own account or for account of customers in: transferable securities, money market instruments or foreign exchange, and financial futures, options and swaps. To carry on these transactions, EC credit institutions may be members of the relevant organised markets established in Spain, provided such membership is allowed by the rules regulating those markets.

j) Participation in securities issues and mediation for direct or indirect account of the issuer in their placement and underwriting of securities issues.

k) Advising and provision of business services in the following areas: capital structure, corporate strategy, acquisitions, mergers and similar matters.

l) Portfolio management and advice.

ll) Safekeeping of securities represented as certificates or administration of securities represented as book entries for the account of their owners.

m) Credit reference services.

n) Safe custody services.

### **Article 53**

1. The opening in Spain of branches of credit institutions authorised in another European Community member state shall not be subject to any prior authorisation requirement or requirement to provide endowment capital.

2. When the Bank of Spain receives notification from the supervisory authority of the credit institution that contains, at least, the information provided in article 49.1, and the rest of the regulatory requirements are fulfilled, it shall proceed to register the branch in the relevant register of credit institutions. In order to organise its supervision of the branch, the Bank of Spain may stipulate a waiting period of no more than two months after receiving notification from the supervisory authority before the branch can commence its activities. It may also instruct the branch, where appropriate, as to the conditions on which it must pursue its activities in Spain for reasons of public interest.

3. The relevant regulatory instruments shall determine the procedure to be followed if the credit institution intends to make changes which entail modification of the information reported to the Bank of Spain.

### **Article 54**

Credit institutions authorised in another European Community member state may commence their activity in Spain under the freedom to provide services as soon as the Bank of Spain receives notification from the institution's supervisory authority indicating which of the activities set out in article 52 the institution intends to pursue in Spain. This freedom shall also apply where the credit institution proposes to commence for the first time in Spain some other activity of those listed in the said article.

## **Article 55**

1. The administrative regime provided in this chapter, with its regulatory implementation, shall apply to the opening of branches or freedom to provide services in Spain by financial entities authorised or having their registered offices in another member state on the following terms:

1<sup>st</sup>) Financial entities shall be considered to be those financial institutions which are not credit institutions and whose principal activity consists in acquiring holdings in other entities or in pursuing one or more of the activities set out in article 52 except for those described in subparagraphs a), m) and n).

2<sup>nd</sup>) The said financial entities must be controlled by one or more credit institutions of the same nationality as the financial entities and which, moreover, hold 90 percent or more of the voting rights.

3<sup>rd</sup>) The financial entities must be subject to a legal regime that authorises them to pursue the activities they propose to carry on in Spain and must actually pursue those activities in their home state.

4<sup>th</sup>) The controlling credit institution or institutions shall have demonstrated to the satisfaction of their supervisory authorities that they carry on prudent management of the financial entities and, with the consent of those authorities, that they have declared themselves as joint and several guarantors of the commitments assumed by those entities.

5<sup>th</sup>) The financial entities and their controlling credit institutions must be subject to supervision on a consolidated basis according to the applicable prudential legal criteria.

The information submitted by the supervisory authority of the financial entity shall include a certificate stating that all of the requirements laid down in this article are fulfilled.

2) The regulatory development referred to by number one above must take into account the specific statutes for those entities and, where applicable, the powers of non-bank supervisory authorities.

## **TITLE VI (18)** **Rules on significant holdings**

### **Article 56**

1. For the purposes of this Law, a significant holding in a Spanish credit institution shall mean a holding that reaches, directly or indirectly, five percent of the capital or voting rights in the institution.

Holdings which do not reach this percentage but allow the holder to exercise notable influence in the credit institution shall also be considered significant.

Regulations may be approved to determine, having regard to the characteristics of the different types of credit institution, when a natural or legal person must be presumed to exercise notable influence.

2. The provisions of this title regarding credit institutions shall be construed without prejudice to application of the rules on tender offers and reporting of significant holdings contained in Law 24/1988, of 28 July , on the Stock Market.

#### **Article 57**

1. All natural or legal persons intending to acquire directly or indirectly a significant holding in a credit institution must give prior notice to such effect to the Bank of Spain, indicating the amount of the holding, terms and conditions of acquisition and maximum time period in which the planned transaction is to be carried out.

2. Prior notice shall also be given to the Bank of Spain, on the terms set out in paragraph 1 above, by persons proposing to increase directly or indirectly their significant holding so that their percentage equity interest or voting rights reaches or surpasses one of the following percentages: 10 percent, 15 percent, 20 percent, 25 percent, 33 percent, 40 percent, 50 percent, 66 percent or 75 percent. In all events, this obligation shall also apply to persons who by virtue of the proposed acquisition could obtain control of the credit institution.

3. For the purposes of this title, a control relation shall be considered to exist whenever there arise any of the circumstances provided for in article 4 of Law 24/1988, of 28 July, on the Stock Market.

#### **Article 58**

1. The Bank of Spain shall have a maximum of three months, reckoned from the date it receives notice, to oppose, if it so decides, the proposed acquisition. The opposition must be based on a consideration that the acquiring party is not suitable according to the terms of article 43.5.

Failure by the Bank of Spain to issue a decision within the stipulated time limit shall be deemed to be acceptance of the proposal. Where there is no opposition from the Bank of Spain, the later may stipulate a maximum time period for making the acquisition different from the requested time limit.

2. The Bank of Spain shall consult the competent higher authority when as a result of the acquisition the credit institution would be subject to one of the types of control provided for in article 43.2.

3. The Bank of Spain shall suspend its decision or limit its effects if as a result of the acquisition the credit institution will be controlled by a credit institution authorised in a non-EC state and the circumstances provided for in article 43.3 exist.

## **Article 59**

When one of the acquisitions regulated in article 57 is made without prior notice having been given to the Bank of Spain, or, such notice having been given, without the three months stipulated in the preceding article having passed, or with the express opposition of the Bank of Spain, the following shall apply:

a) In all events and automatically, the voting and other non-financial rights attaching to the improperly acquired holdings may not be exercised. If they are exercised nevertheless, the related votes shall be null and the resolutions may be challenged in court, as provided in section 2 of chapter V of Legislative Royal Decree 1564/1989, of 22 December, which approved the consolidated text of the Spanish Public Limited Companies Act ( Ley de Sociedades Anónimas); the Bank of Spain shall have standing to file such challenges.

b) Where necessary, the intervention of the credit institution or substitution of its directors shall be decreed in accordance with the provisions of title III.

In addition, the sanctions provided in title I of this Law may be imposed.

## **Article 60**

All natural or legal persons who plan to discontinue holding directly or indirectly a significant holding in a credit institution; who plan to reduce their holding such as to cross one of the levels provided in article 57.2; or who as a result of the proposed disposal would lose control of the credit institution, must give prior notice to the Bank of Spain, indicating the amount of the proposed transaction and the time period during which it would be executed.

Breach of this notification duty shall be sanctioned as provided in title I above.

## **Article 61**

1. Credit institutions shall notify the Bank of Spain as soon as they learn of acquisitions or disposals of interests in their capital that cross any of the levels indicated in articles 57 and 60.

2. Without prejudice to the provisions of paragraph 1 above, credit institutions must report to the Bank of Spain, in the manner and with the frequency established by regulation, on the composition of their shareholder bases or on such changes as may occur in that composition. The reports shall necessarily include information on interests held in their capital of whatever size by other financial institutions.

## **Article 62**

Where there are well-founded and supported reasons indicating that the influence exercised by persons holding significant interests in a credit institution could be detrimental to the sound and prudent management of the institution and seriously harms its financial position, the Minister of Economy and Finance, at the proposal of the Bank of Spain, may adopt one or more of the following measures:



a) Those provided in paragraphs a) and b) of article 59, although the suspension of voting rights shall not last longer than three years.

b) On an exceptional basis, revocation of the authorisation.

In addition, the sanctions applicable under title I of this Law may be imposed.

## ADDITIONAL PROVISIONS

**First.** .....(19)

**Second.** 1. The capital of credit institutions organised as public limited companies (sociedades anónimas) shall in all cases be represented by registered shares.

2. .... (20)

3. Credit institutions shall make public, in the manner and to the extent determined by the government, the interests held by other Spanish or foreign credit institutions in their capital, and their own equity interests in other credit institutions.

4. .... (20)

5. .... (20)

**Third.** 1. .... (21)

2. Article 45.c of the Banking Regulatory Act of 31 December 1946 is hereby amended henceforth to read as follows:

{text incorporated into the said law}

**Fourth.** The credit institutions set forth in article 1.2 of Legislative Royal Decree 1298/1986, of 28 June, shall not be subject to the restriction established in relation to issues of debentures by the first paragraph of article 111 of the Spanish Public Limited Companies Act and article 1.2 of Law 211/1964, of 24 December, on debenture issues by public limited companies and other legal persons.

**Fifth.** The first paragraph of article 12 of Law 2/1981, of 25 March, on Regulation of the Mortgage Market, is hereby amended henceforth to read as follows:

{text incorporated into the said law}

**Sixth.** 1. Financing undertakings, financial leasing companies and mortgage lending companies shall not accept funds from the public in the form of deposits, loans, temporary assignment of financial assets or other similar transactions, at sight, for an indeterminate term or for a term less than that determined by the Ministry of Economy and Finance. The said term shall in no event be less than one year.

2. The provisions of the preceding paragraph shall be applicable to money market brokers, except in relation to temporary assignment of financial assets.

**Seventh.** 1. Contracts whose exclusive subject matter is the assignment of use of movable or immovable property acquired for that purpose according to the specifications of the future user in exchange for a consideration consisting of periodic payment of the instalments referred to by number 2 of this provision shall be considered financial leasing transactions. The property thus assigned must be used only for the farm, fishery, industrial, commercial, artisan, service or professional operations of the user. The financial lease shall necessarily stipulate an option to buy at the end of the lease term.

Where for whatever reason the user does not eventually acquire the leased property, the lessor may assign the same to a new user, without the principle laid down in the preceding paragraph being considered to have been violated by the circumstance of the property not having been acquired according to the specifications of the new user.

- 2. .... (22)
- 3. .... (22)
- 4. .... (22)
- 5. .... (22)
- 6. ....(22)
- 7. ....(22)

8. The principal activity of financial leasing companies shall be execution of financial leasing transactions. On a supplementary basis, and without their qualifying for the specific tax rules laid down in this provision, they may also pursue the following activities:

- a) Maintenance and upkeep of the leased properties.
- b) Granting of financing in relation to a present or future financial lease.
- c) Intermediation in and management of financial leasing transactions.
- d) Non-financial leasing transactions, which may or may not be supplemented with a purchase option.
- e) Commercial reports and advisory services. (23)

9. The government is authorised to regulate, insofar as not provided for herein, the rules to be complied with by financial leasing companies in the conduct of their activities.

10. Beginning 1 January 1990 the financial leasing transactions provided for in this article may also be carried on by official credit institutions, banks, savings banks, including the Confederación Española de Cajas de Ahorro, Caja Postal de Ahorros and credit cooperatives, in all events in compliance with the conditions laid down in this statute and in the regulatory instruments implementing the same.

**Eighth.** .....(24)

The Bank of Spain shall send an annual report to the Spanish parliament on the actions which have given rise to very serious sanctions and to interventions or substitutions under title III of this Law.

**Ninth.** ..... (25)

**Tenth.** 1. In relation to natural or legal persons who, without being registered in the legally prescribed administrative registers for financial institutions, offer the public lending or deposit-taking operations or provision of financial services, of whatever nature, the Ministry of Economy and Finance is delegated powers to:

a) Request from those persons any accounting or other type of information regarding their financial activities with the degree of detail and frequency the Ministry deems fit.

b) Carry out, directly or through the Bank of Spain, the inspections the Ministry considers necessary for ascertaining the truthfulness of the information referred to by subparagraph a) above or clarifying any other aspect of the financial activities of those persons or institutions.

2. Failure to provide the information requested under 1a) above within the stipulated time limit granted for such purpose, mistruth in the information provided and refusal to accept or resistance to the inspection activities referred to by 1b) shall be considered very serious infractions and may give rise to the Minister of Economy and Finance imposing a fine on the person or institution in question in an amount not to exceed 5.000.000 pesetas, graduated according to the criteria laid down in article 14 of this Law. This sanction may be imposed each time the said information is not provided in due time or each time the obligor refuses to accept or resists the aforesaid inspection activities.

**Eleventh.** .....(26)

**Twelfth** .....(27)

**Thirteenth.** The foregoing second through twelfth additional provisions shall be considered basic to the regulation of lending activities to the extent that their content does not derive from other instruments that necessarily imply state competence.

**Fourteenth.** 1. The changes of legal ownership of entities that take place as a result of mergers between credit institutions agreed prior to 1 January 1992 shall not be considered a taxable event for purposes of the establishment opening license fee (Tasa de Licencia de Apertura de Establecimientos).

For these purposes, there shall not apply the provisions of article 187.1 of the consolidated text of the current legal provisions governing local administration as approved by Legislative Royal Decree 781/1986, of 18 April..

2. In mergers of credit institutions, shareholders dissenting or absent from the general meeting in which the merger is resolved shall not have the right of withdrawal.

## **TRANSITIONAL PROVISIONS**

**First.** 1. Companies which at the effective date of this Law are registered in the Special Register of Financial Leasing Companies maintained by the Directorate General of the Treasury and Finance Policy shall not require authorisation and shall be registered ex officio according to number 8 of the seventh additional provision above, and shall for all purposes hold as from that date financial leasing company status.

2. Within six months after the effective date of this Law, the companies referred to by paragraph 1 above whose capital is represented by bearer shares shall amend their articles of association to transform those shares into registered shares and make the appropriate swap.

3. The operations referred to by paragraph 2 above shall be carried out without accruing any tax in respect thereof directly or indirectly. In particular, the share swap shall not be considered a change in net worth for the purposes of article 20 of Law 44/78, of 8 September, on the Personal Income Tax ( Ley del Impuesto sobre la Renta de las Personas Físicas) and article 15 of Law 61/1978, of 27 December, on the Corporate Income Tax ( Ley del Impuesto sobre Sociedades).

4. The provisions of the preceding two paragraphs shall also apply to insurance and reinsurance public limited companies, for which the time limit stipulated in number 2 of this article shall be two years.

**Second.** Until the Minister of Economy and Finance dictates the relevant provisions in the discharge of the functions delegated thereto in article 48 of this Law, there shall remain in force the rules already dictated regulating those matters.

**Three.** Bank of Spain Circulars issued prior to the effective date of this Law under the legal provisions in force from time to time shall continue to apply until they have been modified or superseded by others approved according to the provisions of the eighth additional provision to this Law.

Within one year after this Law comes into force, the Bank of Spain shall approve and publish a consolidated text containing the circulars in force.

**Four.** Enforcement proceedings whose initiation was ordered prior to the effective date of this Law shall continue to be conducted by the same bodies responsible for them theretofore.

## **REPEALING PROVISION**

At the effective date of this Law, there shall be repealed all provisions of equal or lower ranking opposed to the terms hereof and, in particular, the following:

— In Royal Decree-Law 2532/1929, of 21 November, regulating the rules for people's savings banks and approving the special statute for the Cajas Generales de Ahorro Popular: articles 116 to 139, 143 to 146, 156, 159 and 160.

— The Law of 27 August 1938 on government powers in banking matters.

— The Order of 30 October 1940 on rules for the inspection and intervention of the Cajas Generales de Ahorro y Depósito.

— In the Banking Regulatory Act, of 31 December 1946: articles 38, first paragraph, 56, 57 and 58.

— In Decree-Law 53/1962, of 29 November, on industrial and business banks: the second paragraph of article 3.

— In Royal Decree-Law 15/1977, of 25 February, on fiscal, financial and investment measures: the second title.

— In Royal Decree 896/1977, of 28 March, on the legal rules governing financial institutions: article 3.2 and articles 6 and 13.

— In the 14 February 1978 Order of the Ministry of Finance on the legal rules governing finance entities, as amended by the Order of 19 June 1979: article 13.

— In Royal Decree-Law 5/1978, of 6 March, modifying the powers of the Bank of Spain laid down in the Banking Regulatory Act of 31 December 1946 and Decree-Law 18/1962, of 7 June, article 1.

— In Royal Decree 2860/1978, of 3 November, regulating Credit Cooperatives: article 8.

— In Law 27/1980, of 19 May, modifying the Law of 17 July 1951 on the legal regime governing public limited companies and the Law of 24 September 1964 on debenture issues: number 2 of the additional provision.

— In Royal Decree 685/1982, of 17 March, implementing certain aspects of Law 2/1981, of 15 March, on regulation of the mortgage market: articles 76 to 79.

— In Royal Decree-Law 18/1982, of 24 September, on deposit guaranty funds for savings banks and credit cooperatives: article 5.

— In Law 13/1985, of 25 May, on investment requirements, capital adequacy and reporting obligations of financial intermediaries: article 22.

- (1) *Incorporated by Law 3/1994, of 14 April, the second paragraph.*
- (2) *Redrafted according to Law 3/1994, of 14 April, the letters l) and ll).*
- (3) *Repealed by Law 12/1998, of 28 April.*
- (4) *Repealed by Law 12/1998, of 28 April.*
- (5) *In accordance with Law 3/1994, of 14 April.*
- (6) *Repealed by Law 12/1998, of 28 April.*
- (7) *Incorporated by Law 3/1994, of 14 April.*
- (8) *Redrafted according to Law 13/1992, of 1 June.*
- (9) *Amended by Law 12/1998, of 28 April.*
- (10) *Incorporated by Law 3/1994, of 14 April.*
- (11) *In accordance with Law 3/1994, of 14 April.*
- (12) *Redrafted according to Law 3/1994, of 14 April.*
- (13) *Amended by Law 3/1994, of 14 April.*
- (14) *Incorporated by law 3/1994, of 14 April.*
- (15) *Incorporated these paragraph by Law 13/1992, of 1 June.*
- (16) *Incorporated the letters e) and f) by Law 2/1994, of 30 March.*
- (17) *Incorporated the Title V by Law 3/1994, of 14 April.*
- (18) *Incorporated the Title VI by Law 3/1994, of 14 April.*
- (19) *Repealed by Law 30/1995, of 8 November.*
- (20) *Repealed by Law 3/1994, of 14 April.*
- (21) *Implicit repeal by Law 3/1994, of 13 April.*
- (22) *Repealed by Law 43/1995, of 27 December.*
- (23) *In accordance with Law 3/1994, of 14 April.*
- (24) *Repealed by Law 13/1994, of 1 June.*
- (25) *Implicit repeal by Law 43/1995, of 27 December.*
- (26) *Implicit repeal by Law 1/1994, of 11 March.*
- (27) *Implicit repeal by Law 13/1992, of 1 June.*