The Banking Regulation Review

Sixth Edition

Editor
Jan Putnis

Law Business Research

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For further information please email
Nick.Barette@lbresearch.com

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Editor
Jan Putnis

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PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
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EDITOR'S PREFACE

While the pace of new rulemaking affecting banking groups has slowed somewhat in Europe and the United States in the past year, the debate about the future of global banking rages on, not least because implementation of the vast body of rules made since the financial crisis continues. If anything, the debate has become a more complex one, with a number of new fronts opening. Implementing complex new rules is, of course, generally more difficult than making them, and in many areas of activity rules that took shape some time ago are only now exhibiting their shortcomings and unintended consequences.

Questions about 'too big to fail' remain, but with gradually increasing realism among regulators, some governments and banks ask themselves about how this issue might best be managed in the long term. There is now greater recognition that painstaking recovery and resolution planning was not just an urgent post-crisis task but must remain a critical feature of banking supervision in perpetuity. Indeed, the list of points on which regulators should improve cross-border coordination on recovery and resolution matters remains formidably long. There is also a risk that while 'too big to fail' was the most well known and eye-catching phrase to emerge from the financial crisis, any attempt by governments to force or catalyse the break-up of large banking groups would risk neglecting the importance of the 'too inter-connected to fail' problem, which is, of course, far less a function of the size of banks.

The past year has seen further large fines for banks from conduct regulators, most notably in the context of the spot FX markets. Many bank prudential regulators are, sensibly, thinking more seriously now about the implications of these fines (and associated litigation) for the prudential supervision of the banks affected and, potentially, for financial stability itself. The 'conduct agenda', as it is now frequently called, has moved on in other ways in some countries, including increasing discussion among regulators about competition (antitrust) aspects of wholesale as well as retail financial markets. This will begin to create new and, in many cases, unwelcome challenges for large banks.

Return on equity continues to be a significant challenge in the banking sector, with signs of increasing shareholder pressure on some banks. This may add a further

dimension to structural reform in addition to the existing regulatory one. In some cases, particularly where activist investors are concerned, all involved would do well to remember that shareholder activism lay behind some of the more disastrous mergers and acquisitions in the banking sector before the financial crisis. While it can be expected that regulators in most important financial jurisdictions will be more vigilant in assessing the viability of major transactions in the sector now than they were before the crisis, boards of directors of banks will also need to avoid the temptation to give in to short termism in the face of poor shareholder returns. This is arguably particularly the case in an environment where market restructuring and new technology present long-term opportunities for some banks as well as threats.

Governance of banking groups continues to be high on the agendas of many regulators around the world. Directors of banks in the UK, many other European countries and the US rightly focus increasingly on whether they are discharging their regulatory obligations properly when taking significant decisions, and whether their knowledge (and their ability to oversee) the businesses for which they are responsible is sufficient. A cynical bystander would, however, continue to say that in a global bank with tens of thousands of employees worldwide, good governance structures will only ever play a limited role in reducing the risk of a calamity on, for example, a trading desk, and that good luck (or bad luck) is more likely to determine success or failure in global compliance. That is surely too cynical a view in light of the significant strides that many banks have made to improve their governance and oversight in recent years. However, it remains a view with some validity in relation to emerging threats that are not yet generally well understood. These include many cyber-related risks, not just the possibility of the use of banks' IT systems by criminals but also the threat to financial stability posed by vulnerabilities (and in some cases unreliability) in systems used to settle payments and securities transactions. Bank governance in the context of the use of banks for criminal purposes, including tax evasion, has continued to have a very high profile over the past year.

Important developments in prudential regulation in the past year include further advances in the EU towards implementation of the Recovery and Resolution Directive and the Financial Stability Board's proposals on Total Loss-Absorbing Capacity (TLAC). TLAC looks set to continue to dominate debates on capital structure and funding in the banking sector this year, particularly on the difficult question of where and how TLAC should be 'positioned' within groups of companies in order to facilitate their chosen resolution strategy.

This sixth edition of *The Banking Regulation Review* contains submissions provided by authors in 48 countries and territories in March and April 2015, as well as the customary chapters on International Initiatives and the European Union. It is a great privilege to share space in this book with such a distinguished and interesting group of banking and regulatory lawyers from around the world, and I would like to thank them all again for their participation (and those authors who have joined the book for the first time this year).

My thanks also to Shani Bans, Nick Barette and Gideon Roberton at Law Business Research Ltd for their further unusual levels of patience and skill in compiling this edition and for continuing to encourage the participation of the authors.

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Jan Putnis
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May 2015

Chapter 41

SPAIN

Juan Carlos Machuca and Tomás Acosta[1]

I INTRODUCTION

Spain boasts a diversified modern financial system that is fully integrated with international and European financial markets. The Spanish banking regulator, Banco de España, joined the European System of Central Banks (ESCB) on 1 January 1999. As a result, the definition and implementation of the country's monetary and exchange rate policy, the management of official currency reserves, the efficiency of the payment systems and the issuing of banknotes are now controlled by the ESCB.

Also as a consequence of such integration, the Spanish regulatory system governing credit institutions largely mirrors the legal framework in other EU Member States. As such credit institutions from other EU Member States may provide banking services in Spain, and vice versa, without the need to establish a branch or a subsidiary.

The Spanish financial system has been sound and stable for the past 30 years. However, there has also been intense regulatory activity relating to equity ratios and risk management and control, in line with other Member States. In the past few years, significant changes include the incorporation of IFRS into the Spanish banking accountancy rules, the transposition of the Basel requirements on investment ratios, own funds and reporting obligations of the Spanish institutions and measures relating to the marketing and execution of the business of credit institutions supervised by Banco de España.

After a number of years during which intense regulatory activity was undertaken by Spanish authorities, following to a great extent EU-wide requirements, including the establishment of countercyclical buffers, the carrying out of detailed stress tests in 2010 and 2011, the approval of new regulations for the banking system aimed at strengthening

1 Juan Carlos Machuca is a partner and Tomás Acosta is a senior associate at Uría Menéndez Abogados, SLP.

the solvency of Spanish banking entities and speeding up the restructuring process of the now almost-extinguished saving banks and the introduction of strict controls and restrictions on the remuneration of directors of entities that receive government financial support , 2012 was a year of revolution of the Spanish banking system.

In May 2012, the government adopted Royal Decree-law 18/2012, now Law 8/2012 of 30 October (Law 8/2012), which regulated the obligation for credit entities to take their foreclosed assets or those received in payment of debts linked to the real estate sector to a separate asset management company. Simultaneously, the government entrusted two independent appraisers with the duty of carrying out an analysis of the Spanish banking system's balance sheets to determine what the capital needs of each Spanish credit institution would be in a stress scenario.

In the same month, the conversion of preferred shares held by the Fund for Ordered Bank Restructuring (FROB) in Bankia, the fourth-largest Spanish banking institution, and its public statement of needing up to €17 billion to restore its regulatory capital, resulted in its nationalisation by the government and, subsequently, the request to the European Union for financial assistance for the recapitalisation of Spanish financial institutions that was concluded upon the signing of the Memorandum of Understanding (MoU) of 20 July 2012 between the Spanish and European authorities, with the participation of the International Monetary Fund (IMF).

According to the MoU, the Spanish banking sector would be provided with up to €100 billion in financial assistance under a programme that would cover an 18-month period. Major changes to the Spanish banking history have occurred ever since.

The MoU comprised several specific conditions based on the following elements:

a identification of the individual needs of capital after complete bank-by-bank stress tests;

b recapitalisation, restructuring or resolution of weak banks by means of the implementation of plans to address any capital shortfalls identified in the stress tests;

c segregation of problematic assets by those banks receiving public funding support into the external Asset Management Company for Assets Arising from the Bank Restructuring (SAREB), applicable to assets related to real estate development and foreclosed assets.

SAREB's net worth amounts to 8 per cent of its total assets, split between equity (25 per cent) and subordinated debt (75 per cent). Its share capital is 55 per cent privately owned, while 45 per cent is owned by public authorities. Private investors, mainly banks from Group 0 (those in relation to which no further measures were needed after the stress tests as there was no capital shortfall), and insurance companies (domestic and foreign) have signed shareholders' agreements and disbursed two tranches of capital related to the transfers of assets from Group 1 (circa €36 billion) – Bankia-BFA, NCG Banco, SA, Catalunya Banc and Banco de Valencia – and two banks (circa €14 billion) – Banco Mare Nostrum, Banco Caja 3, Liberbank and Banco CEISS.

SAREB has the mandate to divest the assets over 15 years, optimising levels of recovery and value preservation, and minimising negative impacts on the real estate market and economy and the costs to the taxpayers.

Following its incorporation and entry into operation in 2013, 2014 was a very significant year for SAREB during which it faced relevant operational challenges, transfer pricing issues (the price being determined by Banco de España) and the need to adopt a sound business plan. Data for the first half of the year indicate that SAREB sold 8,100 properties as of the end of June 2014 through the retail channel. Income generated by management and disinvestment activity over the first six months of the year totalled €1,696 million. This boost in commercial activity allows optimism as to the fulfilment of SAREB's principal mission: amortisation of debt.

During 2015, however, SAREB faces two major milestones: adapting to a new accounting framework designed by Banco de España, and a new scheme for relations with transferring institutions and new servicers, which will arise as the result of the expiration of the management and administration contracts underwritten at the end of 2012 and the beginning of 2013. However, the balance of these two fiscal years of activity of SAREB is moderately positive, and it can be reasonably expected that it will meet its divestment deadline;[2]

d resolution and burden-sharing legislation to provide the legal framework for a swift and orderly restructuring of the banking sector with minimum costs to taxpayers; and

e reform of the regulatory and supervisory framework of the financial sector.

As part of the MoU obligations, the viability of Spanish banks was assessed by Spain and the European Commission. The process was overseen by a Strategic Coordination Committee composed of Spanish authorities, the European Commission, European Central Bank (ECB), European Banking Authority, European Stability Mechanism (ESM) and IMF staff.

Overall, the final capital needs of the Spanish banks proved to be lower than those initially identified. Out of the original €56 billion of capital needs identified by the stress tests, approximately €41 billion were disbursed.

The EU financial assistance programme for Spanish financial institutions was successfully ended on 22 January 2014 (as scheduled). According to the IMF,[3] the Spanish authorities' implementation of the programme was steady, and all the programme's specific measures were completed.

These efforts have substantially reduced threats emanating from banks to the rest of the economy (thanks to a significant strengthening of the system's capital, liquidity and loan-loss provisioning.). Additionally, financial market conditions improved dramatically during the programme, with risk premium (bond) on external borrowing by Spain's banks and sovereign down more than 75 per cent and equity prices up more than 50 per cent during the programme period.

2 SAREB activity report for the first half of 2014: www.sareb.es/en-en/shareholders-and-investors/Pages/reports.aspx.

3 Spain. Financial Sector Reform: Final Progress Report, prepared by staff of the IMF. February 2014.

The end of the banking sector's financial assistance programme led to a new supervision post programme that will be in place until Spain repays at least 75 per cent of the funds provided, which is expected to occur no earlier than in 2026.

According to the conclusions reached by the European Commission, the ECB and the ESM after their third supervisory visit in March 2015, the Spanish banking sector is enjoying increasing stability, and the spreads in our sovereign debt are plummeting thanks to the structural reforms and the financial entities recapitalisation implemented under the MoU. Nonetheless, significant imbalances persist, and further reforms are likely to be needed. The next supervisory visit will take place during autumn 2015.

During 2014, this overhaul of the Spanish legal and regulatory framework for banks, savings banks and other financial institutions has been deepened by means of the approval of a number of regulatory changes at both the country and pan-EU level. Some of the most relevant changes that occurred during the past year are as follows:

a The implementation in Spain of the CRR/CRD IV package[4] has been deepened by means of the approval of Law 10/2014 of 26 June, on the organisation, supervision and solvency of credit institutions (Credit Institutions Solvency Law) and the recent Royal-Decree 84/2015 of 13 February, developing the Credit Institutions Solvency Law (Credit Institutions Solvency Regulations), which have been major achievements in the Spanish regulatory landscape. In addition to the continued implementation of the CRR/CRD IV package, the Credit Institutions Solvency Law is aimed at repealing and combining some of the numerous and diffuse rules on organisation and discipline of credit institutions in a single piece of legislation, although it leaves many matters to be developed by future regulations. *Inter alia*, the Credit Institutions Solvency Law repeals the core regulation of credit institutions in Spain (most notably, the Banking Regulation Law of 31 December 1946, Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements for financial intermediaries, and Law 26/1988 of 29 July 1988 on Discipline and Intervention of Credit Institutions).

Additionally, Circular 2/2014 was issued by Banco de España on 31 January 2014, by means of which a number of regulatory options, as set out in CRR, were exercised by Banco de España in its capacity as competent national authority.

b Although not yet enacted, it is worth noting that a preliminary draft law that intends to ease Spanish companies' (primarily, SMEs) access to financing by means of a number of measures aimed at easing access to banking financing and promoting alternative non-banking financing sources has been approved by the government as draft bill (Draft Company's Financing Bill). The Draft Company's

4 Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (applicable since 1 January 2014) (CRR); and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV).

Financing Bill has, according to its present wording, multiple purposes: amending and updating the regime of financial credit establishments; amending the regime for securitisations (a market in which Spain became one of the most relevant players during the upturn of the last economic cycle); easing Spanish companies' access to the capital markets (including, in particular, a much-awaited amendment in the regime for bond issues); and regulating crowdfunding for the first time in Spain. Further details are likely to become available in the next year.

The same pace of intense regulatory reform has been maintained by the government during the first quarter of 2015. Two major projects have just been approved by the government, pending Parliamentary approval:

a Draft bill on recovery and resolution of credit institutions and investment services entities, approved by the government on 27 February 2015, which is aimed at adapting the Spanish regulation as regards the European Banking Union (based on two pillars: the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism) and repealing Law 9/2012 of 14 November, on the framework for the restructuring and resolution of financial institutions (Law 9/2012), which had been approved as a consequence of the subscription of the MoU, by Spain in consultation with the Strategic Coordination Committee. Law 9/2012 was a major achievement and incorporated international best practices, including three major reforms that would be maintained in essence in this draft bill:
   - it designated FROB – acting in coordination with Banco de España – as the authority in charge of restructuring and resolving credit institutions;
   - it empowered FROB and Banco de España to take more wide-ranging actions against banks at different stages of financial distress: early intervention, restructuring and resolution, including imposing losses on shareholders and creditors; and
   - it lays down the legal bases on which SAREB was set up in November 2012 to manage and divest in an orderly manner the asset portfolio or real estate loans and assets received from participating banks, and thereby segregate the bank's impaired assets.

b Draft bill on a 'second chance' for Spanish entrepreneur and mortgagee protection, pursuant to which, *inter alia*, a number of protections for debtors within their insolvency proceedings are contemplated (including the possibility of release from all the debts in cases where the debtor's assets do not cover his or her aggregate debts) and floors in mortgage-backed loans are declared null and void for certain especially vulnerable collectives.

In sum, a new institutional and legal framework for the Spanish banking system is in the process of being established on a multi-stage procedure commenced in 2012, deepened in 2013 and 2014 and likely to continue during the coming years. Within this process, a number of measures are being taken with the goal of improving bank transparency, regulation and supervision, and speeding up the recovery of the Spanish financial system within the context of a more propitious economic environment.

II THE REGULATORY REGIME APPLICABLE TO BANKS

The Spanish regulatory regime for credit institutions is currently set out in the Credit Institutions Solvency Law, Law 26/2013, of 28 December 2013, on Savings Banks and Banking Foundations (Savings Banks Law) and Law 13/1989, of 26 May 1989, on credit cooperatives. Additionally, certain matters and rules, principally related to savings banks and credit cooperatives, are also regulated at regional level. Therefore, together with the basic organisation of the Spanish financial system at a state level under the direction of the Ministry of Economy and Competitiveness and the supervision of Banco de España (with the issuance of circulars, rules and guidelines), as well as the regime applicable to FROB, the regional authorities have enacted a number of pieces of legislation.

A credit institution is defined under Spanish law as a company duly authorised to receive from the public deposits or other forms of repayable funds and grant credits for their own account. Spanish credit institutions may therefore primarily engage in a number of retail banking services.

Credit institutions must be recorded in a register maintained by Banco de España before they commence banking activities.

i Credit entities: banks and savings banks. Reference to credit cooperatives

Credit entities in the Spanish financial system basically consist of banks and savings banks, together with credit cooperatives and the Official Credit Institute, which is the country's financial agency. The raising of funds from the general public, except through activities subject to the securities markets regulations, is reserved for credit entities.

Banks, and to a far lesser extent former savings banks, are a central part of the financial system because of the sheer volume of their business and their involvement in every segment of the Spanish economy. Most Spanish banks provide a full range of services for corporate and private customers, including collection and payment services outside Spain through foreign branches. Savings banks attracted a substantial portion of private savings in Spain and tended to loan funds to private customers (mortgages, etc.). Moreover, all are closely involved in financing major public and private projects by subscribing to and purchasing fixed-interest debt securities.

Banks have the legal form of companies (*sociedades anónimas*), and are therefore subject to general principles of company law as well as to banking regulations.

Savings banks are a specific type of credit entity that accounted, until recent times, for nearly half of the Spanish financial sector. Savings banks tended to be locally oriented entities of variable (but generally limited) size (this has recently changed due to the integration, auctions and restructuring processes undergone by several savings banks in 2011 and 2012), with strong economic and social ties to their home region. Although savings banks fully participated in the market, they were a special category within the financial services industry, as they were structured as foundations rather than companies and governed by representatives of collective shareholders: mainly depositors, employees and local authorities. Any positive result is allocated to social welfare and cultural projects.

The corporate model of savings banks has completely changed. After a number or partial reforms during 2011 and 2012 (as a consequence of which most of the Spanish savings banks were transformed into banks through different integration processes), a

comprehensive revolution of their legal regime was put in place in December 2013 when the Savings Banks Law was passed following the conditions set out in the MoU.

In the light of the radical changes in the savings banks sector (since 2010, 43 out of 45 of them (99.39 per cent of the aggregate average assets of the sector) have taken part in a consolidation process, which has resulted in a total of 11 groups operating as of today; the number of branches has been reduced by 36.7 per cent and the workforce by 33.4 per cent),[5] the Savings Banks Law aims at clarifying the role of savings banks in their capacity as shareholders of credit institutions and strengthening incompatibility requirements regarding the governing bodies of the former savings banks and the commercial banks controlled by them. Some of the main features of the new regime are the following:

a savings banks will only be entitled to engage in the solicitation of repayable deposits from the public and the granting of credits within the territory of one autonomous region or a maximum of 10 neighbouring provinces;

b they need to be engaged mainly in the deposit-taking and lending business;

c any person holding an executive position in a political party, trade union or professional association, as well as elected representatives in public administrations, senior officers in such public administrations and those that have held any of the foregoing positions during the past two years will not be allowed to be a member of the management bodies of savings banks. This is a breakthrough on the prior regime that aims to avoid the previous failures in the savings banks' management;

d any savings banks holding assets in excess of €10 billion or with a market share in relation to the deposits in its autonomous region of more than 35 per cent shall transfer its financial activity to a credit entity and become a 'banking foundation'; and

e 'banking foundations' are those foundations holding a (direct or indirect) holding in a credit entity of at least 10 per cent of its share capital or voting rights or such other percentage allowing the appoint or removal of at least one member of the board. These entities shall have the purpose of managing their stake in the relevant credit entities and pursuing their social project or corporate responsibility programme. Depending on the stake of the banking foundation in the credit entity (the relevant thresholds being 10, 30 and 50 per cent), a number of internal rules and protocols shall be in place. Additionally, the dividend distribution of credit entities controlled by banking foundations shall be subject to a minimum voting majority of two-thirds.

Credit cooperatives are private institutions whose corporate purpose is to attend to the financial needs of its members and those of third parties by means of the development of those activities that are also carried out by credit institutions. Their current regime is contemplated in Law 13/1989, of 26 May 1989, on credit cooperatives. However, there is a rumour that a draft bill setting out a new (although not groundbreaking) regime for

5 Presentation on the status of the restructuring process of the saving banks' sector issued by the Spanish Confederation of Saving Banks on 13 February 2015.

credit cooperatives has been prepared by the government. However, no draft has been shared with market participants to date.

ii Electronic money entities (EDEs)

EDEs are recognised as a special type of credit institution that issues electronic money. The legal regime for EDEs was established in 2008 and amended in 2011 by a law regulating the issuing of electronic money and the legal regime of EDEs, partially implementing EU Directive 2009/110/EC. In addition to meeting all the requirements applicable to credit institutions, EDEs are subject to investment requirements. Secondary legislation was approved by Royal Decree-law 778/2012 of 4 May developing the legal framework of EDEs, clarifying the definition of e-money and the scope of the applicable Spanish regulations, and establishing the requirements for the setting up and running of EDEs, their supervision and sanction regime being very similar to that applicable to credit entities. Royal Decree-law 778/2012 fully implemented EU Directive 2009/110/EC.

iii Payment services entities

In 2009, Spain made provision for a new type of credit institution that renders, in a professional manner, payment services that coincide with those set out in the Annex of Directive 2007/64, of the European Parliament and of the Council, of 13 November 2007. Secondary legislation was approved in May and June 2010 establishing the conditions and requirements for the rendering of these activities, and further guidelines on transparency and customer protections were set out by Banco de España.

III PRUDENTIAL REGULATION

It must be noted that, given its participation in the SSM, Banco de España qualifies as a 'national competent authority', which implies that Spanish credit entities considered as significant are supervised by the ECB, while those other less-significant Spanish institutions are directly supervised by Banco de España and, indirectly, by the ECB. Of the 120 significant institutions – which represent almost 85 per cent of total banking assets in the euro area – 15 are Spanish (this number will be lowered to 14 after a currently ongoing merger is completed). These 15 significant institutions represent more than 90 per cent of deposit institution assets in Spain.

i Relationship with the prudential regulator

Many Spanish financial institutions have attributed their solid financial position to their long-standing strategy of prudence and foresight. However, Banco de España also deserves part of the credit. As previously noted, Banco de España no longer sets the country's monetary and exchange rate policy, except in its role as a member of the ESCB. However, it remains in control of, *inter alia*, the following functions:

- *a* management of currency and precious metal reserves not transferred to the ECB;
- *b* supervision of the solvency and the behaviour of credit institutions;
- *c* promotion of the stability of the financial system and of national payment systems, without prejudice to the functions of the ECB; and
- *d* mintage and circulation of coins and other types of legal tender.

Banco de España carries out continuous monitoring and analysis of the Spanish credit entities monitoring reports and regular information received from the credit institutions, and conducts on-site inspections. There is close interaction between Banco de España and the entities subject to its supervision. There is a permanent presence of Banco de España inspectors at the two largest Spanish banking groups and other institutions whose size and complexity call for regular monitoring to verify their liquidity risk, capacity to generate earnings and solvency. Notwithstanding this, as a condition of the MoU, a review of the supervisory procedures of Banco de España was carried out in 2012 identifying possibilities to strengthen Banco de España's power to issue binding guidelines or interpretations without regulatory empowerment and some other rules that were further implemented in 2013 to reform its regulatory framework. In Spain, provisioning rules are straightforward and transparent and verified by Banco de España, while in other countries, provisions are generally decided by the banks with the approval of their external auditors.

Banco de España's responsibilities include the verification of maximum rates and charges for banking services rendered by credit institutions. Banco de España also verifies the customer protection rules and keeps several registries of public banking information, including the register of institutions, register of senior officers and register of shareholders, auditors' reports, and a special registry of articles of association of the supervised institutions. Banco de España also receives confidential information from institutions on their financial situation and their shareholders.

Banco de España may issue general or specific recommendations and requirements to entities (i.e., requiring adequate provisioning for less solvent obligors and improvements in the quality control over assets) and approve restructuring plans. It may also initiate disciplinary proceedings against institutions and their boards of directors or managers, or may even intervene and replace directors to remedy deficiencies or non-compliance.

Banco de España has powers to enforce compliance with the organisational and disciplinary regulations applicable to credit institutions operating in the Spanish financial sector. Such powers are exercised not only on credit institutions and other financial institutions subject to its oversight, but also to directors and managers, who can be penalised for very serious or serious infringements when they are attributable to wilful misconduct or negligence. Sanctions can also be imposed on the owners of significant shareholdings in credit institutions and on Spanish nationals that control a credit institution in an EU Member State.

Additionally, as a consequence of the CRR/CRD IV package and the entry into force of the Royal Decree-Law 14/2013, the supervisory powers of Banco de España and National Securities Market Commission (CNMV) have been widened and strengthened in order to ensure appropriate enforcement of the new banking and supervisory discipline. Likewise, Royal Decree-Law 14/2013 has amended Law 13/1994, of 1 June 1994 (the rule setting out the competences and regime applicable to Banco de España) to allow it to issue technical guidelines and answer binding questions on supervisory regulation.

On the other hand, FROB has become the national resolution authority and, for these purposes, in 2012 it was given an unrivalled set of powers under Spanish law:

a corporate faculties: apart from exercising the legal powers of the management body or the shareholders, FROB will exercise the powers of the general meeting in cases where the general meeting obstructs the restructuring or the resolution, or when necessary for urgent reasons; and

b administrative faculties: a broad list of administrative powers have been conferred, the most relevant of which are ordering the transfer of equity instruments or other instruments convertible into equity, whoever the owners may be, as well as the entity's assets and liabilities; carrying out capital increases and reductions, and issuing and redeeming obligations, including the possibility of suppressing pre-emptive rights; and ordering the transfer of securities deposited in one entity to another of the solvency and the behaviour of credit institutions.

ii Governance of banks

The board of directors of a credit institution (with at least five members) has prominent powers to administer and manage the operations and financial matters of the entity. Members of the board and senior management must have good commercial and professional reputations, appropriate experience and the ability to carry out proper governance of the entity.

A new suitability regime was established in 2014 that is in line with the regime currently applicable to banks (which has not been repealed). There are, however, certain differences, *inter alia*:

a the board of directors is required to monitor the process for the appointment of its members so that it favours a diversity of experience and knowledge, facilitates the appointment of female members and is not discriminatory; and

b where appropriate, the purchasers of a significant holding will be required to assess the suitability of directors, general managers and holders of similar positions.

Additionally, Banco de España is entitled under the Credit Institutions Solvency Law to determine the maximum number of positions that may be held simultaneously by a director, general manager or the holder of a similar position in view of the particular circumstances of the institution and the nature, size and complexity of its activities. Save in the case of directors appointed pursuant to a replacement measure, directors, general managers and holders of similar positions in institutions that are significant in size, or are more complex or of a special nature, may not hold more than four non-executive positions simultaneously, or one executive position at the same time as two non-executive positions.

The Credit Institutions Solvency Law obliges credit institutions to put corporate governance arrangements in place that are sound and proportionate in view of the risks taken by the institution. In addition, the following obligations are established:

a the board of directors may not delegate functions related to corporate governance arrangements, the management and administration of the institution, the accounting and financial reporting systems, the process for the disclosure of information and the supervision of the senior management;

b the chair of the board of directors must not exercise the position of managing director simultaneously, unless this situation is justified by the institution and authorised by Banco de España;

c a website must be maintained on which the information required by the Credit Institutions Solvency Law will be published and on which the institution will explain how it complies with its corporate governance obligations;

d the obligation to draft and keep an up-to-date general viability programme that considers all the measures that will be taken to restore the viability and financial soundness of the institutions in the event that they suffer any significant damage;

e the obligation to establish a nomination committee comprised of non-executive directors and in which, at a minimum, one-third of its members and, in any case, its chair, are independent directors. This committee must decide on a target figure for the representation of the gender that is currently underrepresented on the board of directors;

f the board must actively participate in the management and valuation of the assets, and approve and review the risk policies and strategies of the institution on a regular basis; and

g Banco de España will be entitled to determine which institutions must establish a risk committee or, as the case may be, those institutions that may establish combined audit committees to perform the functions of the risk committee.

As previously mentioned, credit entities (other than credit cooperatives and savings banks) are incorporated as *sociedades anónimas*, and general corporate rules will fully apply (i.e., they must have a suitable structural organisation, compliance and internal audit functions and risk assessments, and certain separate and delegated committees within the board, including an internal audit committee). Such rules are primarily contemplated in Royal Legislative Decree 1/2010 of 2 July, approving the Spanish Stock Companies Law, which was amended in December 2014 in order to import into Spain the best practices in corporate governance, including regarding directors' remuneration, term of directors' appointment, conflicts of interest, diligence and fiduciary duties, and shareholders' rights.

Significant attention has been devoted in Spain to remuneration policies during the past few years, as has been the case at both the European and international level. In particular, the Credit Institutions Solvency Law includes the provisions of CRR/CRD IV package relating to the obligation of credit institutions to put in place remuneration policies that are consistent with their risks. In a nutshell, these provisions relate to:

a the obligation to make a clear distinction between the criteria used for setting fixed remuneration and variable remuneration;

b the obligation that the remuneration policy is subject to the approval of the general shareholders' meeting or equivalent body under the same terms as those applicable to listed companies;

c the principles that will apply to variable elements of remuneration (*inter alia*: the variable component must not exceed 100 per cent of the fixed component save in cases of approval of the general shareholders' meeting granted in accordance with the procedure laid down in Law 10/2014; at least 40 per cent of the variable remuneration is deferred over a period of between three to five years; or the variable remuneration is paid or vests only if it is sustainable according to the financial situation and results of the institution), with special attention in this regard to credit institutions that benefit from public financial assistance; and

d the obligation to establish a remuneration committee or, if Banco de España so determines, a joint nomination and remuneration committee.

iii Regulatory capital and liquidity

Spain's legislation on capital and liquidity requirements has traditionally incorporated capital adequacy requirements in line with international standards as set out by the Basel Committee on Banking Supervision. According to such standards, a banking group should be adequately capitalised overall (in terms of both volume and quality of capital), and there should be an adequate distribution of the capital and the allocation of risk with sufficient buffers to allow ordinary growth.

Several laws, decrees and regulations on own funds, capital requirements and liquidity of individual credit institutions and consolidable groups have been approved through the years, most of them in order to implement the Basel I and Basel II Accords in Spain. Such regulations have been followed by specific circulars and guidelines issued by Banco de España determining the technical specifications and control of minimum funds.

Nonetheless, the entry into force of the CRR/CRD IV package and of the Credit Institutions Solvency Law has led not only to a deep change (both at an European and Spanish level) in the regulation of solvency and liquidity of credit entities but, more generally, to a fundamental step forward in the creation of the Banking Union. Since 1 January 2014, the nuclear regime for credit entities solvency is condensed in the CRR (which is directly applicable in the EU Member States). The CRR is meant to repeal all the currently existing laws, decrees, regulations, circulars and guidelines that are inconsistent with its regime. Thus, all such rules are formally in place, although it is expected that during coming months, new ones will be issued by the Spanish authorities with the purpose of providing a clear-cut view of the applicable regime going forward.

One of the most interesting changes deriving from the entry into force of the Credit Institutions Solvency Law is the inclusion of 'capital buffers' (i.e., additional capital requirements to those envisaged under the CRR). Failure to comply with capital buffers entails restrictions on distributions and payments relating to components of common equity Tier 1 (such as shares) or additional Tier 1 capital (such as contingent convertible bonds) and on the payment of variable remuneration; and the obligation to submit a capital conservation plan that must be approved by Banco de España.

In particular, the various capital buffers provided for in the Credit Institutions Solvency Law, in accordance with CRD IV, are as follows:

a capital conservation buffer (2.5 per cent of the institution's risk exposure): a non-discretionary buffer, the application of which will be phased in from 1 January 2016;

b countercylical capital buffer (percentage to be set by Banco de España): a specific buffer for each institution or group, the application of which will be phased in from 1 January 2016. It is calculated as the weighted average of the countercyclical buffer percentages applicable in each of the territories in which an institution has exposures;

c buffers for global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs): buffers specifically applicable to certain institutions by reason of their systemic importance. Banco de España will identify which institutions are to be considered G-SIIs or O-SIIs and will set the buffer to be maintained by each of these types of institution, which in the case of the G-SIIs will range from 1 to 3.5 per cent, and which in the case of O-SIIs may not exceed 2 per cent. These buffers will be applicable from 1 January 2016, although in the case of G-SIIs, these must be fulfilled in tranches in the following four years; and

d systemic risk buffer: a buffer that may be set by the Banco de España to cover non-cyclical systemic or macroprudential risks where there is a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

As per liquidity, the Credit Institutions Solvency Law sets out that Banco de España will assess the business model, corporate governance procedures and systems, supervision and evaluation findings, and all systemic risks.

IV CONDUCT OF BUSINESS

i Conduct of business rules

According to the Credit Institutions Solvency Law, credit institutions rendering services in Spain, whether domestic entities or foreign entities authorised in another Member State that open a branch or provide cross-border services in Spain, must observe the applicable rules setting out the discipline of credit entities, as well as those enacted in the interest of the general good, whether they are dictated by the state, the autonomous communities or local entities.

The 'general good' includes, *inter alia*, protection of the recipients of services, protection of workers, consumer protection, preservation of the good reputation of the national financial sector, prevention of fraud and protection of intellectual property.

Some conduct of business rules relate to compliance with regulations on advertising (i.e., a prohibition on misleading or subliminal advertising, aggressive commercial practices) or conduct that may injure or is likely to injure a competitor, and also to consumer-related matters. Credit entities are subject to Spanish regulations protecting financial services users, and they must establish consumer services departments and a customer ombudsman to handle complaints of individuals or legal persons who are deemed as users of their financial services.

Further, a credit institution must make certain information available to customers, including:

a the existence of the customer service department and of the customer ombudsman, as the case may be, including postal and e-mail addresses;

b its obligation to serve and resolve customers' complaints within two months;

c the existence and contact information of Banco de España's Complaints Service;

d its internal customer service regulations; and

e references to the legislation in force on transparency and protection of financial services customers. Further, there are rules on the delivery of the contract and a number of specific provisions regarding the valid incorporation of terms into consumer contracts (some of which are currently the subject of legal debate after several recent Supreme Court decisions declaring null and void certain terms traditionally used by Spanish banks).

Since 2010, anti-money laundering laws and regulations applying to credit institutions (including EU credit institutions rendering services in Spain on a cross-border basis) set

forth certain particularities in relation to credit institutions' compliance with Spanish anti-money laundering rules, including:

a requirements of identification details;
b information on the purpose of banking transactions;
c the nature of customers' activities; and
d the obligation to analyse transactions and business relationships on a continuous basis, including for existing clients (in particular in relation to the contracting of new products or when significant or complicated transactions are carried out, or special obligations in relation to 'politically exposed persons), their close relatives and known related parties.

This regime has been improved and further nailed down by means of Law 19/2013, of 10 December 2013, on transparency, public access to information and good governance.

After the implementation of MiFID[6] in Spain, a number of rules were introduced for effective protection of consumers of investment services that apply to credit entities (categorisation of investors, delivery of appropriate and comprehensible information on the financial instruments and investment strategies offered to the customer, etc.), including rules to check that the conduct of the credit entities is sufficiently diligent.

New consumer protection and new legislation on evictions in cases of mortgage default were approved in 2012. The aim was to reinforce the protection of some vulnerable mortgage debtors by establishing a moratorium on evictions until 15 November 2014. In this context, Law 1/2013, of 14 May 2013, was passed in order to protect vulnerable mortgage debtors and provide a framework for the restructuring of debt and social renting.

Finally, on 16 November 2012, the Ministry of Economy and Competitiveness Ministerial Order ECC/2502/2012 was approved, establishing new claims and complaints procedures for customers of credit institutions, investment services companies and insurance companies before Banco de España, the CNMV and the insurance regulator.

ii Spanish banking secrecy

The duty on credit institutions to keep their clients' information confidential from third parties other than the supervisory authorities has traditionally been a common feature of the Spanish banking system, and is codified in law. Credit institutions, their managers and directors, and significant shareholders and their managers and directors, must safeguard and keep strictly confidential all information relating to balances, operations and any other customer's transactions, unless required to disclose by applicable law or the supervisory authorities. In these exceptional cases, the delivery of confidential data must comply with the instructions of the client or with those provided by applicable law. The delivery of confidential information among credit entities pertaining to the same consolidated group is not subject to these restrictions. Any breach of the aforementioned regulations will be deemed a serious offence, which may be punished according to the ordinary sanctions procedure provided under Spanish banking regulations.

6 EU Markets in Financial Instruments Directive 39/2004.

On 10 August 2012, the Spanish authorities on money laundering established a list of countries with equivalent banking secrecy and money laundering regulations to those established in Spain.

V FUNDING

The main funding for Spanish credit institutions has obviously been based on deposits made by their customers. However, according to Banco de España, the global amount of deposits taken from the private sector has decreased during the past few years.

In addition, both capital and debt issuance have also been sources of funding. These instruments include – in addition to common shares – perpetual subordinated debt, rights issues and preferred shares, in many cases issued by special purpose entities. There are no restrictions on the issuance of such instruments, but they are subject to the securities market regulations and must be verified by Banco de España to confirm they meet the conditions established by the bank solvency regulations.

In recent years, the mistrust in the Spanish public finances and the financial system resulted in a substantial increase in funding costs and difficulties in gaining access to wholesale markets, which had a considerable effect on sovereign debt during the summer of 2012. Additionally, the draft bill on recovery and resolution of credit entities and investment service companies – which will repeal Law 9/2012 – will, according to its current drafting, introduce a number of instruments eligible for the recapitalisation of credit entities within a resolution scenario, as well as specific FROB powers. A more developed description of such instruments will emerge once they are set in stone by regulations in force.

Finally, in the past few years, among other measures adopted due to the economic and financial crisis, the government established a fund for the acquisition of financial assets issued by credit institutions and special purpose vehicles. The provision of state guarantees to new funding transactions launched by Spanish-resident entities with a maximum maturity of seven years was also approved.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

The Spanish regime for the prudential assessment of Banco de España regarding acquisitions and increases of holdings in Spanish credit institutions has been contemplated since June 2014 in the Credit Institutions Solvency Law, and since February 2015 in the Credit Institutions Solvency Regulations.

According to these rules, the acquisition of a significant holding is subject to a mandatory pre-acquisition approval from Banco de España. A 'significant holding' is defined as the direct or indirect holding (taking into account conditions regarding aggregation laid down in the Spanish regulations) of shares in the issued share capital or voting rights of a Spanish credit entity in excess of 10 per cent, as well as any holding below that threshold that allows the holder to have a 'notable influence' over the bank. Regulations developing the Credit Institutions Solvency Law are meant to set out a list

of situations where 'notable influence' over a Spanish credit entity shall be presumed to exist, specifically taking into account the ability to appoint or dismiss one or more members of the board of directors.

A similar prior control procedure shall be carried out before Banco de España if the owner of a significant holding intends to increase such holding up to or above 20, 30 or 50 per cent of the issued share capital or voting rights of a Spanish credit entity; or as a consequence of a potential acquisition, if the relevant shareholder could acquire control over the Spanish credit entity.

The disposal of a significant shareholding in a Spanish credit entity, as well as the reduction of a significant shareholding below 20, 30 or 50 per cent of the issued share capital or voting rights of a Spanish credit entity or the loss of control over a Spanish credit entity, require prior notification to Banco de España.

Likewise, immediate written notification to both Banco de España and the relevant credit entity is required if, as a result of the acquisition, the acquirer would hold, either on its own or in concert with other entities, directly or indirectly, 5 per cent or more of the issued share capital or voting rights of a Spanish credit entity.

The obligation to seek approval for a proposed acquisition or increase of qualifying shareholding falls on the acquirer. However, the Spanish bank whose shareholding may be acquired must notify Banco de España as soon as it becomes aware of the proposed acquisition.

In order to assess the suitability of a potential acquirer as well as the financial strength of the proposed acquisition, Banco de España shall receive a report from the Commission for the Prevention of Money Laundering and Monetary Infractions aimed at ensuring that the relevant credit entity is managed in a prudent manner taking into account the influence that may be exercised by such acquirer.

Finally, two provisions modifying the previous regime on significant holding positions are noteworthy:

a resolutions passed by a credit institution with the votes of a shareholder acting in breach of the obligations to notify Banco de España may only be challenged in court to the extent that the votes corresponding to those shares have resulted in the passing of such resolutions, as opposed to being subject to potential challenge in all cases; and

b the authority to take measures in the event of the influence of significant shareholders that may damage the management or financial situation of the institution no longer corresponds to the Ministry of Economy and Competitiveness, but to Banco de España.

ii Transfers of banking business

The Spanish financial system has recently moved towards greater consolidation, mainly for efficiency and profitability, in an increasingly mature financial market and as a consequence of the restructuring of the Spanish banking system. The need to strengthen solvency is also a key driving factor behind this tendency. Naturally, the same factors also apply to transfers of banking business, particularly considering the crucial importance of size in gaining access to wholesale capital markets.

The transfer of banking business by virtue of mergers, total and partial spin-offs, or assignments of assets and liabilities, as well as any legal or economic arrangement analogous to any such transaction, and any structural modification deriving from the foregoing, is subject, in addition to general corporate law, to regulatory approval from the Spanish Ministry of Economy and Competitiveness as set forth in the Credit Institutions Solvency Law and the Credit Institutions Solvency Regulations.

Of particular relevance in Spain in recent times have been the mergers or integrations between savings banks instigated by the Banco de España. Few mergers had been carried out between savings banks other than in cases of financial difficulty. Once the transfer of the savings banks' banking business was achieved, the next step that took place during 2014 was the transformation of savings banks into foundations. The most noteworthy example of this is Fundación Bancaria Caixa d'Estalvis i Pensions de Barcelona, 'la Caixa', which was created in June 2014 as a consequence of the transformation of 'la Caixa' into a foundation in compliance with the Savings Banks Law. This banking foundation (the largest in Europe in terms of assets) is the sole shareholder of Criteria CaixaHolding, which in turn holds 58.9 per cent of CaixaBank (the third-largest bank in Spain).

Special regimes for the transfer of banking businesses are set out in the draft bill on recovery and resolution of credit institutions and investment services entities. The bill is still pending parliamentary approval and, until then, the transfer of banking business in special situations is subject to the provisions of Law 9/2012.

Law 9/2012 introduced three phases, each with respective measures, depending on the entity's degree of deterioration that may affect the transfer of banking business:

a early intervention measures apply when a credit entity breaches, or is likely to breach, solvency, liquidity, organisational structure or internal control requirements, provided that it is foreseeable that the entity will be able to overcome the situation by its own means (although, exceptionally, it may receive public financial support). The entity must prepare a recovery plan enabling it to achieve long-term viability without public financial support. In principle, the management of the entity remains in the hands of the entity's current management body during this phase;

b on the other hand, an entity will be restructured if it requires public financial support to ensure its viability but Banco de España considers that objective elements indicate that the entity will be able to repay the support within the terms granted. In addition, Banco de España may decide to restructure an unviable entity if its resolution may have systemic consequences.

Entities in this situation must prepare a restructuring plan, including measures to ensure their long-term viability. Such measures may include public financial support from FROB, as well as the transfer of assets and liabilities to an asset management company. In line with the new legal configuration of FROB as the Spanish resolution authority, FROB will be responsible for determining suitable measures to implement the restructuring plan, thus assuming, together with Banco de España, a key role in the procedure; and

c the resolution of an unviable entity will be carried out if its insolvency presents a concern as regards the general public interest. The resolution will also be carried out if it benefits the public interest and the restructuring phase is unsuccessful.

'Non-viability' is defined by Law 9/2012 for the first time under Spanish law, and generally mirrors European proposals. An entity is unviable if:

a it fails to comply with the solvency ratios; its outstanding liabilities exceed its assets; or it does not meet, or will be unable to meet, its obligations as they fall due (illiquidity); and

b it is not reasonably foreseeable that the entity will be able to overcome the situation by its own means.

Prior to the commencement of resolution proceedings, Banco de España may adopt certain measures to mitigate or eliminate obstacles that may arise during the resolution proceedings. Among other powers, Banco de España may require changes to the entity's legal or operational structure.

The power to initiate resolution proceedings is vested in Banco de España, which may exercise that power on its own initiative or at FROB's request. FROB will in turn draft a resolution plan or determine the need to commence insolvency proceedings. In addition, if FROB does not already control the entity's management body, the substitution of the management body will be agreed.

In contrast to the proposal for a crisis directive, the use of a bail-in as a means of resolution is not envisaged. Nevertheless, it could be argued that the effect, at least on the subordinated instruments, is equivalent to that of the power to manage liabilities.

VII THE YEAR IN REVIEW

A number of new provisions have been enacted since the financial crisis began in 2007 to, *inter alia*, enhance the capacity of Spanish credit institutions to increase the supply of credit to firms and individuals, to authorise the state to guarantee new funding transactions of medium-term bank debt, or to establish temporary and partial moratoria on the monthly instalments payable by unemployed debtors. In recent years, and certainly between 2012 and 2014, most of these provisions have been implemented as a consequence of the MoU signed with the European authorities and setting up a programme that was in place until January 2014.

These regulatory changes were intended to establish an efficient system for bank restructuring and credit institutions' equity reinforcement. Additionally, new sources of financing have been promoted in earnest by the government, leading to a number of initiatives meant to create new funding channels that reduce the dependency of Spain's real economy on the banking sector.

The significant changes made since the execution of the MoU in the regulatory landscape for financial institutions have been deepened and further developed. 2014 has been another year of revolution in the Spanish banking system. The implementation of the CRR/CRD IV package (following the framework set out in the Basel III Accord) in Spain by means of the Credit Institutions Solvency Law has deepened the regulation of banking institutions not only in respect of capital and liquidity requirements, but also in the governance and remuneration fields having an impact on Spanish entities.

According to the Governor of Banco de España, Luis M Linde, in his opening speech at the XXII Financial Sector Summit on 8 April 2015, Spanish GDP for

Q1 2015 has increased 0.8 per cent on a year-on-year basis, and it is expected that the full-year GDP will rocket by 2.8 per cent in 2015 and 2.7 per cent in 2016. Thus, signs of improvement in the Spanish economy are beginning to be clear. However, the progress in the financial sector restructuring and recapitalisation process has not resulted in a reactivation of traditional banking lending (although shadow banking and hedge funds' direct lending are taking an increasing (but not yet relevant) piece of the lending market).

One of the most active players in the restructuring of the Spanish banking sector is FROB (set up in 2009, with a total allocation of €15 billion equity commitment and chaired by Banco de España), which ran processes during the past year that are remarkable both in number and importance. The most relevant of such processes was, arguably, that concerning Catalunya Banc, which was suspended in March 2013 due to low investor appetite but reactivated in the form of a multistage process according to which three main different sales have taken place: a €6.5 billion portfolio of performing and non-performing loans (sold to Blackstone), the real-estate asset management platform (also sold to Blackstone) and the bank itself, which was eventually acquired by BBVA.

Another heavyweight in the restructuring of the Spanish banking sector during 2014 was SAREB (the bad bank). During 2014, SAREB's commercial activity attained cruise speed, with rapid progress being made in the sale of real estate and financial assets, as well as retail sales through the commercial network of some of the banks that transferred their assets to it. In May 2012, SAREB's annual accounts were approved. In the period running between 28 November and 31 December 2012, SAREB reported a loss of €5.5 billion, basically as a consequence of external services and financial expenses. It also registered a loss in 2013 (basically due to the costs associated with its start-up phase and the provisions related to bad quality assets received from the transferring banks). In 2014, SAREB achieved EBITDA in excess of €1.1 billion. However, provisions due to its special accounting regime led to report net losses of €585 million in 2014. Additionally, SAREB paid up €3.4 billion of debt in 2014 and reportedly expects to amortise €3 billion more in 2015. In spite of the considerable operating and financial challenges that SAREB has faced (and is likely to face in the near future), its commercial activity is already promising, and there seems to be a good chance that it will dispose of its portfolio within the 15-year term that it has been given.

VIII OUTLOOK AND CONCLUSIONS

The Spanish banking supervision model stems from two financial crises – the first resulting from the transition from dictatorship to democracy and the second at the beginning of the 1990s – and the collapse of a number of entities. As a result, Banco de España had to forge a model that not only kept entities in good financial condition, but obliged them to save for a rainy day in booming times. This policy, while extremely useful during the current economic crisis, has not been enough, as the request by the government for financial assistance from the banking sector in June 2012 proved.

Eight years after the international crisis started, the resilience of the Spanish banking sector, historically subject to regulation and supervision based on prudent and

stringent application of international standards, was outstanding until 2012, certainly in comparison with many other developed countries. However, to strengthen the solvency of the Spanish financial system and complete restructuring of the sector, further measures were adopted in the past few years with various consecutive reforms. In 2012, the MoU imposed the establishment and approval of new measures: *inter alia*, new levels of capital requirements, coverage for risk exposure through new provisions, transparent processes on write-downs and accounting rules, and a framework for the restructuring and resolution of banks. Systemically important banks maintain a solid position, which in turn enables them to continue their domestic and international expansion and to continue to deal with the crisis without requiring public support or intervention. However, the position of some small and medium-sized credit institutions and the economic conditions of the country have been substantially jeopardised during the past few years.

Now that the programme set out in the context of the now-defunct MoU has been successfully exited, the Spanish financial sector is subject to post-programme surveillance by the European Commission, the ECB and the ESM. According to the conclusions reached in the context of the third surveillance visit carried out in March 2015:

a the Spanish economy is showing clear signs of recovery, and is growing at a faster pace than the eurozone average;

b the orderly deleveraging of the private sector has further advanced and, at the same time, access to credit, in particular for households and healthier companies (including SMEs) with positive growth prospects, has improved significantly;

c job creation has accelerated, but unemployment, in particular youth and long-term unemployment, remains very high, as does labour market segmentation;

d government debt is still increasing, and bringing it back to the 60 per cent reference value will require a continued fiscal effort in the long run; and

e the banking sector's stabilisation continues, marked by the improvement of banks' asset quality, strengthened solvency and liquidity and a return of the sector to profitability. Nonetheless, these signs are not uniform across financial institutions. A key milestone for improving the management of SAREB's financial assets has been completed with the introduction of incentives in servicers' contracts that link remuneration with performance.

In conclusion, the profound reforms put in place during 2012–2014, both as a consequence of the MoU, and as a result of the overhaul of the capital and liquidity requirements and governance and compensation regimes at global, European and Spanish level, are already taking form in Spain. Today, Spain's banking sector is made up of fewer banks with adjusted risk profiles and improved corporate governance, although the legislative reforms still remain to be tested in the market. In any event, the general economic environment, and the numerous and well-targeted advances in the restructuring of the Spanish banking system, allow us to believe that the future can be looked at with reasonable confidence.

Appendix 1

ABOUT THE AUTHORS

JUAN CARLOS MACHUCA

Uría Menéndez Abogados, SLP

Juan Carlos Machuca joined Uría Menéndez in Madrid in 1996, and has worked out of the firm's London office since January 2000. He is the current resident partner in London.

Mr Machuca's practice focuses on corporate law, banking, finance, regulatory, investment funds, private equity and capital markets. He also advises clients on M&A transactions and on insolvency and restructuring proceedings.

In 2007, Mr Machuca was one of the winners of the Iberian Lawyer 40 Under Forty Awards, which recognise the achievements of the new generation of top lawyers in Spain and Portugal.

TOMÁS ACOSTA

Uría Menéndez Abogados, SLP

Tomás Acosta joined Uría Menéndez in Madrid in 2008, and between 2012 and 2014 worked out of the firm's London office. He is currently based in the Madrid office.

Mr Acosta's practice focuses on mergers and acquisitions, corporate and debt restructuring and multijurisdictional structured finance deals, as well as equity and debt issuances. He also advises on wide-ranging corporate matters, such as corporate governance and national and international contracting, and regulatory aspects concerning financial activities, such as banking, investment services and payment services.

Mr Acosta has been involved in numerous transactions, including investment and divestment projects in listed and non-listed companies, acquisition and project financings and corporate restructurings, in which he has acted for both private equity firms and industrial clients.

URÍA MENÉNDEZ ABOGADOS, SLP
125 Old Broad Street – 17th Floor
London EC2N 1AR
United Kingdom
Tel: +44 20 7260 1800
Fax: +44 20 7260 1812
juancarlos.machuca@uria.com

Príncipe de Vergara, 187
Plaza de Rodrigo Uría
28002 Madrid
Spain
Tel: +34 91 5 860 400
Fax: +34 91 586 04 71
tomas.acosta@uria.com

www.uria.com