

6561 LAW 5/2005, 22 April 2005, on the supervision of financial conglomerates, amending other financial sector legislation.

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KING OF SPAIN

To all those unto whom these presents may come.

Let it be known: That the *Cortes Generales* have approved, and I have sanctioned, the following Law.

DECLARATION OF PURPOSE

Financial stability constitutes one of the central pillars in the design of the single European financial market. The convergence promoted by the European institutions has contributed to this goal, and is underpinned by the exercise of secure prudential supervision, in terms both of common basic rules and practical instruments for their enforcement. This is a palpable reality, in which the Financial Services Action Plan set in motion by the European Commission has played a decisive role.

It was precisely in the framework of this plan that the need to offer an adequate response to the proliferation of cross-sectoral groups, encompassing credit institutions, investment services companies and insurance companies, was addressed. This intensification of the links between traditional financial sectors had given rise to a dual problem. First of all, it favoured the emergence of new risks, or at least it potentially increased existing ones. It was therefore necessary to adopt adequate regulations proportional to these risks. Secondly, in a single financial market these new regulations had to be undertaken in a harmonised way and any inconsistencies between sectoral legislations corrected.

The starting point was characterised by a variety of shortcomings. Whilst "uniform" groups of financial institutions were sufficiently covered by sectoral rules of prudential supervision that were already fully operational and working satisfactorily, "heterogeneous" groups lacked a full body of regulations, and numerous inconsistencies (not to mention loopholes) were apparent between sectoral legislations applicable to entities in such groups.

In Spain, on the other hand, the initial situation was much more satisfactory. Since 1992 a system of prudential supervision has been operating under Spanish legislation which has oversight over the activities of groups carrying on three types of financial business: banking, securities and insurance. These groups have been dubbed non-consolidatable mixed groups. The declaration of purpose of Law 13/1992, 1 June 1992, on the own funds and supervision on a consolidated basis of financial institutions described this situation in the following terms: "... it seemed timely to include a final chapter permitting supervision, in particular of the effective level of own funds and risk concentration in those mixed groups in which there are financial entities or groups which, according to the specific regulations applicable to them, may not be consolidated with one another. This chapter therefore defines a form of limited consolidation which, while pursuing objectives similar to those of the traditional supervision techniques working on a fully consolidated basis, gets around the serious difficulties of applying the latter to institutions such as insurance companies and other financial institutions whose business and risks are so dissimilar." The above Law thus provides for a set of special supervisory rules applicable to non-consolidatable mixed groups. This set of rules is structured, on the one hand, around a series of additional solvency requirements beyond those provided for in the sectoral framework (individual or consolidated) for banking, securities and insurance institutions, and also around the designation of a supervisory authority responsible for overseeing compliance and the setting up of a cooperation procedure to adopt, if applicable, the measures necessary to ensure the compliance.

Meanwhile, at the European Community level the progress was much more modest, with no harmonised rules at all. Doctrinally, the ground was prepared by the work of the G-10 Joint Forum on financial conglomerates and the report by the European Union's Economic and Finance Committee on financial stability (Brouwer Report). The Commission group was able to produce a synthesis of previous contributions and develop a series of papers which finally bore fruit in the

approval of Directive 2002/87/EC of the European Parliament and Council of 16 December 2002, on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council. This Law partially translates the above Directive into Spanish legislation.

This Law therefore responds to the fundamental aim of providing for a specific prudential regime applicable to financial conglomerates. However, it also has a secondary aim. Namely to progress towards greater consistency between the different sectoral legislations applicable to "uniform" groups, and between the sectoral legislation applicable to the latter and that applicable to financial conglomerates. This sectoral regulation, to which the text of this Law makes continual references, is that provided for in Law 13/1985, 25 May 1985, on investment coefficients, own funds and the reporting obligations of financial intermediaries, and Law 26/1988, 29 July 1988, on discipline and intervention in credit institutions, in the case of financial institutions; Law 24/1988, 28 July 1988, on the Securities Market, for the securities market; and the consolidated text of the Law on the organisation and supervision of private insurance, passed by Legislative Decree 6/2004, 29 October 2004, in the case of the insurance industry. To these should be added the consolidated text of the Law regulating pension schemes and funds, passed by Legislative Royal Decree 1/2002, 29 November 2002, Law 35/2003, and 4 November 2003, on collective investment institutions.

Chapter I is devoted to the first of the goals highlighted above: the design of a new system of supervision applicable to credit institutions, investment services firms, insurance and reinsurance undertakings, collective investment management firms, pension fund management firms (which both the Directive and this Law refer to generically as "regulated entities") which form part of a financial conglomerate. Thus, first a definition of a financial conglomerate is given, based on the now classic definition of a group given by Article 4 of Law 24/1988, 28 July 1988, on the Securities Market. Then the elements structuring this supervision are listed, namely: solvency, capital adequacy policies, risk concentration, intra-group transactions, risk management procedures and internal control mechanisms.

Articles 5, 6 and 7 envisage a set of measures intended to facilitate supplementary supervision. These provide for the role of the coordinator as the competent authority responsible for coordinating supervisory activity in a framework in which a multitude of authorities may coexist, if the financial conglomerate is characterised by a high degree of geographical and territorial diversification. The system is completed by obligations upon all the competent authorities involved in the supervision of a given financial conglomerate to cooperate and consult with one another.

Article 8 addresses the issue of financial conglomerates based in third countries, whose regulated entities operate in Spain. The principle of reciprocity is the axis of the regime applicable to entities of this type.

Chapters II, III and IV address the second objective of the Directive, as they are dedicated to credit institutions, the securities market, and the insurance market, respectively.

CHAPTER I

On financial conglomerates

Article 1. - Object.

Regulated entities belonging to financial conglomerates shall be subject to the supplementary supervisory regime envisaged in this Law and its implementing provisions, which shall be applicable to other entities under the terms described herein.

Article 2. Definitions

1. A group is considered to constitute a financial conglomerate when the following circumstances arise simultaneously:

- a) The parent company in the group is a regulated entity, or alternatively, the activities of the group are primarily in the financial sector, as defined in paragraph 4 of this article, and at least one of the subsidiaries is a regulated entity, in accordance with paragraph 3 of this article.
- b) At least one of the entities in the group belongs to the insurance sector, and at least one other belongs to the banking or investment services sector.
- c) That the consolidated or aggregated activities of the group included in the insurance sector and the group entities included in the banking sector and investment services are significant, in accordance with paragraph 5 of this article.

Any subgroup within a group will also be considered a financial conglomerate when it meets the conditions laid down in the preceding sub-paragraphs.

2. For the purposes of this Law, entities will be considered to belong to the same group if:

- a) They constitute a decision-making unit, under the terms of Article 4 of Law 24/1998, 28 July 1998, on the Securities Market,
- b) They hold a participation in the other. A participation shall be understood to be any right over the capital of other companies which creates a lasting bond and is destined to contribute to the activity of the company, or in any case, the holding, directly or indirectly, of at least 20 per cent of the company's capital or voting rights.

The group shall consist of all the entities that have links between them of the kind indicated in the sub-paragraphs above, whatever country or location of their head office or their legal nature, and independently from the country in which they undertake their activities.

3. For the purposes of the provisions of this Law, regulated entities shall include credit institutions, investment services firms, collective investment institution management firms, pension fund management firms, and insurance and reinsurance undertakings.

Regulated entities shall include:

- a) Spanish firms inscribed in the special registers held by the *Banco de España* (Bank of Spain), *Comisión Nacional del Mercado de Valores* (National Securities Market Commission), and the *Dirección General de Seguros y Fondos de Pensiones* (Directorate-General for Insurance and Pension Funds).
- b) Those authorised in other Member States of the European Union.
- c) Public and private organisations and undertakings which have been authorised in third countries, when they carry out activities reserved to credit institutions, investment services companies, insurance and reinsurance undertakings, collective investment institution management firms and pension fund management firms.

4. A group's activities shall be considered to be principally conducted in the financial sector if the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole exceeds 40%.

5. A group's activities shall be considered significant in a financial sector if the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group exceeds 10%.

The requirement envisaged in sub-paragraph c) of paragraph 1 is also considered to be met if the balance sheet total of the smallest financial sector in the group is more than 6,000 million euros. The regulations shall define the cases in which, when the threshold envisaged in this sub-paragraph is exceeded but that in the preceding sub-paragraph is not reached, the group may not be considered a financial conglomerate or when the provisions of sub-paragraphs c), d) and e) of paragraph 1 of Article 4 will not be applicable to it.

For the purposes of this Law, the smallest financial sector in a group is that sector with the smallest average and the most important financial sector is that sector with the highest average. In order to calculate the smallest financial and most important sectors, the banking and investment services sectors will be considered together.

6. In those cases determined by the regulations, and in accordance with the requirements thereof, in the ratios envisaged in paragraphs 4 and 5 the balance sheet total may be replaced or complemented by one or both of the following parameters:

- a) The income structure.
- b) Off-balance-sheet activities.

In order to avoid sudden changes in the regime of financial conglomerates already subject to supplementary supervision, in the case where the ratios defined above are less than 40 per cent and 10 per cent, respectively, over the three following years the thresholds of 35 per cent and 8 per cent will be applied to the financial conglomerate. Similarly, if the balance sheet total of the smallest financial sector falls below 6,000 million euros, a threshold of 5,000 million euros will be applied.

During the period envisaged in the preceding sub-paragraph, the coordinator, with the agreement of the other relevant competent authorities, may decide whether to cease applying the lower thresholds or amounts envisaged here.

7. A parent company, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity, and other entities, constitutes a financial conglomerate, shall be considered a mixed financial holding company.

8. For the purposes of Article 5 and following articles, the competent authorities for a financial conglomerate shall be the national authorities of the European Union Member States which are empowered by law or regulation to supervise regulated entities whose head office is located in their territory whether on a solo or consolidated basis.

Article 3. Scope of application.

1. Financial conglomerates shall be subject to this law in the following cases:

- a) When the parent company is a Spanish regulated entity.
- b) When the parent company is a mixed financial holding company whose head office is located in Spain and at least one of its subsidiaries is a Spanish regulated entity.
- c) If the parent company is a foreign mixed financial holding company, all the subsidiaries are Spanish regulated entities or the subsidiary with the largest balance sheet total in the most important financial sector is a Spanish regulated entity.
- d) In all other cases, if the regulated entity with the largest balance sheet total in the most important financial sector is Spanish.

2. The following will also be subject to the provisions of this Law and its implementing regulations:

- a) Spanish regulated entities which form part of a financial conglomerate subject to supplementary supervision by the competent authorities in other Member States of the European Union.
- b) Mixed financial holding companies with their head office in Spain which are the parent company of a financial conglomerate as indicated in sub-paragraph a) above.
- c) Regulated entities whose parent company is a regulated entity or a mixed financial holding company which has its head office outside of the European Union, under the terms provided for in Article 8 of this Law.
- d) Regulated entities belonging to groups that are not financial conglomerates, under the terms envisaged in paragraph 3 of Article 4 of this Law.

Article 4. Elements of supplementary supervision.

1. Without prejudice to the prudential requirements that may be required individually or on a group-wide basis according to sectoral rules, regulated entities belonging to financial conglomerates shall:

a) Maintain at all times, at the level of the financial conglomerate, an adequate volume of own funds or solvency margin in relation to the investments made and risks assumed; the regulations shall establish the criteria for the inclusion of financial entities in the financial conglomerate for the purposes of calculating capital adequacy requirements, and the methods according to which this calculation should be performed, which must use as their starting point the sum of the solvency requirements provided for in the sectoral rules applicable to the entities belonging to the financial conglomerate.

b) Apply capital adequacy policies in the financial conglomerate.

c) Adhere to the quantitative limits and other requirements laid down by the government, or with specific authorisation, the Ministry of Economy and Finance, the *Banco de España Comisión Nacional del Mercado de Valores*), each in its own specific sphere, in relation to the concentration of risks in the entities of the financial conglomerate, and to inform the coordinator of any significant concentration of risk in the financial conglomerate.

d) Abide by the quantitative limits and comply with the qualitative requirements that may be set by the Government, or with specific authorisation, the Ministry of Economy and Finance, the *Banco de España, Comisión Nacional del Mercado de Valores*, each in its own specific sphere of competence, in relation to intra-group transactions between the financial conglomerate's entities or between them and natural or legal persons with whom it has close links, and to inform the coordinator of significant intra-group transactions between the financial conglomerate's regulated entities.

Close links shall be understood to exist when two or more natural or legal persons are linked by control, in the terms envisaged in Article 4 of Law 24/1998, 28 July 1988, on the Securities Market, or by ownership, direct or by way of control, of 20% or more of the voting rights or capital of an entity.

e) At the level of the financial conglomerate there shall be risk management procedures and adequate internal control mechanisms, and an administrative and accounting organisation.

2. Where the parent company of a financial conglomerate is a mixed financial holding company, the sectoral rules regarding risk concentration and intra-group transactions of the most important financial sector in the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.

3. Some or all of the obligations provided for in paragraph 1 may be extended by regulations to those groups meeting the requirements envisaged in Articles 2 and 3, except in the case envisaged in Article 2, paragraph 1, sub-paragraph c).

Articles 5, 6 and 7 of this Law shall also be applicable to groups that are subject to the above obligations, as determined by the applicable regulations.

4. The circumstances in which the supervisory authorities may demand fulfilment of some or all of the obligations envisaged in paragraph 1 by regulated entities in which one or more natural or legal persons hold participations or have capital ties, or exercise significant influence, without their constituting a group, in the terms provided for by Article 2, shall be defined by the regulations, due account being taken of the particular features of cooperatives or mutual insurance companies in such cases.

5. Persons holding directorships and executive offices in mixed financial holding companies must be of recognised good business and professional repute and the majority, at least, must have adequate knowledge and experience to perform their duties.

Non-compliance with these requirements shall result in the undertaking's being classed as unsuited to holding a significant participation in any regulated entity and the sectoral rules applicable in this case to each of the regulated entities making up a financial conglomerate shall apply.

Article 5. Coordinator and reporting entity.

1. A single coordinator shall be responsible for the exercise and coordination of the supplementary supervision of regulated entities belonging to financial conglomerates subject to this Law. This coordinator shall be one of the authorities with supervisory functions over the regulatory entities making up the conglomerate, in accordance with the provisions of the following paragraph.

2. When the parent company of a financial conglomerate is a regulated entity, the coordination function will be exercised by the competent authority responsible for supervision of the consolidatable group to which it belongs or, otherwise, by the competent authority responsible for supervision of the entity itself on a solo basis.

In the case of financial conglomerates whose parent company is not a regulated entity, the coordinator function shall be exercised by the competent authority defined by the criteria provided for by the regulations.

3. The coordination functions regarding supplementary supervision of the regulated entities in a financial conglomerate are the following:

a) Coordination of the gathering and dissemination of relevant or essential information, including the dissemination of information which is of importance for a competent authority's supervisory tasks under sectoral rules.

b) Supervisory overview and assessment of the financial situation of a financial conglomerate.

c) Assessment of compliance with the obligations envisaged in the preceding article and the rules implementing them.

d) Assessment of the structure, organisation and internal control systems of the financial conglomerate.

e) Planning and coordination of supervision activities when necessary for the purposes of supplementary supervision, and at all events, in serious situations.

f) The remainder of the functions assigned by this Law and its implementing provisions.

4. The presence of a coordinator responsible for performing the functions assigned to in this Law shall not affect the functions, powers and responsibilities of the competent authorities under the respective sectoral rules as regards the exercise of their tasks of supervision and control.

5. In each financial conglomerate there shall be a Spanish reporting entity that shall take upon itself the duties deriving from the relationship between the conglomerate and the coordinator.

The parent company shall be the reporting entity for the conglomerate if it is a credit institution, investment services company, insurance undertaking or a mixed financial holding company. Otherwise, it shall be the financial conglomerate's credit institution, investment services company or insurance undertaking identified by the coordinator following consultations with the other competent authorities. In such cases it shall give the conglomerate an opportunity to state its opinion on this decision.

Article 6. Cooperation between competent authorities.

1. The competent Spanish authorities shall cooperate closely with each other and with other competent authorities within the framework of the supplementary supervision of regulated entities belonging to financial conglomerates subject to this Law and other national legislation translating Directive 2002/87/EC of the European Parliament and Council, of 16 December 2002.

2. Whenever called upon to perform the role of coordinator or if they are made responsible for consolidated supervision of a group of financial entities which belong to any of the financial conglomerates referred to in the previous paragraph, the competent Spanish authorities shall establish coordination agreements with all the other competent authorities for this same financial conglomerate. It may limit these to those authorities it considers relevant in accordance with the criteria laid down by the regulations.

These agreements may expand the coordinator's functions and specify procedures applicable to the process of decision making by the signatory competent authorities, and the procedures for cooperation with other competent authorities.

Such agreements must also be signed when, as competent authorities, they are required to do so by other Member States of the European Union which are performing the functions described in the first sub-paragraph of this paragraph.

3. The competent Spanish authorities shall exchange all relevant or essential information with the other competent authorities as necessary for the exercise of supplementary supervision over the financial conglomerate. The minimum scope of the information collected and exchanged in accordance with this paragraph shall be determined by the regulations.

This information exchange regime may be extended to central banks, the European System of Central Banks and the European Central Bank.

4. Prior to adopting any of the following measures the competent Spanish authorities shall consult with other competent authorities for the same financial conglomerate where these measures are of importance for supplementary supervision tasks:

- a) Changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of competent authorities.
- b) Major penalties or exceptional measures.
- c) Other measures that may be provided for in the regulations.

The Spanish competent authorities may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In such cases, the Spanish competent authorities shall inform the other competent authorities.

5. The competent authority, whether Spanish or from another Member State, acting as the coordinator for a financial conglomerate, may directly address the entities, whether regulated or not, belonging to the conglomerate, in order to collect relevant information for the purposes of supplementary supervision. When the information requested has already been supplied to a competent authority under applicable sectoral rules, the authority acting as the coordinator may obtain the information from the latter.

Without prejudice to the foregoing, the competent Spanish authorities, at the behest of the competent authority acting as the coordinator, shall ask entities whose head office is located in Spain, whether regulated or not, which belong to financial conglomerates, for any information that may be relevant for its coordination tasks, and send the competent authority such information.

Also, the Spanish competent authorities acting as the coordinator for a conglomerate may ask the competent authorities in other Member States of the European Union for any relevant information for the purposes of supplementary supervision in relation to the parent company, or other entities, whether regulated or not, belonging to the conglomerate, whose head office is located in the corresponding Member State.

6. The Ministry of Economy and Finance may provide for the rules necessary to ensure the adequate coordination and collaboration, under the terms of this article, between the competent Spanish authorities.

Article 7. Enforcement measures.

1. If the regulated entities in a financial conglomerate do not comply with the requirements referred to in Article 4 and the implementing regulations, or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the regulated entities' financial position, the same limitations as provided for in the regulations applicable to consolidatable financial institutions shall be applicable to the regulated entities concerned.

2. The competent Spanish authorities, in the case of the regulated entities in a financial conglomerate, and the coordinator in the case of a mixed financial holding company, shall have the same powers as those provided for the regulation of consolidatable groups of financial institutions.

3. The provisions of the preceding articles shall be understood as being without prejudice to the application, where applicable, of the penalties envisaged in Law 24/1988, 28 July 1988, on the Securities Market, Law 26/1988, 29 July 1988 on discipline and intervention in credit institutions, the consolidated text of the Law on the organisation and supervision of private insurance, passed by Legislative Royal Decree 6/2004, 29 October 2004, the consolidated text of the Law regulating pension plans and funds, passed by Legislative Royal Decree 1/2002, 29 November 2002, and Law 35/2003, 4 November 2003, on collective investment institutions.

Regulated entities in the groups referred to in Article 4 paragraph 3 may be sanctioned in accordance with the provisions of the rules indicated in the preceding sub-paragraph, in the event of non-compliance with the obligations upon them by virtue of the provisions of this Law. To this end, the references in the cited legislation concerning financial conglomerates shall be understood to apply to the aforementioned groups.

Article 8. Groups based in third countries.

1. In the case of regulated entities whose parent company is a regulated institution or a mixed financial holding company whose head office is located outside of the European Union and is subject to supervision by an authority in a third country, if they form part of a group which, if the rules in Article 2 were applied, would constitute a financial conglomerate, the competent Spanish authorities must verify that the regulations applied to them are equivalent to those envisaged in this chapter and their implementing regulations.

The duty of verification referred to in the preceding sub-paragraph shall only apply when, in accordance with the criteria laid down in Article 5 paragraph 2 and its implementing provisions, the Spanish competent authority is acting in the role of coordinator.

2. If it is found that there is no equivalent supervisory regime, the supervisory regime envisaged in this Law and its implementing provisions shall be applicable to regulated entities mentioned in the preceding paragraph.

Notwithstanding the provisions of the preceding sub-paragraph, the government, or with specific authorisation, the Ministry of Economy and Finance, the *Banco de España*, *Comisión Nacional del Mercado de Valores* each in its own specific sphere, may provide for other methods for the supplementary supervision of groups referred to in this paragraph, with respect to which they act as coordinator. These methods shall include the supervisory authorities' having the power to require the creation of a mixed financial holding company which has its head office in the European Union.

The methods must comply with the objectives of supplementary supervision defined in this Law and be communicated to other competent authorities and to the European Commission.

CHAPTER II

Rules regarding credit institutions

Article 9. Amendment of Law 13/1985, 25 May 1985, on investment coefficients, own funds, and financial intermediaries' reporting obligations.

Law 13/1985, 25 May 1985, on investment coefficients, own funds, and financial intermediaries' reporting obligations, is amended as follows:

One. The new text of Article 8 paragraph 1, sub-paragraph c) of paragraph 3), sub-paragraph g) of paragraph 4 and paragraph 5, reads as follows:

"1. In order to comply with the solvency coefficient, and where applicable, the limitations envisaged in Articles 6 and 10, credit institutions shall consolidate their financial statements with those other credit institutions and financial entities with which they constitute a decision-making unit. To these same ends, credit institutions that do not have subsidiaries shall prepare financial statements in

which they apply criteria analogous to those of consolidation if they have a participation, in the sense indicated in paragraph 1 of Article 185 of the Law of Joint Stock Companies, directly or indirectly, of at least 20 per cent of the capital or voting rights in the financial institution.

Consolidatable groups of credit institutions must have adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures, and all the entities or companies belonging to them must have adequate mechanisms for reporting the information necessary for compliance with the regulations applicable to the group."

"3. c) That a company whose main activity is the holding of participations in financial institutions, a natural person, a group of natural persons acting systematically in concert, or an entity that is not consolidatable under this Law, control various financial institutions, at least one of them being a credit institution, always provided that the credit institutions are the largest entities among the financial institutions, in accordance with the relevant criteria laid down by the Ministry of Economy and Finance."

"4. g) Entities whose main activity is the holding of shares or participations, unless they are mixed financial holding companies subject to supervision at the level of the financial conglomerate."

"5. For this purposes indicated in paragraph 1 of this Article, insurance undertakings shall not form part of consolidatable groups of credit institutions."

Two. The new text of the first sub-paragraph of paragraph 2 and paragraph 3 of Article 9 reads as follows:

"2. The *Banco de España* and the *Comunidades Autónomas* (Governments of the Autonomous Regions), within the scope of their competencies, may require that entities subject to consolidation belonging to a consolidatable group of credit institutions all such information as is necessary to verify the consolidation carried out, analyse the risks assumed by the group of consolidated entities, and evaluate the risk management processes and internal control mechanisms of the institutions that make up the group. To this same end, they may inspect their books, documents and records."

"3. The *Banco de España* (Bank of Spain) and the *Comunidades Autónomas* (Governments of the Autonomous Regions), within the scope of their competencies, may request information from natural persons and inspect non-financial entities with which there is a relationship of control in the sense provided for by paragraph 2 of the preceding article, for the purposes of determining their impact on the legal, financial and economic situation of credit institutions and their consolidatable groups. In particular, in the case of the parent company of a credit institution, the *Banco de España* may conduct general supervision of the transactions between the credit institution or its consolidatable group and the non-financial parent company and its subsidiaries."

Three. A new paragraph 3 is added to Article 13, the text of which is as follows:

"3. The *Banco de España* must verify whether credit institutions whose parent company is a financial institution whose head office is located outside of the European Union are subject to supervision on a consolidated basis by a competent authority in a third country that is equivalent to that envisaged in this Law and its implementing regulations.

If it is found that there is no equivalent supervisory regime, the system of supervision on a consolidated basis envisaged in this Law and its implementing provisions shall be applicable to credit institutions mentioned in the preceding sub-paragraph.

Notwithstanding the provisions of the preceding sub-paragraph, the *Banco de España* may provide for other techniques for the supervision of the groups referred to in this paragraph on a consolidated basis. These methods shall include the *Banco de España's* having the power to require the creation of a parent financial institution which has its head office in the European Union.

The methods must achieve the objectives of consolidated supervision as defined in this Law and must be notified to the other competent authorities involved and the European Commission."

Article 10. *Amendment of Law 26/1988, 29 July 1988, on discipline and intervention in credit institutions.*

Law 26/1988, 29 July 1988, on discipline and intervention in credit institutions, is amended as follows:

One. The new text of Article 4 sub-paragraphs c), f), i) and n) reads as follows:

"c) When credit institutions or the consolidated group or financial conglomerate to which they belong, suffers from insufficient cover of the minimum own resource requirements, when these are below 80 per cent of the minimum, where applicable, established as being obligatory on the basis of the risks assumed, and when they remain in this situation for a period of at least six months."

"f) When the lack the legally required books of account or keep such books with essential irregularities preventing the financial and asset situation of the entity, consolidatable group or financial conglomerate to which it belongs from being known."

"i) When they fail to submit to the competent administrative body any data or documents for which submission is mandatory or which are required in the exercise of the administrative body's functions, or if the information submitted is inaccurate, such that this is an obstacle to determining the solvency of the entity, consolidatable group or financial conglomerate to which it belongs. For the purposes of this point, it shall be understood that information has not been sent when not sent within the period determined by the competent body when giving a written reminder of the obligation or repeating the requirement."

"n) If the credit institution or the consolidated group or financial conglomerate to which it belongs, suffers deficiencies in its administrative and accounting organisation, or its internal control procedures, including those regarding risk management, when such deficiencies put in jeopardy the solvency or viability of the entity or the consolidated group or financial conglomerate to which it belongs."

Two. The text of Article 5 sub-paragraphs h) and r) reads as follows:

"h) When credit institutions or the consolidated group or financial conglomerate to which they belong, suffers from insufficient cover of the minimum own resource requirements, when they remain in this situation for a period of at least six months, unless this constitutes a very serious infringement in accordance with the provisions of the preceding article."

"r) When the credit institution or the consolidated group or financial conglomerate to which it belongs, suffers deficiencies in its administrative and accounting organisation, or its internal control procedures, including those regarding risk management, once the period granted by the competent authorities for these deficiencies to be rectified has elapsed, unless this constitutes a very serious infringement in accordance with the provisions of the preceding article."

Three. The new text of Article 16 paragraph 1 reads as follows:

"1. When the infringements described in Articles 4, 5 and 6 refer to obligations of consolidatable groups of credit institutions, the entity considered the head of the conglomerate (reporting entity) shall be penalised, as shall its directors and executives, if appropriate.

Similarly when such infringements refer to the obligations of financial conglomerates, the penalties envisaged in this Law shall be applied to the reporting entity when the latter is a credit institution or a mixed financial holding company, provided that in this latter case it is the responsibility of the *Banco de España* to act as the coordinator for supplementary supervision of the financial conglomerate concerned. The penalties referred to here may be applied, where appropriate, to the directors and executives of the regulated entity."

Four. The new text of Article 43 paragraphs 2 and 4 reads as follows:

"2. The competent authorities of the relevant European Union Member State must be consulted prior to deciding upon the authorisation of a credit institution if any of the following circumstances arise:

a) The new entity is due to be controlled by a credit institution, an investment company or an insurance or reinsurance undertaking authorised in that Member State.

b) It is due to be controlled by the parent company of a credit institution, an investment services company or an insurance or reinsurance undertaking authorised in that Member State.

c) It is due to be controlled by the same natural or legal persons as those who control a credit institution, an investment services company or an insurance or reinsurance undertaking authorised in that Member State.

An entity is considered to be controlled by another when any of the situations envisaged in Article 4 of Law 24/1988, 28 July 1988, on the Stock market arise.

This consultation will deal, in particular, with the assessment of the suitability of the shareholders and that the directors and executives of the new entity or the parent company are of good repute and have sufficient experience. This consultation may be repeated for the ongoing assessment of compliance by Spanish credit institutions of these requirements."

"4. Authorisation to create a new credit institution shall be refused when it lacks the minimum capital required, a good administrative and accounting organisation or adequate internal control procedures to ensure the healthy and prudent management of the institution; when its directors and executives, or those of the parent company, if any, do not have the required good business and professional repute, or when any other requirement laid down in the regulations for the exercise of banking business is not complied with."

CHAPTER III

Rules regarding the securities market

Article 11. *Amendment of Law 24/1988, 28 July 1988, on the Securities Market.*

Law 24/1988, 28 July 1988, on the Securities Market is amended as follows:

One. The new text of Article 66 paragraph 3 reads as follows:

"3. The competent authorities of the relevant European Union Member State must be consulted prior to deciding upon the authorisation of an investment services company if any of the following circumstances arise:

a) The new entity is due to be controlled by an investment services company, a credit institution or an insurance or reinsurance undertaking authorised in that Member State.

b) It is due to be controlled by the parent company of an investment services company, a credit institution or an insurance or reinsurance undertaking authorised in that Member State.

c) It is due to be controlled by the same natural or legal persons as those who control an investment services company, a credit institution or an insurance or reinsurance undertaking authorised in that Member State.

A company is considered to be controlled by another when any of the circumstances envisaged in Article 4 of this Law arise.

This consultation will deal; in particular, with the assessment of the suitability of the shareholders and that the directors and executives of the new entity or the parent company are of good repute and have sufficient experience. This consultation may be repeated for the ongoing assessment of compliance by Spanish investment services companies of these requirements."

Two. A new sub-paragraph d) is added to paragraph 1 of Article 67, the text of which reads as follows:

"d) The lack of professional and business repute on the part of the members of the board of directors and the persons responsible for the effective management of the mixed financial holding company, when the investment services company is going to be dependent upon it as a part of a financial conglomerate."

Three. Article 70, paragraph 1, sub-paragraph i) reads as follows:

"i) That all the members of the board of directors and the general managers and similar officers of the company are of recognised business and professional good repute. As regards authorised representatives whose authority is not restricted to representing the company in specific areas or on specific topics, or areas outside the activity constituting the object of the investment services company, the directors shall verify, prior to granting a power of attorney, that the persons concerned meet the required standards of professional and business good repute and they shall revoke any powers of attorney granted to persons no longer meeting this requirement. Also, if the investment services company is dependent upon a mixed financial holding company which is part of a financial conglomerate, that the persons responsible for effectively directing the mixed financial holding company are of sufficiently good repute and have sufficient experience."

Four. Paragraph 4, sub-paragraph c), paragraph 6 sub-paragraph f), paragraph 7, and a new paragraph 15 of Article 86, reads as follows:

"4. c) That a company whose principal activity is the holding of participations in financial institutions, a natural person, a group of persons acting systematically in concert, or a non-consolidatable entity in accordance with this Law, control various entities of those defined in paragraph 6 of this article, at least one of them being an investment services company, provided that the investment services companies are those of largest relative size among the financial institutions, in accordance with the criteria laid down in this regard by the Ministry of Economy and Finance."

"6. f) Entities whose main activity is the holding of shares or participations, unless they are mixed financial holding companies subject to supervision at the level of the financial conglomerate."

"7. For the purposes indicated in paragraph 4, insurance companies do not form a part of consolidatable groups of investment services companies."

"15. Consolidatable groups of investment services companies must have adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures, and all the entities or companies belonging to them must have adequate mechanisms for reporting the information necessary for compliance with the regulations applicable to the group."

Five. In Article 99 the last sub-paragraph is deleted. Additionally sub-paragraphs e), e') and k) are amended to read as follows and a new sub-paragraph l') is added, so as to read as follows:

"e) Breach of the obligation of consolidation described in Article 86 of this Law, and failure on the part of companies cited in the above article to keep the legally required accounts and records, or to keep them with defects or essential irregularities preventing a proper knowledge of the financial and asset situation of the entity, consolidatable group or financial conglomerate to which it belongs, or not registering on the accounts the transactions it enters into or in which it acts as an intermediary."

"e') When institutions subject to prudential supervision by the *Comisión Nacional del Mercado de Valores*, consolidated groups of investment services companies and financial conglomerate to which they belong, present deficiencies in the administrative and accounting organisation or in the internal control procedures, including those relating to risk management, when such deficiencies jeopardise the solvency or viability of the entity or the consolidatable group or financial conglomerate to which it belongs."

"k) Reduction in the own funds of investment services companies or the consolidatable group or the financial conglomerate to which it belongs to a level less than 80 per cent of that required, and remaining in this situation for at least six consecutive months."

"l') Failure of investment services companies to submit to the *Comisión Nacional del Mercado de Valores* any data or documents that it is obligator for it to submit or which are required of it by the latter authority in the exercise its functions, or when the information submitted is inaccurate, such that this represents an obstacle to determining the solvency of the entity, consolidatable group or financial conglomerate to which it belongs. For the purposes of this point, it shall be understood that information has not been sent when it is not sent within the period determined by the *Comisión*

Nacional del Mercado de Valores when giving a written reminder of the obligation or repeating the requirement."

Six. 1. The text of the new sub-paragraph c') and a new sub-paragraph n) of Article 100 read as follows:

"c') When institutions subject to prudential supervision by the *Comisión Nacional del Mercado de Valores*, consolidated groups of investment services companies and financial conglomerate to which they belong, present deficiencies in the administrative and accounting organisation or in the internal control procedures, including those relating to risk management, once the period granted by the competent authorities for the deficiencies to be rectified has elapsed, provided that they do not constitute a very serious infringement."

"n) When investment services companies or the consolidated group or financial conglomerate to which they belong, suffers from insufficient cover of the minimum own resource requirements, and remains in this situation for a period of at least six months, unless this constitutes a very serious infringement in accordance with the provisions of the preceding article."

2. The last sub-paragraph of Article 100 reads as follows:

"The infringement envisaged in sub-paragraph a') will be imposed *in solidum* upon any of the parties to the paracorporate agreement."

Seven. A new Article 106a is added, which reads as follows:

"Article 106a.

When the infringements described in Articles 99, 100 and 101 refer to obligations of consolidatable groups of investment services companies, the entity considered the head of the financial conglomerate (reporting entity) shall be penalised and, where appropriate, its directors and executives.

Similarly when such infringements refer to the obligations of financial conglomerates, the penalties envisaged in this Law shall be applied to the entity considered the head of the financial conglomerate (reporting entity) when the latter is an investment services company or a mixed financial holding company, provided that in this latter case it is the responsibility of the *Comisión Nacional del Mercado de Valores* to act as the coordinator for supplementary supervision of the financial conglomerate concerned. The penalties referred to here may also be applied, where appropriate, to the directors and executives of the regulated entity."

CHAPTER IV

Rules regarding the insurance sector

Article 12. *Amendment of the consolidated text of the Law on the organisation and supervision of private insurance, passed by Legislative Royal Decree 6/2004, 29 October 2004.*

The consolidated text of the Law on the organisation and supervision of private insurance, passed by Legislative Royal Decree 6/2004, 29 October 2004, is amended as follows:

One. Article 2 sub-paragraph e) is amended, and in paragraph 6 a new paragraph 4' is added, and a new sub-paragraph h) is added, which read as follows:

"e) Indicate the contributions and participations in the share capital or partners' mutual fund, which must meet the requirements stated in Article 14, expressly stating which partners are insurance undertakings, credit institutions or investment services companies, and, if applicable, the participations, independently of their amount, of which the owner is any partner in an insurance company, credit institution or investment services company."

"4'. The competent authorities of the relevant European Union Member State must be consulted prior to deciding upon the authorisation of an insurance undertaking if any of the following circumstances arise:

a) The new entity is due to be controlled by and insurance or reinsurance undertaking, credit institution or an investment company authorised in that Member State.

b) It is due to be controlled by the parent company of an insurance or reinsurance undertaking, a credit institution or an investment services company authorised in that Member State.

It is due to be controlled by the same natural or legal persons as those who control an insurance or reinsurance undertaking, a credit institution or an investment services company authorised in that Member State.

An undertaking is considered to be controlled by another when any of the situations envisaged in Article 4 of Law 24/1988, 28 July 1988, on the Stock market, arise.

This consultation will deal, in particular, with the assessment of the suitability of the shareholders and that the directors and executives of the new entity or its parent company are of good repute and have sufficient experience. This consultation may be repeated for the ongoing assessment of compliance by Spanish insurance undertakings of these requirements."

"6. The application for authorisation must be refused when:

h) Contributions or participations of the kind referred to in Article 5.2 e) exist, such that this situation hinders the good exercise of the organisation and supervision or does not guarantee the healthy and prudent management of the entity, or the directors and executives of the financial institution which is its parent company, if any, do not meet the requirements of good repute and sufficient experience."

Two. The new text of Article 15 paragraph 1 reads as follows:

"1. Persons who, with whatever title, are responsible for the effective management of the insurance undertaking, or an entity whose principal activity is the holding of participations in insurance undertakings, shall be natural persons of recognised good repute and meeting the necessary conditions in terms of qualifications and professional experience and shall be inscribed in the administrative register of senior officials of insurance undertakings referred to in Article 74.

At all events, it shall be considered that persons holding executive offices or seats on the board of directors shall be responsible for the effective management of the company, thus including those referred to in Article 40.1. sub-paragraph a). Legal persons may hold seats on the board, but in this case they must appoint a natural person meeting the requirements stated above to represent them."

Three. In Article 20, sub-paragraph one of paragraph 2, the first sub-paragraph of paragraph 3, sub-paragraphs a) and c) of paragraph 3, and a new paragraph 3', reads as follows:

"2. In order to comply with solvency margins and, where appropriate, other limitations and obligations envisaged in the law, insurance undertakings shall consolidate their financial statements with other insurance undertakings or financial entities which form a decision-making unit with them or in which they have a participation in the sense indicated in Article 185 of the Law on Joint Stock Companies."

"3. Consolidatable groups of insurance undertakings are subject to the duty of consolidation in accordance with the provisions of this article, the rules provided for to implement it, and in a subsidiary way, the rules contained in Articles 42 to 49 of the Code of Commerce and other applicable rules contained in the mercantile legislation. Moreover they must have adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures, and all the entities or companies belonging to them must have adequate mechanisms for reporting the information necessary for compliance with the regulations applicable to the group.

At all events the following rules will be applied:

a) A group of financial institutions will be considered to form a consolidatable group of insurance undertakings, the types of entities belonging to it being determined by the regulations, when any of the following circumstances arise:

1. When an insurance undertaking controls the other entities.
2. When the parent company is an entity whose principal activity is the holding of participations in insurance undertakings.
3. When a company whose main activity is the holding of participations in financial institutions, or a natural person, or a group of natural persons acting systematically in concert, or an entity that is not consolidatable under this Law, control various financial institutions, at least one of them being an insurance undertaking, always provided that the insurance undertakings are the largest entities among the financial institutions, in accordance with the criteria laid down to this end by the Ministry of Economy and Finance.

When either of the two foregoing circumstances arises, the *Dirección General de Seguros y Fondos de Pensiones* shall designate the person or entity obliged to formulate and approve the consolidated annual accounts and management report, and to deposit them, and the regulated entity shall appoint the account auditors. For the purposes of the above designation, insurance undertakings belonging to the group must notify their existence to the *Dirección General de Seguros y Fondos de Pensiones*, stating the registered address and company name of the entity exercising control, or the name of the person, in the case of a natural person."

"c) The *Dirección General de Seguros y Fondos de Pensiones* may ask for information from natural persons and inspect financial institutions with which there is a relationship of control in the sense provided for in paragraph 2 of this article, for the purposes of determining their impact on the legal, financial and economic situation of the insurance undertakings and their consolidatable groups. In particular, in the case of the parent company of insurance or reinsurance undertaking, the *Dirección General de Seguros y Fondos de Pensiones* must undertake general supervision of the transactions between insurance undertakings or their consolidatable group and the dominant financial institution and its subsidiaries."

"3'. For the purposes of the provisions of paragraph 2, credit institutions and investment services companies do not form part of insurance undertakings' consolidatable group."

Four. The new text of the first clause of paragraph 1 and sub-paragraphs e), l) and q) of Article 40 paragraph 3 read as follows:

"1. The following persons and entities infringing rules of organisation and supervision of private insurance shall be liable for administrative penalties in accordance with the following articles:

- a) Insurance undertakings, including the parent companies of consolidatable groups of insurance undertakings.
- b) Entities that must, where applicable, draw up and approve consolidated accounts and reports on such groups.
- c) Regulated entities belonging to financial conglomerates in the case of an insurance undertaking or a mixed financial holding company, provided that in this latter case the *Dirección General de Seguros y Fondos de Pensiones* is acting as the coordinator for the supplementary supervision of this financial conglomerate.
- d) Natural persons or entities that are the holders of significant participations or who hold positions as directors or executives in any of the foregoing entities.
- e) The average adjusters of insurance undertakings."

"3. c) Deviation from the solvency margin of more than five per cent from the corresponding amount or any insufficiency in the guarantee fund by insurance undertakings or consolidatable groups or the financial conglomerates to which they belong."

"3. e) Failure to keep the legally required accounts, or substantial anomalies in such accounts, which prevent or substantially hinder the ability to ascertain the economic, asset and financial situation of the entity or consolidatable group or financial conglomerate to which it belongs, or

breach of the obligation to submit the annual accounts to an audit in accordance with the legislation in force."

"3. l) Failure to submit the *Dirección General de Seguros y Fondos de Pensiones* any data or documents the insurance undertaking is obliged to submit either periodically or in response to individualised requirements sent to it by the aforementioned Directorate-General in the exercise of its functions, or if any information sent is inaccurate, such that this represents an obstacle to determining the solvency of the insurance undertaking, its consolidatable group or the financial conglomerate to which it belongs. For the purposes of this point, it shall be understood that information has not been sent when it is not sent within the period determined by the *Dirección General de Seguros y Fondos de Pensiones* when giving a written reminder of the obligation or repeating the requirement."

"3. q) If the insurance undertaking, or the consolidated group of insurance undertakings or financial conglomerate to which it belongs, suffers deficiencies in its administrative and accounting organisation, or its internal control procedures, including those regarding risk management, when such deficiencies put in jeopardy the solvency or viability of the insurance undertaking or the consolidated group or financial conglomerate to which it belongs."

Five. In Article 40, the new text of sub-paragraphs c) and q) and the new sub-paragraph r) of paragraph 4 read as follows:

"c) Deviation from the solvency margin of less than five per cent of the corresponding amount by the insurance undertaking, or the consolidated group of insurance undertakings or financial conglomerate to which it belongs."

"q) When the organisation of the administration or accounts, or the internal control procedures, including those regarding risk management, of the insurance undertaking, or the consolidated group or financial conglomerate to which it belongs, are deficient, and remain so after the period granted by the competent authorities for these deficiencies to be rectified has elapsed, unless this constitutes a very serious infringement in accordance with the provisions of Article 3 above."

"r) Breach of the rules in force as regards concentration and risk limits."

Six. The new text of Article 71 paragraph 3 reads as follows:

"3. The Ministry of Economy and Finance shall require that insurance undertakings subject to control have well organised administration and accounts and adequate internal control and risk management procedures. Also, their advertising shall comply with the provisions of Law 34/1988, 11 November 1988, General advertising law and its implementing provisions, and the precise rules for its adaptation to insurance undertakings covered in the regulation of this Law."

First additional provision. *Regulatory references.*

The references that the Consolidated Text of the Law on the organisation and supervision of private insurance, passed by Legislative Royal Decree 6/2004, 29 October 2004, makes to securities companies and stockbrokers shall be understood to refer to investment services companies.

Second additional provision. *Amendment of Law 31/1985, 2 August 1985, on Regulation of the basic rules on the governing bodies of Savings Banks.*

The second additional provision of Law 31/1985, 2 August 1985, on Regulation of the basic rules on the governing bodies of savings banks is amended such that it reads as follows:

"Two. In the case of savings banks (*Cajas de Ahorros*) whose articles of association at the time of the entry into force of this law include the Catholic Church or public law bodies dependent upon it as their founding entity, the procedure for the appointment of representatives of the founding body in the governing bodies of the savings bank and the duration of their mandate shall be governed by the terms of the articles of association. On all other points they shall be subject to the provisions of this Law and its implementing regulations."

Transitional provision. *Adaptation of the articles of association and regulations of Savings Banks referred to in the second additional provision of Law 31/1985, 2 August 1985, on Regulation of the basic rules on the governing bodies of Savings Banks.*

The Savings Banks referred to in the second additional provision of Law 31/1985, 2 August 1985, on Regulation of the basic rules on the governing bodies of Savings Banks shall adapt their articles of association and regulations, and the composition of their governing bodies, to the legal regime resulting from the aforementioned provision, in the wording given in this Law, in accordance with the applicable regulatory provisions, or otherwise, within six months of the entry into force of this Law.

Repealing provision. *Regulatory repeal.*

Chapters IV and V of Law 13/1992, 1 June 1992, on own funds and supervision of financial institutions on a consolidated basis, are hereby repealed.

First final provision. *Grounds of competency.*

This Law, which shall be basic in nature, is decreed under the competency envisaged in Article 149.1.11 and 13 of the Spanish Constitution.

Second final provision. *Empowerment for regulatory implementation.*

Without prejudice to the specific empowerment of other bodies envisaged in this Law, the Government is empowered to implement the regulations provided for herein.

Third final provision. *Entry into force.*

This Law shall enter into force on the day following its publication in the "*Boletín Oficial del Estado*" (Official State Gazette) and shall first be applied to the supervision of annual accounts in the 2005 financial year.

Therefore,

I order all Spaniards, private individuals and authorities, to obey this law and ensure that it is obeyed.

Madrid, 22 Abril 2005.

JUAN CARLOS R.

The President of the Government,

JOSÉ LUIS RODRÍGUEZ ZAPATERO

