

On 21 January 2017, Royal Decree-law 1/2017 of 20 January, on urgent measures to protect consumers regarding floor clauses came into force (the "Royal Decree") designed to establish a process to help consumers who have entered into real estate mortgage backed loan or credit agreements which included floor clauses, to reach an agreement with the credit institutions to claim back wrongfully paid amounts, all as a result of the most recent court rulings on the matter and, specifically, the ruling from the Court of Justice of the European Union (CJEU) of 21 December 2016.

Here, we look at the main novelties introduced by this Royal Decree, which looks to establish an out-of-court settlement procedure for consumers affected by floor clauses, having had the full retroactivity of their right to claim excess amounts recognised in the ruling of the CJEU:

- **Prior claim.** The Royal Decree sets forth the obligation of all credit institutions to implement, within one month as of its entry into force, a claims system prior to filing a court claim. This system will be voluntary and free of charge for affected consumers, who may elect to either claim the amounts from the financial institution via this method or alternatively through the courts. The financial institution must create a department specialising in processing the claims presented, ensuring the implementation of a fast claims system that is made widely known by all affected consumers through adequate publicity thereof (in branches, websites, etc.). Once it has received the consumer's claim, the credit institution must calculate the amount to be reimbursed (including any accrued interest) and send a calculation breakdown to the consumer or, in the event that it should consider that the reimbursement is not fair, shall send the consumer a letter explaining the reasons for the dismissal of the claim, thus putting an end to the out-of-court procedure. The consumer must then reply to the institution if he agrees with the calculation, in which case the bank shall reimburse the amount in cash or by any other method of compensation that may be agreed, as will be explained below.
- **Prior claim deadlines.** The maximum period for the bank and the consumer to reach an agreement will be **three months** as of the date of presentation of the claim. Failure by the parties to reach an agreement or failure by the bank to pay the amount offered to the consumer in this period shall put an end to the out-of-court procedure.

- **Payment method.** In the event that the parties reach an agreement in relation to the amount to be reimbursed, they may decide on the preferred method of payment, which may be either:

(i) Reimbursement in cash

(ii) Compensation measures other than reimbursement in cash

The Royal Decree does not specify such compensation measures, but it does establish a number of guarantees designed to enable the consumer to accept or reject this method of payment once he has received sufficient and adequate information on the matter.

- **Incompatibilities.** By virtue of this Royal Decree, the parties may not exercise against one another any court or out-of-court action in relation to the purpose of the prior claim whilst this is being processed. In the event of a claim being filed prior to this procedure having been completed, the legal procedure shall be suspended until the prior claim has been settled. Likewise, in the event of court proceedings being in progress upon the entry into force of the Royal Decree, the parties may request the suspension of the procedure and submit to the prior claim described herein.
- **Tax implications.** Finally, the Royal Decree also considers the tax treatment of the amounts reimbursed, both in court and out-of-court, establishing, among other measures, that:
 - (i) The return of these amounts (in cash or via other compensation measures) shall not be included in the Personal Income Tax base.
 - (ii) If these amounts in previous tax years have formed part of the deduction base as a result of investment in primary residence or deductions established by the autonomous community, the right to make a deduction with regard to such amounts will be lost.
 - (iii) If the amounts should have been considered a deductible expense in previous years regarding which the right of the administration to apply it has not prescribed, an additional tax settlement for such years must be made with no penalty, default interest or surcharge whatsoever being applied in the period between the date of the agreement and the end of the next personal income tax settlement period.
 - (iv) If the amounts have been paid by the taxpayer in financial years whose period for tax settlement have not ended prior to the agreement of reimbursement of the amounts entered into with the bank, such amounts shall not form part of the deduction base for investment in primary residence nor be considered a deductible expense.