

Royal Decree-Act 11/2017 of 23 June, on urgent measures for financial matters

On June 25, 2017 Royal Decree-Act 11/2017 of 23 June entered into force, on urgent measures for financial matters (hereinafter, the “**Royal Decree**”). It modifies some of the provisions included in Act 13/1989 of 26 May, on Credit Cooperatives; Royal Decree-Act 16/2011 of 14 October, thereby creating the Deposit Guarantee Fund of Credit Institutions; Act 11/2015 of 18 June, on the recovery and termination of credit institutions and investment services enterprises; and the Recast Text of the Securities Market Act, approved by Royal Legislative Decree 4/2015 of 23 October.

The objective of this Royal Decree is to allow certain credit institutions to adopt policies and strategies to improve their resistance to the risks that can be derived from exercising their business activity, and it facilitates compliance with the requirements set forth by the new financial regulation and adapting it to international and European standards.

Among the main modifications introduced, the following are of particular importance:

- **Integration of the institutional protection systems provided for in European legislation.** The possibility of becoming a part of institutional protection systems provided for in European legislation is expressly incorporated into the legal scheme of credit cooperatives. This favours the processes that contribute to strengthening those protection systems and increases the strength of institutions that finance smaller economic agents of the agricultural, industrial and professional sectors, such as SMEs, self-employed individuals and entrepreneurs.

Thus, the Royal Decree opens the door to the establishment of Institutional Protection Schemes (IPS), which are classified as stated below:

- **Reinforced:** If 100% is mutualised – meaning if the benefits and risks are completely reciprocal and there is a lead institution that directs almost all the group’s decisions (with the consideration of a group that can be consolidated).

- **Regulatory:** If they don’t have to mutualise 100% of the benefits and risks, and they are characterised by the establishment of a private guarantee fund that is ex-ante financed by institutions that are members of the group, which will be used to handle the possible needs of own funds of the institutions that participate in the IPS.

- **Establishment of incentives to set up IPS.** The Royal Decree recognises the possibility of setting up IPS as mechanisms of mutual self-protection for credit cooperatives. Likewise, to favour the establishment of said IPS within credit cooperatives and guarantee the adequate implementation thereof, incentives regarding the minimum requirement for own funds and admissible liabilities are incorporated, as well as the contributions that member institutions of the IPS must make to the Deposit Guarantee Fund. It will therefore be necessary to previously submit an action plan to the Bank of Spain so that it can analyse the viability of the plan.
- **Novelties regarding bankruptcy.** In accordance with international standards, the classification or distinction (within ordinary credits) between preferred ordinary credits and non-preferred ordinary credits is introduced as a speciality in the bankruptcy scheme of credit institutions and investment services enterprises. Act 11/2015 of 18 June, on the recovery and termination of credit institutions and investment services enterprises, is therefore amended, and ordinary credits are given an order of priority such that in the event of bankruptcy, the credit of this new instrument has an order of priority below all other ordinary credits, but above subordinated debt. Thus, in accordance with the amendments introduced by the Royal Decree, an ordinary credit may only be considered as non-preferential if it satisfies a series of requirements that guarantee that, in the event of termination, the instrument will have the facility to absorb losses, in accordance with the indicators established by the law.
- **Complementary measures.** With the entry into force of the Royal Decree, the Bank of Spain must develop, prior to 30 September 2017, the necessary mechanisms so that the annual contributions from institutions to the Deposit Guarantee Fund are proportional to their risk profiles.

In conclusion, the Royal Decree attempts to regulate the adoption of certain measures and policies that improve resistance to the risk of certain institutions when developing their business activities, in accordance with European legislation, such as the case of IPS. Moreover, certain incentives are established to facilitate the complete adoption and implementation of the same, therefore making use of complementary measures and guarantees that ensure the efficacy of such mechanisms.