

## Financial credit establishments

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### 1. Characterisation

The Business Financing Promotion Bill (hereinafter, the Bill) proposed by the Government provides in Title II (arts. 6-14) the legal regime of financial credit establishments (EFCs, their acronym in Spanish), regarding as such those undertakings which, without qualifying as credit institutions and subject to approval of the Ministry of Economy, on a professional basis carry on one or more of the following activities:

- a) Granting of loans and credit facilities, including consumer credit, mortgage credit and financing of commercial transactions.
- b) Factoring, with or without recourse, and related activities, such as client research and classification, receivables accounting, and generally any other activity in favour of the management, assessment, security and financing of credit facilities.
- c) Financial leasing, including the following related activities: maintenance and upkeep of assigned property; granting of financing connected to current or future leasing; intermediation and management of leasing transactions; operational leasing activities that may or not be related to a purchase option; business advice and reports.
- d) Granting of bonds and guarantees, and taking on similar commitments.

- e) Granting of reverse mortgages.

In addition, EFCs may engage in other ancillary activities necessary to conduct the above business, in accordance with their articles of association.

EFCs which, in addition to carrying out one or more of the activities listed above, provide any of the payment services under the Payment Services Act, must request authorisation. These firms will be considered hybrid payment institutions and will be governed, without prejudice to the provisions of the Bill, by legislation specific to such institutions.

EFCs which also issue electronic money in the terms established in the Electronic Money Act must also apply for administrative authorisation. These firms will be considered hybrid electronic money institutions and will be governed, without prejudice to the provisions of the Bill, by legislation specific to such institutions.

EFCs may not receive repayable funds from the public. However, repayable funds may be received through the issue of securities under the Securities Market Act subject to the requirements and limitations specifically set out for these establishments.

Finally, EFCs may securitize their assets, in accordance with legislation on securitization funds.

## 2. Legal regime

In all matters not covered by the Bill, EFCs shall be governed by legislation on credit institutions, particularly regulation on significant shareholdings, suitability and ineligibility of senior positions, corporate governance and solvency contained in the Unified Regulation, Supervision and Solvency of Credit Institutions Act 10/2014 of 26 June and the legislation on transparency, mortgage market, insolvency regime and money laundering and terrorist financing prevention provided for credit institutions.

In any case, the third additional provision of the Structural Modifications of Commercial Companies Act 3/2009 of 3 April, on the regime applicable to transfers in full or in part of assets and liabilities between credit institutions, shall apply to EFCs.

## 3. Denomination reserve

The denomination "EFC" and its abbreviation "EFC" shall be reserved for these establishments, which must have them included in their company name.

The denomination "EFC-entidad de pago" and its abbreviation "EFC-EP" shall be reserved for EFCs that are regarded as hybrid payment institutions, which may, at their discretion, include such denomination in their company name.

The denomination "EFC-entidad de dinero electrónico" and its abbreviation "EFC-EDE" shall be reserved for EFC that are regarded as hybrid electronic money institutions, which may, at their discretion, include such denomination in their company name.

## 4. Authorisation and registration

The Bank of Spain is the competent authority to authorise the creation of EFCs. Prior to the granting of the authorisation, it will request a report from the Executive Service of the Prevention of Money Laundering and Monetary Offences Committee.

The Bank of Spain will inform the Ministry of Economy on the opening of the authorization procedure indicating the essential elements of the proceedings and the conclusion of the same.

The application for authorisation must be decided on within three months of its receipt by the competent authority, or when the required documentation is complete, and in any event within twelve months of receipt. The application will be deemed rejected if it is not decided on in the aforementioned period.

The requirements to carry out of the activity of EFCs, the grounds for refusal of authorisation and the specialties of EFCs under the control of foreigners shall be laid out in regulation.

In all matters not covered by the Bill, the authorisation, revocation, waiver and expiry procedure set out for credit institutions under the Unified Regulation, Supervision and Solvency of Credit Institutions Act shall apply.

Once the authorisation has been obtained and following its incorporation and registration with the Register of Companies, EFCs must, before commencing their activities, register with the Special Register of Credit Institutions to be set up at the Bank of Spain. Registrations with this special register, as well as strike-offs from the same, shall be published in the Official Journal of Spain (BOE, its acronym in Spanish).

## 5. Structural modifications

The merger, division or transfer in full or in part of assets and liabilities involving an EFC must be authorised by the Minister of Economy in accordance with the procedure established by regulation. The institution resulting from the merger of two or more EFCs may carry out the activities the merging companies were authorised.

## 6. Hybrid institutions

Companies intending to establish themselves as EFCs and, in turn, provide payment services, shall require a single specific authorisation enabling them to carry out their activities. Once authorisation is granted, they shall be regarded as hybrid payment institutions.

Similarly, companies intending to establish themselves as EFCs and, in turn, issue electronic money, shall require a single specific authorisation enabling them to carry out their activities. Once authorisation is granted, they

shall be regarded as hybrid electronic money institutions.

Already authorised EFCs intending to provide payment services must, to this end, apply for authorisation to operate as a hybrid payment institution in accordance with the provisions of the Payment Services Act.

Those intending to issue electronic money must also apply for authorisation to operate as a hybrid electronic money institution in accordance with the provisions of the Electronic Money Act.

## 7. Supervision and solvency

It will fall to the Bank of Spain to supervise EFCs pursuant to the provisions of Title III of the Unified Regulation, Supervision and Solvency of Credit Institutions Act 10/2014 of 26 June, with the adjustments determined by regulation, if any. This authority shall extend to any office or place within or outside the Spanish territory and, to the extent to which performance of the duties entrusted to the Bank of Spain so requires, to companies within the EFC's group.

The solvency rules applicable to EFCs will be that set out in Act 10/2014 of 26 June, and its implementing regulation, with the special features that may be determined by regulation, the following provisions, in particular, not applying to EFCs:

- a) Art. 30 of Act 10/2014 of 26 June, or Part Six of 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.
- b) For those EFCs having the status of SME pursuant to the provisions of the Commission

Recommendation 2003/361/EC of 6 May 2003, the obligation to maintain the capital preservation buffer and countercyclical capital buffer provided in arts. 44 and 45 of Act 10/2014 of 26 June.

On the other hand, EFCs will have a minimum amount of liquid assets adjusted to the legal nature and specifics of their business model. The above requirement will be specified by regulation so that, in any case, EFCs may face potential outflows resulting from liabilities and commitments, even in serious events that could affect liquidity; and maintain an adequate structure of sources of finance and maturity in their assets, liabilities and commitments in order to avoid potential liquidity imbalances or stresses that may damage or jeopardise the institution's financial position.

## 8. Disclosure obligations

EFCs and EFCs' groups admitting consolidation must provide the Bank of Spain with and publish their financial statements. They must also audit their annual accounts in accordance with the provisions of the Auditing of Accounts (Consolidation) Act. The auditors' report must be submitted to the Bank of Spain.

The Minister of Economy may set out and modify accounting rules and models to which the EFCs' financial statements, as well as the consolidated financial statements, must conform to with the limits and specifications prescribed by regulation, providing the frequency and detail that the appropriate data must be provided to the Bank of Spain and made public in general by the EFCs themselves.

## 9. Regime of penalties

The regime of penalties provided in Title IV of Act 10/2014 of 26 June for credit institutions shall apply, with the required adaptations, to EFCs.