Act 35/2018, of 20 December, on solvency, liquidity and the prudential supervision of banking entities and investment entities
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Preamble

On 24 November 2011, the General Council approved ratification of the Monetary Agreement between the Principality of Andorra and the European Union, enabling Andorra to adopt the euro as its official currency and issue its own coins for circulation and collection. The monetary agreement has an appendix (the last updated version was published in the Official Journal of the European Union on 23 March 2018) listing the European legal provisions that the Principality of Andorra must implement according to the schedule agreed by Andorra and the European Union for legislation on banking and financial matters, among others.

On the basis of the monetary agreement, Andorra undertook to implement within its legal system, among others, Directive 2013/36/EU of the European Parliament and 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, and also Regulation (EU) 575/2013 of the European Parliament and the Council, of 26 June 2013, on the prudential requirements for credit institutions and investment firms, amending Regulation (EU) 648/2012, and several delegated and implementing acts that develop specific aspects of the said directive and regulation in more depth. The purpose of these rules is to strengthen the resilience of the EU’s banking sector, to be in a better position to absorb economic shocks, while ensuring that banks continue to finance economic activity and growth.

Accordingly, the said directive and regulation are not limited to the constant surveillance of institutions’ solvency and risk management but go further in relation to other elements of regulation, such as the supervisory system, access to the activity of credit institutions, the suitability requirements for senior management and shareholders with qualifying holdings, and the requirements for enhancing corporate governance.

Consequently, to adapt our legal system to the changes in legislation imposed within the European Union, a substantial amendment of current legislation is required, since aspects such as the supervisory system, initial capital requirements, access to activity, corporate governance requirements and the penalty system have been amended significantly in recent years.

Firstly, it was deemed appropriate to pass a new law on solvency, liquidity and prudential supervision to implement, clearly and coherently, all the legislative changes needed to incorporate this directive and regulation into the Andorran legal system, which will bring the Principality of Andorra’s legislation up to date on the matter. This law represents a major step forward from the Law regulating the solvency and liquidity criteria of financial entities of 29 February 1996. Among the main differences, with regards to solvency, is a notable differentiation of the various elements of capital based on their ability to absorb losses; more stringent requirements when considering capital instruments as own funds elements; the significant increase in the total value of exposure to the different risks to which entities are exposed (credit and counterparty risk, market risk, operational risk, settlement risk and credit valuation adjustment risk resulting from off-exchange derivatives; a system of capital buffers; self-assessment of risk by each entity in consultation with the Andorran Financial Authority (AFA), and the need to carry additional capital to cover uncaptured risks in the total value of exposure to risks identified in the supervisory review and evaluation processes; market transparency about compliance with the solvency and liquidity requirements and, finally, the AFA’s obligations to publish information about financial regulation and supervision.
Regarding the calculation of the total risk exposure value, already partly existent in the previous Law on solvency and liquidity criteria, and in various technical communiqués from the AFA, we must highlight, on the one hand, the greater sophistication of the legislation, which improves the mechanisms for estimating the credit and counterparty risk in the trading book, and also the position risk of the trading book, interest rate risk, settlement risk and commodity risk, although, apart from the credit and counterparty risk in the trading book, the latter were not included in the calculation of the solvency ratio of 10% to be maintained by banking entities. On the other hand, this Law introduces the new requirement to calculate additional capital requirements for operational risk and credit valuation adjustment risk resulting from off-exchange derivatives. In addition, a new system of capital buffers is introduced to boost the solvency of entities over and above the capital requirements deriving from the above risk elements. The aim of this system of capital buffers is for banking entities and large financial investment companies, according to the nature, scale and complexity of their activities, to have a capital conservation buffer and a countercyclical capital buffer to accumulate a sufficient capital base during periods of economic growth to absorb any losses that may occur in difficult periods. It is also important to note that this Law introduces the obligation to calculate a leverage ratio, i.e. the quotient between the highest quality capital (Common Equity Tier 1) divided by the total exposure value of the entity, as a complementary measure to the risk-based solvency ratio, to contain the excessive leverage in the financial system.

From the point of view of liquidity, this law represents a notable improvement in relation to refining the calculation of the short-term liquidity ratio, to ensure that sufficient liquid assets are maintained – a liquidity buffer – to cover the total liquidity outflows less liquidity inflows in situations of stress, for a period of 30 days. The previous liquidity system in the Law regulating the solvency and liquidity criteria of financial entities, of 29 February 1996, only expected banking entities to cover 40% of their short-term commitments with sufficiently liquid assets. The new liquidity system also expects entities to calculate and report to the AFA on the long-term structural liquidity or stable funding ratio, i.e. the ratio between liabilities providing stable funding, such as own funds and long-term deposits, and long-term assets requiring stable funding. Until the European regulations on stable funding advance, it is not intended to introduce a stable funding limit into the Andorran legal system.

The purpose of this Law is to strengthen the resilience of the Andorran banking and financial sector to place it in a better position to face economic crises and ensure that banking entities continue to fund economic activities and economic growth with adequate own resources. From the point of view of liquidity and stable funding, the aim of the Law is to ensure that entities have adequate liquidity buffers to deal with potential stresses in the markets and a balance sheet structure that does not rely heavily on short-term funding.

The demands of such complex, ambitious legislation require a major effort, both from private business operators and the public authorities. Accordingly, the Law provides for the application of proportionality criteria within the field of corporate governance, own funds and liquidity requirements, and requirements for maintaining capital buffers, so the demands of the Law can be borne by smaller operators, introducing a series of vital changes to guarantee the transparency and solvency of the sector.

This Law has had to adopt a series of unavoidable measures when establishing this new legal framework. The best way to tackle these measures is to examine the most relevant content and give special consideration to those that are most innovative when compared with the previous legislation.

This Law is structured as five Titles containing 106 articles, an additional provision, four transitional provisions, a repeal provision and eight final provisions.
Title I contains various general provisions. It regulates the purpose and scope of application of this Law, to offer the greatest legal security in such a crucial matter. The title ends with a precept defining the main terms.

Title II sets out the supervisory function of the AFA in matters of solvency, liquidity and supervision of the activities of entities and, when applicable, of financial holding companies and mixed financial holding companies.

Title III, structured as eight chapters, deals with the prudential requirements of banking entities and investment entities. Chapter one covers the level of application of prudential requirements, i.e. individual application of the requirements and prudential consolidation, methods of prudential consolidation, internal capital self-assessment processes and entities’ risk management systems, procedures and mechanisms.

Chapter two regulates own funds. For this purpose, it lists the elements of own funds, prudential filters and deductions where there are significant participations in financial sector entities, qualifying holdings in entities outside the financial sector, intangible assets and deferred tax assets.

Chapter three establishes the capital requirements and lists the minimum ratios. It also regulates capital buffers, i.e. the requirement for maintaining Common Equity Tier 1 buffers, additional to the capital requirements based on exposure to risks and additional to those required by the AFA based on the supervisory review and evaluation.

Chapter four sets out the requirements for large exposures, meaning any exposure that is taken on by an entity with a client or group of connected clients, the value of which is higher than 10% of the eligible capital. Entities are obliged to send information to the AFA about large exposures (the identity of the client or group of clients, exposure value, collateral or personal guarantees acting as coverage, etc.). It is prohibited to take on exposures to a client or group of connected clients, after applying risk mitigation techniques, that are higher than 25% of the eligible capital. When the exposure is with an institution, or there is one or more institutions among the connected clients, the limit will be equal to the highest of either 25% of the eligible capital or 150 million euros, whenever the total value of the exposures to all the connected clients that are not institutions is less than 25% of the eligible capital.

Chapter five, on exposures to transferred credit risk, defines the requirements applicable to investment entities and originator, sponsor and lending institutions of securitisations.

Chapter six establishes the obligation to cover 100% of liquidity outflows net of liquidity inflows with high liquidity assets, within 30 days and in a stress scenario, such as a major withdrawal of deposits. This represents a notable improvement when compared with the previous requirements of maintaining an appropriate relationship between liquid assets and long-term commitments, maintaining liquid assets above 40% of current short-term liabilities.

Chapter seven, on leverage, obliges entities to calculate their leverage ratio as the quotient between the amount of Tier 1 capital divided by the aggregate accountable value of the exposures, net of provisions and other adjustments, relating to both on- and off-balance sheet entries, not taking into account the effect of in rem or financial guarantees. The methodology for calculating the leverage ratio will be subject to implementing regulations. Finally, entities must send the information about the leverage ratio to the AFA, which must monitor the levels of leverage.

The last chapter of Title III sets out the requirements for market disclosure. Consolidation groups and entities not forming part of a group must disclose, at least annually and at the time of publishing the financial statements, specific information about the solvency of the group or entity and the management carried out relating to the principal risks.
Title IV defines prudential supervision and is divided into two chapters. The first chapter concerns the process of review, supervisory evaluation and the supervisory measures and powers for matters of solvency and liquidity. The second chapter determines supervision on a consolidated basis, i.e. the principles for carrying out supervision on a consolidated basis, and also the inclusion and supervision of financial holding companies, mixed financial holding companies and mixed activity holding companies.

Finally, Title V defines the publication obligations of the competent authority, i.e. the AFA. It specifies the information that the AFA must publish about the general criteria and methods used for the supervisory review and evaluation, and also the aggregate information on fundamental aspects of implementation of the prudential framework and applicable penalties.

The Law contains one additional provision, which establishes that the penalty system applicable to this Law is that of the Law regulating the financial system’s disciplinary regime, of 27 November 1997, with the amendments introduced in the fourth final provision.

The transitional provisions establish transition periods relating to entities maintaining the capital conservation buffer and the institution-specific countercyclical capital buffer; to entities’ compliance with the requirement for liquidity coverage; to the publication by the AFA of the general criteria and methods adopted in the supervisory review and evaluation, the aggregate statistical data and the result of the supervisory review and the measures imposed in cases of non-compliance; the return of the deposits held by the AFA as minimum reserves that the financial investment entities currently maintain, and lastly, the publication requirements for entities.

The repeal provision cancels the Law regulating the solvency and liquidity criteria of financial entities, of 29 February 1996; the Law regulating reserves guaranteeing deposits and other operational maintenance and deposit obligations for entities within the financial system, of 11 May 1995, and article 4 of the Law regulating the financial system’s disciplinary regime, of 27 November 1997.

The first final provision amends Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra. These amendments are fundamental to the adaptation of Law 7/2013 and, specifically, the rules governing entities operating in the Andorran financial system pursuant to the changes introduced in this Law.

The second final provision amends Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements. These amendments adapt the Andorran legal system to the provisions contained in Directive 2013/36/EU, of the European Parliament and the Council, of 26 June 2013, relating to 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. These amend significant aspects of the organisation and activity of entities operating in the financial system in areas such as corporate governance, with specific obligations regarding senior management; the creation of delegate committees of the board of directors with the presence and commitment of independent directors; the assessment of the board of directors’ suitability requirements; a specific incompatibilities system for them, and the development of remuneration policies that are better aligned to entities’ risks, among others.

In this way, major progress is made in matters of corporate governance, fostering more efficient and suitable management practices for carrying out financial activities.
The second final provision also incorporates the changes in organisational requirements and operating conditions deriving from Directive 2004/39, of 21 April 2004, on markets in financial instruments, better known as “MiFID I”, and its implementing regulations, and some aspects of the Directive that succeeded it, Directive 2014/65/EU, of the European Parliament and the Council, of 15 May 2014, on markets in financial instruments, amending Directive 2002/92/EC and Directive 2011/61/EU, known as “MiFID II”. Incorporation of the content of the latter is limited to the aspects necessary to ensure that the transposition of MiFID I is really effective and does not oblige entities to adapt, which would have to be corrected subsequently with the definitive incorporation of MiFID II.

Additionally, this second final provision also amends the current system of qualifying holdings by making technical changes to the authorisation procedure and the assessment criteria.

On the other hand, the third final provision amends Law 35/2010, of 3 June, on the regime of authorization for the creation of new bodies operating within the Andorran financial system. In this case, a series of amendments to the Law to adapt the current authorisation procedure to the demands of Directive 2013/36/EU.

The fourth final provision includes a significant adaptation of the revised Law regulating the financial system’s disciplinary regime, of 27 November 1997, to adapt the penalty system for entities operating in the financial system to the new obligations deriving from the incorporation of the regulations mentioned above. The appropriate offences are introduced to make these new legal obligations effective, and the penalty system is updated accordingly, ensuring that the penalties, whether pecuniary or not, are adequate and dissuasive to entities and senior management.

One of the side-effects of this Law is to strengthen the functions assigned to the AFA as the prudential financial supervisor in the Principality of Andorra. To adapt to these new functions, the fifth final provision amends Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF) to strengthen its functions and competences in matters of prudential supervision and cooperation with other national and third-country competent authorities.

This amendment includes, among others, the development of a procedure by the AFA to encourage the reporting of potential infringements that guarantees confidentiality and adequate protection to employees of entities under the financial sector disciplinary system who report these potential infringements. It also creates powers for the AFA to set up supervisory colleges to assist and encourage adequate coordination and cooperation with the supervisory authorities of third countries.

The sixth final provision authorises the Andorran Government to consolidate Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF).

The seventh final provision authorises the Government of the Principality of Andorra to draft, adapt and update, as appropriate, the implementing regulations needed to implement the Law.

Title I: Purpose, scope of application and definitions

Article 1. Purpose
This Law establishes the rules on:

a) the general prudential requirements with which banking entities and investment entities must comply in relation to:
i) the own funds requirements relating to entirely quantifiable, uniform and standardised elements of credit risk, market risk, operational risk and settlement risk;

ii) requirements that limit large exposures;

iii) liquidity requirements relating to entirely quantifiable, uniform and standardised elements of liquidity risk;

iv) information requirements relating to sub-sections i), ii) and iii), and to leverage;

v) public disclosure requirements.

b) the prudential supervision of entities by the AFA in a manner that is consistent with the applicable regulations;

c) the publication requirements of the AFA in the field of prudential regulation and the prudential supervision of entities.

**Article 2. Scope of application**

1. This Law applies to entities established in the Principality of Andorra, as defined in point 23, section 1 of article 3, and their consolidation groups.

2. Chapter two of Title IV applies to financial holding companies, mixed financial holding companies and mixed activity holding companies with their headquarters in the Principality of Andorra.

3. This Law does not apply to post office giro entities established in the Principality of Andorra.

**Article 3. Definitions**

1. For the purposes of this Law, the following definitions apply:

   1) “Defined benefit pension fund assets” are the assets of a defined benefit pension fund or plan, as applicable, calculated after they have been reduced by the amount of obligations under the same fund or plan;

   2) “Intangible assets” has the same meaning as under the applicable accounting framework;

   3) “Deferred tax assets” has the same meaning as under the applicable accounting framework;

   4) “External Credit Assessment Institution” or “ECAI” is a legal person whose occupation includes issuing professional credit ratings recognised by the AFA, according to point a) of section 3 of article 68;

   5) “Credit risk adjustment” means the amount of specific and general loan loss provision for credit risks that has been recognised in the financial statements of the institution in accordance with the applicable accounting framework;

   6) “Competent authority” means a public authority or body officially recognised by the national law of a third country, which is empowered by applicable national law to supervise institutions as part of the supervisory system in operation in the country concerned;

   7) “Consolidated basis” means on the basis of the consolidated situation;

   8) “Sub-consolidated basis” means on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company, excluding a sub-group of entities, or on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company that is not the ultimate parent institution, financial holding company or mixed financial holding company;
9) “Retained earnings” means profits and losses brought forward as a result of the final application of profit or loss under the applicable accounting framework;
10) “Profit” has the same meaning as under the applicable accounting framework;
11) “Discretionary pension benefits” means enhanced pension benefits granted on a discretionary basis by an institution to an employee, which do not include accrued benefits granted to an employee under the terms of the company pension scheme;
12) “Eligible capital” for the purposes of article 50 and chapter four of Title III, means the sum of the following:
   a) Tier 1 capital as referred to in Article 27;
   b) Tier 2 capital as referred to in Article 37, less than one third of the Tier 1 capital;
13) “Trading book” means all positions in financial instruments and commodities held by an institution either with trading intent, or in order to hedge positions held with trading intent;
14) “Control” means the relationship between a parent institution and a subsidiary, or a similar relationship between any natural or legal person and an undertaking, in any of the control situations listed in point 7 of article 2 of Law 8/2013, of 9 May, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements;
15) “General management” are the members, natural persons, who hold executive functions in the institution and are responsible for the daily management of the institution and will be accountable for it before the administrative body;
16) “Distributions” means the payment of dividends or interest in any form;
17) “Ancillary services undertaking” means an undertaking the principal purpose of which consists of owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more institutions;
18) “Investment entity” means financial investment companies, financial investment agencies, direct asset management companies, where authorised to provide services of administration and custody of financial instruments for clients, including custody and related services, such as treasury and guarantees, as defined in articles 23 to 25 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra;
19) “Parent undertaking” means an undertaking that may directly or indirectly exercise control of one or more undertakings, as defined in point 14 in this section;
20) “Financial sector entity” is any of the following:
   a) an institution;
   b) a financial institution;
   c) an ancillary services undertaking included in the consolidated financial situation of an institution;
   d) an insurance undertaking;
   e) an insurance undertaking established outside the Principality of Andorra;
   f) a reinsurance undertaking;
   g) a reinsurance undertaking established outside the Principality of Andorra;
h) an undertaking established outside the Principality of Andorra with a main business comparable to any of the entities referred to in letters a) to g);

21) “Public sector entity” means a non-commercial administrative body responsible to central governments, regional governments or local authorities, or to authorities that exercise the same responsibilities as regional governments and local authorities, or a non-commercial undertaking that is owned by the central or regional governments or local authorities, or set up and sponsored by these governments or authorities, and that has explicit guarantee arrangements, and may include self-administered bodies governed by law that are under public supervision;

22) “Insurance undertaking established outside the Principality of Andorra” means an insurance entity established outside the Principality of Andorra, as defined in point 22 of article 6 of Law 12/2017 on the regulation and supervision of insurance and reinsurance in the Principality of Andorra;

23) “Entity” means a banking entity or investment entity;

24) “Insurance undertaking” means an insurance entity as defined in point 19 of article 6 of Law 12/2017 on the regulation and supervision of insurance and reinsurance in the Principality of Andorra;

25) “Banking entity” is a legal person, as defined in section 1 of article 8 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, the purpose of which is to take public deposits or other repayable funds and to grant credits of any kind, on own account;

26) “Systemically important institution” or “SII”: is a parent institution, parent financial holding company, parent mixed financial holding company or institution authorised in the Principality of Andorra, whose failure or bad operation could trigger a systemic risk;

27) “Central Counterparty” or “CCP”: means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

28) “Financial entity” means an undertaking, other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in letters a) to l), and n) in section 2 of article 8, of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra. They include financial holding companies, mixed financial holding companies, companies managing collective investment schemes and payment institutions, as defined in section 1 of articles 38 to 61, respectively, of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra;

29) “Parent undertaking in the Principality of Andorra” means an undertaking established in the Principality of Andorra that has an undertaking or financial undertaking as a subsidiary, or has a participation in the undertaking or financial undertaking, and is not in itself a subsidiary of another undertaking authorised in the Principality of Andorra, of a financial holding company or mixed financial holding company established in the Principality of Andorra;

30) “Reinsurance undertaking established outside the Principality of Andorra” is a reinsurance undertaking established outside the Principality of Andorra, as defined in point 22 of article 6 of Law 12/2017 on the regulation and supervision of insurance and reinsurance in the Principality of Andorra;
31) “Reinsurance undertaking” is a reinsurance undertaking, as defined in point 27 of article 6 of Law 12/2017 on the regulation and supervision of insurance and reinsurance in the Principality of Andorra;

32) “Regulated entity” is a banking entity, insurance undertaking, reinsurance undertaking, an investment entity or a management company of collective investment schemes;

33) “Subsidiaries” are entities meeting any requirement of point 7 of article 2 of Law 8/2013, of 9 May, on the organisational requirements and operating conditions of entities operating in the financial system, investment protection, market abuse and financial guarantee agreements;

Additionally, any subsidiary of a subsidiary is also deemed to be a subsidiary of the original parent undertaking;

34) “Own funds” means the sum of Tier 1 capital and Tier 2 capital, according to articles 27 and 37;

35) “Group of connected clients” are as follows:
   a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others;
   b) two or more natural or legal persons between whom there is no relationship of control as described in point (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties.

Notwithstanding points (a) and (b), where a central government has direct control over or is directly interconnected with more than one natural or legal person, the set consisting of the central government and all of the natural or legal persons directly or indirectly controlled by it in accordance with point (a), or interconnected with it in accordance with point (b), may be considered as not constituting a group of connected clients. Instead the existence of a group of connected clients formed by the central government and other natural or legal persons may be assessed separately for each of the persons directly controlled by it in accordance with point (a), or directly interconnected with that person in accordance with point (b), including the central government. The same applies in cases of regional governments or local authorities;

36) “Financial instrument”, should be understood in the broadest sense of the term, especially those listed below:
   1) a contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party;
   2) an instrument, as defined in point 11 of article 2 of Law 8/2013, of 9 May 2013, on the organisational requirements and operating conditions of entities operating in the financial system, investment protection, market abuse and financial guarantee agreements;
   3) a primary financial instrument;
   4) a cash instrument;

The instruments referred to in points 1) and 2) above are only financial instruments if their value is derived from the price of an underlying financial instrument or another underlying item, a rate (interest or exchange), or an index;
37) “Minority interest” means the amount of Common Equity Tier 1 of a subsidiary of 
an institution that is attributable to natural or legal persons other than those 
included in the prudential scope of consolidation of the institution;

38) “Applicable accounting framework” are the accounting regulations to which the 
institution is subject, established in the Decree of 28 December 2016 approving 
the accounting framework applicable to entities operating in the Andorran 
financial system and Andorran collective investment schemes, under the 
international financial reporting standards adopted by the European Union (IFRS-

39) “Regulated market” means a multilateral system, operated or managed by a 
market operator, which brings together or facilitates the bringing together of 
multiple third-party buying and selling interests in financial instruments – in the 
system and in accordance with its non-discretionary rules – to produce contracts, 
in respect of the financial instruments admitted to trading under its rules or 
systems, and which is authorised and functions regularly;

40) “Credit risk mitigation” means a technique used by an institution to reduce the 
credit risk associated with an exposure or exposures which that institution 
continues to hold;

41) “Administrative body” is the body or bodies of an institution, which are appointed 
under applicable legislation, empowered to establish the strategy, objectives and 
general orientation of the institution, and which supervises and monitors the 
process of management decision-making;

42) “Originator” is an entity that:

(a) itself or through related entities, directly or indirectly, was involved in the 
original agreement which created the obligations or potential obligations of 
the debtor or potential debtor giving rise to the exposure being securitised; or

(b) purchases a third party's exposures for its own account and then securitises 
them;

43) “Repurchase agreement” and “reverse repurchase agreement” mean any 
agreement in which an institution or its counterparty transfers securities or 
commodities or guaranteed rights relating to title to securities or commodities 
where that guarantee is issued by a recognised exchange which holds the rights 
to the securities or commodities and the agreement does not allow an institution 
to transfer or pledge a particular security or commodity to more than one 
counterparty at one time, subject to a commitment to repurchase these securities 
or commodities – or securities or commodities of the same description – at a 
specified price on a future date specified, or to be specified, by the transferor.

This transfer is a repurchase agreement for the institution selling the securities or 
commodities and a reverse repurchase agreement for the institution buying them;

44) “Leverage” means the relative size of the assets, off-balance sheet obligations 
and contingent obligations to pay, deliver or to provide collateral, including 
obligations from received funding, made commitments, derivatives or repurchase 
agreements, but excluding obligations which can only be enforced during the 
liquidation of an institution, compared to that institution's own funds;

45) “Participation” means the rights over capital in other undertakings, embodied or 
ot in securities which, by creating a durable link with them, are destined to 
contribute to the activities of the enterprise, or the direct or indirect ownership of 
20% or more of the voting rights or capital of an undertaking;

46) “Qualifying holding” is defined in point 14 of article 2 of Law 8/2013, of 9 May 
2013, on the organisational requirements and operating conditions of entities
operating in the financial system, investment protection, market abuse and financial guarantee agreements;

47) “Sponsor” means an institution other than an originator institution that establishes and manages an asset-backed commercial paper programme or other securitisation scheme that purchases exposures from third-party entities;

48) “Securitisation position” means an exposure to a securitisation;

49) “Dilution risk” means the risk that an amount receivable is reduced through cash or non-cash credits to the obligor;

50) “Model risk” means the potential risk that may be incurred by an institution as a result of the decisions based principally on the results of internal models, due to errors in the preparation, application or use of these models;

51) “Risk of excessive leverage” means the risk resulting from an institution’s vulnerability due to leverage or contingent leverage that may require unintended corrective measures to its business plan, including distressed selling of assets which might result in losses or in valuation adjustments to its remaining assets;

52) “Operational risk” means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk;

53) “Systemic risk” means the risk of a shock to the financial system that may incur serious losses to the financial system and real economy;

54) “Consolidated situation” means the situation that results from applying the requirements in section two of chapter one of Title III to an institution, as if that institution formed, together with one or more other entities, a single institution;

55) “Financial holding company” means a financial institution, the subsidiaries of which are exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company;

56) “Financial holding company in the Principality of Andorra” is a financial holding company established in the Principality of Andorra that is not a subsidiary of an authorised entity in the Principality of Andorra, a financial holding company or mixed financial holding company established in the Principality of Andorra;

57) “Mixed financial holding company” means a parent undertaking, other than a regulated entity which, together with its subsidiaries, of which at least one is a regulated entity established in the Principality of Andorra, and other institutions, form a financial conglomerate;

58) “Mixed financial holding company in the Principality of Andorra” means a mixed financial holding company established in the Principality of Andorra that is not a subsidiary of an authorised entity in the Principality of Andorra, or a financial holding company or mixed financial holding company established in the Principality of Andorra;

59) “Mixed activity holding company” means a parent undertaking, other than a financial holding company or an institution or a mixed financial holding company, with at least one institution among its subsidiaries;

60) “Companies managing collective investment schemes” are legal persons, as defined in section 1 of article 38 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra;

61) “Branch” means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of an institution;
62 “Reciprocal cross holding” means a holding by an institution of the own funds instruments or other capital instruments issued by financial sector entities, where those entities also hold own funds instruments issued by that institution;

63) “Synthetic holding” means an investment by an institution in a financial instrument, the value of which is directly linked to the value of the capital instruments issued by a financial sector entity;

64) “Securitisation” means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched, having both of the following characteristics:
   a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;
   b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

65) “Synthetic securitisation” means securitisation where the transfer of the risk is obtained by the use of credit derivatives or guarantees, and the securitised exposures remain the exposures of the originator institution;

66) “Traditional securitisation” means a securitisation which involves the economic transfer of the securitised exposures. This must be done by a transfer of the ownership of the securitised exposures of the originator institution to a securitisation special purpose entity or “SSPE” or through sub-participation by a “SSPE”. The issued securities do not represent payment obligations of the originator institution;

67) “Market value” means, for the purposes of immovable property, the estimated amount for which the property may exchange on the date of valuation, between a willing buyer and a willing seller, in an arm's-length transaction, wherein the parties act knowledgeably, prudently and without compulsion, after proper marketing;

68) “Securitisation special purpose entity” or “SSPE” means a corporation trust or other entity, other than a banking entity or investment entity, organised for carrying out a securitisation or securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate their obligations from those of the originator institution, and in which the holders of the beneficial interests have the right to pledge or exchange those interests without restriction;

69) “Close links” means a situation in which two or more natural or legal persons are linked in any of the following ways:
   a) participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
   b) a control relationship;
   c) a permanent link of both or all of them to the same third person by a control relationship.

Title II: Competent authority

Article 4. Supervisory function of the AFA in prudential matters

1. The AFA exercises the functions and competences provided in article 4 of Law 10/2013, of 23 May, on the Andorran National Institute of Finance, in matters of prudential supervision of entities, and the power of sanction for non-compliance with the requirements established in this Law and the implementing regulations.
2. The AFA supervises the activities of the entities and, if applicable, the financial holding companies and mixed financial holding companies, for the purpose of verifying compliance with the requirements established in this Law and the implementing regulations.

3. The AFA must be able to obtain any necessary information to verify the compliance of the entities and, if applicable, the financial holding companies and mixed financial holding companies, with the requirements mentioned in section 2, and to investigate any potential infringements of these requirements.

4. The entities must provide the AFA with all necessary information so that it can verify whether the entities comply with the provisions of this Law and the implementing regulations. The internal control mechanisms and administrative and accounting procedures of the entities must allow verification of compliance with these provisions at all times.

Title III: Prudential requirements for banks and investment entities

Chapter one. Level of application of the prudential requirements

Section one. Application of the requirements on an individual basis

Article 5. General principles

1. Entities must fulfil the obligations established in chapters two to five and eight of Title III of this Law and the implementing regulations on an individual basis.

2. No entity that is a parent undertaking or subsidiary, and no entity included in the prudential consolidation under article 10, is subject on an individual basis to the obligations established in chapter eight of Title III of this Law.

3. Banking entities and financial investment companies must fulfil, on an individual basis, the obligations established in chapter six of Title III of this Law. After applying to the AFA, financial investment companies may be exempted from fulfilling the obligations established in chapter six of Title III, based on the nature, scale and complexity of their activities.

4. Entities other than the investment entities referred to in section 1 of article 48, and section 1 of article 49, and entities which, under section 1 of article 6, have been exempted from application of the prudential requirements on an individual basis, must fulfil the obligations established in chapter seven of Title III on an individual basis.

Article 6. Exemption from application of the prudential requirements on an individual basis

1. The AFA may, on request, exempt from application of section 1 of article 5 any subsidiary of an entity when both the subsidiary and the entity are under the authorisation and supervision of the AFA, the subsidiary is included in the supervision on a consolidated basis of the entity that is the parent undertaking and the following conditions are met, for the purpose of guaranteeing that the own funds are distributed adequately between the parent undertaking and the subsidiary:

   a) that there are currently no major impediments, and none are anticipated, of a practical or legal kind, to the immediate transfer of own funds or the repayment of liabilities by the parent undertaking;
b) that either the parent undertaking shows, to the satisfaction of the AFA, that it carries our prudent management of the subsidiary and has declared itself, with the consent of the AFA, guarantor of the subsidiary’s commitments, or that the risks to the subsidiary are insignificant;
c) that the risk assessment, measurement and control procedures of the parent undertaking include the subsidiary;
d) that the parent undertaking owns more than 50% of the voting rights attached to the subsidiary’s shares, or has the right to appoint or dismiss the majority of members of the administrative body of the subsidiary.

2. The AFA, on request, may exempt from application of section 1 of article 5, when the parent undertaking is a financial holding company or a mixed financial holding company incorporated in the Principality of Andorra, and whenever under the same supervision as carried out on the entities and, specifically, the rules established in section 1 of article 9.

3. The AFA, on request, may exempt from application of section 1 of article 5, any parent undertaking under the authorisation and supervision of the AFA, which is included in the supervision on a consolidated basis and meets all the following conditions, to ensure that own funds are distributed adequately between the parent undertaking and the subsidiaries:
   a) that there are currently no major impediments, and none are anticipated, of a practical or legal kind, to the immediate transfer of own funds or repayment of liabilities by the parent undertaking;
   b) that the procedures of assessment, measurement and control of risks relevant to the supervision on a consolidated basis include the parent undertaking.

Article 7. Exemption from application of the liquidity requirements on an individual basis

The AFA may, on request, totally or partially exempt from the application on an individual basis of chapter six of Title III, an entity and all or several of its subsidiaries located in the Principality of Andorra, supervising them as a single liquidity sub-group, whenever the conditions established in the regulations are met.

Article 8. Individual consolidation method

Whenever the parent institution proves special circumstances to the AFA, including those of a legal type, for which no significant impediments exist or are anticipated, of a practical or legal type, for the immediate transfer, on maturity, of own funds or the repayment of liabilities by the subsidiary to the parent undertaking, the AFA may authorise, case by case and on request, the parent undertaking to incorporate into its calculation of the requirement provided in section 1 of article 5, any subsidiaries that meet the conditions established in letters c) and d) of section 1 of article 6, and whose material exposures or liabilities are to the parent undertaking.

Section two. Prudential consolidation

Article 9. Application of the requirements on a consolidated basis

1. Parent undertakings established in the Principality of Andorra must fulfil the obligations established in chapters two to four and seven of Title III, on the basis of their consolidated situation. The parent institutions and their subsidiaries must establish an adequate organisational structure and adequate internal control mechanisms to ensure that the necessary data for the consolidation are duly processed and sent. Specifically, they must ensure that any subsidiaries that are not
subject to this Law and the implementing regulations, apply systems, procedures and mechanisms to ensure adequate consolidation.

2. Entities controlled by a parent financial holding company or a parent mixed financial holding company established in the Principality of Andorra must fulfil the obligations established in chapters two to four and seven of Title III, on the basis of the consolidated financial situation of the financial holding company or mixed financial holding company.

3. Parent institutions established in the Principality of Andorra and entities controlled by a parent financial holding company or a parent mixed financial holding company must fulfil the obligations established in chapter six of Title III, on the basis of the consolidated situation of these parent institutions, parent financial holding company or parent mixed financial holding company, whenever the group contains one or more banking entities or financial investment companies. If the group in the Principality of Andorra contains only financial investment companies, the AFA may, case by case and on request, exempt the financial investment companies from fulfilling the obligations established in chapter six of Title III, on a consolidated basis, based on the nature, scale and complexity of their activities.

4. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to specify the following:
   a) the application of the prudential and liquidity requirements in financial holding companies or mixed financial holding companies that include a banking entity and investment entity in their group;
   b) the application of the information requirements on a consolidated basis established in chapter eight of Title III, to the parent institutions, entities controlled by a financial holding company or mixed financial holding company established in the Principality of Andorra and their material subsidiaries;
   c) the application of the information requirements established in chapter five of Title III, to parent undertakings and subsidiaries;
   d) exemption from the application of the requirements established in chapter three and seven of Title III, to groups of investment entities and determination of their supervision.

Section three. Prudential consolidation methods

Article 10. Prudential consolidation methods

1. Entities that are obliged to fulfil the requirements mentioned in article 9 on the basis of their consolidated situation must carry out full consolidation of all the entities, financial entities and ancillary services undertakings that are their subsidiaries or, if applicable, of the subsidiaries of the same financial holding company or mixed financial holding company. Sections 2 and 5 of this article do not apply when chapter six of Title III is applied on the basis of the consolidated situation of an entity.

2. Nevertheless, the AFA may authorise the application of proportional consolidation, case by case and on request, according to the share of capital that the parent undertaking owns in the subsidiary. Proportional consolidation may only be authorised when all the following conditions are met:
   a) the liability of the parent undertaking is limited to the share of capital that the parent undertaking owns in the subsidiary in accordance with the liability of the other shareholders or members;
   b) the solvency of the other shareholders or members is satisfactory;
c) the liability of the other shareholders and members is clearly established in a legally binding manner.

3. In cases where two or more undertakings are connected under the same management, under an agreement between the undertakings or statutory clauses of those undertakings, but no control relationship exists as defined in point 14 of section 1 of article 3, and when the administrative, management or control bodies of those undertakings consist mainly of the same people, the AFA may determine the prudential consolidation method to apply to the connected undertakings, case by case.

4. Entities must apply the proportional consolidation method, based on the share of the capital represented by participations in entities and financial entities managed by an undertaking included in the consolidation jointly with one or several undertakings not included in the consolidation, when the liability of these undertakings is limited to the share of capital that they own.

5. In cases of participation or other capital ties other than those provided in sections 1 to 4, the AFA must determine whether it is necessary to carry out the prudential consolidation and which consolidation method. Specifically, the AFA may allow or require use of the equity method of consolidation. However, the use of this method does not represent inclusion of these undertakings in the consolidated supervision.

6. The AFA must decide whether to carry out the consolidation in the following cases, and how:
   a) when an entity exerts a material influence, in AFA’s opinion, over one or several entities or financial entities, despite no participation in or other capital ties to those entities, and
   b) when two or more entities or financial entities are under a single management, even if this has not been established under contract or statutory clauses.

Article 11. Entities and undertakings excluded from the scope of application of prudential consolidation

1. An undertaking, financial entity or ancillary services undertaking that is a subsidiary or an undertaking in which a participation is held, may be excluded from the consolidation, on application to the AFA, if the current total assets and off-balance sheet entries of the undertaking concerned is less than the lowest of the two following amounts:
   a) 10 million euros;
   b) 1% of the total assets and off-balance sheet entries of the parent undertaking or undertaking that owns the participation.

2. The AFA may decide, case by case, not to include in the consolidation an entity, financial entity or ancillary services undertaking, whether subsidiaries or investees, under the following circumstances:
   a) when the undertaking concerned is located in another country in which there are legal obstacles to the transmission of the necessary information;
   b) when the undertaking concerned is of no material interest for the purposes of supervising the entities;
   c) when, in the AFA’s opinion, the consolidation of the financial situation of the undertaking concerned is inadequate or may mislead from the point of view of the aims of supervising the entities.

3. When, in the cases provided in section 1) and point b) of section 2, several undertakings meet the said criteria, these must be included in the consolidation, whenever these undertakings collectively represent a material interest in relation to the specified aims.
**Article 12. Sub-consolidation in the case of third-country entities and undertakings**

Subsidiaries must apply the requirements established in the regulations regarding qualifying holdings outside the financial sector, and those established in chapters three and four of Title III, to the basis of their sub-consolidated situation when these entities, or the parent undertaking in the case of a financial holding company or a mixed financial holding company, own an institution, a financial entity, as subsidiaries in another country, or own a participation in them.

**Article 13. Undertakings of other countries**

For the purposes of implementing the supervision on a consolidated basis, under sections two and three of this chapter, the terms “investment entity”, “banking entity”, “financial entity” and “entity” are applicable even to undertakings established in other countries which, if established in the Principality of Andorra, would come under the definition of these terms that appears in article 3.

**Article 14. Valuation of assets and off-balance sheet entries**

The valuation of assets and off-balance sheet entries must be done according to the applicable accounting framework in the Principality of Andorra.

**Section four. Internal capital self-assessment processes**

**Article 15. Internal capital self-assessment**

1. Entities and their consolidation groups must have sound, effective and comprehensive strategies and procedures, to constantly assess and maintain the inflows, types and distribution of internal capital they consider appropriate for covering the nature and level of risks to which they are or may be exposed.

These strategies and procedures must be reviewed internally and periodically to ensure that they remain comprehensive and proportional to the nature, scale and complexity of the activities of the entity concerned.

2. The process of self-assessment provided in section 1 must be carried out:

a) on a consolidated basis, according to the provisions of sections two and three, by:

   i) parent institutions in the Principality of Andorra;
   
   ii) entities controlled by financial holding companies and mixed financial holding companies. In cases where a financial holding company or mixed financial holding company controls more than one banking entity or investment entity, the self-assessment process must only be carried out by the banking entity or investment entity to which the consolidated supervision is applied under article 100.

b) on an individual basis by:

   i) entities, except entities that are subsidiaries of entities established in the Principality of Andorra;
   
   ii) entities that are not included in the prudential consolidation under article 11;
   
   iii) groups of investment entities that are exempt from application of the own funds requirements on a consolidated basis under letter d) section 4 of article 9.

   c) on a sub-consolidated basis, comprising the parent institution, financial holding company, mixed financial holding company and their subsidiaries established in the Principality of Andorra.
3. Entities must provide to the AFA, before 12 May, or the next working day in the case of a public holiday or non-working day, of each financial year, an annual report of the internal capital self-assessment process for the previous financial year ended on 31 December, including a summary of the strategies and procedures referred to in section 1. To prepare the internal capital self-assessment report, entities must follow the criteria and instructions given by the AFA.

Section five. Entities’ risk management systems, procedures and mechanisms

**Article 16. Entities’ risk management systems, procedures and mechanisms**

1. Entities must fulfil the obligations established in this section, and in articles 6 to 6 duodecies of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, on an individual basis, unless the AFA authorises the exemptions provided in article 6.

2. Parent undertakings and subsidiaries under this Law must fulfil the obligations established in this section, and also those in articles 6 to 6 duodecies of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, on a consolidated or sub-consolidated basis, to ensure that the systems, procedures and mechanisms required by this section and the aforementioned articles of Law 8/2013, are consistent and well-integrated, and that any kind of relevant data and information can be provided for the purposes of supervision. Specifically, parent undertakings and subsidiaries under this Law must implement such systems, procedures and mechanisms in their subsidiaries that are not subject to this Law. These systems, procedures and mechanisms must be consistent and well-integrated, and these subsidiaries must be able to produce any kind of relevant data and information for the purposes of supervision.

3. Obligations resulting from this section and articles 6 to 6 duodecies of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, relating to subsidiaries that are not subject to this Law, need not be applied if the parent undertaking or entities controlled by a financial holding company or mixed financial holding company can demonstrate to the AFA that application of these requirements is illegal under the laws of the third country where the subsidiary is established.

**Article 17. Risk treatment**

1. The administrative body must periodically approve and review the strategies and policies for assuming, managing, supervising and mitigating risks to which the entity is or may be exposed, including those posed by the macroeconomic situation in which it operates in relation to the stage of the economic cycle.

2. The administrative body must spend adequate time considering the issues related to risks. The administrative body must be actively involved in the management of all substantial risks defined in this Law and in the implementing regulations, must ensure that adequate resources are assigned to it, and must also be involved in asset valuation and the use of external credit ratings. The entity must set up information channels to the administrative body about all the major risks it faces and about risk management policies and their modifications.
Article 18. Credit and counterparty risk
On matters of credit and counterparty risk, entities:
  a) must base lending on sound, well-defined criteria and the procedure for approval, modification, renewal and refinancing of loans must be clearly set out;
  b) must have internal methodologies that allow assessment of the credit risk from exposures to the different debtors, securities or securitisation positions, and the credit risk of the portfolio as a whole. Specifically, internal methodologies are not based solely or mechanically on external credit ratings. The fact that the own funds requirements are based on the evaluation of an ECAI or the absence of a rating for the exposure, does not prevent entities from considering other relevant information to evaluate their assignment of internal capital;
  c) must use effective methods to constantly administer and supervise the various portfolios and exposures with credit risk, and to identify and manage doubtful debts and make the appropriate value adjustments and provisions;
  d) must diversify the credit portfolios appropriately, considering the entity’s target markets and global strategy in credit matters.

Article 19. Residual risk
Entities must have written policies and procedures for approaching and controlling the risk that the recognised credit risk mitigation techniques applied by the entity may be less effective than anticipated.

Article 20. Concentration risk
Entities must consider and control, among others, through written policies and procedures, the concentration risk deriving:
  a) from exposures to each of the counterparties, including central counterparty entities, connected counterparty groups and counterparties from the same economic sector, the same geographical region or with the same activity or commodity or,
  b) from the application of credit risk mitigation techniques, including risks linked to large indirect credit exposures, such as a collateral giver.

Article 21. Securitisation risk
1. Entities must assess and control, through adequate policies and procedures, the risks deriving from securitisation transactions in which banking entities act as investors, originators or sponsors, including reputational risk and those arising in relation to complex structures or products, to ensure that the economic content of the transaction is fully reflected in the decisions on risk assessment and management.
2. Originator entities of renewable securitisation transactions that include early repayment clauses must have liquidity plans to face any consequences of both planned or early repayment.

Article 22. Market risk
1. Entities must implement policies and procedures to determine, assess and manage any significant sources of market risk and any significant effects of these risks.
2. Entities must take appropriate measures against the risk of a shortage of liquidity due to a short position expiring before the long position.
3. Entities’ internal capital must be adequate to cover significant market risks that are not subject to own funds requirements.
Entities which, when calculating the own funds requirements for position risk, have offset their positions in one or more of the shares forming a stock index with one or more positions in a futures contract or other product based on this stock index, must have adequate internal capital to cover the risk of loss of basis resulting from the difference between the evolution of the value of the futures contract or other product and the value of the shares that form the stock market index. Entities must also maintain that adequate internal capital when they have opposite positions in futures contracts based on stock indices that are not identical regarding their expiry and/or composition.

When an entity secures debt and capital instruments and uses the mechanism provided in the implementing regulations to reduce the net positions, it must ensure that it has sufficient internal capital to cover the risk of losses that exist between the time of the initial commitment and the following working day.

**Article 23. Interest rate risk deriving from non-trading book activities**

Entities must implement systems to determine, assess and manage the risk deriving from potential variations in interest rates that affect the entity’s non-trading book activities.

**Article 24. Operational risk**

1. Entities must implement policies and procedures to assess and manage the exposure to operational risk, including model risk, if applicable, and to cover the risk of rare events that generate very high losses. Entities must specify what constitutes an operational risk for the purposes of these policies and procedures.

2. Entities must establish contingency and business continuity plans that enable them to continue their activities and limit losses in the event of serious interruptions in business.

**Article 25. Liquidity risk**

1. Entities must have sound strategies, policies, procedures and systems to identify, measure, manage and supervise liquidity risk, over an appropriate set of time horizons, including intra-day, to ensure that entities maintain an adequate level of liquidity buffers. These strategies, policies, procedures and systems must be adapted to the business lines, currencies, branches and legal entities and must include adequate mechanisms for the allocation of expenses, profits and liquidity risks.

2. The strategies, policies, procedures and systems referred to in section 1 must be proportional to the complexity, risk profile and scope of activity of the entities and in line with the risk tolerance set by the administrative body, and must reflect the importance of the entity in each of the jurisdictions in which it carries out activities. Entities must inform all relevant business lines of the risk tolerance.

3. Entities, considering the nature, scale and complexity of their activities, must maintain liquidity risk profiles that are consistent with those necessary for the proper functioning and stability of the financial system.

The AFA must monitor the evolution of these liquidity risk profiles maintained by the entities, noting elements such as the design and volumes of products, risk management, funding policies and funding concentrations.

The AFA may adopt effective measures when the evolution of an entity’s liquidity risk profile might destabilise another entity or the financial system.

4. Entities must develop methodologies to identify, measure, manage and supervise the funding positions. These methodologies must include any significant cash flows,
both current and predicted, in shares and liabilities, and in off-balance sheet entries, including contingent liabilities and the potential impact of reputational risk.

5. Entities must make a distinction between pledged assets and assets free of charges that are available at any time, especially in emergency situations. Equally, entities must consider the legal entity in which the assets are located, the country where the assets are legally registered, whether on a register or as a book entry, and also their eligibility, and must monitor how the assets may be mobilised in a timely manner.

6. Entities must also take into consideration any legal, regulatory and operational constraints to potential transfers of liquidity and assets free of charges between entities, both inside and outside the Principality of Andorra.

7. Entities must consider the different liquidity risk mitigation tools, including a system of limits and liquidity buffers to enable them to face various difficult situations, such as adequate diversification of their funding structure and their access to funding sources. These measures must be reviewed periodically.

8. Entities must consider alternative scenarios regarding the liquidity positions and risk mitigation factors, and must review the circumstances on which the decisions relating to the funding position are based, at least once a year. For this purpose, the alternative scenarios must consider, in particular, the off-balance sheet entries and other contingent liabilities, including securitisation special purpose entities (SSPEs) or the special purposes entities of other entities, for which the entity acts as sponsor or provides material support in terms of liquidity.

9. Entities must analyse the potential impact of alternative scenarios that might affect just the entity, the whole market or a combination of both scenarios. Entities must consider different periods of time, and also stress situations with different levels of difficulty.

10. Entities must periodically adjust their strategies, internal policies and limits to liquidity risk and develop effective contingency plans, considering the result of the alternative scenarios mentioned in section 8.

11. Entities must have liquidity recovery plans in which adequate strategies are defined, and also the appropriate implementation measures, in order to correct potential shortages of liquidity and, if applicable, relating to branches established outside the Principality of Andorra. Entities must test these plans at least once a year, update them based on the results of the alternative scenarios established in section 8, communicate them to the general management and submit them for approval, so that the internal policies and procedures can be adjusted as necessary. Entities must adopt any necessary operational measures in advance to ensure that the liquidity recovery plans can be implemented immediately.

For banking entities, the above-mentioned operational measures must include having immediately-available collateral to obtain external funding. This includes, if necessary, the banking entity holding collateral in the currency of the third country to which it is exposed and, if essential for operational reasons, within the territory of a third country to whose currency it is exposed.

**Article 26. Excessive leverage risk**

1. Entities must establish policies and procedures to identify, manage and monitor the risk of excessive leverage. Among the indicators of excessive leverage risk are the leverage ratio defined in article 84 of this Law and asset liability mismatches.

2. Entities must take steps to avoid the risk of excessive leverage, considering potential increases in this risk caused by reductions in the entity’s own funds deriving from anticipated or real losses, based on the applicable accounting regulations. For these purposes, entities must be ready to deal with various situations of difficulty relating to excessive leverage risk.
Chapter two. Own funds

Section one. Elements of own funds

Article 27. Tier 1 capital
The Tier 1 capital of an entity is the sum of the Common Equity Tier 1 and Additional Tier 1 capital of the entity.

Article 28. Elements of Common Equity Tier 1
1. The following are elements of Common Equity Tier 1:
   a) capital instruments that meet the requirements to be considered an element of Common Equity Tier 1 according to the regulations;
   b) issue premiums related to the instruments mentioned in letter a);
   c) undistributed profits;
   d) other accumulated comprehensive income;
   e) other reserves;
   f) funds for general banking risks.
The elements mentioned in points c) to f) must only be recognised as Common Equity Tier 1 when they can be used immediately by the entity without restrictions, to cover risks or losses as soon as they occur.
2. Failing the provision of letter c) in section 1), the entity may include in Common Equity Tier 1, subject to authorisation by the AFA and the requirements established by the regulations, any interim or year-end profits before the entity has passed a formal resolution confirming the final results of the financial year.
3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to specify:
   a) the implementing provisions relating to elements of Common Equity Tier 1;
   b) conditions for considering that the capital instruments qualify as Common Equity Tier 1 capital instruments, and
   c) consequences if the Common Equity Tier 1 capital instruments cease to fulfil the required conditions.

Article 29. Prudential filters
1. Entities must exclude from any element of own funds any increase in net assets resulting from securitised assets, including:
   a) the increase from future margins income resulting in a capital gain for the entity;
   b) when the entity is the originator of a securitisation, the net gains from the capitalisation of future earnings from securitised assets that provide a credit enhancement in the securitisation positions.
2. Entities must not include the following entries in any element of own funds, relating to cash flow coverage and changes in the value of own liabilities:
   a) reserves at fair value connected to profit or loss from coverage of cash flows of financial instruments not measured at fair value, including anticipated cash flows;
   b) profit or loss from liabilities of the entity measured at fair value, resulting from changes in the entity’s own creditworthiness;
   c) profit and loss at fair value, from liabilities of the entity resulting from changes in the entity’s own creditworthiness.
For the purposes of letter c) of section 2, entities must not offset profit and loss at fair value deriving from the entity’s own credit risk with those deriving from their counterparty’s credit risk.

3. Entities must carry out a prudent valuation of their assets measured at fair value when calculating the amount of their own funds and, moreover, must deduct from Common Equity Tier 1 capital the total of any necessary additional value adjustment.

4. Except in the case of the entries mentioned in section 2, entities must not carry out adjustments aimed at eliminating from their own funds any profit or loss not made from assets or liabilities measured at fair value.

5. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to define the following:
   a) the concept of capital gains referred to in letter a) of section 1);
   b) cases where the entity can include in its own funds the amount of profit and loss in its liabilities, without prejudice to the provisions of section 2, letter b).

Article 30. Deductions in the elements of Common Equity Tier 1

1. Entities must deduct the following concepts from Common Equity Tier 1, subject to the provisions of the regulations regarding the applicable calculation method, limits and exemptions:
   a) losses from the current financial year;
   b) intangible assets, with the exemptions to deduction for the following types of intangible assets, recognised in the accounts prior to this Law entering into force or that have to be recognised, on the conditions defined in the regulations, relating to:
      i) investments in computer applications of banking entities and investment entities that involve the substitution of a significant part of their current systems. Excluded are expenditure on intangible assets that are not capitalisable under the Andorran accounting framework, such as expenses resulting from the modification or modernisation of applications or software systems that already exist within the entity’s operational structure, or
      ii) investments in computer applications for the digital transformation of the company, in which the banking entities and investment entities are involved or promote as major stakeholders in the digitalisation of the processes in which the public interacts with the financial system and/or the central or local government of the Principality of Andorra.
   b) tax-deferred assets attached to future revenues, with the exemptions from deduction determined by the regulations;
   d) the assets of defined benefit pension funds described in the entity’s balance sheet;
   e) an entity’s own Common Equity Tier 1 capital instruments, owned directly, indirectly and synthetically, including the Common Equity Tier 1 capital instruments that the entity has the real or contingent obligation to buy under an existing contractual commitment;
   f) Common Equity Tier 1 capital instruments of financial sector entities owned by the entities directly, indirectly or synthetically, when those entities have a reciprocal cross-holding with the entity that, in the AFA’s opinion, is intended to artificially increase the entity’s own funds;
   g) the relevant value of the Common Equity Tier 1 capital instruments that the entity owns, directly, indirectly or synthetically, in financial sector entities when the entity does not have a significant investment in those entities;
h) the relevant value of the Common Equity Tier 1 capital instruments that the entity owns, directly, indirectly or synthetically, in financial sector entities when the entity has a significant investment in those entities, with the exemptions and alternatives to the deduction defined in the regulations;

i) the value of the entries that must be deducted from the elements of Additional Tier 1 capital, according to article 33, that exceeds the entity’s Additional Tier 1 capital elements;

j) the exposure value of the following elements, subject to the conditions defined in the regulations, when the entity deducts this amount from the total of the Common Equity Tier 1 elements as an alternative to applying a risk weight:

i) significant qualifying holdings outside the financial sector relating to eligible capital, with the exemptions and alternatives to the deduction defined by the regulations;

ii) securitisation positions of originator entities in which the conditions determined by the regulations do not concur, such as no significant transfer of credit risk from a traditional or synthetic securitisation, non-qualifying securitisation positions, or securitisation or resecuritisation positions of low credit quality;

iii) price difference in transactions over debt instruments, variable income securities, currencies and commodities pending settlement (unfinished transactions), as determined by the regulations.

l) any tax linked to elements of Common Equity Tier 1 capital that is foreseeable at the time of calculating it, unless the entity duly adjusts the amount of the elements of Common Equity Tier 1 capital, insofar as those taxes reduce the maximum amount of those elements that may be allocated to coverage of risks or losses.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to define the following:

a) the calculation procedure and applicable limits in applying the deductions to the elements of Common Equity Tier 1 capital;

b) the exemptions from deductions of elements of Common Equity Tier 1 capital and possible alternatives to the application of deductions.

c) application of the deductions referred to in letters a), c), d), e), g), h) and k) of section 1 and letters a), c), d) and f) of section 1 of article 33 and letters a), c) and d) of section 1 of article 36.

d) the types of capital instruments of financial entities and insurance and reinsurance entities of third countries that must be deducted from the following elements of own funds:

i) Common Equity Tier 1 capital elements;

ii) Additional Tier 1 capital elements;

iii) Tier 2 capital elements.

**Article 31. Common Equity Tier 1 capital**

The Common Equity Tier 1 capital of an entity consists of the elements of Common Equity Tier 1 capital, after applying the prudential requirements in article 29, the deductions established in article 30, and the exemptions and alternatives also provided in articles 30 and 42.
**Article 32. Additional Tier 1 capital elements**

1. Additional Tier 1 capital elements consist of:
   a) the capital instruments that fulfil the requirements to be considered elements of Additional Tier 1 capital as determined by the regulations;
   b) issue premiums related to the instruments mentioned in point a).

The instruments included in point a) must not be classified as elements of Common Equity Tier 1 or Tier 2 capital.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to define the following:
   a) the implementing provisions relating to elements of Additional Tier 1 capital;
   b) the conditions to consider that capital instruments qualify as Additional Tier 1 capital instruments;
   c) the consequences if Additional Tier 1 capital instruments cease to fulfil the conditions required in point b) above.

**Article 33. Deductions in Additional Tier 1 capital elements**

1. Entities must deduct the following concepts from Additional Tier 1 capital elements, subject to the regulations relating to the applicable calculation method, limits and exemptions:
   a) direct, indirect and synthetic holdings of Additional Tier 1 capital instruments owned by the entities, including Additional Tier 1 capital instruments that the entity may be obliged to acquire due to existing contractual obligations;
   b) direct, indirect and synthetic holdings of Additional Tier 1 capital instruments in financial sector entities, when the entity has a reciprocal cross-holding that, in the AFA’s opinion, is intended to artificially increase the entity’s own funds;
   c) the relevant value of Additional Tier 1 capital instruments that the entity has, directly, indirectly and synthetically, in financial sector entities, as determined by the regulations, when the entity has no significant investment in those entities;
   d) direct, indirect and synthetic holdings of Additional Tier 1 capital instruments in financial sector entities, when the entity has a significant investment in those entities, excluding insurance positions held for five or less working days;
   e) the value of the entries to be deducted from Tier 2 capital elements, according to article 33, that exceeds the entity’s Tier 2 capital elements;
   f) any tax linked to Additional Tier 1 capital elements foreseeable at the time of calculation, unless the entity duly adjusts the value of the Additional Tier 1 capital elements, insofar as those taxes reduce the maximum amount of those elements that may be allocated to the coverage of risks or losses.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to define the following:
   a) the calculation procedure and applicable limits in applying the deductions to the Additional Tier 1 capital elements;
   b) the exemptions from deductions of Additional Tier 1 capital elements and possible alternatives to the application of deductions.

**Article 34. Additional Tier 1 capital**

The Additional Tier 1 capital of an entity consists of the elements of Additional Tier 1 capital, after the deductions referred to in article 33 and after application of article 42.
Article 35. Tier 2 capital elements

1. Tier 2 capital elements are:
   a) capital instruments and subordinated loans that meet the requirements to be considered as Tier 2 capital elements according to the regulations;
   b) issue premiums related to the instruments mentioned in letter a);
   c) general credit risk adjustments, not reflecting tax, up to the limit defined in the regulations, of the risk-weighted exposures calculated according to the provisions of section three of chapter three of this Title.

   The elements included in point a) are not considered to be Common Equity Tier 1 capital elements or Additional Tier 1 capital elements.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to define the following:
   a) the implementing provisions relating to Tier 2 capital elements;
   b) the conditions to consider that the capital instruments and subordinated loan qualify as Tier 2 capital instruments;
   c) the consideration of Tier 2 capital instruments and subordinated loan instruments in the five years prior to expiry;
   d) the consequences if the Tier 2 capital instruments cease to fulfil the conditions required in letter a) above.

Article 36. Deductions in Tier 2 capital elements

1. The following concepts must be deducted from Tier 2 capital, subject to the regulations relating to the applicable calculation method, limits and exemptions:
   a) direct, indirect and synthetic holdings of Tier 2 capital instruments owned by the entities, including Tier 2 capital instruments that the entity may be obliged to acquire due to existing contractual obligations;
   b) direct, indirect and synthetic holdings of Tier 2 capital instruments in financial sector entities, when the entity has a reciprocal cross-holding that, in the AFA’s opinion, is intended to artificially increase the entity’s own funds;
   c) the relevant value of Tier 2 capital instruments that the entity has, directly, indirectly and synthetically, in financial sector entities, when the entity has no significant investment in those entities;
   d) direct, indirect and synthetic holdings of Tier 2 capital instruments in financial sector entities, when the entity has a significant investment in those entities, excluding the insurance positions held for five or less working days;

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to define the following:
   a) the calculation procedure and applicable limits when applying the deductions to the Tier 2 capital elements;
   b) the exemptions from deductions of Tier 2 capital elements.

Article 37. Tier 2 capital

The Tier 2 capital of an entity consists of the elements of Tier 2 capital, after the deductions referred to in article 36 and after application of article 42.
Article 38. Own funds
The own funds of an entity consist of the sum of its Tier 1 capital and Tier 2 capital.

Article 39. Distributions based on own funds instruments
1. Capital instruments for which an entity has the discretion to decide to pay distributions, in a manner other than cash or an own funds instrument, do not qualify as Common Equity Tier 1 capital instruments, or Additional Tier 1 capital instruments, or Tier 2 capital instruments, unless the entity has obtained prior authorisation from the AFA.
2. Capital instruments for which a legal person other than the entity that issues them has the discretion to decide or require that payment of distributions based on the instrument be made in a manner other than cash or an own funds instrument, do not qualify as Common Equity Tier 1 capital instruments, or Additional Tier 1 capital instruments, or Tier 2 capital instruments.
3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to define the following:
   a) the conditions under which entities may obtain the authorisation mentioned in section 1);
   b) the acceptable methods for determination of the distribution levels based on the Additional Tier 1 and Tier 2 capital instruments.

Article 40. Capital instruments issued by regulated entities in the financial sector not considered to be regulatory capital
Entities need not deduct from any element of own funds any direct, indirect or synthetic holdings of capital instruments issued by a regulated entity in the financial sector, that are not considered to be regulatory capital of that entity.

Article 41. Authorisation to reduce own funds
1. The AFA must authorise an entity to reduce, repurchase or repay Common Equity Tier 1 capital, Additional Tier 1 capital or Tier 2 capital instruments, when it fulfils any of the following conditions:
   a) prior to or at the same time as the action referred to in subsection iv) of section 2 of article 20, of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, relating to Common Equity Tier 1 capital, and subsection iv bis), relating to Additional Tier 1 capital and Tier 2 capital, that the entity substitute the said instruments with own funds instruments of an equal or higher quality under conditions that are sustainable for the entity's ability to generate income;
   b) the entity has demonstrated, to the AFA's satisfaction, that its own funds, after the said action, exceed the requirement in section 1 of article 46, and the combined buffer requirements defined in point e) of section 1 of article 54, with a margin that the AFA considers necessary pursuant to section 3 of article 97.
2. When assessing the sustainability of substitution instruments in relation to the entity's ability to generate income, under point a) in section 1, the AFA must consider to what extent the substitution of those capital instruments would be costlier to the entity than those they substitute.
3. The AFA may allow entities to reimburse Additional Tier 1 capital or Tier 2 capital instruments within 5 years of their issue date, solely when the conditions established in section 1 and points a) or b) of this section are met:
a) that there is a modification of the regulatory classification of these instruments that has the likely result of excluding them from own funds or their reclassification into a lower class of own funds, and that the following two conditions are met:
   i) that the AFA considers this modification has reasonable certainty;
   ii) that the entity demonstrates to the AFA’s satisfaction that the regulatory reclassification of those instruments was not reasonably foreseeable at the time of issue.

c) that there is a modification in the tax treatment applicable to these instruments and the entity demonstrates to the AFA’s satisfaction that this modification is significant and was not reasonably foreseeable at the time of issue.

4. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to specify the parameters and factors to determine the concept “sustainable for the income capacity of the entity” on the terms provided in letter a) of section 1 of this article.

Article 42. Temporary waiver of deduction from own funds

When an entity temporarily holds capital instruments or has granted subordinated loans, depending on the case, that are considered Common Equity Tier 1 capital instruments, Additional Tier 1 capital instruments or Tier 2 capital instruments of a financial sector entity and the AFA considers that this holding meets the purposes of financial assistance for the restructuring and rescue of that entity, the AFA may temporarily exempt them, on request, from application of the deduction provisions normally applicable to such instruments.

Section two. Minority interests and Tier 1 and Tier 2 capital instruments issued by subsidiaries

Article 43. Minority interests that may be included in the consolidated Common Equity Tier 1 capital

1. Minority interests are the sum of the Common Equity Tier 1 capital instruments, the issue premiums related to those instruments, undistributed profits and other reserves of a subsidiary, whenever:
   a) the subsidiary is an entity or an undertaking subject to this Law and the implementing regulations;
   b) the subsidiary is fully included in the consolidation, according to section two of chapter one of Title III;
   c) the Common Equity Tier 1 capital instruments mentioned in the introduction to this section belong to persons other than the undertakings included in the consolidation according to section two of chapter one of Title III.

2. Minority interests that are financed directly or indirectly through a special purpose entity or in any other way by the parent undertaking of the entity or its subsidiaries, may not form part of the consolidated Common Equity Tier 1 capital.

Article 44. Eligible Additional Tier 1 capital, Tier 1 capital and Tier 2 capital and eligible own funds

Eligible Additional Tier 1 capital, Tier 1 capital and Tier 2 capital, and eligible own funds, must include the minority interests, the Additional Tier 1 capital or Tier 2 capital instruments, as applicable, and also the corresponding undistributed profits and issue premiums, of a subsidiary, whenever:
a) it is the subsidiary of an entity or undertaking subject to this Law and the implementing regulations;

b) the subsidiary is fully included in the consolidation, according to section two of chapter one of Title III;

c) the said instruments belong to persons other than the undertakings included in the consolidation, according to section two of chapter one of Title III.

**Article 45. Eligible Additional Tier 1 capital and Tier 2 capital issued by a special purpose entity**

1. Additional Tier 1 capital and Tier 2 capital instruments issued by a special purpose entity, and the corresponding issue premium accounts, are included in the eligible Additional Tier 1 capital, Tier 1 capital and Tier 2 capital or eligible own funds, as applicable, only if:

   a) the special purpose entity issuing these instruments is fully included in the consolidation, according to section two of chapter one of Title III;

   b) the instruments and the corresponding issue premiums are included in the eligible Additional Tier 1 capital only if they fulfil the requirements to be considered Additional Tier 1 capital elements, according to the regulations;

   c) the instruments and the corresponding issue premium accounts are included in the eligible Tier 2 capital solely if they fulfil the requirements to be considered Tier 2 capital elements, according to the regulations;

   d) the only asset of the special purpose entity is its investment in the own funds of the parent undertaking, or a subsidiary of it that is fully included in the consolidation according to section two of chapter one of Title III, in a manner that fulfils the regulatory requirements to be considered an element of Additional Tier 1 capital or Tier 2 capital, as appropriate.

   If the AFA considers that the assets of a special purpose entity other than investments in the own funds of the parent undertaking of subsidiary of it that is fully included in the scope of the consolidation, according to section two of chapter one of Title III, are minimal and insignificant for that entity, it may waive application of the provisions of letter d) of section 1.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to define the following:

   a) the details of the calculation of minority interests to be included in the consolidated Common Equity Tier 1 capital, and any applicable exemptions;

   b) the details of the calculation of the total eligible Tier 1 capital of a subsidiary to be included in the consolidated Common Equity Tier 1 capital, and any applicable exemptions;

   c) the details of the calculation of the total eligible Tier 1 capital of a subsidiary to be included in the consolidated Additional Tier 1 capital, and any applicable exemptions;

   d) the details of the calculation of the total eligible own funds of a subsidiary to be included in the consolidated own funds, and any applicable exemptions;

   e) the details of the calculation of the total eligible own funds of a subsidiary to be included in the consolidated Tier 2 capital, and any applicable exemptions;

   f) the types of assets relating to the operation of the entity with a special purpose and the conditions to be met for the assets to be considered “minimal” and “insignificant” as referred to in section 1, paragraph two.
Chapter three. Capital requirements

Section one. General requirements, assessment and presentation of reports

Article 46. Own funds requirements

1. Entities and their consolidation groups must fulfil the following own funds requirements at all times:
   a) a Common Equity Tier 1 capital ratio of 4.5%;
   b) a Tier 1 capital ratio of 6%;
   c) a total capital ratio of 8%.

2. Entities and their consolidation groups must calculate their capital ratios as follows:
   a) the Common Equity Tier 1 capital ratio must be equal to the Common Equity Tier 1 capital of the entity expressed as a percentage of the total risk exposure value;
   b) the Tier 1 capital ratio must be equal to the Tier 1 capital of the entity expressed as a percentage of the total risk exposure value;
   c) the capital ratio must be equal to the own funds of the entity expressed as a percentage of the total risk exposure value;

3. The total risk exposure value must be calculated as the sum of points a) to f) of this section, considering the provisions established in section 4:
   a) the value of the exposures weighted for credit and dilution risk, calculated according to section three of chapter three of Title III, and letter c) of section 2 of article 76, regarding all the business activities of an entity, excluding the value of the exposures weighted for the entity’s trading book risk;
   b) the own funds requirements, calculated according to section five of chapter three of Title III, or chapter four, as applicable, for the trading book of an entity, in relation to the following:
      i) the position risk;
      ii) major risks exceeding the limits specified in section 6 of article 78, insofar as an entity is authorised to exceed these limits.
   c) the own funds requirements for market and settlement risk, calculated according to sections five and six of chapter three of Title III, as applicable, in relation to the following:
      i) exchange rate risk;
      ii) settlement risk;
      iii) commodity risk.
   d) the own funds requirements, calculated according to section seven of chapter three of Title III, in relation to the credit valuation adjustment risk resulting from OTCs other than the credit derivates recognised for the reduction of the value of credit risk-weighted exposures;
   e) the own funds requirements, calculated according to section four of chapter three of Title III, relating to operational risk;
   f) the value of the risk-weighted exposures, calculated according to section three of chapter three of Title III, relating to counterparty risk deriving from the entity’s trading book for specific types of transactions and agreements:
i) the contracts in letters d) to g), j) and k) of point 11 of article 2 of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, and credit derivatives;

ii) repurchase transactions, lending or borrowing transactions in securities or commodities;

iii) margin lending transactions based on securities or commodities;

iv) deferred settlement transactions.

4. The following provisions must be applied when calculating the total value of the risk exposure mentioned in section 3:

a) the own funds requirements listed in letters c), d) and e) of section 3 must include those relating to all the entity’s business activities;

b) entities must multiply the own funds requirements established in letters b) to e) of section 3, by 12.5.

Article 47. Exemption for small trading book business

1. Entities may substitute the capital requirement referred to in letter b) of section 3 of article 46, with a capital requirement calculated according to letter a) of section 3, in relation to their trading book, whenever the volume of on- and off-balance sheet transactions fulfils the following two conditions:

a) it is usually lower than 5% of the total assets and 15 million euros;

b) it never exceeds 6% of the total assets or 20 million euros.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to define the following:

a) the conditions to consider to calculate the volume of on- and off-balance sheet transactions;

b) the procedure to follow if the entities cease to fulfil the condition established in letter b) of section 1.

Article 48. Own funds requirements for financial investment agencies, direct asset management companies and indirect asset management companies

1. For the purposes of section 3 of article 46, financial investment agencies, direct asset management companies and indirect asset management companies that carry out the investment services established in letters b) and d) of article 20 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, must consider as the total value of risk exposure the highest value resulting from:

a) the sum of the elements listed in points a) to d) and f) of section 3 of article 46, after applying the provisions of section 4 of article 46;

b) multiplying by 12.5 the amount of own funds based on general fixed expenses according to article 50.

Indirect asset management companies that carry out the investment services defined in letters b) and d) of article 20 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, must fulfil the requirements established in sections 1 and 2 of article 46, on the basis of the total risk exposure value referred to in section 1 of this article.
2. Financial investment agencies and direct asset management companies are subject to the other provisions for operational risk provided in section five of chapter one of Title III.

**Article 49. Own funds requirements for financial investment companies with limited activity in providing investment services.**

1. For the purposes of section 3 of article 46, financial investment companies that fulfil one of the following conditions must apply the calculation of the total risk exposure value defined in section 2:
   a) they deal on own account with the sole purpose of carrying out clients’ orders or accessing a clearing and settlement system or a recognised regulated market when acting as agents or carrying out clients’ orders;
   b) they fulfil all the following conditions:
      i) they do not hold clients’ money or securities;
      ii) they only operate on own account;
      iii) they have no external clients;
      iv) the liability for executing and settling their transactions falls on a clearing house and they are guaranteed by this clearing house.

2. The financial investment companies mentioned in section 1 of this article must consider as the total value of the risk exposures the highest value resulting from:
   a) the sum of the elements listed in letters a) to d) and f) of section 3 of article 46, after applying the provisions of section 4 of article 46;
   b) multiplying by 12.5 the amount of own funds based on general fixed expenses according to article 50.

3. Financial investment companies are subject to the other provisions for operational risk provided in section five of chapter one of Title III.

**Article 50. Own funds based on general fixed expenses**

1. According to article 48 and article 49, investment entities and indirect asset management companies must have eligible capital that is at least equal to one fourth of the general expenses of the previous financial year.

2. If the activities of an investment entity vary compared with the previous financial year and the AFA considers that it is a significant change, the AFA may adjust the requirement established in section 1.

3. When the period of activity of an investment entity is less than one year from the date of commencing activities, the eligible capital must be equal to at least one fourth of the general fixed expenses provided in its business plan, unless the AFA requires the plan to be modified.

4. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to specify the following content:
   a) the calculation of the requirement for having minimum acceptable capital equal to one fourth of the general fixed costs of the preceding financial year;
   b) the criteria that can be applied by the AFA to adjust the calculation of the requirement for having minimum acceptable capital equal to one fourth of the general fixed costs of the preceding financial year;
   c) the calculation of the expected general fixed costs, if the investment undertaking has not completed one financial year.

**Article 51. Own funds of investment entities on a consolidated basis**
1. Financial investment agencies or direct asset management companies that form part of a group, when this group does not include banking entities, the parent investment entity in the Principality of Andorra must apply article 46 at consolidated level as follows:
   a) applying the calculation of the total risk exposure value specified in section 1 of article 48;
   b) calculating own funds on the basis of the consolidated situation of the parent investment entity or parent financial holding company or parent mixed financial holding company, as appropriate.
2. The financial investment companies mentioned in article 49 that form part of a group, when that group does not include banking entities, the parent investment entities in the Principality of Andorra and the investment entities controlled by a financial holding company or mixed financial holding company, must apply article 46 at consolidated level as follows:
   a) applying the calculation of the total risk exposure value specified in section 1 of article 49;
   b) calculating own funds on the basis of the consolidated situation of the parent investment entity or parent financial holding company or parent mixed financial holding company, as appropriate.

Article 52. Communication of information about the own funds requirements, financial information and other specific communications
1. Entities must inform the AFA of the obligations established in article 46, and financial information, at least biannually.
2. Entities must communicate to the AFA the level of repurchase agreement transactions, securities lending and any kind of charges and encumbrances on their assets.
3. Entities must communicate biannually to the AFA any relevant data on exposures and losses for each of the national property markets to which they are exposed, with the content defined in a technical communiqué.
4. The AFA must establish, in a technical communiqué, the formats, frequency and dates for presenting confidential statements and the software definitions and solutions to be applied by the entities to report on own funds, own funds requirements and financial information.

Article 53. Trading book requirements
1. Trading book positions must be free of restrictions on trading or be able to have coverage.
2. The trading intent must be demonstrated through strategies, policies and procedures established by the entity to manage the position or portfolio according to the regulations.
3. Entities must establish and maintain systems and controls to manage their trading book according to the regulations.
4. Entities may include the internal coverage in the calculation of the capital requirements for position risk, whenever it meets trading purposes.
5. The Government, at the proposal of the Ministry of Finance, must establish additional provisions, relating to the specific requirements applicable to the trading book, its management, to prudent valuation and internal coverage.
Section two. Capital buffers

Article 54. Definitions

1. For the purposes of this section, the following definitions are applicable:
   a) “capital conservation buffer” means the own funds that an entity is required to maintain in accordance with article 57;
   b) “institution-specific countercyclical capital buffer” means the own funds that an entity is required to maintain in accordance with article 58;
   c) “SII buffer” means the own funds that an entity is required to maintain in accordance with article 59;
   d) “systemic risk buffer” means the own funds that an entity is required to maintain in accordance with article 60;
   e) “combined buffer requirement” means the total Common Equity Tier 1 capital required to fulfil requirement for the capital conservation buffer plus the following, as applicable:
      i) an institution-specific countercyclical capital buffer;
      ii) an SII buffer;
      iii) a systemic risk buffer.
   f) “countercyclical buffer rate” means the rate that entities must apply to calculate their institution-specific countercyclical capital buffer, and that is set by the AFA both for exposures located in the Principality of Andorra and those located in third countries;

2. The authority responsible for setting, reviewing and supervising the implementation of capital buffers by authorised entities in the Principality of Andorra is the AFA.

Article 55. Scope of application of capital buffers

1. This section applies to banking entities and financial investment companies.
2. The AFA may exempt financial investment companies from the requirements established in this section, case by case and on request, considering the nature, scale and complexity of their business, the type of products and services provided and the risks to which they are exposed.

Article 56. Combined buffer requirements

1. Entities subject to the requirements in this section, according to article 55, must fulfil the combined buffer requirement at all times, as defined in letter e) of section 1 of article 54.
2. The Common Equity Tier 1 capital required to satisfy each of the buffers established in articles 57 to 60 must be different from and, therefore, additional to that required to satisfy the other buffers and other own funds requirements imposed by article 46, and any others that the AFA may require based on letter a) of section 1 of article 97, except the provisions of the AFA on the buffers for systemically important financial entities, according to article 59, and the systemic risk buffer, according to article 60.
3. The requirements for capital buffers must be fulfilled on an individual, consolidated or sub-consolidated basis, according to the regulations and according to section two of chapter one of Title III.
4. When an entity or group does not comply with the obligation established in section 1, it must be subjected to the restrictions on distributions established in article 62, and must present a capital conservation plan according to the provisions of article 63.
Article 57. Requirement to maintain a capital conservation buffer

1. Entities must maintain, in addition to the Common Equity Tier 1 capital maintained to satisfy the own funds requirements imposed by section 1 of article 46, a capital conservation buffer consisting of Common Equity Tier 1 capital, equal to 2.5% of its total risk exposure calculated according to section 3 of article 46, on an individual and consolidated basis, according to chapter one of Title III.

2. Notwithstanding the provisions of section 1, the AFA may exempt financial investment companies from the requirements in this paragraph when that exemption does not threaten the stability of the financial system of the Principality of Andorra.

3. Entities must not use the Common Equity Tier 1 capital that they are obliged to maintain to satisfy the requirement of section 1 of this article to also satisfy the requirements imposed under article 97.

Article 58. Requirement to maintain an institution-specific countercyclical capital buffer

1. Entities must maintain an institution-specific countercyclical capital buffer equal to their risk exposure value, calculated according to section 3 of article 46, multiplied by the weighted average of the countercyclical capital buffer rates published by the AFA, calculated according to the regulations and on an individual and consolidated basis, as applicable, according to chapter one of Title III.

2. Notwithstanding the provisions of section 1, the AFA may exempt financial investment companies from the requirements of this section when that exemption does not threaten the stability of the financial system of the Principality of Andorra.

3. Entities must fulfil the requirements imposed in section 1 through Common Equity Tier 1 capital, which must be additional to the Common Equity Tier 1 capital maintained to satisfy the own funds requirements imposed by article 46, to the obligation to maintain a capital conservation buffer according to article 57 of this Law, and to any other requirement imposed under article 97 of this Law.

4. The rate of the countercyclical capital buffer, expressed as a percentage of the total risk exposure calculated according to section 3 of article 46, must lie between 0% and 2.5%, calibrated in fractions or multiples of 0.25 percentage points. The AFA may fix a countercyclical buffer rate above 2.5% of the total risk exposure value calculated according to section 3 of article 46, both for exposures located in the Principality of Andorra and exposures located in third countries, considering the specific countercyclical capital buffers set by the competent authorities of those third countries.

5. The AFA must publish, on its website, the countercyclical capital buffer rate set for the quarter, together with the minimum information defined in a technical communiqué.

6. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations, to specify the following:

   a) the procedure for calculating the countercyclical capital buffer rate;
   b) the procedure for the determination, effective date and publication by the AFA of the countercyclical capital buffer rate for exposures located in the Principality of Andorra;
   c) the procedure for recognising countercyclical capital buffer rates set by the competent authorities of third countries or the decision concerning those rates;
   d) the content of the announcement setting the specific countercyclical capital buffer for each entity, both for exposures located in the Principality of Andorra and in third countries;
   e) the categories of credit exposures to be considered in the calculation of the specific countercyclical capital buffer for each entity;
f) the manner in which the entities must identify the geographical location of a credit exposure for the purposes of calculating the specific countercyclical capital buffer for each entity.

**Article 59. Capital buffers for systemically important institutions**

1. The methodology for identifying Andorran SIIs must be defined by regulations and, in any case, is based on at least some of the following criteria:
   a) the size of the entity, group or sub-group;
   b) its importance for the economy of the Principality of Andorra;
   c) the importance of its cross-border business;
   d) the interconnection of the entity or group with the financial system.

2. The AFA may require each of the SII to maintain, on an individual, sub-consolidated and/or consolidated basis, as appropriate, an SII capital buffer of up to 2% of the total risk exposure value, calculated according to section 3 of article 46. This buffer, which is composed of Common Equity Tier 1 capital, is in addition to the mentioned Common Equity Tier 1 capital.

3. Systemically important institutions must not use the Common Equity Tier 1 capital maintained to satisfy the requirements of section 2 to fulfil the requirements imposed in articles 46, 57 and 58, nor the requirements established in articles 95 and 97 of this Law.

4. When an SII buffer and a systemic risk buffer are applicable to an entity on an individual or sub-consolidated basis, according to article 60, the higher of the two must be applied.

5. When the systemic risk buffer defined by the AFA applies only to all exposures located in the Principality of Andorra, but not to exposures in third countries, entities must apply the systemic risk buffer cumulatively with the SII buffer, determined according to this article.

6. When section 4 is applicable and an entity forms part of a group or sub-group that includes an SII, this does not mean that that entity is subject, on an individual basis, to combined buffer requirements lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the higher out of the SII or systemic risk buffers applied on an individual basis.

7. When section 5 is applicable and an entity forms part of a group or sub-group that includes an SII, this does not mean that that entity is subject, on an individual basis, to combined buffer requirements lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the sum of the SII and systemic risk buffers applied on an individual basis.

8. The Government, at the proposal of the Ministry of Finance, must prepare implementing regulations relating to the following aspects:
   a) specification of the methodology to identify systemically important institutions in the Principality of Andorra (SII);
   b) the application system for combining SII buffers and systemic risk buffers, provided in article 60 of this Law.

**Article 60. Requirement to maintain a systemic risk buffer**

1. The AFA may require a systemic risk buffer to be set up, composed of Common Equity Tier 1 capital, for the Andorran financial sector or for one or several of the sub-groups in this sector, for the purpose of preventing and/or avoiding long-term systemic risks or acyclical macroprudential risks that are not covered by this law and/or the implementing regulations. This means risks that could cause a shock to the Andorran
financial system or those of third countries, with seriously negative consequences for the financial system and the real economy of the Principality of Andorra.

2. For the purposes of section 1 of this article, the AFA may require that the entities maintain, in addition to the Common Equity Tier 1 capital maintained to satisfy the own funds requirements imposed by article 46, a systemic risk buffer of at least 1% of Common Equity Tier 1 capital, based on the exposures to which the systemic risk buffer applies according to section 7 of this article, on an individual, consolidated and/or sub-consolidated basis, as applicable, according to chapter one of Title III.

3. When a group that has been identified as a systemically important institution is required to have an SII buffer on a consolidated basis according to the provisions of article 59, and is also required to have a systemic risk buffer on a consolidated basis, according to the provisions of this article, the highest of the two buffers must be applied. When an SII buffer is applicable to an entity, on an individual or sub-consolidated basis, according to article 59, and also a systemic risk buffer according to this article, the highest of the two must be applied.

4. Notwithstanding the provisions of section 3, when the systemic risk buffer defined by the AFA is applied only to all exposures located in the Principality of Andorra, but is not applied to exposures in third countries, entities must apply the systemic risk buffer cumulatively with the SII buffer determined according to article 59.

5. When section 3 is applicable and an entity forms part of a group or sub-group that includes an SII, this does not mean that that entity is subject, on an individual basis, to combined buffer requirements lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the higher of the SII and systemic risk buffers applied on an individual basis.

6. When section 4 is applicable and an entity forms part of a group or sub-group that includes an SII, this does not mean that that entity is subject, on an individual basis, to combined buffer requirements lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the sum of the SII and systemic risk buffers applied on an individual basis.

7. The systemic risk buffer may be applied for all exposures in the Principality of Andorra or established outside the Principality of Andorra according to the implementing regulations that are developed according to this Law.

8. The systemic risk buffer may be required from all entities in the Andorran financial sector, or one or more subsets of these entities, and must be set in gradual or accelerated steps of 0.5 percentage points. The AFA may introduce different requirements for different subsets of entities.

9. When the AFA requires a systemic risk buffer to be maintained, it may review it at least every two years.

10. When the application of restrictions regarding the distributions referred to in section 4 of article 56 does not satisfactorily improve the Common Tier 1 capital of the entity in the light of relevant systemic risk, the AFA may take additional measures according to article 95 to 97 of section two of chapter one of Title IV of this Law, and section 3 bis of article 9 of Law 35/2010, of 3 June, on the regime of authorization for the creation of new bodies operating within the Andorran financial system.

Article 61. Recognition of systemic risk buffer rates of third countries

1. The AFA may recognise the systemic risk buffer rate set by the competent authority of a third country and may apply that capital buffer rate to the entities authorised in the Principality of Andorra for exposures located in that third country.
2. When deciding whether to recognise the systemic risk buffer rate of third countries, the AFA must consider the information presented by the competent authority of the third country that sets the systemic risk buffer rate.

3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to introduce additional provisions relating to the recognition of systemic buffer rates of third countries.

Article 62. Restrictions on distributions.

1. Entities that fulfil the combined capital buffer requirement are prohibited from making distributions in connection with Common Equity Tier 1 capital when:
   a) the distribution would decrease the capital to a level that no longer meets the combined requirement, or
   b) the AFA has adopted any of the measures provided in article 97, to strengthen own funds or limit or prohibit the payment of dividends.

2. Entities that do not fulfil the combined capital buffer requirement or that try to make a distribution of Common Equity Tier 1 capital involving a reduction of that capital to a level where the combined capital buffer requirement is no longer met, must calculate the Maximum Distributable Amount (MDA), according to the regulations, and must notify the AFA of the result to obtain prior authorisation.

Entities may not carry out any of the following actions before calculating the MDA and informing the AFA of the amount:
   a) make a distribution in connection with Common Equity Tier 1 capital;
   b) create an obligation to pay variable remuneration or discretionary pension benefits, or pay variable remuneration if the payment obligation was created at a time when the entity did not meet the combined buffer requirements
   c) make payments connected to Additional Tier 1 capital instruments.

Entities must have mechanisms to guarantee that the amount of distributable profits and the MDA are calculated precisely and must be able to demonstrate their precision to the AFA when requested.

3. As long as an entity fails to meet its combined buffer requirement, it may not distribute more than the maximum distributable amount for the purposes provided in letters a), b) and c) of section 2.

4. The restrictions imposed by this article shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where their suspension or the inability to pay does not constitute a breach of payment obligations or a reason for commencing proceedings under the Decree on insolvency and bankruptcy, of 4 October 1969.

5. When an entity does not meet the combined capital buffer requirement and proposes to distribute all or part of its distributable profits or carry out any of the actions described in letters a), b) and c) of section 2, it must notify the AFA and provide the information to be determined in the regulations.

6. For the purposes of the provisions of sections 1) and 2) of this article, a distribution in connection with Common Equity Tier 1 includes:
   a) the payment of cash dividends;
   b) the distribution of fully or partly paid-up shares or other capital instruments referred to in letter a) of section 1 of article 28;
   c) the redemption or purchase by an entity of its own shares or other capital instruments referred to in letter a) of section 1 of article 28;
d) the repayment of amounts paid in connection with the capital instruments referred to in letter a) of section 1 of article 28;

e) the distribution of elements referred to in letters b) to e) of section 1 of article 28.

7. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:

a) the methodology for calculating the Maximum Distributable Amount (MDA);

b) the information to be provided by entities that do not satisfy the combined capital buffer requirements and intend to distribute all or part of their distributable profits or take an action described in letters a), b) and c) of section 2.

**Article 63. Capital conservation plan**

1. When an entity does not meet the combined capital buffer requirement, it must prepare a capital conservation plan and present it to the AFA within five working days from the date on which the entity identifies that it does not meet the requirements. Nevertheless, the AFA may extend this period to ten working days, based on the individual situation of the entity and considering the size and complexity of its activities.

2. The capital conservation plan must include the following points:

   a) estimates of income and expenditure and a balance sheet forecast;

   b) measures to increase the capital ratios of the entity;

   c) a plan and timeframe for increasing own funds to meet the combined buffer requirements;

   d) any other data that the AFA considers necessary to make the evaluation provided in section 3.

3. The AFA must evaluate the capital conservation plan and approve it if it considers that, if carried out, it is reasonably foreseeable that sufficient capital will be conserved or obtained for the entity to be able to meet the combined capital buffer requirement within the period the AFA considers appropriate.

4. If the capital conservation plan presented by the entity is not approved, the AFA may:

   a) require the entity to increase own funds within the period it determines;

   b) use the powers granted to it by article 95 to impose stricter restrictions on distributions than those provided in article 62.

**Section three. Capital requirements for credit risk**

**Article 64. Credit risk method**

1. Entities must apply the standardised method provided in this section to calculate their weighted exposures for credit risk and dilution risk according to letters a) and f) of section 3 of article 46.

2. For the purposes of this Law, exposures to investment entities, credit institutions and central counterparty entities and organised markets of third countries must only be treated as exposures to entities when the third country applies prudential supervision and regulation requirements to an entity that are equal to those existing in the Principality of Andorra.

3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
a) the calculation criteria for obtaining the weighted exposures for credit and dilution risk based on the standardised method;
b) the treatment of specific kinds of exposures to central counterparty entities;
c) the use of eligible techniques for reducing credit risk through the standardised method;
d) the treatment of securitised exposures in the standardised method, and
e) the treatment of credit risk adjustments.

Article 65. Exposure value

1. The exposure value of an asset entry is equal to its accounting value after application of the specific credit risk adjustments, additional valuation adjustments, and other own funds reductions related to the asset entry. The exposure value of the off-balance sheet entries is a percentage, determined by the regulations on the basis of the risk level of those entries, of their nominal value reduced by the specific credit risk adjustments.

2. The Government, at the proposal of the Ministry of Finance, must establish the methods for determining the exposure value of the asset and off-balance sheet entries to be considered in the calculation of own funds relating to credit and dilution risk.

Article 66. Categories of exposure

1. Each exposure must be assigned to a specific category according to the nature of the debtor, type of transaction or situation of it, or other criteria to be determined by the regulations.

2. The Government, at the proposal of the Ministry of Finance, must determine the categories of exposure.

Article 67. Calculation of risk-weighted exposures

1. To calculate risk-weighted exposures, the risk weights must be assigned to all the exposures, except where they are deducted from own funds. The applied risk weight depends on the category in which the exposure falls and its credit quality. The credit quality can be determined by referring to the credit assessments made by the ECAIs or by the export credit agencies.

2. For the purposes of applying a risk weight referred to in section 1, the exposure value must be multiplied by the risk weight provided or defined by the implementing regulations.

3. The Government, at the proposal of the Ministry of Finance, must determine the following in regulations:
   a) the requirements that exposures must meet to classify them in the different exposure categories and the risk weights to apply to them to determine the risk-weighted exposures;
   b) the treatment of credit risk coverage for calculating risk-weighted exposures;
   c) the calculation of the risk-weighted value of securitised exposures;
   d) the treatment of an entity’s exposures to a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or a connected undertaking;
   e) the treatment of an entity’s exposures to a counterparty with which the entity has signed a liability agreement.

Article 68. Use of credit assessments made by ECAIs or export credit agencies
1. An external credit assessment may only be used to determine the risk weight of an exposure where issued or confirmed by an ECAI or export credit agency.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
   a) the use of credit assessments made by the ECAI or export credit agencies;
   b) the requirements for the use of ECAI credit assessments to determine the risk weights.

3. The AFA must establish in a technical communiqué:
   a) a list of recognised ECAIs in the Principality of Andorra for exposure risk-weighting;
   b) the relationship between the credit risk assessments of ECAIs and the credit quality levels established in the regulations for exposure risk-weighing purposes.

**Article 69. Principles for recognising the effects of the credit risk mitigation techniques**

1. Any exposure for which an entity obtains a credit risk reduction cannot give rise to a risk-weighted exposure that is higher than another identical exposure for which the entity has not obtained a credit risk reduction.

2. When the risk-weighted exposure already considers the credit risk coverage according to the standardised method, the entity cannot consider the credit risk coverage in the calculations of the effects of the credit risk reduction.

3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
   a) the principles governing the acceptability of credit risk mitigation techniques;
   b) the acceptable forms of credit risk reduction;
   c) the specific requirements for each admissible credit risk mitigation technique;
   d) the calculation of the effects of the credit risk mitigation;
   e) the treatment of the discrepancies between the expiry dates of the credit risk coverage and the protected exposure, and
   f) the credit coverage through credit derivatives.

**Article 70. Recognition of transfer of a significant part of the risk**

1. The originator of a traditional securitisation may exclude securitised exposures from the calculation of the risk-weighted exposures subject to specific conditions to be defined in the regulations.

2. The originator of a synthetic securitisation may calculate the risk-weighted exposures relating to the securitised exposures subject to specific conditions to be defined by the regulations.

3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
   a) Conditions to be met by the originator entities of traditional securitisations to exclude the securitised exposures from the calculation of the risk-weighted exposures;
   b) Conditions to be met by the originator entities of synthetic securitisations to calculate the risk-weighted exposures relating to the securitised exposures;
   c) Criteria for considering a significant transfer of the credit risk in the traditional and synthetic securitisations;
   d) Calculation of the risk-weighted exposures;
e) Use of the assessments made by the ECAIs to determine the risk weight of a
securitisation exposure.

Article 71. Own funds requirements relating to counterparty credit risk

1. “Counterparty credit risk” means the risk that the counterparty in a transaction might
default before the final settlement of the transaction’s cash flows.

2. Entities must determine the exposure value of the derivative instruments listed in
letters d) to g), j) and k) of point 11 of article 2 of Law 8/2013 of 9 May 2013, on the
organisational requirements and terms of operation of operative entities of the financial
system, protection of investors, market abuse and financial guarantee agreements,
subject to meeting specific requirements and according to the methods determined by
the regulations.

3. An entity may determine the exposure value of repurchase transactions, securities or
commodities lending or securities or commodities acquisition transactions, deferred
settlement transactions and margin borrowing transactions, instead of using the credit
risk mitigation techniques established in article 69, subject to meeting certain
conditions to be defined in the regulations.

4. The Government, at the proposal of the Ministry of Finance, must prepare the
implementing regulations, to specify the following:
   a) the methods for calculating the exposure value;
   b) the requirements relating to contractual compensation agreements in the context
      of counterparty credit risk for risk reduction;
   c) the requirements relating to calculation of the counterparty risk-weighted
      exposures of trading book derivatives;
   d) the own funds requirements for exposures to central counterparty entities.

Section four. Own funds requirements relating to operational risk

Article 72. Own funds requirements relating to operational risk

1. Entities must determine the own funds requirements for operational risk based on
the basic indicator method or standardised method. Entities that apply the
standardised method must meet the criteria established in the regulations, and also the
general risk management rules established in article 6 of Law 8/2013 of 9 May 2013,
on the organisational requirements and terms of operation of operative entities of the
financial system, protection of investors, market abuse and financial guarantee
agreements and article 24 of this Law. Before applying the standardised method,
entities must notify the AFA of their intention to use that method.

2. Entities that apply the standardised method cannot use the basic indicator method
again, unless they meet the conditions determined in the regulations.

3. The combined use of the methods to determine own funds requirements for
operations risk is subject to notification and prior authorisation from the AFA.

4. The Government, at the proposal of the Ministry of Finance, must prepare the
implementing regulations to specify the following:
   a) the conditions of use of the different methods of calculating own funds
      requirements for operational risk;
   b) the detailed methodologies of the basic indicator and standardised methods of
      calculating own funds requirements for operational risk;
c) the requirements for returning to the basic indicator method of calculation when the standardised method has been used;

d) the requirements for combined use of the basic indicator and standardised methods to determine own funds requirements for operational risk.

Section five. Own funds requirements for market risk

Article 73. Own funds requirements for position risk

1. Entities must determine own funds requirements for position risk as the sum of the own funds requirements for the general risk and specific risk of their debt and variable income instrument positions. The trading book securitisation positions must be treated as debt instruments.

2. Entities must determine the net position in each of the instruments as the absolute value of long (short) positions that exceed their short (long) positions of the same variable-income instrument, debt instrument and convertible instrument, and also in identical contracts for financial futures, options, purchase option certificates and covered purchase option certificates. The net position in derivatives must follow specific provisions established in the regulations.

3. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
   a) the principles to apply in calculating the net position of debt, variable-income and derivative instruments;
   b) the requirements for calculating net positions and the own funds requirement on a consolidated basis;
   c) the treatment for calculating the net position of specific derivatives (interest rate futures and forward transactions, options and purchase option certificates, swaps) and stock sold on repos or borrowings;
   d) the calculation of the net position in variable-income and debt instruments;
   e) the methods for calculating own funds requirements for general risk and specific risk for debt and variable-income instruments, derivatives and securitisation instruments;
   f) the treatment of the underwriting positions of debt and variable income instruments;
   g) own funds requirements for specific risk for positions covered with credit derivatives;
   h) own funds requirements for positions in collective investment schemes.

Article 74. Own funds requirements for exchange rate risk

1. Entities must calculate the own funds requirements for exchange rate risk when the sum of the net global position in currencies of an entity and its net position in gold exceeds 2% of the entity’s total own funds. The own funds requirements for exchange rate risk is the sum of the net global positions in currencies plus its net position in gold multiplied by 8%.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
   a) the methodology for calculating the net global position in currencies;
   b) the methodology for calculating the net global position in gold;
   c) the treatment of closely correlated currencies to reduce own funds requirements for exchange risk;
The treatment of exchange rate risk in collective investment schemes.

Article 75. Own funds requirements for commodity risk
1. Entities must calculate own funds requirements for commodity risk by applying one of the following methods: the maturity ladder approach, the simplified method or the extended maturity ladder approach.
2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations to specify the following:
   a) the treatment of physical commodities stocks that entities maintain for determining the own funds requirements;
   b) the calculation of positions in commodities and related derivatives;
   c) the methods for calculating the own funds requirements for commodity risk for each of the acceptable methods mentioned in section 1.

Section six. Own funds requirements for settlement risk

Article 76. Own funds requirements for settlement risk
1. In transactions where the debt instruments, variable-income securities, currencies and commodities (excluding repurchase transactions and securities or commodities lending or acquisitions) are not settled after the stipulated release date, the entity must calculate the price difference to which it is exposed. The price difference is calculated as the difference between the agreed settlement price for the debt instruments, the variable-income securities, the currencies and the commodities, and their actual market value, when this difference could result in losses for the entity.
   To calculate own funds requirements for settlement risk, the entity must multiply this price difference by a factor to be determined in the regulations.
2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations relating to:
   a) calculation of the price difference;
   b) the multiplication factor to apply to obtain the own funds requirements for settlement risk based on the time that has passed since the settlement date;
   c) the treatment of incomplete transactions;
   d) exemptions to the obligation to calculate own funds requirements for settlement risk.

Section seven. Own funds requirements for credit valuation adjustment risk

Article 77. Own funds requirements for credit valuation adjustment risk
1. “Credit valuation adjustment” or “CVA” is a valuation adjustment to the average market prices of the portfolio of transactions carried out by a counterparty. This adjustment reflects the actual market value of the credit risk that the counterparty represents to the entity, but does not reflect the actual market value of the credit risk that the entity represents to the counterparty.
2. Entities must calculate own funds requirements for CVA risk for all off-exchange derivatives for all their activities, other than recognised credit derivatives, to reduce credit risk-weighted exposures.
3. Entities must include securities financing transactions in the calculation of own funds requirements, according to section 2, if the AFA decides that their CVA risk exposures deriving from these transactions are significant.

4. Excluded from own funds requirements for CVA risk are transactions with a qualifying central counterparty and between a client and a clearing member, when the latter acts as an intermediary between the client and a qualifying central counterparty, and when the transactions give rise to a trading exposure of the clearing member to the qualifying central counterparty.

5. Excluded from own funds requirements for CVA risk are the following transactions:
   a) transactions with a non-financial counterparty, when those transactions do not exceed the clearing threshold under the regulations;
   b) intragroup transactions, unless the AFA requires structural separation within a banking group. In that case, the AFA may require that the intragroup transactions between structurally-separated entities be included in the own funds requirements;
   c) transactions with recognised pension plan systems in the Principality of Andorra or third countries, with their management companies and with authorised and supervised entities, of which the main purpose is to provide retirement benefits, subject to conditions established in regulations;
   d) transactions with central banks or public bodies with similar functions, and with other public bodies in charge of managing the public debt of a country or that are involved in that management, transactions with the International Payment Bank, with multilateral development banks, with public sector entities and, moreover, transactions with central governments and central banks in other countries denominated and financed in the national currency of the corresponding central government and corresponding central bank, and any transactions with regional governments or local authorities that are similar to central governments due to their specific revenue-raising capacity and the existence of specific institutional mechanisms to reduce their risk of default.

As for letter a), if an entity ceases to be exempt through exceeding the exemption threshold or due to a change in the exemption threshold, any existing contracts shall continue to be exempt until their expiration date.

For the purposes of this section, the following definitions apply:
   a) “financial counterparty” means a financial investment institution as defined in article 19 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra. For example, a banking entity, an insurance entity, a reinsurance entity, an undertaking for collective investment in transferable securities or “UCITS” and, if applicable, its management company, an occupational pension fund and an alternative investment fund;
   b) “non-financial counterparty” means any undertaking other than a “CCI” and a financial counterparty;
   c) “intragroup transaction” means an off-exchange derivative contract signed with a counterparty that belongs to the same prudential consolidation group, subject to adequate centralised procedures of risk assessment, measurement and control. Moreover, it is considered to be an intragroup transaction with a financial counterparty when the latter is a financial counterparty as defined above, a financial holding company, a financial entity or an ancillary services undertaking subject to the prudential requirements.
6. The Government, at the proposal of the Ministry of Finance, must prepare implementing regulations relating to:
   a) the clearing thresholds for the off-exchange derivatives transactions with non-financial counterparties provided in letter a) of section 5 above;
   b) the conditions to be met by the transactions provided in letter b) of section 5 above, being excluded from the own funds requirement for CVA risk;
   c) the methods for calculating own fund requirements for CVA risk;
   d) the acceptable coverage for calculating own fund requirements for CVA risk.

Chapter four. Large exposures

Article 78. Requirements relating to large exposures, and additional own funds

1. Entities must supervise and monitor their large exposures according to the provisions of this chapter. Investment entities that meet the requirements established in section 1 of article 48, or section 1 of article 49, need not meet the requirements for large exposures.

2. The requirements for large exposures do not apply to groups on the basis of their consolidated situation, if that group only includes investment entities that meet the requirements of section 1 of article 48, or section 1 of article 49, and ancillary services undertakings, or when the group does not include banking entities.

3. For the purposes of this chapter, the following definitions apply:
   a) “exposure” means any asset or off-balance sheet entry described in section three of chapter three of Title III, without applying risk weights or degrees of risk;
   b) “large exposure” means the exposure assumed by an entity to a client or group of connected clients, when its value is equal or higher than 10% of the entity’s eligible capital.

4. Entities must have sound administrative and accounting procedures and internal control systems for identifying, managing, supervising, notifying and recording all the large exposures and changes in them, according to this Law and the implementing regulations.

5. Entities must inform the AFA periodically about the large exposures, according to the regulations.

6. An entity may not assume an exposure to a client or group of connected clients if its value, after considering the effect of using credit risk mitigation techniques, according to the regulations, exceeds 25% of its eligible capital. If the client is an entity, or if the group of connected clients includes one or more entities, this value cannot exceed 25% of the entity’s eligible capital, or 150 million euros if this amount is higher, whenever the sum of the exposure values of all the connected clients that are not entities, after considering the effect of using credit risk mitigation techniques, does not exceed 25% of the entity’s eligible capital.

When the amount of 150 million euros is higher than 25% of the entity’s eligible capital, the exposure value, after considering the effect of using credit risk mitigation techniques, must not exceed a reasonable limit in terms of the entity’s eligible capital. This limit must be determined by the entity according to the policies and procedures for dealing with and controlling concentration risk. This limit cannot exceed 100% of the entity’s eligible capital.

7. If, in an exceptional case, the exposures exceed the limit set in section 6, the entity must immediately notify the exposure value to the AFA, which may grant the entity, if the circumstances justify it, a limited period of time to comply with the limit.
8. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations relating to:
   a) the methods for calculating the exposure value;
   b) the obligations to present information relating to large exposures;
   c) the conditions for exceeding the limits for large exposures relating to trading book exposures;
   d) the obligations relating to exceeding the limits of large exposures;
   e) acceptable credit risk mitigation techniques and the calculation of the effects of the use of credit risk mitigation techniques;
   f) exemptions from the large exposures rules;
   g) the calculation of additional own funds requirements for major trading book risks.

Chapter five. Exposures to transferred credit risk

Article 79. Requirements applicable to investment entities

1. An entity that is not an originator, sponsor or original lender, may be exposed to the credit risk of a securitisation position on its trading book or investment portfolio only if the originator, sponsor or original lending institution has expressly indicated to the entity that it intends to retain, on a continuous basis, a significant net economic interest which may not, in any case be lower than 5%.

2. When a parent credit institution, a financial holding company, a mixed financial holding company or one of their subsidiaries, as originator or as sponsor, securitises exposures of several banking entities, investment entities or other financial entities included in the scope of the supervision on a consolidated basis, the requirement mentioned in section 1 may be fulfilled on the basis of the consolidated situation of the corresponding connected parent credit institution, financial holding company or mixed financial holding company, subject to the banking entities, investment entities and financial entities that created the securitised exposures undertaking to fulfil the requirements established in section 1 of article 80, and providing, in a timely manner, to the originator or sponsor in the parent credit institution, financial holding company or mixed financial holding company, the necessary information for fulfilling the requirements mentioned in section 2 of article 80.

3. Entities investing in securitisation positions must adopt, before exposing themselves to the risks of a securitisation and for as long as they maintain those investments, the due diligence measures defined in the regulations, to ensure that they know at all times the specific details of the individual securitisation positions and that they have applied adequate formal policies and procedures to their trading book and/or investment portfolio and in proportion to the risk profile of their investments in securitised positions, in order to constantly and appropriately monitor the information relating to the evolution of the underlying exposures.

4. When an entity does not satisfy the requirements of section 1 and 2, due to negligence or omission, they must apply a proportional additional risk weight, to be determined by regulation, which must be applied to the relevant securitisation positions, according to the provisions of article 70.

5. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations relating to the following:
   a) the criteria for determining the retention of a significant net economic interest of no less than 5%, by the securitisation’s originator, sponsor or original lending institution;
b) the exemptions to application of the retention requirements for specific securitisation positions;
c) the due diligence obligations of the investing entity when investing in securitisation positions;
d) the requirements for additional own funds relating to securitisation positions.

**Article 80. Requirements applicable to the originator, sponsor and lending institutions of securitisations**

1. Originator and sponsor institutions must apply to the exposures they are going to securitise, the same sound, well-defined lending criteria that they apply to other exposures they hold on their own portfolio, off the trading book. For this purpose, the originator and sponsor institutions must apply the same procedures for approval and, if applicable, modification, renewal and refinancing of the loans. Otherwise, the originator institution cannot exclude the securitised exposures from the calculation of own funds requirements under this Law.

2. Entities that act as originators, sponsors or original lenders must inform the investors of their level of commitment to maintaining a net economic interest in the securitisation. Originator and sponsor institutions must ensure that potential investors can easily access all relevant data on the credit quality and evolution of the different underlying exposures, cash flows and in rem guarantees that support a securitisation exposure, and also any necessary information for carrying out thorough, documented stress tests on the cash flows and the value of in rem guarantees that support the underlying exposures. For this purpose, the relevant data must be determined on the securitisation date and, if applicable, due to the nature of the securitisation, after that date.

**Chapter six. Liquidity**

**Article 81. Liquidity coverage requirement**

1. Entities must maintain liquid assets, the sum of which must cover the liquidity outflows less liquidity inflows, in stress situations, to ensure that entities maintain a sufficient liquidity buffer to deal with any imbalance in liquidity inflows and outflows in serious stress scenarios, for a period of thirty days. During periods of stress, entities may use their liquid assets to cover their net liquidity outflows.

2. Entities must avoid double counting liquidity and liquid asset inflows.

3. Entities may use the liquid assets referred to in section 1 to meet their obligations in stress scenarios, as specified in article 83.

4. Entities must maintain a liquidity coverage requirement of at least 100%.

5. Entities must inform the AFA monthly, stated in a single currency, irrespective of their real denomination, the liquidity inflows and outflows and their components, including the composition of their liquid assets.

6. The Government, at the proposal of the Ministry of Finance, must prepare implementing regulations relating to:
   a) the detailed requirements for liquidity coverage;
   b) the composition of the liquidity buffer;
   c) the general and operational requirements for liquid assets;
   d) the valuation of liquid assets;
e) the requirements relating to liquidity inflows and outflows;

f) information about liquidity coverage and the availability of stable funding.

**Article 82. Required stable funding**

1. Entities must ensure that their long-term liabilities, in any case of more than 12 months, are covered adequately through a variety of stable funding instruments, both under normal and stress conditions.

2. Entities must maintain required stable funding to cover their long-term liabilities, as determined by regulation.

3. Entities must inform the AFA every quarter, stated in a single currency, irrespective of their real denomination, the elements that provide stable funding and the elements that require stable for the AFA's assessment of stable funding needs.

4. The Government, at the proposal of the Ministry of Finance, must prepare implementing regulations relating to the information to be provided by the entities regarding:
   a) elements that provide stable funding;
   b) elements that require stable funding.

**Article 83. Compliance with the liquidity requirements**

When an entity does not meet, or is expected not to meet, the requirement established in article 81, or the general obligation established in section 1 of article 82, even during periods of stress, it must notify the AFA immediately and, without undue delay, present a plan to rapidly restore compliance with article 81 of section 1 of article 82.

**Chapter seven. Leverage**

**Article 84. Calculation of the leverage ratio**

1. Entities must calculate the leverage ratio according to the methodology to be determined by regulation, as the amount of Tier 1 capital of the entity divided by the total exposure value of the entity, expressed as a percentage.

2. The Government, at the proposal of the Ministry of Finance, must prepare the implementing regulations relating to:
   a) the methodology for determining the entity’s total exposure value;
   b) the deductions and additions applicable to the entity’s total exposure value;
   c) exemptions applicable to calculation of the entity’s total exposure value.

**Article 85. Information requirements**

1. Entities must send to the AFA all necessary information on the leverage ratio and its components according to the regulations.

2. The Government, at the proposal of the Ministry of Finance, must prepare implementing regulations relating to the required information on the leverage ratio to be provided by the entities.
Chapter eight: Disclosure by entities

Section one. General principles

Article 86. Scope of application of the requirements for publication of information

1. Entities must publicly disclose the information stipulated in this chapter and in the implementing regulations.

2. Groups and entities must adopt a formal policy to comply with the disclosure requirements laid down in this chapter, and have policies for assessing the appropriateness of their disclosures, including verification and frequency. Entities must also have policies for assessing whether their disclosures convey their risk profile comprehensively to market participants.

Where disclosures do not convey the risk profile comprehensively to market participant, entities must publicly disclose the necessary information, in addition to that required in section 1. However, they are only required to disclose information which is meaningful and not restricted or confidential, according to article 87.

Article 87. Information that is not meaningful, restricted or confidential

1. Entities may omit one or more of the breakdowns of information required in this chapter, when that breakdown is not considered meaningful, except information that must be published on own funds, the remuneration policy and diversity policy regarding the selection of members of the administrative body, the objectives and targets established in the policy, and also how far those objectives and targets have been achieved, as determined by regulation.

Information is considered meaningful when its omission or erroneous presentation could change or influence the assessment or decision of the user who bases his financial decision-making on that information.

2. Entities may also omit one or more of the data included in the breakdown of information if those data include information that is considered restricted or confidential, except in the breakdown of information relating to own funds and the remuneration policy, as defined by regulation.

Information is considered restricted for an entity if its publication could compromise the competitive position of that entity.

Information is considered confidential when an entity is required to maintain confidentiality based on an obligation towards the client or other relationship with a counterparty.

3. In the exceptions provided in section 2, the entity must state in its breakdowns of information that specific data is not published, and the reasons for not publishing them, and must publish more general information about the aspect referred to by the disclosure requirement that is not classified as restricted or confidential.

Article 88. Frequency and place of publication of the information

Entities must publish the information required by this chapter at least annually.

Publication of the annual information must be carried out within the first semester after the end of the financial year concerned and on 30 June at the latest.

Entities must publish the Solvency Report on their website.
Section two. Information to be disclosed by entities

Article 89: Solvency Report

1. Consolidation groups of entities that do not form part of one of these consolidation groups must publish, duly incorporated into a single document known as a “Solvency Report”, specific information about:

   a) data on their financial situation and their activities in which the market and other interested parties may have an interest for assessing the risks faced by those groups and entities;
   b) their market strategy;
   c) their risk control measures;
   d) their internal organisation and corporate governance, and
   e) their situation, for complying with the minimum own funds requirements provided in the solvency regulations, such as:
      i) risk management policies and objectives;
      ii) scope of application of the requirements established in this Law and the implementing regulations;
      iii) own funds;
      iv) capital requirements;
      v) exposure to counterparty credit risk;
      vi) capital buffers;
      vii) credit risk adjustments;
      viii) assets free of charges;
      ix) use of ECAIs;
      x) exposure to market risk;
      xi) operational risk;
      xii) variable income exposures that do not appear in the trading book;
      xiii) exposures to interest rate risk on positions not included in the trading book;
      xiv) exposures to securitisation positions;
      xv) remuneration policy;
      xvi) leverage;
      xvii) credit risk mitigation techniques.

The content, means and frequency of publishing the “Solvency Report” must be determined by regulation.

2. The AFA may require parent undertakings to publish annually, in a comprehensive manner or through references to equivalent information, a description of their legal structure and corporate governance and the organisational structure of the group.

3. The disclosure, to comply with the requirements of the Decree of 22 December 2016, approving the accounting framework applicable to entities operating in the Andorran financial system and Andorran collective investment schemes, in accordance with international financial reporting standards, of the data referred to in section 1, does not exempt their inclusion in the document “Solvency Report” in the manner provided in this section.

Article 90. Annual report
1. Entities must send to the AFA and publish annually in a report annexed with audited financial statements, specifying by countries where they are established, the following information on a consolidated basis for each financial year:
   a) the name and nature of the activities and geographical location;
   b) turnover;
   c) the number of employees on a full-time equivalent basis;
   d) gross profits before tax;
   e) the tax on profits;
   f) any public subsidies received.
2. The information described in section 1 must be audited and published, together with the annual financial statements of the entity.
3. Entities must publish in their annual bank report, among the key indicators, the revenue from their assets, calculated by dividing the net profits by the total balance.

Title IV. Prudential supervision

Chapter one. Review process

Section one. Supervisory review and evaluation process

Article 91. Supervisory review and evaluation
1. Considering the technical criteria defined in article 92, the AFA must review the systems, strategies, procedures and mechanisms applied by the entities to comply with this Law and the implementing regulations. In particular, the AFA must assess the following:
   a) risks to which entities and their consolidation groups are or could be exposed;
   b) risks that an entity represents for the Andorran financial system, considering the determination and measurement of systemic risk, and
   c) risks that appear in the stress tests, considering the nature, scale and complexity of an entity’s activities.
2. The review and evaluation referred to in section 1 considers all the requirements of this Law and the implementing regulations.
3. From the review and evaluation mentioned in section 1, the AFA must determine whether the systems, strategies, procedures and mechanisms implemented by the entities, and the level of own funds and liquidity maintained by them, guarantee sound risk management and coverage.
4. The AFA must establish the frequency and depth of the review and evaluation provided in section 1, taking into account the size, systemic importance, nature, scale and complexity of the activities of the entity concerned and, in any case, taking into account the principle of proportionality. The review and evaluation must be updated at least annually in the case of entities to which the supervisory examination programme considered in section 2 of article 93 is applied.

Article 92. Technical criteria for the supervisory review and evaluation
1. As well as the credit risk, market risk and operational risk, the review and evaluation made by the AFA must include at least all the following aspects, according to article 91:
a) the exposure to concentration risk and its management by the entities, including their compliance with the requirements established in chapter four of Title III, and in article 20;

b) the soundness, adequacy and manner of implementation of the policies and procedures established by the entities for residual risk management associated with the use of recognised credit risk mitigation techniques;

c) the adequacy of own funds held by an entity in relation to assets it has securitised, considering the economic substance of the transaction, including the degree of risk transfer achieved;

d) the exposure to liquidity risk and its measurement and management by entities, including carrying out alternative scenario analysis, the management of risk reduction factors (especially the level, composition and quality of liquidity buffers) and the effective contingency plans;

e) the impact of the effects of diversification and the way in which those effects are considered in the risk assessment system;

f) the geographical location of the entities' exposures;

g) the business model of the entity;

h) the systemic risk assessment, according to the criteria defined in article 91.

2. For the purposes of the provisions of letter d) of section 1, the AFA must periodically carry out a comprehensive assessment of the global management of liquidity risk by the entities and foster the development of sound internal methodologies. To carry out this assessment, the AFA must consider the role played by the entities in the financial markets and the potential effect of their decisions on the stability of the Andorran financial system.

3. The AFA must monitor whether an entity has provided implicit support to a securitisation. If an entity has provided implicit support to a securitisation on more than one occasion, the AFA must adopt appropriate measures, considering the highest expectations, to provide support to the securitisation in the future, so preventing a significant risk transfer.

4. For the purposes of determining what needs to be carried out based on section 3 of article 91, the AFA must consider whether the valuation adjustments made for specific positions or portfolios on the trading book, authorise the entity to sell or cover their positions within a short period of time, without incurring major losses in normal market conditions.

5. The review and evaluation by the AFA must include the entities' exposure to the interest rate risk deriving from off-book trading activities. The AFA must require the adoption of measures, at least in those entities in which their economic value falls by more than 20% of their own funds as a result of a sudden unexpected variation in the interest rate of 200 basis points, or a variation defined by regulation.

6. The review and evaluation carried out by the AFA include the exposure of entities to excessive leverage risk, as reflected in the excessive leverage indicators, including the leverage ratio, according to the implementing regulations. To determine the adequacy of the leverage ratio of the entities and the systems, strategies, procedures and mechanisms implemented by the entities to manage excessive leverage risk, the AFA must consider the business model of those entities.

7. The review and evaluation carried out by the AFA include the entities' corporate governance systems, culture and corporate values, and the ability of members of the administrative body to carry out their duties. In carrying out the review and evaluation, the AFA must have access to at least the agendas, the supporting documentation for meetings and the minutes of meetings of the administrative body and its delegates.
committees, as well as the results of the internal or external assessment of the performance of the administrative body.

**Article 93. Supervisory examination programme**

1. The AFA must adopt, at least once a year, a supervisory examination programme for all entities under their supervision. This programme must consider the supervisory review and evaluation process defined in article 91. In particular, the programme must contain the following information:
   a) an indication of how the AFA intends to carry out its tasks and assign its resources;
   b) identification of the entities on which it intends to carry out enhanced supervision and the measures it plans to adopt for the supervision, according to the section 3;
   c) a plan of in-situ inspections of the entities.

2. The supervisory examination programmes affect the following entities:
   a) entities that obtain results from the stress tests mentioned in article 94, or the review and evaluation process defined in article 91, that indicate the existence of significant risks to the continuity of their financial soundness or reveal potential non-compliance with the provisions of this Law and the implementing regulations;
   b) entities that represent a systemic risk to the Andorran financial system;
   c) any other entity that, in the AFA’s opinion, requires special consideration when carrying out its supervisory function.

3. The AFA, in view of the results of the supervisory review and evaluation defined in article 91, may adopt measures it considers appropriate in each case, which could be:
   a) an increase in the number or frequency of in-situ inspections of the entity;
   b) a permanent presence of the AFA in the entity;
   c) the additional or more frequent transmission of information by the entity;
   d) an additional or more frequent review of the operational, strategic or business plan of the entity;
   e) thematic examinations centred on specific risks that could materialise.

**Article 94. Stress tests for supervisory purposes**

1. When appropriate, but at least every three years, the AFA must submit the entities that it supervises to stress tests for supervisory purposes, to facilitate the review and evaluation process defined in article 91.

2. The AFA must prepare a technical communiqué where it describes the content of the information to be provided by the entities so that the stress tests for supervisory purposes can be carried out.

**Section two. Supervisory measures and powers**

**Article 95. Supervisory measures**

1. The AFA must require entities to immediately adopt necessary measures to restore compliance in the following circumstances:
   a) when the entity does not comply with the requirements established in this Law or the implementing regulations;
   b) when, according to the data available to the AFA, there are substantial grounds for considering it probable that the entity will not comply with the requirements
established in this Law or the implementing regulations within the next twelve months.

2. For the purposes of section 1, the competences of the AFA include those mentioned in article 97.

**Article 96. Implementation of supervisory measures for entities with similar risk profiles**

1. When the AFA determines that, according to article 91, certain entities with similar risk profiles due, among other reasons, to the similarity of their business models or the geographical location of their exposures, are or could be exposed to similar risks or represent similar risks to the Andorran financial system, the AFA may apply to these entities the supervisory review and evaluation process defined in article 91, in a similar or identical manner. For this purpose, the AFA has the necessary legal authority to impose on those entities the requirements laid down in this Law and the implementing regulations, in a similar or identical manner, and in particular, the exercise of supervisory powers based on articles 97, 98 and 89.

2. The types of entities mentioned in the first paragraph may be determined according to the criteria listed in letter h) of section 1 of article 92.

**Article 97. Specific competences relating to prudential supervision**

1. For the purposes of article 91, section 4) of article 92 and articles 95 and 96 of this Law, and the provisions of the implementing regulations, the AFA has the following competences:

   a) to require entities to maintain own funds over and above the requirements laid down in chapter one of Title III, and the implementing regulations, relating to the elements of risk and risks not covered by letter a) of article 1;

   b) to require enhancement of the systems, procedures, mechanisms and strategies implemented, according to article 15 of this Law and article 6 of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements;

   c) to require entities that present a plan to restore compliance with supervision requirements, according to the provisions of this Law and the implementing regulations, to set a period for completion, and even to include in the plan any necessary improvements relating to its scope and deadline;

   d) to require entities to apply a specific provisioning policy or a specific treatment of assets, in terms of own funds requirements;

   e) to restrict or limit the activity, transactions or network of entities or request the abandonment of activities when they represent excessive risks to the soundness of an entity;

   f) to require the mitigation of risk inherent in the activities, products and systems of entities;

   g) to require entities to limit the variable remuneration based on a percentage of net income, when that remuneration is incompatible with maintaining a sound capital base;

   h) to require entities to use the net profits to strengthen own funds;

   i) to restrict or prohibit dividend or interest payments to shareholders, partners or holders of Additional Tier 1 capital instruments, whenever this prohibition does not incur a breach by the entity;

   j) to impose additional or more frequent information obligations, including information about the capital and liquidity situation;
k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

l) to require publication of additional information.

2. The AFA shall require the additional own funds requirements referred to in letter a) of section 1, in the following circumstances:

a) when the entity does not comply with the requirements established in article 15 of this Law and article 6 of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, or the established requirements relating to the ability to identify and manage large exposures;

b) when the risks or elements of risk are not covered by the own funds requirements established in section two of chapter three of Title III of this law, or in the implementing regulations;

c) when the application of other administrative measures cannot improve the systems, procedures, mechanisms and strategies within an appropriate term;

d) if the review referred to in section 4 of article 92 reveals that non-compliance with the requirements for applying the corresponding method would result in a shortage of own funds;

e) if there are substantial grounds for considering that the risks could be undervalued, despite compliance with the applicable requirements of this Law and the implementing regulations.

3. For the purposes of determining the adequate level of own funds in accordance with the review and evaluation made according to section one, chapter one of Title IV, the AFA must assess whether it is necessary to require additional own funds over and above the own funds requirements, to cover the risks to which the entity is or could be exposed, considering the following elements:

a) the quantitative and qualitative aspects of the evaluation process of the entity, referred to in article 15;

b) the systems, procedures and mechanisms of the entities listed in article 6 of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements;

c) the results of the review and evaluation carried out according to article 91;

d) the systemic risk assessment.

Article 98. Specific liquidity requirements

To determine the adequate level of liquidity requirements according to the review and evaluation carried out in accordance with section one, chapter one of Title IV, the AFA must assess whether it is necessary to require a specific liquidity requirement to cover the liquidity risks to which an entity is or may be exposed, considering the following elements:

a) the specific business model of the entity;

b) the systems, procedures and mechanisms of the entity listed in articles 17 to 26 of this Law, in particular article 25, and in articles 6 to 6 duodecies of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements;

c) the results of the review and evaluation carried out according to article 91;
Section three. Scope of the supervisory function

Article 99. Review and evaluation and supervisory measures

1. The AFA shall carry out the review and evaluation process mentioned in section one and apply the supervisory measures mentioned in section two of this chapter, in accordance with the level of application of requirements established in chapter one of Title III.

2. If the AFA requires application of the own funds requirements on a consolidated basis based on letter d) of section 4 of article 9, the requirements of article 91 must be applied to the supervision of investment entities on an individual basis.

Chapter two. Supervision on a consolidated basis

Section one. Principles of carrying out supervision on a consolidated basis

Article 100. Supervision on a consolidated basis

1. The AFA supervises Andorran entities and consolidation groups of entities with parents in the Principality of Andorra, and also sub-groups of consolidation groups in the Principality of Andorra whose parent undertaking, or parent financial holding companies, or parent mixed financial holding companies are established in a third country.

2. When the parent undertaking of an entity is a parent financial holding company or parent mixed financial holding company established in the Principality of Andorra, the AFA, being in charge of authorising and supervising the entity, must supervise the company.

Section two. Financial holding companies, mixed financial holding companies and mixed activity holding companies

Article 101. Inclusion of holding companies in the consolidated supervision

1. When a subsidiary that is an entity is excluded from the supervision on a consolidated basis under article 11, the AFA may require from the parent undertaking the necessary information for the supervision of that subsidiary.

2. The AFA, as supervisor on a consolidated basis, may require the information referred to in article 104 from the subsidiaries of an entity, a financial holding company or a mixed financial holding company that are not included within the scope of supervision on a consolidated basis.

Article 102. Supervision of mixed financial holding companies

1. When a mixed financial holding company under the supervision of the AFA is subject to equivalent provisions under this Law and the Law on financial conglomerates, especially in terms of supervision based on risk, the AFA may decide that only the provisions of the Law on financial conglomerates and its implementing provisions be applied.
2. When a mixed financial holding company under the supervision of the AFA is subject to equivalent provisions under this Law and Law 12/2017 on the regulation and supervision of insurance and reinsurance in the Principality of Andorra, especially in terms of supervision based on risk, the AFA may decide only to apply to that company the provisions of this Law or those applicable to insurance and reinsurance entities, in relation to the more important financial sector.

**Article 103. Qualification of executives**

The members of the administrative body of a financial holding company or mixed financial holding company must have sufficient knowledge, skills and experience, according to article 6 bis of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, to act as members of the administrative body, considering the specific function of financial holding companies or mixed financial holding companies.

**Article 104. Requests for information and verifications in mixed activity holding companies**

1. When the parent undertaking of one or more entities is a mixed activity holding company, the AFA may require the mixed activity holding company and its subsidiaries, addressing it directly or through the subsidiaries that are entities, to communicate all relevant information for carrying out the supervision of those subsidiaries.

2. The AFA may carry out, or entrust to external auditors, the in-situ verification of the information provided by the mixed activity holding companies and their subsidiaries.

**Article 105. Supervision of mixed activity holding companies**

1. Without prejudice to the provisions of chapter four of Title III of this Law, and any applicable implementing regulations, if the parent undertaking of one or more Andorran entities is a mixed activity holding company, the AFA must require general supervision of the transactions between the entity and the mixed activity holding company and its subsidiaries.

2. Subsidiaries of a mixed activity holding company must have adequate risk management mechanisms and adequate internal control mechanisms, including reliable information and accounting procedures, to adequately identify, measure, follow up and monitor the transactions with their parent mixed activity holding company and its subsidiaries. The entities must report any other significant transaction made with those companies than the information required in this Law and in the implementing regulations relating to large exposures. These procedures and significant transactions may be reviewed by the AFA.

**Title V: Obligations of the Competent Authority to publish information**

**Article 106. Obligations of the AFA to publish information**

1. The AFA must publish the following information:
   a) the text of the legal provisions, regulations and technical communiqués, and the general guidelines adopted in the Principality of Andorra within the field of prudential standards;
   b) the general criteria and methods used for the supervisory review and evaluation provided in article 91;
c) the general criteria and methods adopted to verify compliance with the provisions of chapter five of Title III, and the implementing regulations;

d) the aggregate statistical data on the basic aspects of application of the Andorran prudential framework, including the number and nature of the supervisory measures adopted according to letter a) of section 1 of article 95, and the administrative sanctions adopted according to article 22 of the Law regulating the financial system’s disciplinary regime;

e) a general description of the result of the supervisory review and a description of the measures imposed in cases of non-compliance with the provisions of chapter five of Title III, and the implementing regulations;

f) other information determined by regulation.

2. The information referred to in section 1 must be published on the website of the AFA and updated periodically.

Single additional provision. Applicable penalty system

The provisions of this Law are subject to the penalty system laid down in the Law regulating the financial system’s disciplinary regime, of 27 November 1997.

Transitional provisions

First transitional provision. Capital conservation buffers and institution-specific countercyclical buffers

1. This article amends the provisions of articles 57 and 58, for a transitional period between 1 January 2021 and 31 December 2023.

2. For the period between 1 January 2021 and 31 December 2021:
   a) The capital conservation buffer consists of Common Equity Tier 1 equal to 0.625% of the total of the risk-weighted exposures of the entity, calculated according to article 46.
   b) The institution-specific countercyclical buffer shall not be greater than 0.625% of the total of the risk-weighted exposures of the entity, calculated according to article 46.

3. For the period between 1 January 2022 and 31 December 2022:
   a) The capital conservation buffer consists of Common Equity Tier 1 equal to 1.25% of the total of the risk-weighted exposures of the entity, calculated according to article 46.
   b) The institution-specific countercyclical buffer shall not be greater than 1.25% of the total of the risk-weighted exposures of the entity, calculated according to article 46.

4. For the period between 1 January 2023 and 31 December 2023:
   a) The capital conservation buffer consists of Common Equity Tier 1 equal to 1.875% of the total of the risk-weighted exposures of the entity, calculated according to article 46.
   b) The institution-specific countercyclical buffer shall not be greater than 1.875% of the total of the risk-weighted exposures of the entity, calculated according to article 46.

5. During the transitional period between 1 January 2021 and 31 December 2023, the obligation to prepare a capital conservation plan established in article 63 and the restrictions on distribution established in articles 62 must be applied, taking into
consideration any failures in the combined capital buffer requirements established in sections 2 to 4 of this article.

**Second transitional provision. Liquidity coverage ratio**
The liquidity coverage requirement referred to in section 4 of article 81 must be adopted according to the following schedule:

a) 60% of the liquidity coverage requirement from 1 January 2019;
b) 80% of the liquidity coverage requirement from 1 January 2020;
c) 100% of the liquidity coverage requirement from 1 January 2021.

**Third transitional provision. Publication by the AFA of the general criteria and methods adopted in the supervisory review and evaluation, aggregate statistical data and general description of the result of the supervisory review and the measures imposed in cases of non-compliance**
The AFA has a period of up to 12 months from entry into force of this law to publish the information required in sections b) and c) of article 106 and a period of up to 24 months from entry into force of this Law to publish the information required in sections e) and f) of article 106.

**Fourth transitional provision. Return of the deposits for minimum reserves**
Entities operating in the financial system that maintain a deposit at the AFA to comply with the Law regulating reserves guaranteeing deposits and other operational maintenance and deposit obligations for entities within the financial system, of 11 May 1995, must file the appropriate application to the AFA for return of their deposits. The AFA must return the deposit as soon as it has verified that the requesting entity complies with the own funds requirements imposed by article 45, and for requesting entities subject to the combined capital buffer requirements as defined in letter e) of section 1 of article 54, and also any other capital requirements that the AFA may require under letter a) of section 1 of article 97.

**Fifth transitional provision. Publication requirements for entities**
Entities must publish the required information as established in chapter eight of Title III for the first time in relation to the data for the 2019 financial year.

**Single repeal provision**
1. All legal or regulatory provisions that contradict the provisions of this Law are repealed.
2. In particular, the following provisions are repealed:
   - The Law regulating the solvency and liquidity criteria of financial entities, of 29 February 1996.
   - The Law regulating reserves guaranteeing deposits and other operational maintenance and deposit obligations for entities within the financial system, of 11 May 1995
   - Article 4 of the Law regulating the financial system’s disciplinary regime, of 27 November 1997.
Final provisions

First final provision. Amendment of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra

The following amendments are introduced into Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra.

1. Sections 2, 4 and 5 of article 2 are amended and sections 7 and 8 are included, which are drafted as follows:

“Article 2. Definitions

[...]

2) General management: are the natural persons who carry out executive functions in the entity and are responsible for the daily management of the entity and must account for it to the administrative body.

[...]

4) Financial instruments: financial instruments are those defined in sub-section 11 of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements.

[...]

5) Own funds: means the sum of Tier 1 capital and Tier 2 capital, according to the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, and its implementing regulations.

The initial capital comprises only one or more of the elements referred to in section 1 of article 28, section 1) letters a) and e) of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.

[...]

7) Financial sector entity: a financial sector entity as defined in sub-section 20, section 1 of article 3 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.

8) Qualifying participation: means the participation defined in section 14 of article 2 of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements.

2. Section 3 of article 4 is amended and drafted as follows:

“3. Finally, without the status of financial entities under this Law and, therefore, not forming part of the financial system, are legal persons that, despite including in their company objects any of the activities listed in a), sub-sections i) and ii), b) and c) of section 1 of article 49, do not provide their services to third parties but do so exclusively within their economic group and do not allow public offers of shares regarding special
purpose vehicles, limiting, therefore, those funding activities to the sales and provisions of services made by the companies in their group to their clients. These limitations must be defined in their articles of association.”

3. Section 3 of article 7 is included and drafted as follows:

“3. Section 1 shall not apply to the receipt of deposits or other funds repayable by the Government, the AFA, or other entities or bodies expressly authorised by Law.”

4. Sections 1, 2 and 6 of article 8 are amended and drafted as follows:

“1. Banking entity means an undertaking the business of which is to take deposits or other repayable funds from the public.

2. Banking entities may carry out the following activities:
   a) Loans and credit including, in particular, consumer credit, mortgages, factoring with or without recourse and commercial transaction funding, including forfaiting);
   b) Financial leases with or without purchase option;
   c) Payment transactions under the Law on payment services and electronic money;
   d) Issuance and management of other payment methods, such as travellers’ cheques and bank drafts;
   e) Granting loans and underwriting commitments;
   f) Own account transactions of the entity or on behalf of its clients aimed at:
      - Money market instruments, such as cheques, bills of exchange, deposit certificates;
      - Currencies;
      - Financial futures and options;
      - Currency or interest rate instruments;
      - Negotiable securities.
   g) Participation in securities issues and the provision of services related to those issues;
   h) Business advice on capital structures, industrial strategy and similar matters, and advice on services related to mergers and acquisitions of businesses;
   i) Intermediation in interbank markets;
   j) Portfolio advice and management;
   l) Custody and administration of securities;
   l) Commercial reports;
   m) Safe deposit box rentals;
   n) Issuing electronic money under the Law on payment services and electronic money.

[...]
6. The accounting value of the set of qualifying holdings, direct or indirect, of banking entities in entities or undertakings other than a financial sector entity may not exceed 60% of the eligible capital of the banking entity, as defined in sub-section 12, section 1 of article 3 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.”

5. Section 1 of article 13 is amended and section 2 is included, drafted as follows:
“1. Banking entities must have a minimum share capital of 5,000,000 euros, fully subscribed and paid up through monetary contributions.

2. The share capital must include one or more of the elements referred to in letters a) and supplementarily b), of section 1 of article 28, of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.”

6. Section 3 of article 14 is amended and section 6 is included, drafted as follows:

“3. Members of the board of directors, including natural persons representing legal persons, must be persons with suitable knowledge for carrying out the inherent duties of that office. The board of directors must collectively hold the appropriate knowledge, skills and experience to be able to understand the activities of banking entities, including the principal risks.

[...]

6. Members of the board of directors must, in particular, meet the requirements established in articles 6 bis and 6 quarter of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements. The general composition of the board of directors must adequately represent a wide range of experience.”

7. Article 18 is amended and drafted as follows:

“Article 18. Solvency and liquidity standards

Banking entities are subject to the solvency and liquidity standards defined in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.”

8. Article 31 is amended and drafted as follows:

“Article 32. Share capital

1. Financial entities must have the following minimum share capital, fully subscribed and paid up through monetary contributions, based on the type of financial investment undertaking concerned:

   a) 730,000 euros, financial investment companies;
   b) 125,000 euros, financial investment agencies and direct asset management companies;
   c) 60,000 euros, indirect asset management companies;
   d) 60,000 euros, societat anònima (joint stock company) financial advisers;
   e) 50,000 euros, limited company financial advisers, otherwise professional civil responsibility insurance or other comparable guarantee to cover professional negligence, with minimum cover of 1,000,000 euros per incident, and an annual total of 1,500,000 euros for all incidents.

2. Natural persons authorised to act as financial advisers must take out professional civil liability insurance to cover liability from negligence when carrying out their professional activities with a minimum cover of 1,000,000 euros for damages claims and a total of 1,500,000 euros annually for all claims.

3. Financial investment agencies and direct asset management companies that execute investors’ orders relating to financial instruments may maintain them for own account whenever they meet the following conditions:
a) The positions only derive from the inability to carry out the exact orders received from clients;
b) The total market value of those positions does not exceed 15% of their share capital;
c) They meet the requirements established in articles 46 to 48 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities;
d) Those positions are accidental and provisional and strictly limited to the time needed to carry out the transaction concerned.

Holding off trading book positions in financial instruments, to invest own funds, is not considered an activity for own account in relation to the provision of the investment services defined in letters a), b) and d) of article 20.”

8 bis. Section 1 of article 33 is amended and drafted as follows:

“**Article 33. Administrative body**

1. The administrative body of financial investment entities in the form of a legal person must take the form of board of directors and have at least three members. However, the administrative body of financial advisers may have a sole director.”

9. Article 37 is amended and drafted as follows:

“**Article 37. Solvency standards**

1. Financial investment companies, financial investment agencies and direct asset management companies are subject to the solvency and liquidity standards defined in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, under article 2, section 1 of the Law.

2. Indirect asset management companies and legal person financial advisers must have sound, effective and comprehensive strategies and procedures to constantly assess and maintain the amounts, types and distribution of internal capital they consider adequate to cover the nature and level of risks to which they are or could be exposed. These strategies and procedures must periodically undergo an internal examination to guarantee that they are comprehensive and proportional to the nature, scale and complexity of the activities of the financial investment entity and/or group it heads, as applicable.”

10. Article 43 is amended as follows:

“**Article 43. Share capital**

Companies managing collective investment schemes must have a minimum share capital of 125,000 euros, fully subscribed and paid up through monetary contributions.”

11. Article 48 is amended as follows:

“**Article 48. Own resources**

1. Companies managing collective investment schemes must have own resources at all times that cannot be less than the highest of the following amounts:
   a) Share capital and additional own resources as follows:
      i) The minimum share capital fully subscribed and paid-up as defined in article 43;
      ii) Moreover, this share capital must meet the following conditions:
1. It must be incremented by a factor of 0.02% of the actual value of the assets of the CIUs, including the portfolios for which it has delegated management, but not the portfolios it administers and/or manages by delegation, insofar as those assets exceed 250,000,000 euros. Under no circumstances must the required amount of initial capital and the additional amount exceed 10,000,000 euros;

2. The additional amount of own resources referred to in the previous paragraph may be covered up to 50%, with a guarantee for the same amount from a banking entity or insurance entity. The credit institution or insurance entity must be established in the Principality of Andorra or a third country whenever subject to equivalent prudential standards to those applicable in the Principality of Andorra.

b) To cover any potential risks deriving from professional liability relating to the activities that may be carried out by companies managing collective investment schemes managing other CIUs, as defined in article 6 of Law 10/2008, of 12 June, regulating Andorran collective investment schemes, they must:

1. Have additional own resources that are adequate to cover any potential risks arising from liability in case of professional negligence. Additional own resources adequate to cover any potential arising risks means 0.01% of the assets under management relating to other CIUs, or

2. Take out professional civil liability insurance to cover liability for professional negligence. The insurance cover relating to a specific incident must be at least equal to 0.7% of the absolute market value of the assets forming the portfolios of other CIUs managed by the company managing collective investment schemes, including acquired assets with recourse to leverage. The insurance cover relating to aggregate incidents in one year must be at least equal to 0.9% of the absolute market value of the assets forming the portfolios of other CIUs managed by the company managing collective investment schemes, including the acquired assets with recourse to leverage.

To calculate the required own resources referred to in the above paragraphs, from the assets of the other managed CIUs are deducted those relating to their investments in other CIUs that are in turn managed by the same company managing collective investment schemes;

c) 25% of the structural expenses charged to the profit and loss account of the previous financial year. Structural expenses comprise: staff costs, general expenses, tax contributions, amortisations and other operating costs.

The staff costs mentioned in the previous paragraph may be reduced by the amount of the expenses relating to variable staff remunerations. The said reduction may only be made when the true nature of the remunerations does not present a partly or wholly fixed component of expenses or commitments assumed with the staff. For these purposes, the AFA may analyse and determine, if appropriate, the non-variable nature of the remunerations.

The company managing collective investment schemes may reduce this amount, with prior authorisation from the AFA, if their activities have notably decreased since the previous financial year. In these circumstances, the new calculation basis is reported to the AFA, which may modify it within three months if it considers that it does not comply with this Law. Equally, the company managing collective investment schemes must increase this amount immediately if its business has increased notably since the previous year.
If the company managing collective investment schemes has not completed one financial year since registering with the AFA, the structural costs provided in its business plan must be taken as the calculation basis.

It is understood that the level of activity has varied substantially when the structural costs increase or decrease by 25% compared with the total expenses of the previous financial year, calculated in proportion to the corresponding time period in the current financial year.

Irrespective of the amount represented by these requirements, the own resources of the company managing collective investment schemes can never be lower than the amount stipulated in article 50, section 1 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.

2. When a company managing collective investment schemes presents a level of own resources lower than the required minimum, it must immediately inform the AFA and present a programme defining its plans to restore compliance. The programme must refer to the reasons for non-compliance, any actions carried out and, if appropriate, define a plan to restore compliance and the planned term, which can be no longer than three months. This programme must be approved by the AFA, which may set additional measures to those proposed by the company managing collective investment schemes within two months of their approval.

Companies managing collective investment schemes are not considered in default of the own resources requirements when, due to changes in the prices of the securities forming the assets of the managed CIUs or individual managed portfolios, or the number of shares of the CIUs it manages, the shortage of own resources does not exceed 20%. Nevertheless, the company managing collective investment schemes must have the required own resources in the two following calendar months on the last day of each month.”

12. Sections 1, 2, 3 and 6 are amended, and sections 7 and 8 of article 59 are included and drafted as follows:

“1. Specialised credit institutions – not banks – are subject to the same solvency and liquidity standards as those of the banking entities defined in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, with the specificities provided in the regulations.

2. Without prejudice to the obligations deriving from legislation on solvency, liquidity and the prudential supervision, specialised credit institutions – not banks – must have sound, effective and comprehensive strategies and procedures to constantly assess and maintain the amounts, types and distribution of internal capital they consider adequate to cover the nature and level of risks to which they are or could be exposed. These strategies and procedures must periodically undergo an internal examination to guarantee that they are comprehensive and proportional to the nature, scale and complexity of the activities of the financial investment entity and/or group it heads, as applicable.

3. Minimum own resources means the level of own funds needed to reach a total capital ratio of the specialised credit institutions – not banks – of 8%, as defined in letter c), section 1 of article 46 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities. The own resources of the specialised credit institutions – not banks – may not fall below this minimum.

[...]

6. Specifically, not applicable to specialised credit institutions – not banks – are articles 57 and 58 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, relating to the obligation to maintain a capital
conservation buffer and a countercyclical capital buffer, regarding those specialised credit institutions – not banks.

7. Specialised credit institutions – not banks – must have a minimum amount of liquid assets adapted to their legal form and the specificities of their business model, to:
   
   a) Deal with potential outflows of repayable funds deriving from liabilities and commitments, even in the case of serious events that could affect liquidity, and
   
   b) Maintain an adequate structure of sources of funding and maturities in its assets, liabilities and commitments, to avoid potential liquidity imbalances or stresses that could damage or put at risk the financial situation of the entity.

8. The AFA may, in a technical communiqué, provide any suitable supplements and carry out any appropriate adaptations to the calculation criteria relating to the solvency and liquidity standards."

Second final provision. Amendment of Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements

The following amendments are introduced into Law 8/2013 of 9 May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements.

1. Article 1 is amended and drafted as follows:

   “Article 1. Purpose of the Law

   The purpose of this Law is to establish:

   - The organisational requirements and operating conditions for engaging in the business of entities operating in the financial system;
   
   - The minimum requirements to be met by entities operating in the financial system to protect the investor;
   
   - The obligations of any natural or legal person relating to acquisitions, increases in participation, transfers or assignments of a qualifying holding in an entity operating in the financial system;
   
   - The obligations and prohibitions and the penalty system relating to market abuse by any natural or legal person, meaning transactions based on the use of insider information and market manipulation, to support the integrity of the financial markets and increase investors’ confidence in those markets;
   
   - The regulatory framework of contractual compensation agreements and financial guarantee agreements.”

2. Sections 6, 7, 14 and 19 are amended and section 2 bis is added to article 2 which is drafted as follows:

   “Article 2. Definitions

   [...]

   6) General management: members of general management are the natural persons who hold executive functions in the entity, are responsible for the daily management of
the entity and form part of the entity’s senior management body which accounts for the
day-to-day management to the board of directors.

7) Controlled entity: means any undertaking where:

a) A natural or legal person has the majority of voting the rights, or

b) A natural or legal person has the power to appoint or dismiss the majority of the
   members of the board of directors, management or supervisory board and, at the
   same time, is a shareholder or partner in that undertaking, or

c) A natural or legal person is a shareholder or partner and alone controls the
   majority of voting rights of the shareholders or partners in it, due to an agreement
   signed with other shareholders or partners in that undertaking, or

d) A natural or legal person can exercise or effectively exercises a dominant or
   controlling influence, or

e) A natural or legal person who used his votes to appoint the majority of the
   members of the board of directors in office at the time that the consolidated
   accounts must be prepared and in the two previous financial years. Specifically,
   this circumstance is presumed when the majority of the members of the board of
   directors of the controlled company are members of the board of directors or the
   general management of the controlling company or of another controlled by that
   company.

To the voting rights of the controlling entity must be added the rights owned through
other controlled companies or through persons acting in their own name but on behalf
of the controlling entity or others controlled by it, and the rights it holds jointly with any
other person.

[...]

14) Qualifying holding: a holding that, directly or indirectly, represents 10% or more of
the share capital or voting rights of the entity. Also, any holding that, without reaching
the said percentage, enables a significant influence to be exerted over the investee.

Considering the characteristics of the different types of entity, it is presumed that a
natural or legal person can exert this significant influence when, among others, he has
the power to appoint or dismiss any member of its board of directors.

In addition, to determine whether the criteria for a qualifying holding are met, not
included are any voting rights or shares that entities may have as a result of
subscribing the financial instruments or placing financial instruments with a sound
basis of commitment, whenever the rights are not exercised or are used in any other
way to intervene in the management of the issuer and are arranged within one year of
acquisition.

[...]

19) Control functions: means the regulatory compliance function, risk management
function and internal audit function, as established respectively in article 9, 10 and 11
of this Law.”

[...]

20) “group” is a group of companies consisting of a parent company, subsidiaries and
entities in which the parent company or its subsidiaries have a share, and companies
linked by one management, based on a contract between those companies or by
clauses in the articles of association of those companies or in which the administrative,
management or control bodies of the companies consist mainly of the same persons.”

3. Article 6 is amended and drafted as follows:
“Article 6. System of corporate governance

1. Entities operating in the financial system must have sound corporate governance procedures, to include the following:

   a) An organisational structure that is appropriate and proportional to the nature, scale and complexity of its activities, the risks to which it is exposed, and the nature and type of services provided. This organisational structure must be clear, with well-defined, transparent and coherent lines of responsibility;

   b) Efficient policies and procedures for the identification, management, control and communication of risks to which the entity operating in the financial system is or could be exposed, such as credit risk, residual risk, liquidity risk, market risk, concentration risk, interest rate risk, securitisation risk, excessive leverage risk, operational risk or reputational risk;

   c) Adequate internal control mechanisms, including administrative and accounting procedures;

   d) Adequate and sufficient policies and procedures, including adequate separation of functions and the prevention of conflicts of interest, to ensure that the entity operating in the financial system, the board of directors and the general management, its staff and the financial agents it appoints fulfil the obligations established in this Law and in any other prevailing legislation;

   e) Remuneration policies and practices that are compatible with healthy, prudent risk management and promote it.

2. The procedures and mechanisms referred to in paragraph 1 must be comprehensive and proportional to the nature, scale and complexity of the risks inherent in the business model and the activities of the entity operating in the financial system. Equally, the technical criteria relating to the organisation and treatment of risks established in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities and applicable prevailing legislation must be considered.

3. The board of directors and the general management of entities operating in the financial system must actively participate in the management of all substantial risks, ensure that adequate resources are assigned to it and, equally, participate in the valuation of assets, the use of external credit ratings and the internal models relating to those risks.

4. Entities operating in the financial system must have a website where the public information defined in this law and the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities or any other applicable prevailing legislation is disseminated. They must also communicate how they fulfil the obligations of corporate governance.

5. The AFA specifies, in technical communiqués, the development of additional organisational and corporate governance requirements.”

4. 12 new articles are included, from 6 bis to 6 terdecies, drafted as follows:

“Article 6 bis. Suitability requirements

1. Entities operating in the financial system must have a board of directors formed of persons who meet the suitability requirements for holding office. Specifically, they must be of recognised business and professional repute, have suitable knowledge and adequate experience to carry out their duties and be in a position to carry out good governance of the entity.
If entities operating within the financial system have a sole director, the specifications contained in this Law referring to members of the board of directors will also be applicable to the sole director.

2. The requirements of previous repute, suitable knowledge and experience must also be met by the general managers, and those in charge of control functions. These requirements are also expected of natural persons representing the board of directors and directors that are legal persons.

3. The board of directors of an entity operating in the financial system must be formed of individuals with an adequate combination of skills, diversity and experience, so that collectively they bring together all the knowledge, skills and experience necessary to adequately understand the activities of the entity, including its principal risks, and ensure the effective capacity of the board of directors to make decisions independently and on its own initiative on behalf of the entity.

Accordingly, entities operating in the financial system must assign adequate human and financial resources towards integrating and training the members of the board of directors.

Article 6 ter. Assessment of suitability requirements

1. The board of directors of entities operating in the financial system must have a clear, thorough process for identifying, assessing and selecting candidates for the board. The board of directors appoints the candidates and encourages the preparation of appropriate succession plans for the directors.

Via the process of selection and/or assessment of suitability of the members, it must be verified whether the candidates to the board of directors meet the following requirements:

a) They have the knowledge, skills, experience and, especially in the case of non-executive director, exercise independent judgement, given their responsibilities to the board of directors and the business and risk profile of the entity;

b) They exercise independent judgement, so that any potential conflict of interests will not, generally, compromise their ability to make objective, impartial decisions in the interest of the entity.

The AFA may define, in a technical communiqué, the situations or circumstances that may imply the existence of a conflict of interest which, in general, could present itself as an element of impossibility or absolute incompatibility for the member to hold office on the board of directors as long as the situation causing the conflict of interest continues.

c) They have a history of integrity and good reputation;

d) They have sufficient time to carry out their responsibilities, and

e) They have the skill to foster good interaction between the board of directors and its members.

2. Entities operating in the financial system must periodically assess, at least once a year, the continued suitability of their boards of directors and each of its members, and also the delegate committees of the board, taking into consideration their contribution to the board of directors.

Article 6 quater. Incompatibilities

1. The maximum number of offices that one member of the board of directors or a managing director can hold simultaneously must be determined by considering the particular circumstances and the nature, dimension and complexity of the activities of the entity operating in the financial system. In any case, the AFA will have the power to analyse and assess these circumstances on an individual basis.
2. In any case, members of the board of directors or the general management of major entities, on account of their size, internal organisation and the nature, dimension, scope and complexity of their activities, cannot hold more positions simultaneously than as provided in the following combinations:
   a) One executive position together with two non-executive positions;
   b) Four non-executive positions.
Executive positions means those that carry out management functions, whatever the legal bond those functions confer.
3. For the purposes of the previous section, the following are counted as one position:
   a) Executive or non-executive positions held within the same group;
   b) Executive or non-executive positions held in undertakings, including non-financial entities, where the entity operating in the financial system has a qualifying holding.
4. For the purposes of the provisions of the above sections 2 and 3, management positions in organisations that do not have predominantly commercial purposes shall not be taken into consideration.
5. The AFA may authorise the members of the board of directors and managing directors mentioned in section 1 to hold an additional non-executive position, if it considers that that would not interfere with the performance of their duties in the entity operating in the financial system.

Article 6 quinquies. Functions of the board of directors

1. The board of directors of an entity operating in the financial system must be suited to its responsibilities and its composition should facilitate the effective supervision of that entity. For this purpose, the board of directors must be formed of a sufficient number of independent directors.
2. The members of the board of directors must act in full knowledge of the facts, in good faith, with due diligence and care and in the interest of the entity operating in the financial system and its shareholders. Each of the members of the board of directors must act with honesty and integrity and exercise independent judgement, effectively evaluating and questioning, if appropriate, the decisions of the general management and effectively supervising and monitoring the management’s decision-making process.
3. The members of the board of directors must have suitable knowledge, be effective, and fulfil their duties of diligence and loyalty. The duty of diligence requires all members of the board of directors to act in full knowledge of the facts, fully informed, in good faith and with due care and diligence. The duty of loyalty is the duty of members of the board of directors to act in consideration of the interests of the entity and its shareholders.
4. The boards of directors of entities operating in the financial system must actively participate in the management of all substantial risks, ensure that adequate resources are assigned and participate in the valuation of assets, use of external credit ratings and the internal models relating to those risks.
5. The board of directors must define, supervise and take responsibility for implementing the governance arrangements that guarantee healthy, prudent management of the entity operating in the financial system, including the separation of functions in the organisation and the prevention of conflicts of interest. The board of directors must periodically monitor and assess the efficiency of the system of government of the entity operating in the financial system, and take adequate measures to correct any shortcoming.
6. The boards of directors of entities operating in the financial system must define the level of risk that the entity operating in the financial system is willing to assume, and approve the appropriate risk management policies, supervise fulfilment periodically and adopt adequate measures to correct any shortcoming.

7. The boards of directors of entities operating in the financial system must approve the code of ethics and conduct, the internal control policies and regulatory compliance policies, and supervise fulfilment periodically and adopt adequate measures to correct any shortcoming.

8. The board of directors must have a written policy on the management of conflicts of interest of its members. The policy must specify, at least:
   a) The duty to avoid conflicts of interest that have not been approved by the board of directors and the obligation to ensure that conflicts of interest are managed adequately;
   b) The process of review and approval by the board of certain functions, such as holding office in another administrative body, to ensure that the new commitment does not create a conflict of interest;
   c) The obligation to inform the entity of any matter that could result, or has already resulted, in a conflict of interest;
   d) The obligation to abstain from decision-making or voting on any matter where the member may have a conflict of interest or when his objectivity or ability to adequately fulfil his duties towards the entity could be compromised;
   e) Adequate procedures to follow to ensure that transactions with connected parties are carried out on the basis of free competition, and
   f) How the board of directors will act when faced with non-compliance with this policy.

9. The board of directors must approve internal operating regulations to facilitate compliance with the obligations and responsibilities of all its members.

10. The board of directors must perform specific key functions including, at least, setting up and supervising:
   a) The global business strategy of the entity within its legal and regulatory framework, considering the long-term financial interests of the entity and its solvency; the annual budgets; the creation of profit targets; monitoring the proposed plan and the profits that the entity obtains, and supervising capital outlay, larger acquisitions and disinvestments;
   b) The general risk strategy and risk policy of the entity and the group it heads, if applicable, including its tolerance and risk appetite and the risk management framework;
   c) The amounts, types and distribution, both of capital and own funds needed to cover the risks of the entity and group;
   d) A consistent and transparent corporate and organisational structure, with clear and effective lines of responsibility and channels of communication; equally, the guiding principles of the communication systems, including the aspect of information security, the internal communication agreements and a procedure for reporting and reporting potential infringements within the organisation;
   e) A robust, efficient operational structure, including the necessary human resources and materials for the proper functioning of the entity in areas such as administration, accounts, IT systems and subcontracting;
   f) The appointment policy and succession plans of persons with key functions within the entity; for this purpose, suitability criteria must be established for the selection of the board of directors and the general management and it must
actively and critically supervise the implementation of the board of directors’ strategies by the general management, including follow-up and completion according to the reference criteria established by the board of directors;

g) A long-term remuneration framework for the main executives and members of the board of directors aligned with the interests of the entity and shareholders and with the entity’s risk strategy; in this respect, the board of directors must actively supervise the design and operation of the remuneration system of the entity and group, verify that it has adequate incentives, in accordance with a prudent assumption of risks, and that these are periodically reviewed and modified as soon as shortcomings are detected;

h) The governing principles and corporate values of the entity, via a code of ethics and conduct, a code of behaviour or similar document, including management of conflicts of interest;

i) An adequate, effective, internal control framework that includes the establishment of risk, compliance and internal audit functions that are competent, robust and independent and ensure a suitable environment for preparing the accounting and financial information, and

j) The principles applicable to the management, business continuity plan and crisis management.

Article 6 sexies Delegate committees of the board of directors

1. Based on the size, scale, internal organisation, nature, scope and complexity of the activities of the entity operating in the financial system and its group, and also its risk profile, entities operating in the financial system must have the following delegate committees of the board of directors:
   a) Audit committee;
   b) Risk committee;
   c) Appointments committee;
   d) Remuneration committee.

2. Entities operating in the financial system may combine risk and audit committees and appointments and remuneration committees, with prior authorisation from the AFA, based on the size, scale, internal organisation and nature, scope and complexity of their activities, whenever they can demonstrate that the mixed committee is still effective.

3. In addition, entities operating in the financial system that see fit, may create other delegate committees of the board of directors other than those established in section 1.

4. If the delegate committees of the board of directors indicated in section 1 and 3, are not set up, with prior authorisation of the AFA, motivated by the size, scale, internal organisation and nature, scope and complexity of their activities, those functions must be performed directly by the board of directors.

5. Each committee must have a clear, documented mandate, including its scope, approved by the board of directors.

6. Delegate committees of the board must be formed of members of the board of directors who do not perform executive functions within the entity operating in the financial system concerned, and must have the knowledge, capability and appropriate experience to understand and supervise the specific functions of each of the committees, without prejudice to ensuring the independence of the committees.

7. The delegate committees of the board of directors must be formed of members who do not perform executive functions in the entity operating in the financial system. Equally, the chairmen of the delegate committees of the board of directors must be
independent directors and may be, at the same time, chairmen of up to two delegate committees of the board of directors.

8. The independent directors of the entities operating in the financial system must actively participate in the delegate committees of the board of directors.

9. The respective chairmen of the delegate committees must periodically report to the board of directors. In addition, the special committees must interact, as appropriate, to ensure consistency and avoid any gaps.

10. The delegation of functions to the committees does not in any way relieve the board of directors of its supervisory function or ultimate responsibility.

11. The periodical assessment referred to in article 6 ter is applicable to the operation of the delegate committees of the board of directors.

Article 6 septies. Audit committee

1. The audit committee must perform at least the following functions:
   a) To monitor effectively the entity’s internal systems of quality management and control and, if applicable, the internal audit function, principally in relation to audited financial information, without affecting its independence;
   b) To supervise the creation of accounting principles by the entity;
   c) To control the process of generating and disseminating financial information and send recommendations or proposals to guarantee its integrity;
   d) To review and monitor the independence of the external auditors and audit bodies, according to article 19 of this law and, in particular, the adequacy of the provision of non-audit services to the audited entity;
   e) To monitor the external audit of the annual individual and consolidated accounts;
   f) To be in charge of the procedure for selecting the audit body and recommend its appointment, contracting, payment and dismissal for approval by the competent body of the entity, according to article 19 of this law;
   g) To review the scope and frequency of the external audit of the annual individual and consolidated accounts;
   h) To inform the board of directors of the audited entity of the results of the external audit and explain how the external audit contributes to the integrity of the financial information and the audit committee’s function in this process;
   i) To receive and consider the audit reports.

2. The audit committee must be composed exclusively of non-executive directors appointed by the board of directors, of which at least the majority must be independent directors, and one of them must be appointed for his knowledge and experience of accounting or auditing or both.

3. The audit committee has the power to use any kind of recourse it considers appropriate, including external advice, and must receive the appropriate funding for the purpose.

4. Entities operating in the financial system may combine audit and risk committees, with prior authorisation from the AFA motivated by the size, scale, internal organisation and nature, scope and complexity of their activities, whenever they can demonstrate that the mixed committee is still effective. Members of the mixed committee must have the necessary knowledge and skills required for the remuneration committee and appointments committee.

Article 6 octies. Risk committee
1. Members of this committee must have the appropriate knowledge, capability and experience to understand and supervise the risk strategy and risk tolerance of the entity.

2. The risk committee must perform at least the following functions:
   a) To advise the board of directors about the risk tolerance of the entity, current and future, and the global risk strategy, and assist the board of directors in monitoring the implementation of this strategy by the general management. Nonetheless, the board of directors is responsible for the risks assumed by an entity operating in the financial system;
   b) To verify that the price policy of the assets and liabilities offered to clients fully considers the business model and risk strategy of the entity operating in the financial system. Otherwise, the risk committee must present a contingency plan to the board of directors;
   c) To determine the nature, quantity, format and frequency of the information about risks to be received by the committee itself and the board of directors;
   d) To collaborate to set up sound remuneration policies and practices. For these purposes, the risk committee, without prejudice to the functions of the remuneration committee, must examine the incentive policy provided by the remuneration system and confirm that they are proportional and consider the risk, capital, liquidity and probability and timeliness of profits.

3. The risk committee must have adequate access to the information on the risk situation of the entity operating in the financial system and, if necessary and appropriate, the risk management function and external expert advice.

4. Entities operating in the financial system may combine the risk and audit committees, with prior authorisation from the AFA, motivated by the size, scale, internal organisation and nature, scope and complexity of their activities, whenever they can demonstrate that the mixed committee is still effective. Members of the mixed committee must have the necessary knowledge and skills required for the remuneration committee and appointments committee.

When entities operating in the financial system combine the audit and risk committees, according to the paragraph above, they must follow the composition criteria defined by the audit committee according to section 2 of article 6 septies.

**Article 6 nonies. Appointments committee**

1. The appointments committee must perform at least the following functions:
   a) To identify and recommend for approval by the board of directors or general meeting, candidates to fill the vacancies on the board of directors;
   b) To assess the balance of knowledge, capability, diversity and experience of the board of directors and prepare a description of the functions and necessary skills for a specific appointment, anticipating the time commitment for performing the assigned functions;
   c) To periodically evaluate, at least once a year, the structure, size, composition and performance of the board of directors and make recommendations for potential changes to it;
   d) To periodically evaluate, at least once a year, the knowledge, expertise and experience of the various members of the board of directors and of the board as a whole, and inform the board of directors accordingly;
   e) To periodically review the policy of the board of directors on the selection and appointment of the members of the general management and make recommendations to the board of directors;
f) To fix a target for representation of the least represented gender on the board of directors and prepare guidelines on how to achieve this target. The target and guidelines and their implementation will be published according to letter d), section 1 of article 89 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.

2. In performing its task, the appointments committee must consider, as far as possible and constantly, the need to ensure that the decision-making of the board of directors does not become dominated by one individual or a small group of individuals, to the detriment of the interests of the entity operating in the financial system as a whole.

3. The appointments committee has the power to use any kind of recourse it considers appropriate, including external assessment, and must receive suitable funding for the purpose.

4. Entities operating in the financial system may combine the appointments and remuneration committees, with prior authorisation from the AFA, motivated by the size, scale, internal organisation and nature, scope and complexity of their activities, whenever they can demonstrate that the mixed committee is still effective. Members of the mixed committee must have the necessary knowledge and skills required for the appointments committee and remuneration committee.

**Article 6 decies. Remuneration committee**

1. The composition of the remuneration committee must enable it to exercise independent judgement competently on the remuneration policies and practices and the incentives created to manage risk, capital and liquidity.

2. The remuneration committee shall be in charge of decisions relating to remuneration, including those that impact the risk and risk management of the entity operating in the financial system concerned, which must be made by the board of directors. In preparing the decisions, the remuneration committee must consider the long-term interests of the shareholders, investors and other interested parties in the entity operating in the financial system, and also the public interest.

3. Entities operating in the financial system may combine remuneration and appointments tasks, with prior authorisation from the AFA, motivated by the size, scale, internal organisation and nature, scope and complexity of their activities, whenever they can demonstrate that the mixed committee is still effective. Members of the mixed committee must have the necessary knowledge and skills required for the remuneration committee and appointments committee.

**Article 6 undecies. Remuneration policy**

1. This article is applicable to entities operating in the financial system at group, parent and subsidiary level, including subsidiaries established in third countries except foreign subsidiaries located in jurisdictions considered equivalent by the AFA for the purposes of regulation and supervision. However, the AFA has the power to require application of the remuneration policy of the parent at group level of the entities operating in the financial system in specific cases where an employee performs duties in different entities and jurisdictions of the group, including Andorra.

2. Entities operating in the financial system, when setting and applying the global remuneration policy, including salaries and the discretionary benefits of a retirement pension, of the categories of staff that include the general management, risk-taking employees, those performing control tasks, and any employee receiving a global remuneration that places him on the same remuneration scale as the general management and risk-taking employees, apply the principles in sections 3 and 4.
below, according to their size, internal organisation and the nature, dimension, scope and complexity of their activities.

3. The remuneration policy must be determined according to the following principles:
   a) The remuneration policy must be compatible with healthy, prudent risk management, must encourage this type of management and not offer incentives to assume risks that exceed the level of risk tolerated by the entity operating in the financial system;
   b) The remuneration policy must be compatible with the business strategy, targets, values and long-term interests of the entity operating in the financial system and include measures to avoid conflicts of interest;
   c) The board of directors of the entity operating in the financial system must adopt and periodically review the general principles of the remuneration policy and is responsible for supervising its implementation;
   d) At least once a year, a central, independent internal assessment of the implementation of the remuneration policy must be made, to verify whether the remuneration guidelines and procedures adopted by the board of directors are being followed;
   e) Staff who perform control functions must be independent to the business units they supervise, must have the necessary authority and be paid for achieving the targets related to their functions, irrespective of the results of the business departments they supervise;
   f) The remuneration of the general management or those in charge of the risk management and regulatory compliance functions must be supervised directly by the remuneration committee referred to in article 6 decies or, if that committee has not been created, the board of directors;
   g) The remuneration policy must establish a clear distinction between the criteria for establishing:
      i) Fixed remuneration, which must principally reflect the relevant professional experience and responsibility in the organisation as stipulated in the job description as part of the working conditions, and
      ii) Variable remuneration, which must reflect a risk-adjusted sustainable return, and a return that is higher than required to fulfil the stipulations of the job description as part of the working conditions.

4. As for the variable elements of remuneration, the following principles must be applied, as well as those established in section 3, on the same conditions:
   a) When remuneration is linked to results, the total amount must be based on an assessment that combines the individual’s results, valued according to both financial and non-financial criteria, the business unit concerned and the global results of the entity operating in the financial system;
   b) The performance evaluation must be recorded within a multiannual framework to ensure that the assessment process is based on long-term results and that the effective payment of the components of remuneration based on results is staggered over a period that takes into account the underlying economic cycle of the entity operating in the financial system and its business risks;
   c) The total variable remuneration must not limit the ability of the entity operating in the financial system to consolidate a sound capital base;
   d) Guaranteed variable remuneration is not compatible with healthy risk management or the principle of rewarding performance, and cannot be included in remuneration plans;
e) Guaranteed variable remuneration is exceptional and can only be made when contracting new staff and when the entity operating in the financial system has a healthy, sound capital base, and is limited to the first year of employment;

f) Within the total remuneration, the fixed and variable components must be duly balanced; the fixed component must constitute a fairly high part of the total remuneration, so that a wholly flexible policy can be applied to the variable components of remuneration, to the point where it may be possible not to pay those components;

g) Entities operating in the financial system must establish the appropriate ratios between the fixed and variable components of total remuneration, applying the following principles:

i) The variable component must not be higher than 100% of the fixed component of each person’s total remuneration;

ii) Nevertheless, the general meeting of shareholders of the entity operating in the financial system may approve a higher rate than the one above, but no higher than 200% of the fixed component:

- Approval of the higher rate of variable remuneration must be made according to the following procedure:
  - The general meeting of shareholders of the entity operating in the financial system must make a decision based on a detailed recommendation from the board of directors that states the reasons and scope for the decision and includes the number of persons concerned and their positions, and also the expected impact on maintaining a sound capital base for the entity operating in the financial system;
  - The general meeting of shareholders of the entity operating in the financial system must pass its resolution with a majority of at least two thirds, whenever at least half of the shares or the equivalent rights with voting rights are present or represented at the vote. If this quorum if not reached, the resolution must be passed by a majority of at least three quarters of the share capital with voting rights, present or represented;
  - The board of directors must inform all the shareholders, with adequate notice, of the matter to be submitted for approval;
  - The board of directors must immediately inform the AFA of the recommendation to the general meeting of shareholders, including the highest rate of the variable component of the proposed remuneration and corresponding justification, and must prove that this rate does not affect the obligations of the entity operating in the financial system defined in the solvency law, especially considering the own resources obligations of the entity operating in the financial system;
  - The board of directors must immediately inform the AFA of its resolution on the matter at the general meeting of shareholders, including the maximum percentage of the variable component of the approved remuneration;
  - If applicable, staff directly affected by application of the maximum levels of variable remuneration cannot, directly or indirectly, exercise any voting rights they may have as shareholders in the entity operating in the financial system, and their shares must be deducted from the share capital for calculating the voting majority needed in each case for resolutions referring to application of maximum levels of variable remuneration.

iii) The AFA may authorise entities operating in the financial system to apply the theoretical discount rate considered in the second paragraph of this sub-
section at 25% of the total variable remuneration, whenever it is paid via deferred instruments, for a period of five or more years. The AFA may set a maximum lower percentage.

h) Payments for early termination of a contract must be based on the results obtained over time, while bad results or inappropriate conduct shall not be rewarded. The AFA may define any circumstances that could lead to a reduction in the amount of these payments for early termination;

i) The remuneration packages relating to compensation or payments for abandonment of previous employment contracts must be adapted to the long-term interests of the entity operating in the financial system, so provisions for retentions, deferment, performance and claims must be included;

j) When evaluating performance to calculate the variable components of remuneration, an adjustment must be made for all manner of current and future risks, and consider the necessary capital cost and liquidity;

k) The allocation of variable components of remuneration in the entity operating in the financial system must also consider all manner of current and future risks;

l) A substantial part must be fixed, in any case at least 50% of any element of variable remuneration, whether deferred or not, to achieve a suitable balance between:

i) Shares or equivalent ownership titles, based on the legal structure of the entity operating in the financial system concerned, or instruments linked to the shares or equivalent non-pecuniary instruments, in the case of unlisted entities;

ii) Whenever possible, other instruments, under the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, or other instruments that may be converted or annotated entirely as Common Equity Tier 1 instruments, which adequately reflect the credit rating as a going concern in each case, and are suitable for the purposes of variable remuneration;

The instruments mentioned in this sub-section must be subject to an appropriate retention policy designed for the incentives to be aligned with the most long-term interests of the entity operating in the financial system. The AFA may impose restrictions on the design or types of those instruments, and even prohibit some. This sub-section is applicable to both the variable component of deferred remuneration according to m) and the variable component of undeferred remuneration.

m) A substantial part, at least 40% of the element of variable remuneration in any case, must be deferred for a period of no less than three to five years, and must be correctly adapted to the nature of the business, its risks and the activities of the relevant employees.

Remuneration payable under the deferment provisions must not be received earlier than proportional. In the case of an element of variable remuneration of an especially high value, at least 60% should be deferred. The length of the deferment period must be determined by considering the economic cycle, the nature of the business, its risks and the activities of the member of staff concerned.

n) Variable remuneration, including the deferred part, must be paid or consolidated only if it is sustainable, according to the financial situation of the entity operating in the financial system as a whole, and if it can be justified by the performance of the entity operating in the financial system, the business unit and the person concerned.
Without prejudice to the general principles of contractual and employment law, total variable remuneration must be reduced considerably when the entity operating in the financial system obtains poor or negative financial results, considering both the actual remuneration and the reductions in payments of previously accrued amounts, if applicable, through clauses for remuneration reduction or the recovery of already paid remuneration.

Up to 100% of the total variable remuneration must be subject to clauses for remuneration reduction or the recovery of already paid remuneration. Entities operating in the financial system must establish specific criteria to implement the clauses for remuneration reduction or the recovery of already paid remuneration. These criteria must cover, in particular, situations where the employee:

i) Has been involved in or responsible for conduct that has generated major losses for the entity operating in the financial system;

ii) Fails the relevant requirements of fitness and propriety.

o) The pension policy must be consistent with the business strategy, the goals, values and long-term interests of the entity operating in the financial system.

If the employee abandons the entity operating in the financial system before retirement, the entity must retain control of the discretionary pension benefits for a period of five years in the form of instruments such as those mentioned in letter l). If the employee reaches the age of retirement, the discretionary benefits must be paid to him in the form of instruments such as those mentioned in letter l), subject to a retention period of five years;

p) Personal cover or insurance strategies relating to remuneration and responsibility cannot be used when they undermine the effects of alignment with healthy management of the risks under the remuneration systems;

q) Variable remuneration must not be paid via instruments or methods that facilitate non-compliance with the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities and the prevailing implementing regulations and implementing rules.

5. Letters l), m) and the second paragraph of letter o) of section 4 of this article are, at least, not applicable to employees whose variable annual remuneration does not exceed 50,000 euros and does not represent more than one third of their annual remuneration. For the purposes of this section the Government, at the proposal of the Ministry of Finance, may amend the thresholds provided here by regulation, taking into consideration the particularities of market remuneration practices and the responsibilities and professional profile of the staff members concerned.

6. The Government, at the proposal of the Ministry of Finance, must specify by regulation the classes of instrument that meet the conditions established in section 4, letter l), sub-section ii) of this article, and the appropriate qualitative and quantitative criteria for determining the categories of staff whose professional activities have a major impact on an entity's risk profile, as indicated in section 2 of this article.

Article 6 duodecies. Entities benefitting from public intervention

In the case of entities benefitting from a special public intervention, the following principles must be applied:

a) Variable remuneration must be strictly limited to a percentage of net income when incompatible with maintaining a sound capital base and with the appropriate renunciation of public support;

b) The relevant competent authorities must require entities operating in the financial system to restructure remunerations so that they comply with adequate risk management and long-term growth, even, if applicable, establishing
remuneration limits for members of the board of directors of the entity operating in the financial system;

c) The members of the board of directors of the entity operating in the financial system may not receive any variable remuneration.

**Article 6 terdecies. Reporting potential infringements**

Entities operating in the financial system must have adequate procedures for their employees to be able to notify any potential infringements internally through an independent channel that is specific and autonomous. Those procedures must guarantee the confidentiality of both the person reporting the infringements and the natural persons allegedly responsible for the infringement.

Equally, entities operating in the financial system must guarantee the protection of any employees who report potential infringements committed in the entity, against any possible reprisals, discrimination and any other kind of unwarranted treatment."

5. Section 5 is included in article 7 and drafted as follows:

"5. Entities operating in the financial system must record and keep, for the periods determined by prevailing legislation at the time, all documentation, data and information, which is required to be obtained under this Law and the implementing regulations, the supporting documents and records of any transactions and operations, accounting and risks information, the information on accounts and commercial correspondence, and also document all the systems and processes under this Law and other applicable legislation, so that the AFA may verify compliance at all times."

6. Letter a bis is included in section 1 of article 10 and drafted as follows:

“a bis) To inform the board of directors directly, independently of the general management and state the reasons for concern and advise that body, if appropriate, in the event of specific risk developments that affect or may affect the entity operating in the financial system, without prejudice to the responsibilities of the board of directors, under this Law;”

7. Letter b bis is included in section 2 of article 10 and drafted as follows:

“b bis) The person in charge of the risk management function must act independently and may not be dismissed without prior authorisation from the board of directors. The risk management function must report directly to the board of directors when necessary.”

8. Section 10 and section 14 of article 19 are amended and drafted as follows:

“10. External auditors must report any act or decision relating to the entities mentioned in section 1, which they discover while carrying out the external audit and which could:

a) Significantly affect the stability of the entity operating in the financial system;

b) Constitute a serious or very serious infringement of the disciplinary system of the financial system or a breach of the law, regulations or administrative provisions that establish the conditions for authorisation or specifically regulate the activities of entities operating in the financial system;

c) Affect the principle of going concern of the entity operating in the financial system;

d) Lead to refusal to certify the accounts or reservations.

External auditors also have the obligation to communicate any act or decision that they discover while carrying out the external audit, in an entity with close links due to a
control relationship with an entity operating in the financial system where they are carrying out an assigned task, when they may have a notable or serious impact on the entity operating in the financial system or are related to sections a) to d) of the previous paragraph.

The communication must be made as an immediate report to the board of directors of the audited entity which must then send a copy to the AFA. If, within five working days, the auditor has no reliable record of this being done, he must send a copy of that report directly to the AFA. If the auditors change, the auditing company responsible for this requirement is the one currently appointed by the general meeting of shareholders.

The disclosure in good faith to the AFA by the external auditors of any act or decision referred to in this section does not represent an infringement of the restrictions on disclosure of information imposed contractually or by any legislative, regulatory or administrative provision and does not incur any kind of liability for the external auditors. This disclosure must be made simultaneously to the board of directors of the entity operating in the financial system, unless there are valid reasons for it not to be done.

[...]

14. Audit entities or auditors who do not fulfil the obligations deriving from the previous sections and/or do not carry out the AFA’s requirements and tasks according to prevailing legislation, may be punished with a fine of 1,000 to 30,000 euros and professional disqualification in Andorra for a period of up to five years, if non-compliance was through negligence; or a fine of 30,001 to 150,000 euros and permanent professional disqualification in Andorra, if non-compliance was intentional.”

9. Sub-sections i), ii), iii) and iv) are amended and sub-sections i bis), iv bis), xv) to xix) are added to letter a) of section 2 of article 20, drafted as follows:

“i) The decision of any shareholder, natural or legal person, acting alone or with others, directly or indirectly, to achieve or acquire a qualifying holding in an entity operating in the financial system or to increase that qualifying holding or make the entity become a subsidiary;

i bis) The decision of any shareholder, natural or legal person, to reduce, directly or indirectly, their qualifying holding in an entity operating in the financial system or cause that entity to no longer be a subsidiary of it;

ii) The changes and appointments of members of the board of directors, the general management and those with control functions in entities operating in the Andorran financial system, financial holding companies or mixed financial holding companies, including changes in position or duties of members of the general management and those with control functions;

iii) The changes and appointments of members of the general management and those with control functions with responsibility at group level within the framework of an entity operating in the financial system, a financial holding company or a mixed financial holding company that form part of a group, and in which, apart from positions in the parent institution, positions are created in general management or with control functions at group level other than those of the parent institution on an individual basis;

iv) Increases, reductions, reimbursements or repurchases of capital instruments issued by the entity, even when they represent no change in the holding of the shareholders, both of entities operating in the Andorran financial system and their investees, whenever they are entities controlled by the latter;

iv bis) The redemption, reimbursement, return or repurchase of Additional Tier 1 or Tier 2 capital instruments, as appropriate, before the contractual maturity date;
iv ter) Modifications of the objects of entities operating in the financial system, and their investees in the financial and insurance sector, whenever they are controlled by the former;

[x]

xv) The exemption from creating delegated committees of the board of directors based on the size, scale, internal organisation, nature, scope and complexity of the activities of the entity operating in the financial system, and its group, and also its risk profile;

xvi) The creation of mixed risk and audit committees, based on the size, scale, internal organisation, nature, scope and complexity of the activities of the entity operating in the financial system;

xvii) The creation of mixed remuneration and appointments committees, based on the size, scale, internal organisation, nature, scope and complexity of the activities of the entity operating in the financial system;

xviii) A non-executive position additional to those established in article 6 quater of this Law being held by members of the board of directors and managing directors, when it is considered that that does not interfere with the performance of his duties in the entity operating in the financial system;

xix) Application of the theoretical discount rate mentioned in sub-section four, letter g), section ii) of article 6 undecies of this Law at 25% of the total variable remuneration, whenever paid through instruments deferred for a period of five or more years.”

10. A new article, 20 bis, is added and drafted as follows:

“Article 20 bis. Prior authorisation to the acquirer of qualifying holdings

Any natural or legal person, i.e. the proposed acquirer, other than an entity operating in the financial sector, must request prior authorisation from the AFA for the following acts:

i) The decision of any natural or legal person, acting alone or with others, directly or indirectly, to achieve or acquire a qualifying holding in an entity operating in the financial system or to increase this qualifying holding or make the entity become a subsidiary of it;

ii) The decision of any natural or legal person, to reduce, directly or indirectly, their qualifying holding in an entity operating in the Andorran financial system or make that entity cease to be a subsidiary of it.

Any natural or legal person who, acting alone or jointly with others, directly or indirectly acquires a shareholding in an entity operating in the financial system so that the percentage of voting rights or capital he owns reaches 3 percent or higher, must immediately communicate this in writing to the AFA and the entity operating in the relevant financial system, indicating the total shareholding he has reached.”

11. A new article is added, 20 ter, drafted as follows:

“Article 20 ter. Criteria for evaluating the proposed acquisition of a qualifying holding in an entity operating in the financial system

1. On examining the notification relating to the acts referred to in sub-sections i) and i bis) of letter a) of section 2 of article 20 and letters i) and ii) of article 20 bis, and the additional information referred to in article 25, section 2, for the purpose of guaranteeing healthy, prudent management of the entity operating in the financial sector in which the acquisition is proposed, and considering the probable influence of
the potential acquirer over that entity, the AFA must assess the suitability of the potential acquirer and the financial solvency of the proposed acquisition according to the following criteria:

a) The professional and business repute of the potential acquirer;

b) The business and professional repute, knowledge, capability and adequate professional experience, as indicated in sections 2 and 3 of article 2 of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, of any member of the board of directors and any member of the general management who would govern the activities of the entity as a result of the proposed acquisition;

c) The financial solvency of the potential acquirer, to meet the commitments to be taken on, especially relating to the type of activities he carries out or is expected to carry out in the entity in which the acquisition is proposed;

d) The impact of the proposed transaction on the ability of the acquired entity to comply, in a durable manner, with the solvency and liquidity standards provided in:

i) The Law on solvency, liquidity and the prudential supervision of banking entities and investment entities and implementing regulations, in the case of banking entities and investment entities under it, or

ii) Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, in the case of indirect asset management companies, financial advisers, companies managing collective investment schemes and specialised credit institutions, and if applicable,

iii) The Law on financial conglomerates and the implementing regulations, if the entity belongs to a mixed financial holding company, including if the group of which it becomes part has a structure that allows for effective supervision and an effective exchange of information between the relevant competent authorities;

e) If there are reasonable indications to suppose that, in relation to the proposed acquisition, money laundering or terrorism financing operations are being carried out or attempted, or have been carried out, as defined in article 1 of Law 14/2017, of 22 June, on the prevention and fight against the laundering of money or securities and terrorism financing or that the proposed acquisition could increase the risk of these occurring.

In relation to the evaluation of the proposed acquisition, no prior conditions are established regarding the level of participation to be acquired. Equally, the AFA, in general, must not examine the application of a proposed acquisition of a qualifying holding in an entity operating in the financial system on the basis of the economic needs of the market.

2. Notwithstanding article 20, section 2, article 20 bis, article 25, section 2, and article 26, section 2, when the AFA receives two or more notifications to acquire or increase qualifying holdings in the same entity operating in the financial system, it must not treat the potential acquirers in a discriminatory manner.”

12. A new article is added, 20 quater, drafted as follows:

“Article 20 quater. Cooperation in authorising acquisitions of qualifying holdings
1. The AFA, in carrying out the assessment referred to in article 20 ter, must consult the Andorran Financial Intelligence Unit of the Police Force and other national authorities within its area of responsibility, in relation to the repute of the potential acquirer and of the members of the board of directors and general management who may be appointed as a result of the proposed acquisition.

2. Equally, the AFA may request from the competent authorities of third countries, whenever complying with the principles of international cooperation established in article 20 of Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF), any information that is essential or relevant to the assessment of an acquisition or transfer of a qualifying holding, especially if the potential acquirer is one of the following:

   a) A banking entity, insurance entity, reinsurance entity, financial investment entity, company managing collective investment schemes, payment institution or electronic money institution, authorised in a third country or in a sector other than the one in which the acquisition is proposed;

   b) The parent undertaking of any of the entities specified in letter a), authorised in a third country or a sector other than the one in which the acquisition is proposed;

   c) A natural or legal person who exerts control over any of the entities specified in letter a), authorised in a third country or in a sector other than the one in which the acquisition is proposed."

12 bis. Article 21 is amended and drafted as follows:

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“Article 21. Responsible body

1. The AFA is the body responsible for resolving deciding on applications for prior authorisation and/or registration, and establishing and updating the official registers containing information about entities relating to the acts described in this Law.

2. The AFA, in assessing applications for prior authorisation, must consult, when appropriate, the Andorran Financial Intelligence Unit, Police Force, other national authorities within the scope of their competences and/or other equivalent foreign authorities.”
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13. Article 22 is amended and drafted as follows:

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“Article 22. Applications for prior authorisation

1. To be fully effective, prior to carrying out the acts, entities operating in the financial system must present to the AFA the applications for prior authorisation relating to the acts referred to in letter a) of section 2 of article 20.

2. The AFA must confirm receipt of the applications at the time of presentation in writing.”
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14. Article 25 is amended and drafted as follows:

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“Article 25. Supplementary information

1. The AFA may request from entities any supplementary information it considers relevant or appropriate to the act that is the subject of the initial communication, prior authorisation or registration.

2. In the case of the acts referred to in letters i) and i) bis of the second paragraph of section 1 of article 20) and in letters i) and ii) of article 20 bis, the AFA may request, if appropriate, during the assessment period of the proposed qualifying holdings, but no later than the fiftieth working day in it, any supplementary information it requires to complete the assessment. This request must be sent by the AFA in writing, specifying the additional information and documentation needed."
The assessment period referred to in article 26, section 2, is suspended during the period between the date on which the AFA requests the information and the date of receipt of a reply from the potential acquirer. The maximum period of suspension is twenty working days, which may reach 30 working days if the potential acquirer is located in a third country or is a natural or legal person not subject to solvency and liquidity legislation like that of the Principality of Andorra. The AFA may make other requests, if necessary, to complete or clarify the information, although none of those requests results in a suspension of the assessment period."

15. Article 26 is amended and drafted as follows:

“Article 26. Resolution and notification period

1. The AFA must decide on and notify the applications for prior authorisation and for registration within thirty working days from the date of presentation of the applications or, if applicable, from the date of delivery of the supplementary information, and also inform about the existing channels of appeal.

2. In the case of the acts referred to in sub-section i) and i) bis of letter a) of section 2 of article 20 and letters i) and ii) of article 20 bis, the AFA has a maximum of 60 working days from the date of presentation of the applications or, if applicable, from the date of delivery of the supplementary information, called the “assessment period”, to carry out the assessment referred to in article 20 ter, section 1, called the “assessment”.

3. The AFA may set a deadline for completing the proposed acquisition and extend it as appropriate.”

16. Article 27 is amended and drafted as follows:

“Article 27. Refusal

1. The AFA refuses prior authorisation and/or registration if, on examining the documentation, it ascertains that it is incomplete or the act that requires authorisation and/or registration does not comply with prevailing legislation or may negatively and significantly affect the stability or prestige of the Andorran financial system or the entity concerned, and also any elements forming technical, financial or professional guarantees of the entity or its group or any other assessment criteria, including prestige.

2. In relation to the acts referred to in sub-sections i) and i) bis of letter a) of section 2 of article 20 and letters i) and ii) of article 20 bis, if the AFA refuses the proposed acquisition, it must inform the potential acquirer, in writing and explaining its decision, within two working days after the assessment is completed, being impossible, in any case, to exceed the assessment period mentioned in article 26, section 2.”

17. Two transitional provisions are added and drafted as follows:

“Second transitional provision:

1. Entities operating in the financial system have a transitional period of 1 year to adapt the composition of the board of directors and the general management to the requirements established in article 6 quater of this Law.

2. Equally, entities operating in the financial system have a transitional period of 1 year to adapt the composition of the delegate committees of the board of directors to the requirements established in section 7 of article 6 sexies and section 2 of article 6 septies of this Law.

Third transitional provision:
Notwithstanding the provisions of letter I), section 4 of article 6 undecies, entities operating in the financial system must apply, for the first time, the requirements established for the elements of variable remuneration, at the latest to variable remuneration for the 2020 financial year.

**Third final provision. Amendment of Law 35/2010 of 3 June on the regime of authorization for the creation of new bodies operating within the Andorran financial system**

The following amendments are introduced into Law 35/2010 of 3 June on the regime of authorization for the creation of new bodies operating within the Andorran financial system.

1. Sections 1 and 3 of article 5 of Law 35/2010 of 3 June on the regime of authorization for the creation of new bodies operating within the Andorran financial system, are amended and drafted as follows:

   “1. The AFA must decide on and notify the applicant of granting the prior authorisation for the creation of an entity operating in the Andorran financial system when, from the analysis of the documentation provided according to articles 11, 12, 13 and 14 of this law and other requirements set out in technical communiqués from the AFA, no breaches of prevailing legislation are observed and the requirements and conditions are met to be able to create an entity operating in the financial system. Otherwise, the AFA must refuse the application for prior authorisation and proceed to notify the applicant with a detailed breakdown of the reasons for refusal. This notification must be made within six months from the date of presentation or, if applicable, from the time of completing the required documentation.

   The AFA, before conceding the authorisation for the creation of an entity operating in the financial system, must consult the Andorran Financial Intelligence Unit, the Police Force, other competent national authorities within the scope of their competences and/or other equivalent foreign authorities, especially if the entity operating in the financial system:

   a) Is a subsidiary of a credit institution, a financial investment entity, a specialised credit institution – not banks, a payment institution, an electronic money institution, an insurance entity, a reinsurance entity or an insurance and reinsurance entity established in a third country.

   b) Is a subsidiary of the parent undertaking of a credit institution, a financial investment entity, a specialised credit institution – not banks, a payment institution, an electronic money institution, an insurance entity, a reinsurance entity or an insurance and reinsurance entity established in a third country.

   c) Is controlled by the same natural or legal persons that control a credit institution, a financial investment entity, a specialised credit institution – not banks, a payment institution, an electronic money institution, an insurance entity, a reinsurance entity or an insurance and reinsurance entity established in a third country.

   The AFA consults with the competent national and third-country authorities, especially when assessing the suitability of shareholders and the experience of members of the administrative body who are involved in the management of another entity in the same group. Specifically, all information relating to the suitability of shareholders and the reputation and experience of members of the general senior management and those with control functions is interchanged when relevant to the concession of an
authorisation, and also for the continued assessment of compliance with operating conditions.

[...] 3. Once the information or documentation described in section 2 has been received, the AFA examines the application and, if it sees fit, grants the authorisation to create the entity and proceeds to notify the decision to the applicant within three months from the date of receipt of that information or documentation. In any case, the decision to grant or refuse the authorisation must be taken within 12 months following receipt of the application.”

2. Section 2 is amended, and sections 3 bis, 3 ter and 3 quater are added to article 9, drafted as follows:

“2. If the entity operating in the financial system – the creation of which has been authorised – does not commence real, effective business within the period established in the previous section, or explicitly waives it, the AFA must nullify the authorisation and cancel the deposit and return it to the applicants.

[...] 3 bis. In the following circumstances, the AFA may revoke the authorisation that was granted initially:

a) When the entity operating in the financial system has obtained the authorisation through false declarations or by any other irregular means;

b) When the entity operating in the financial system no longer meets the necessary conditions to access and carry out the authorised business or does not inform the AFA of significant changes in application of these conditions;

c) When the entity operating in the financial system no longer meets the prudential requirements applicable to it, repeatedly within a period of 6 months or more, according to:

i) Title III, three, four, six, letter a), section 1 of article 97, and article 98 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities and its implementing regulations; and ceases to provide guarantees that it can fulfil its obligations to lenders, especially when it ceases to guarantee the funds entrusted to it by depositors, in the case of banking entities and investments entities under this Law, or

ii) The solvency and liquidity standards, if applicable, of Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, for other entities operating in the financial system not included in sub-section i) above; and, if applicable,

iii) The Law on financial conglomerates and the implementing regulations, where the entity operating in the financial system is a parent financial holding company or parent mixed financial holding company.

d) Due to penalties being imposed that derive from the application of other penalty systems applicable to entities operating in the financial system and establish withdrawal of the licence as a penalty.

3 ter. Adequate reasons must be given for withdrawal of the authorisation and communicated to the interested parties.

3 quater. In any case, when the entity operating in the financial system is in liquidation, once the appropriate notice has been published in the Andorran Official Gazette (BOPA), the AFA must withdraw the authorisation.”
3. A new letter, e), is added to article 11, which is drafted as follows:

“e) The AFA is authorised to develop, through technical communiqués:

i) The information to be provided to the AFA in the application for authorisations to set up entities operating in the financial system, including the schedule of activities;

ii) The requirements applicable to shareholders and partners with qualifying holdings.

The AFA must publish in a technical communiqué the list of necessary information and documentation to provide to the AFA in the applications for authorisation to create entities operating in the financial sector.”

4. Letter a) and e) of article 12 are amended and drafted as follows:

“a) The identity of shareholders or partners, whether direct or indirect, natural or legal persons, in the entity to be created or the provisional list of shareholders or partners of the entity, indicating their identity, nationality and their part of the share capital.

If they are legal persons, the composition of their administrative bodies must be indicated, and the annual accounts and audit reports relating to the three last financial years must be provided and, if they form part of a group of undertakings, the composition of the group must be indicated, and provide the above information with reference to the essential elements and the consolidated annual accounts of the group.

[...]

e) The provisional list of persons to integrate the first administrative body and the general management and control functions, with information about the professional career and activities of each of them, and also all necessary documentation to verify that the legal requirements for holding these offices are met.”

5. Article 17 is amended of Law 35/2010, of 3 June, on the regime of authorisation for new entities operating within the Andorran financial system, which is drafted on the following terms:

“Article 17. Specific criteria and technical guarantees

1. Once the application has been examined, the AFA grants an authorisation through a favourable written resolution, whenever the information and evidence adjoined to the application demonstrate compliance with all the requirements of prevailing legislation and, in particular, the requirements of articles 10, 11, 12 and 13 of this Law and its implementing regulations. Prior to concession of an authorisation, the AFA may consult other national authorities or relevant equivalent international authorities, where appropriate.

2. The following must be specifically assessed:

a) The coherence of the business project.

b) The suitability of the shareholders or partners who directly or indirectly own qualifying holdings in the planned entity, and the knowledge, experience and potential capacity of the applicants and partners to achieve the objects of the planned entity.

b bis) The reputation, knowledge, capacity and experience, according to sections 2 and 3 of article 2 of Law 7/2013, of 9 May, on the rules governing entities operating in the Andorran financial system and other provisions regulating financial activities in the Principality of Andorra, of each of the members of the administrative body and each of
the members of the general management of the planned entity, and those with control functions provided in article 2, section 19 of Law 8/2013.

c) The connections of the planned entity to other entities in the financial system that provide it with business and technological knowledge about the planned activities, among others.

d) The commitments assumed in relation to the project of the newly-created entity by the entity or entities in the financial system linked to management of the planned entity.

e) Whether the structure of the group to which the planned entity belongs allows for necessary information about completion of its activities to be obtained transparently.

f) The possibility that the planned entity may be inappropriately exposed to the risk of the non-financial activities of its shareholders or partners, or when, in relation to financial activities, the stability or control of the entity may be affected by their high risk.

g) The technical means and organisation of the management, especially relating to measures aimed at guaranteeing adequate internal control.

h) Compliance with the prudential requirements applicable to the planned entity, based on:

i) The Law on solvency and liquidity and its implementing regulations, in the case of banking and investment institutions under it, or

ii) Law 7/2013, of 9 May, on the rules governing entities operating in the Andorran financial system and other provisions regulating financial activities in the Principality of Andorra, in the case of entities operating within the financial system not covered in point i) above, and, if applicable


Compliance with the prudential requirements by the planned entity must be assessed on the basis of the group of which it forms part.

3. The AFA only grants an authorisation if, considering the need to guarantee sound, prudent management of the entities operating within the financial system, the entity concerned has sound corporate governance procedures, including a clear organisational structure, with well-defined, transparent and coherent lines of responsibility, and also efficient procedures for the identification, management, control and communication of risks to which it is or may be exposed, together with suitable internal control mechanisms, including adequate administrative and accounting procedures.

The systems, procedures and mechanisms mentioned in the previous paragraph must be thorough and proportional to the nature, scale and complexity of the services provided by the planned entity.

4. The AFA must refuse the authorisation to commence activities to an entity operating in the financial system if, considering the need to guarantee sound, prudent management by the entity operating within the financial system, it is not satisfied in relation to the suitability of the shareholders or partners who directly or indirectly own qualifying holdings.

5. When there are close links between the planned entity operating within the financial system and other natural or legal persons, the AFA should only grant the authorisation if those links do not undermine the effectiveness of its supervisory functions.

For this purpose, “close links” means a situation where two or more natural or legal persons are linked in any of the following ways:

a) participation in the form of ownership, directly or through a control relationship, of 20% or more of voting rights or capital in a company;

b) a control relationship;
c) a permanent link between both or all of them and one third party through a control relationship.

For this purpose, “control” means the relationship between a parent institution and a subsidiary, or the relationship of the same kind between any natural or legal person and a company, in any of the control situations described in point 7 of article 2 of Law 8/2013, of 9 May, on the organisational requirements and operating conditions for entities operating in the financial system, investor protection, market abuse and financial guarantee agreements.

6. The AFA must refuse authorisation to commence activities to an entity operating within the Andorran financial system when implementation of the laws, regulations or other administrative provisions established in the legal framework of a third country applicable to one or more natural or legal persons with which the entity operating within the Andorran financial system has close links, undermines the effectiveness of its supervisory functions.

7. The AFA must require entities operating in the financial system to provide the information necessary to continuously monitor compliance with the conditions referred to in sections 5 and 6 of this article.

8. When any of the following circumstances occurs, before granting authorisation to create an entity operating in the financial system, the AFA must obtain confirmation of non-opposition from the corresponding foreign supervisory authority of the third country:

a) When it is planned for the entity operating within the financial system to be controlled by one of the following authorised entities in a third country: a credit institution, a financial investment entity, a specialised credit institution – not banks, a payment or electronic money institution, an insurance entity or a reinsurance entity.

b) When it is planned for the entity operating within the financial system to be controlled by the parent entity of one of the following authorised entities in a third country: a credit institution, a financial investment entity, a specialised credit institution – not banks, a payment or electronic money institution, an insurance entity or a reinsurance entity.

c) When it is planned for the entity operating within the financial system to be controlled by the same natural or legal persons who control one of the following entities authorised in a third country: a credit institution, a financial investment entity, a specialised credit institution – not banks, a payment or electronic money institution, an insurance entity or a reinsurance entity.

9. The AFA is authorised to issue, through technical communiques, supplementary guidelines and requirements relating to the specific criteria and technical guarantees established in this article, based on international standards and, in particular, based on the guidelines issued by the European Banking Authority on these matters.”

6. Paragraph one is converted into a section, 1, and a new section, 2, is inserted into article 20, drafted as follows:

“2. The AFA, in general, should not examine the application for authorisation on the basis of the economic needs of the market.”

Fourth final provision. Amendment of the Law regulating the financial system’s disciplinary regime

The following amendments are introduced into the Law regulating the financial system’s disciplinary regime.

1. Article 2 is amended and drafted as follows:
“Article 2. Offenders and responsible parties

Offenders and responsible parties are:

- Banking institutions,
- Specialised credit institutions – not banks,
- Financial investment entities,
- Financial holding companies,
- Mixed financial holding companies,
- Mixed activity holding companies,
- Companies managing collective investment schemes,
- Payment institutions and other providers of payment services authorised under article 4 of Law 8/2018,
- Electronic money institutions,
- Audit entities, when they commit actions or omissions classified as offences in article 19 of Law 8/2013, limiting the penalties and criteria for grading penalties in the provisions of this article 19,
- Natural or legal persons that carry out the actions classified in letters a), b), d), e), h), t) and u) of article 15 and letters a), b) and c) of article 16.
- Regulated entities, as defined in section 4 of article 2 of the Law on financial conglomerates, that fail to comply with the elements of additional supervision included in section 1 of article 7 of the said Law.

Offenders and/or parties responsible for the offence are those holding administrative or general management positions, de jure or de facto, and the managers of the control functions provided in article 2, section 19 of Law 8/2013, of the offending entities and entities responsible for the offence, when the offences can be attributed to their wilful misconduct or negligence.”

2. Article 8 is amended and drafted as follows:

“Article 8. Initiation and preliminary proceedings

1. The AFA starts the disciplinary procedure and examines the corresponding file.

For this purpose, it notifies commencement of proceedings to the alleged offenders and/or parties responsible for the potential offence, informs them of the acts motivating proceedings, their potential classification as an offence and specifies the articles setting out the corresponding penalty.

The AFA orders appropriate evidence to be taken to clarify the facts.

The list of accusations together with the statement of facts, reference to the infringed legal precepts and proposed penalty, is notified to the accused so that, within the unrenewable period of ten working days from the day after notification, they may answer with any arguments they deem appropriate or make the voluntary payment of the proposed fine with a reduction of 20% on the terms established in section 2 of this article.

If, from the argument, supplementary evidence seems appropriate, its results will be communicated and any appropriate supplementary arguments must be made within the following ten working days.

If the proposed fine is paid on the conditions established in section 2 of this article, summary proceedings will be pursued, otherwise ordinary disciplinary proceedings will be pursued.
2. Once voluntary payment of the fine proposed in the list of accusations with a discount of 20% is made by the party concerned, he must notify the AFA within 10 working days from notification of the list of accusations as established in the previous section through summary proceedings. This voluntary payment has the following effects:
   a) Waiver of claims against the list of accusations.
   b) Full agreement and acceptance by the offender of the alleged facts and offences, and acknowledgement of committing the offence with the legal grounds underlying the penalty.
   c) Irrespective of the type of offence, the list of accusations will be considered a disciplinary decision, acquiring administrative finality when the fine is paid.

Voluntary payment of the fine proposed in the list of accusations on the conditions established in this article involves, apart from the said discount of 20% on the fine, a 20% reduction of any period of temporary suspension of the person or persons holding senior management posts within the structure of the liable person proposed in the list of accusations.

Lodging any kind of appeal, whether administrative or of a jurisdictional nature, against the list of accusations, as a disciplinary decision, means that the appellant waives both the 20% reduction of any period of temporary suspension of the person or persons holding senior management posts within the structure of the liable person, and the 20% discount on the applied fine, payment of which must be made by the appellant within 3 days from the date of lodging the relevant appeal. Once this term expires, the above-mentioned amount may be claimed by enforcement procedure.

3. Alternatively, once commencement of proceedings has been notified, the Director General of the AFA may propose a penalty to the offender(s) at any time during the proceedings which, if accepted by the offender(s), who has 10 working days to accept it, would terminate the proceedings with imposition of the corresponding penalty/ies, being considered disciplinary decision, and would become final administratively from the time of actual payment of the fine. This would therefore end the proceedings, except in relation to restoring the altered situation or deciding on compensation for damages caused by the offence, if appropriate.

The AFA must apply the 40% discount to the amount of the proposed fine(s). This discount and closure of the proceedings depends on the withdrawal or waiver of any action or appeal against the fine through the administrative or judicial channel.

In this case, the AFA must include at least the following information in the proposal for this special procedure:
   a) Identification of the person or persons who are allegedly the offenders and/or responsible for the supposed offence;
   b) the facts that motivated commencement of proceedings, its classification as an offence, the proposed penalties and the possible application of discounts for acceptance and payment, which are applicable to the special procedure;
   c) the competent body for deciding the proceedings.

A condition of this special procedure is that the proposed penalty is solely of a pecuniary nature.

Non-acceptance of the proposal in this special procedure by any or all of the accused results, for those who do not accept it, in continuation of the disciplinary procedure through ordinary proceedings, without the proposal, and the penalty contained in it, entailing, in any way, continuation of the procedure through ordinary proceedings, or the final penalty.
4. Neither acceptance of the penalties or payment on the terms established in section 2 and 3 of this article may provide the grounds or evidence to classify the conduct of other natural or legal persons.

In both cases, conclusion of the procedure precludes any new disciplinary proceeding based on the same facts and grounds and against the same persons."

3. Section 3 of article 12 is amended and drafted as follows:

“Article 12. Precautionary measures

[...]

3. These measures may consist of:
   a) Restricting the field of action of entities operating in the financial system;
   b) Provisionally prohibiting certain types of operations;
   c) Ordering the provisional suspension of persons who, by holding administrative or
general management positions, de jure or de facto, or being in charge of control
functions in the entities listed in article 2, appear as alleged responsible parties
for very serious offences;
   d) Appointing provisional administrators and specifying the scope of their
responsibilities;
   e) The temporary suspension of voting rights attached to the shares of shareholders
in the entities listed in article 2."

4. Article 15 is amended and drafted as follows:

“Article 15. Very serious offences

Very serious offences are those that substantially affect the solvency, liquidity and
stability of the entities or undermine the operational legitimacy of the structure of the
financial system, and any offences that conceal the real situation of the entity.

Very serious offences are:
   a) Receiving money from the public, as deposits or other repayable funds, without
the legal capacity to do so, according to prevailing legislation.
   b) The pursuit of other specific financial activities reserved exclusively for each of
the different types of entities operating in the financial system, according to
prevailing legislation, by an entity operating within the financial system or any
natural or legal person.
   c) The pursuit of economic activities not pertaining to the financial system, or not in
the company’s objects, unless legally authorised, when not of an occasional or
isolated nature.
   d) Acquiring or transferring, directly or indirectly, a qualifying holding in an entity
operating in the financial system, or increasing/reducing that holding, so that the
proportion of voting rights or capital owned through acquisition/transfer becomes
greater or less than 20%, 30% or 50% of the voting rights or capital, or the entity
operating in the financial system becomes its subsidiary, without obtaining prior
authorisation for the transaction from the AFA.
   e) When an entity, on realising that any acquisition or transfer of shares in its capital
that results in achieving or reducing the percentages of 10%, 20%, 30% or 50%
of that capital, or the entity operating in the financial system becomes its
subsidiary, does not inform the AFA of those acquisitions or transfers and
infringes sub-sections i) and i bis) of letter a) of section 2 of article 20 of Law
8/2013, of 9 May, on the organisational requirements and operating conditions
for entities operating in the financial system, investor protection, market abuse and financial guarantee agreements.

f) A breach of the suitability requirements by members of the board of directors and members of the general management, and also those with control functions, when the AFA discovers the existence of a breach of the requirements, which is not corrected after sending the relevant demand.

g) Carrying out acts or transactions without authorisation, when required, not following the basic conditions of that authorisation, or obtaining the authorisation through false declarations or any other irregular or illegal means, with intent.

h) Non-compliance, for a period of 6 months or more, with the prudential requirements laid down in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, in the implementing regulations and in the corresponding technical communiqués, in the case of banking entities and investment entities subject to it, according to sections 1 and 2 of article 2, relating to:

- not having sufficient coverage of the own resources requirements according to articles 46 and 56, when these lie below the 80% minimum established on the basis of assumed risks, or below the same percentage of the own resources requirements imposed, if appropriate, by the AFA on a specific entity according to letter a) of section 1 of article 97;
- specific liquidity requirements provided in article 98;
- rules for maintaining liquid assets established in article 81;

i) Not sending to the AFA the data or documents to be sent, or which it requires when performing its functions, or the incomplete or inaccurate transmission of them, when this makes it difficult to ascertain the solvency or liquidity of banking entities and investment entities. For the purposes of this sub-section, failure to send means the untimely transmission outside the deadline provided in the relevant rule or the deadline conceded by the AFA on carrying out the relevant demand, if applicable, whenever the untimely transmission has a significant impact on the supervisory capacity of the AFA or obscures any non-compliance. Specifically included in this letter is the failure to send or the incomplete or inaccurate transmission of:

1) The data mentioned in section 3 of article 52 of the Law on solvency, liquidity and prudential supervision of banking entities and investment entities;

2) The information about major risks, breaching section 5 of article 78 of Law on solvency, liquidity and prudential supervision of banking entities and investment entities;

3) The information about compliance with the own resources requirements defined in article 46, so breaching section 1 of article 52 of the Law on solvency, liquidity and prudential supervision of banking entities and investment entities;

4) The information about liquidity, breaching section 5 of article 81 of the Law on solvency, liquidity and prudential supervision of banking entities and investment entities;

5) The information about the leverage ratio, so breaching article 85 of the Law on solvency, liquidity and prudential supervision of banking entities and investment entities.

j) When an entity reaches an exposure that exceeds the limits established in article 78 of the Law on solvency, liquidity and the prudential supervision of banking
entities and investment entities and its implementing regulations for a period of 6 months or more.

k) When an entity is exposed to the credit risk of a securitisation position without meeting the conditions established in article 79 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities and its implementing regulations.

l) When an entity makes payments to owners of instruments included in the own funds of the entity, infringing article 62 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, or in the circumstances where the implementing regulations in letter b), section 3 of article 28, letter b), section 2 of article 31 or letter b), section 3 of article 35 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, prohibits such payments to owners of instruments included in own funds.

m) Failing in the duty to submit to audit the annual individual and consolidated accounts, as applicable, as established in prevailing legislation.

n) Not publishing the information required in article 86 and sub-section xvi), letter e), section 1 of article 89 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, or publishing it in an incomplete or inaccurate manner.

o) When the entity operating in the financial system or the consolidation group or financial conglomerate to which it belongs, has or presents defects in its organisational structure, its internal control mechanisms or its administrative and accounting procedures, including those relating to risk management and control, when such defects threaten the solvency or viability of the entity operating in the financial system or the consolidation group or financial conglomerate to which it belongs.

p) When the entity operating in the financial system or consolidation group or financial conglomerate allows one or more persons who do not meet the requirements in article 6 bis of Law 8/2013 to become or continue to be members of the board of directors, the general management or persons with control functions when the AFA discovers the existence of the breach in the requirements and it is not fixed after sending the relevant demand.

q) When financial holding companies or mixed financial holding companies allow members of the administrative body who do not have the reputation, knowledge, skills and sufficient experience, according to article 103 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities.

r) When the entity operating in the financial system or the consolidation group or financial conglomerate allows one or more persons who are members of the board of directors, the general management or with control functions, to breach the corporate governance rules and remuneration policies established in Law 8/2013 and its implementing regulations and legislation.

s) The provision of payment services by persons not authorised by the AFA to be payment institutions or not authorised in any other manner.

t) The issuance of electronic money by persons not authorised by the AFA to be electronic money institutions or entities that are not authorised to do it, for any other reason.

u) Breaching safeguarding obligations when this puts clients’ interests at serious risk.
v) Non-compliance with the specific requirements of the AFA regarding corrective actions or measures.

w) Refusing to provide information to the AFA or providing false, inaccurate or incomplete information, when it prevents correct assessment by the AFA of the situation of the entity or seriously impedes the AFA from exercising its supervisory capacities.

x) The performance of acts or transactions by a payment service provider, which breach the obligations provided in the regulations for payment services in general and, in particular, the Law on payment services and electronic money and its implementing regulations when, due to the number of those affected, repeated behaviour or the effects on customer confidence and the stability of the financial system, such breaches can be considered especially significant.

y) Breaching the duty of confidentiality in the service of information about accounts provided in letter h) of section 2 of the Law on payment services and electronic money, when the number of affected or the information in the breach is significant, without prejudice to any infringement of the applicable legislation on data protection.

z) Breaching, for a period of 6 months or more, the prudential requirements established in the Law on financial conglomerates, in the implementing regulations and corresponding technical communiques, in particular the additional elements of supervision included in section 1 of article 7 of that Law.

aa) Committing more than three serious offences within three years, for which a final penalty has been imposed in administrative proceedings.”

5. Article 16 is amended and drafted as follows:

“Article 16. Serious offences

Serious offences are offences that affect the solvency, liquidity and stability of entities, which do not involve a very serious offence, and offences that prevent knowledge of the real situation of the entity.

Serious offences are:

a) Carrying out acts or transactions without authorisation, when required, not following the basic conditions of the authorisation, or obtaining it through false declarations or any other irregular or illegal means, occasionally or on one occasion, when it does not constitute a very serious offence.

b) Carrying out occasionally or on one occasion economic activities not pertaining to the financial system, or not in its company objects, unless legally authorised.

c) When the owner of a qualifying holding in an entity operating in the financial system exerts undue influence on the entity that is detrimental to the healthy, prudent management of the entity, its financial situation, stability, solvency or proper functioning.

d) Non-compliance with the repute requirements of members of the board of directors and members of the general management, and those in charge of control functions, when it does not constitute a very serious offence.

e) Non-compliance, for a period of 6 months or more, with the prudential requirements established in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, in the implementing regulations and in the corresponding technical communiqués, whenever this does not constitute a very serious offence, in the case of banking entities and investment entities subject to it, under sections 1 and 2 of article 2, in relation to:
- not having sufficient coverage of the own resources requirements according to articles 46 and 56;
- additional own funds requirements based on letter a) of section 1 of ‘article 97.

f) Non-compliance, for a period of 6 months or more, with the prudential requirements established in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, in the implementing regulations and in the corresponding technical communiqués, in the case of banking entities and investment entities subject to it, under sections 1 and 2 of article 2, in relation to:
- specific liquidity requirements defined in article 98;
- rules relating to maintaining liquid assets established in article 81;
- reaching an exposure that exceeds the limits established in article 78.

g) Not sending to the AFA the data or documents to be sent, or which it requires when performing its functions, or the incomplete or inaccurate transmission of them, when it does not constitute a very serious offence. For the purposes of this sub-section, failure to send means the untimely sending outside the deadline provided in the relevant rule or the deadline conceded by the AFA on carrying out, if applicable, the relevant demand.

h) Non-compliance, for 6 months or more, with the solvency standards established in Law 7/2013, of 9 May, on the legal regime of the operative entities of the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, in the case of:
- indirect asset management companies, financial advisers, in article 32;
- companies managing collective investment schemes, in article 48;
- specialised credit institutions – not banks – in article 54, and if applicable.

i) When the entity operating in the financial system or the consolidation group or financial conglomerate to which it belongs, presents defects in its organisational structure, its internal control mechanisms or its administrative and accounting procedures, when it does not constitute a very serious offence.

j) The occasional or isolated breach by entities operating in the financial system of the obligations for the selection and assessment of members of the board of directors, managing directors and persons in charge of control functions, of the organisational and operating conditions, corporate governance obligations, obligations to create the delegate committees of the board of directors, and remuneration obligations.

k) Non-compliance with the prevailing rules on guaranteeing deposits and investments by entities who are members of the Andorran bodies FAGADI and SAGI, respectively.

l) Not keeping the accounts in the legally-prescribed manner or keeping them with anomalies that make it difficult to know the transactions carried out by the entity and/or the economic, asset and financial situations of the entity.

m) Making excuses or resisting providing information to the AFA, directly or through the external auditors, or filing false, inaccurate or incomplete information, that makes it difficult to know specific aspects of the organisational, economic and asset situations of the entity or the consolidation group or financial conglomerate to which they belong, when this does not constitute a very serious offence.

n) Ceasing to comply with the rules relating to investor protection according to prevailing legislation.
o) Non-compliance with existing regulations on mandatory investment coefficients.

p) Breaching safeguarding obligations, when it does not constitute a very serious offence.

q) The performance of acts or transactions by a payment service provider, which breach the obligations provided in the regulations for payment services in general and, in particular, the Law on payment services and electronic money and its implementing regulations, when it does not constitute a very serious offence.

r) Breaching the duty of confidentiality in the service of information about accounts provided in letter h) of section 2 of the Law on payment services and electronic money, when it does not constitute a very serious offence.

s) Non-compliance with the specific requirements of the AFA regarding corrective actions or measures, when it does not constitute a very serious offence

t) Breaching, for a period of more than one month and less than 6 months, the prudential requirements established in the Law on financial conglomerates, in the implementing regulations and corresponding technical communiques, in particular the additional elements of supervision included in section 1 of article 7 of that Law.

u) Committing more than three minor offences within three years, for which a final penalty has been imposed in administrative proceedings.”

6. Article 18 is amended and drafted as follows:

“Article 18. Penalties

Penalties resulting from each procedure are established according to the classification of the offences.

1. Very serious offences are punished with one or more of the following penalties:

   a) A public reprimand identifying the offender and the nature of the offence;

   b) A temporary or permanent ban on carrying out functions in entities operating in the financial system, financial holding companies and mixed financial holding companies, for members of the board of directors and the general management or any other natural or legal person considered responsible;

   c) If it is a legal person, administrative fines of up to 5% of the net total annual turnover, including gross income from interest receivable and similar income, returns on shares and other fixed-income or variable securities, and commissions or brokerage for collection that were carried out in the previous financial year, or in the current financial year in the case of newly-created entities;

   d) If it is a natural person, administrative fines of up to 1,000,000 euros;

   e) Administrative fines of up to double the amount of proceeds from the offence, if these can be determined;

   f) Suspension of voting rights of the shareholder or shareholders responsible for the offences and/or nullity of the votes cast or the possibility of nullifying them;

   g) A temporary restriction on the field of action of the entity operating in the financial system and/or the appointment of provisional administrators;

   h) Withdrawal of the authorisation or licence of the entity operating in the financial system or a temporary or permanent prohibition on carrying out specific activities.

   i) Temporary or permanent ban on providing payment services.

2. Serious offences are punished with one or more of the following penalties:

   a) A public reprimand identifying the offender and the nature of the offence;
b) A temporary or permanent ban on carrying out functions in entities operating in the financial system, financial holding companies and mixed financial holding companies, for members of the board of directors and the general management or any other natural or legal person considered responsible;

c) If it is a legal person, administrative fines of up to 2.5% of the net total annual turnover, including gross income from interest receivable and similar income, returns on shares and other fixed-income or variable securities, and commissions or brokerage for collection that were carried out in the previous financial year, or in the current financial year in the case of newly-created entities;

d) If it is a natural person, administrative fines of up to 500,000 euros;

e) Administrative fines of the amount of the proceeds from the offence, if these can be determined;

f) Suspension of voting rights of the shareholder or shareholders responsible for the offences and/or nullity of the votes cast or the possibility of nullifying them;

g) A temporary restriction on the field of action of the entity and/or the appointment of provisional administrators.

h) Temporary or permanent ban on providing payment services.

3. Minor offences are punished with:

a) If it is a legal person, administrative fines of up to 0.5% of the net total annual turnover, including gross income from interest receivable and similar income, returns on shares and other fixed-income or variable securities, and commissions or brokerage for collection that were carried out in the previous financial year, or in the current financial year in the case of newly-created entities;

b) If it is a natural person, administrative fines of up to 100,000 EUR.

4. If the offending entity is a subsidiary of an Andorran parent undertaking, the relevant gross income will be the gross income resulting from the consolidated accounts of the ultimate parent undertaking in the previous financial year.

5. In applying points 1, 2 and 3 above, the penalties of the various sections of each point may be imposed alternatively or cumulatively."

7. The letters b), e), g), i), j), k), m), n), o), p), and q) are introduced and the current letter l) of article 19 is amended and drafted as follows:

“Article 19. Criteria for grading penalties

To grade penalties within the limits of the previous article, the following must be considered:

a) The intent or degree of negligence involved;

b) The level of responsibility in the offending entity of the natural person responsible for the offence;

c) Lack of supervision;

d) Failings or shortcomings in the foresight mechanisms;

e) The seriousness of the danger and/or damage caused, and their duration;

f) The indirect negative consequences of the acts for the financial system and/or the national economy;

g) Potential systemic consequences of non-compliance;

h) The objective difficulties that may have concurred due to breaking the established rules;

i) The circumstance of proceeding to correct the offence on one’s own initiative;
j) The level of cooperation with the AFA, of the natural or legal person responsible for the offence;
k) The measure adopted by the person responsible for the offence, after it was committed, to avoid recurrence;
l) The previous behaviour of the natural or legal person with regards to legal rules and regulations, and towards any provisional requirements, also considering any penalties imposed on him in the last five years;
m) Previous offences by the natural or legal person responsible for the offence;
n) The financial stability of the natural or legal person responsible for the offence, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
o) The significance of the profits obtained or losses avoided by the natural or legal person responsible for the offence, as far as can be determined;
p) Losses caused to third parties by the offence, as far as can be determined;
q) The sizeable number of people harmed by the offence."

8. Sections 1 and 2 are numbered and sections 3, 4 and 5 are introduced into article 22, drafted as follows:

“Article 22. Registration and publicity

1. The imposed penalties must be recorded in the relevant administrative record, created and kept by the AFA.

2. Penalties involving withdrawal of the authorisation, the limitation of the operating capacities of entities and public reprimands must be published in the Official Gazette: Butlletí Oficial del Principat d'Andorra.

3. Without prejudice to the data protection regulations, very serious and serious penalties and reprimands must be published on the website of the AFA, within fifteen working days of the final decision on the penalty or reprimand, with information about the type and nature of the offence and the identity of the natural or legal person who receives the penalty or reprimand.

4. The AFA may decide either to publish the penalties without identifying the offenders or not to publish them, in any of the following circumstances:
   a) When the penalty is imposed on a natural person and, on evaluation, publication of their personal data appears disproportionate;
   b) When publication could threaten the stability of the financial system, financial markets or an ongoing criminal investigation;
   c) When publication could cause disproportionate damage to the legal or natural persons involved, as far as can be determined.

As an alternative, when the circumstances referred to in this section might end within a reasonable period, publication on the website of the AFA may be temporarily delayed.

5. The published information must remain on the website of the AFA for the following five years.”

Fifth final provision. Amendment of Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF)

The following amendments are introduced into Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF).
1. The heading of article 3 and sections 4 and 8 are amended and drafted as follows:

**Article 3. Mission and objectives of supervision of the Andorran financial sector**

[...]

4. The AFA carries out the supervision, on a consolidated basis, of the entities operating in the financial system and, therefore, carries out the supervision of operating entities and their consolidation groups, including financial holding companies and mixed financial holding companies, as defined in sub-sections 55 and 57 of section 1 of article 3, respectively, of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities. The AFA also carries out supervision of the significant operations of any entity operating in the financial system with its parent mixed holding company, as defined in sub-section 58, section 1 of article 3 of the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, and also those it has with the subsidiaries of that mixed holding company.

[...]

8. In carrying out its functions, the AFA supervises and monitors the entities to ensure their compliance with prevailing legislation and, in particular, with the specific regulations of the sector, and takes preventive action on seeing signs of irregularities by those under supervision, except where prevailing legislation attributes specific powers to other administrative authorities. The administrative penalties and other disciplinary actions must be effective, proportional and dissuasive. “

2. The heading of article 4 and letters b) and d) are amended and letter o) of section 2) is added; letters b), c) and f) are amended and letters f bis and h) are added to section 3, and section 5 of article 4 is amended, which are drafted as follows:

**Article 4. Functions and competences in the field of the Andorran financial system**

2. The functions of the AFA include:

[...]

b) Examining and deciding on any application presented to the AFA to obtain a licence or authorisation to operate in the Andorran financial system according to prevailing legislation; keeping the corresponding records of the AFA up-to-date; to this end, the AFA keeps updated on its website the list containing the basic data such as the company name, business name, registered office, date of granting the authorisation, date of withdrawing or deregistering the authorisation, information about the services or activities for which it is authorised and a list of the authorised agents, of all authorised entities operating in the financial system;

[...]

c) Supervising, on a consolidated basis, the entities operating in the financial system and, consequently, the groups of entities operating in the financial system, meaning all those groups of companies in which the parent company is an entity operating in the financial system or of which the main activity is holding shares in one or more entities operating in the financial system, and also financial holding companies, for the purposes of verifying compliance with the prudential requirements established in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, and mixed financial holding companies to verify compliance with the requirements established in the Law on financial conglomerates;

[...]

o) Publishing notices and warning for the protection of investors.
3. In carrying out its functions, the AFA is competent to:

[...]

b) require any natural or legal person to deliver information and/or documentation within the time it considers appropriate;

c) carry out in-situ inspections;

[...]

f) contract independent external auditors or other experts qualified in the matter under supervision or analysis. In any case, the expenses deriving from the actions of the independent external auditors or other qualified experts must be charged to the supervised entity whenever these are tasks for exercising the disciplinary powers of the AFA and the corresponding proceedings have not been dismissed;

f bis) require delivery of information and/or documentation from any natural or legal person who has been subcontracted to carry out functions or operational activities for the supervised entities, without prejudice to the liability of the entity that delegated the functions;

[...]

h) it may use any other means that allows it to use its control competences and competences for imposing penalties, according to prevailing legislation;

[...]

The persons defined in letters a), b), d), f bis) and g) must provide to the AFA all necessary information for the AFA to be able to carry out its functions according to prevailing legislation and they must maintain secrecy.

[...]

5. To adequately carry out its functions while respecting the legal competences of the parties, the AFA cooperates with the Government and other national authorities or bodies, providing assistance and exchanging any necessary confidential information.

In situations of emergency relating to the stability of the Andorran financial system, the AFA may exchange any relevant information with the competent national authorities, national bodies and ministries, as appropriate.

When the exchange of confidential information contains personal data, this may only be exchanged by the AFA with the judicial criminal authority, with the competent national authority for fighting money laundering and terrorism financing, with the competent national authority for resolution, with the bodies in charge of the systems for guaranteeing deposits and investments, with the Police Force and/or the external auditor regarding the data of the entity concerned. Equally, the AFA may collaborate with the competent national authority for fighting money laundering and terrorism financing within the framework of investigations or inspections while carrying out its functions.

The AFA may exercise its supervisory and disciplinary powers through a request to the competent judicial authorities; in this respect, it may request and obtain from the Andorran Magistrates’ Courts (Batllia) the judicial assistance it requires to fulfil its functions of control and supervision.”

3. Article 4 ter is added and drafted as follows:

“Article 4 ter. Procedure for reporting potential infringements

1. The AFA establishes, through technical communiqués, effective and reliable mechanisms to encourage the communication of potential or real offences under the Law regulating the financial system’s disciplinary regime; chapter IV of Law 8/2013 of 9
May 2013, on the organisational requirements and terms of operation of operative entities of the financial system, protection of investors, market abuse and financial guarantee agreements, and Law 12/2017 on the regulation and supervision of insurance and reinsurance in the Principality of Andorra.

2. The mechanisms to which section 1 refers must include, at least:
   a) specific procedures for receiving reports of offences and their follow-up;
   b) adequate protection for the employees of entities subject to the disciplinary regulations mentioned in paragraph 1 above, who report offences committed in the entity, against reprisals, discrimination or other kinds of unfair treatment at least;
   c) protection of the personal data of both the person who reports the offences and the natural person allegedly responsible for the offence, and
   d) precise rules that guarantee, in all cases, the confidentiality of the person who reports the offences committed inside the entity, unless a prevailing legal provision requires disclosure within the context of new investigations or subsequent judicial proceedings."

4. The heading of article 5 is amended and drafted as follows:

"Article 5. Communication framework of the AFA"

5. The heading of article 19 is amended and sections 1 and 5 of it, which are drafted as follows:

"Article 19. Duty of secrecy

1. The members of the governing bodies of the AFA, their staff and anyone who carries out or has carried out a function in the AFA, including the external auditors or other experts contracted by the AFA, have the duty to maintain secrecy on all information obtained within the framework of their mandate, in carrying out their functions and their professional activities at the AFA, even after termination or resignation.

This duty of secrecy must also apply to any confidential information that the AFA has exchanged with other national authorities or bodies or any other natural or legal person, according to section 5 of article 4 of this Law.

5. In any cases where a specific law regulating the functions and competences of the AFA does not explicitly authorise the AFA to disclose confidential information, the receipt, exchange and transmission of confidential information by the AFA to national authorities or official bodies with equivalent to complementary competences to those of the AFA is authorised, when the aim is to protect depositors and investors, for the purposes of prudential supervision, in processes of resolution and/ or for the stability of the financial system."

6. The heading of article 20 is amended and drafted as follows:

"Article 20. International cooperation"

7. Article 20 ter is added and drafted as follows:

"Article 20 ter. Supervisory colleges

The AFA, as a supervisor on a consolidated basis, must ensure, when appropriate, that supervisory colleges are set up to help foster suitable coordination and cooperation with the supervisory authorities of third countries."
8. The transitional provisions of Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF) are renumbered and a fourth transitional provision added, drafted as follows:

“First transitional provision

The annual supervision tax which, according to the provisions of chapter four of this Law, must be paid by the entities operating within the financial system and the collective investment schemes under Andorran law, must be applied to the financial years that start from entry into force of this Law.

Second transitional provision. Validity of authorisations granted before 1 January 2018

According to the second transitional provision of Law 12/2017, of 22 June, on the regulation and supervision of insurance and reinsurance in the Principality of Andorra, administrative authorisations granted to insurance and reinsurance entities and delegates of non-resident entities appointed under the previous legislation, do not have to file a new application for authorisation, without prejudice to the fact that from entry into force of this Law, they are subject to the new ordinary or simplified system of supervision and must pay the corresponding tax.

Third transitional provision. Mandatory registration of insurance brokers operating in the Principality of Andorra

Brokers who carry out their activities in the Principality of Andorra must apply for registration with the Agent Register and pay the corresponding tax within three months after entry into force of this Law.

Fourth transitional provision

The AFA has until 31/12/2020 to develop the specific provisions relating to the procedure for reporting possible offences.”

9. Section 4, letter a) of article 32 of Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF), is amended and drafted as follows:

“Article 32. Annual supervision tax for Andorran banking entities

(…)

a) The individual supervision tax for each banking entity, determined on the basis of the total individual balance of the entity, which for financial year N is set on the basis of their individual audited annual accounts on 31 December of the financial year N-1, according to the following scale:

<table>
<thead>
<tr>
<th>Total individual balance</th>
<th>Tax liability for the annual supervision tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to 500 million euros</td>
<td>59,500 euros</td>
</tr>
<tr>
<td>Higher than 500 and lower than or equal to 1,000 million euros</td>
<td>91,000 euros</td>
</tr>
<tr>
<td>Higher than 1,000 and lower than or equal to 3,000 million euros</td>
<td>165,000 euros</td>
</tr>
<tr>
<td>Higher than 3,000 million euros</td>
<td>210,000 euros</td>
</tr>
</tbody>
</table>

10. A new fifth transitional provision is added to Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF), which is drafted as follows:

“Fifth transitional provision. Annual tax on Andorran banking entities
The amounts of tax defined in article 32 apply to the taxes incurred in financial years after 31 December 2018.

Sixth final provision. *Redraft*

It is delegated to the Government to publish, within six months of the date of entry into force of this Law, in the Andorran Official Gazette (BOPA), the corresponding text containing Law 10/2013, of 23 May, on the Andorran National Institute of Finance (INAF).

Seventh final provision. *Implementing regulations*

The Government is authorised to draft, adapt or update, as applicable, the necessary regulations for implementing this Law. Specifically, the Government shall pass the general implementing regulations for the Law.

Eighth final provision. *Entry into force*

1. This Law will enter into force the day after publication in the Andorran Official Gazette (BOPA).

2. Notwithstanding the provisions of section 1, article 60 shall apply from 1 January 2020 and articles 54, 55, 56, 57, 58, 59 and 60 shall apply from 1 January 2021.