

Delegated legislation

Decree

Having regard to article 59 of the Andorran Constitution, under which the General Council can, by means of a law, delegate the exercise of its legislative function to the Government.

Having regard to the delegation of legislation to the Government established in the eighth final provision of Law 17/2019 of 15 February amending Law 8/2013 of 9 May on the organisational requirements and operating conditions for entities operating within the financial system, investor protection, market abuse and financial collateral arrangements, under which the Government is entrusted to publish in the Official Gazette of the Principality of Andorra (BOPA), within six months of the said Law coming into force, the recast text of the Law of 27 November 1997 regulating the disciplinary regime of the financial system.

Whereas, in fulfilment of the eighth final provision of Law 17/2019, this legislative Decree recasts the content of the Law regulating the disciplinary regime of the financial system, including the amendments deriving from Law 8/2018 of 17 May on payment services and electronic money; Law 20/2018 of 13 September regulating the Andorran Deposit Guarantee Fund and the Andorran Investment Guarantee System; Law 27/2018 of 25 October amending Law 8/2018 of 17 May on payment services and electronic money; Law 35/2018 of 20 December on solvency, liquidity and the prudential supervision of banking entities and investment entities and, to guarantee clarity when consulting this legislative Decree and preserve legal certainty, indicates from which of the said laws each of the provisions arises. Moreover, any supplementary provisions which have been voided due to their transitional nature or subsequent legislative amendments are not included.

At the proposal of the Minister of Finance, the Government, in its session on 17 July 2019, approved the following Decree:

Single article

It is ordered to publish in the Official Gazette of the Principality of Andorra (BOPA) the recast text of the Law on the disciplinary regime of the financial system, which will enter into force on the day after publication.

Derogatory provision

The Decree of 19 February 2014, in which the recast text of the Law on the disciplinary regime of the financial system of 27 November is published, is repealed.

Published for public information.

Andorra la Vella, 17 July 2019

Xavier Espot Zamora
Head of Government

Recast text of the Law on the disciplinary regime of the financial system of 27 November 1997

Chapter One. Scope of the Law

Article 1. *Scope of the Law*

The Law regulating the disciplinary regime develops two kinds of measures: preventive measures and those relating to administrative offences.

Article 2. *Offenders and responsible parties*

Offenders and responsible parties are:

- Banking entities,
- Non-bank specialised credit institutions,
- 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 infringements in article 19 of Law 8/2013, limiting the sanctions and criteria for grading sanctions in the provisions of the same article 19,
- Natural persons or legal entities 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 infringement are those that hold administrative or general management positions, de jure or de facto, and those in charge of the control functions provided in article 2, section 19 of Law 8/2013, of entities that commit and are responsible for the infringement, when the infringements can be attributed to their wilful misconduct or negligence.

Chapter II. Preventive disciplinary measures

Article 3. *The Andorran financial system authority*

The Andorran Financial Authority (AFA) exercises supervisory and control functions over entities operating within the financial system and monitors their performance to ensure that they fulfil the legal and regulatory provisions that regulate their activities, and takes preventive action if there are indications of irregularities.

Article 4. (repealed)

Article 5. Warnings

In the exercise of its supervisory and control functions, the AFA issues warnings to the different components of the financial system regarding actions or procedures which, while not constituting an infringement, depart from the standards of good professional practice.

Article 6. Orders

In the exercise of its supervisory and control duties, the AFA shall issue reasoned orders to the different components of the financial system regarding risky procedures that need to be changed, within a period specified in the order.

Chapter III. Sanctions procedure

Article 7. Competent authority to exercise disciplinary and sanctioning powers

The AFA, as the Andorran financial system authority, exercises disciplinary powers over the whole financial system.

Article 8. Initiation and preliminary proceedings

1. The AFA initiates the sanctions 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 infringement, informs them of the acts motivating proceedings, their potential classification as an infringement and specifies the articles that set out the corresponding sanction.

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 sanction, is notified to the accused so that, within the non-renewable period of ten working days from the day after notification, they may respond with any arguments they deem appropriate or pay the proposed fine voluntarily with a reduction of 20% on the terms established in section 2 of this article.

If, from the argument, supplementary evidence seems appropriate, the results of this 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 terms established in section 2 of this article, summary proceedings will be conducted, otherwise ordinary proceedings will be conducted.

2. If the party concerned pays the fine proposed in the list of accusations voluntarily, with a discount of 20%, 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) It waives the submission of arguments against the list of accusations.
- b) Full agreement and acceptance of the alleged facts and infringements by the offender, and acknowledgement of having committed them, on the legal grounds substantiating the sanction.
- c) Irrespective of the type of infringement, the list of accusations will be considered a sanction decision, acquiring administrative finality once the fine is paid.

Voluntary payment of the fine proposed in the list of accusations on the conditions established in this article entails, apart from the said discount of 20% of 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 party proposed in the list of accusations.

Lodging any kind of appeal, whether of an administrative or judicial nature, against the list of accusations, being a sanction 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 party, 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 through enforcement proceedings.

3. Alternatively, once commencement of proceedings has been notified, the General Director of the AFA may propose a sanction 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, terminates the proceedings with the imposition of the corresponding sanction(s), being considered a sanction decision and acquiring administrative finality from the time of actual payment of the fine. This therefore ends the proceedings, except in relation to restoring the altered situation or deciding on compensation for damages caused by the infringement, where appropriate.

The AFA shall apply a 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 that allegedly committed and/or are responsible for the potential infringement;
- b) the facts that motivated the commencement of proceedings, the class of infringement, the proposed sanctions and the potential application of discounts for acceptance and payment, applicable to the special procedure;
- c) the competent body for deciding the proceedings.

A condition of this special procedure is that the proposed sanction be solely of a pecuniary nature.

Non-acceptance of the proposal of this special procedure, by any or all of the accused, results in the continuation of the sanctions procedure for anyone that does not accept it, through ordinary proceedings, the proposal and the sanction therein not presupposing, in any way, continuation of the procedure through ordinary proceedings or the final sanction.

4. Neither acceptance of the sanctions nor payment on the terms established in section 2 and 3 of this article provide the grounds or evidence to qualify the conduct of other natural persons or legal entities.

In both cases, conclusion of the procedure precludes any new sanction proceeding based on the same facts and grounds and against the same persons.

Article 9. Decision

1. Once the inquiry is completed, the AFA issues a decision on the case within two months. The decision shall include a reasoned explanation of the facts and their exact legal classification, determine the infringement stemming from those facts and the entity, person or persons that committed and/or

are responsible for the infringements and specify the appropriate sanction, or otherwise declare the inexistence of the infringement or responsibility.

2. Sanctions imposed on natural persons or entities that have committed and/or are responsible for the same infringement are subject to a single decision resulting from a single procedure.

3. If the sanction requires the appointment of provisional administrators, the AFA shall specify the scope of their powers and actions in its decision.

4. The AFA shall notify the final decision on the sanctions imposed for minor, serious and very serious infringements to the entities concerned and inform them of any remedies, where applicable.

Article 10. (repealed)

Article 11. *Appeal*

Decisions imposing sanctions can be appealed before the Administrative Division of the *Tribunal de Batlles* [Magistrates Court] within thirteen working days from the day after notification of the decision.

In accordance with the Administration Code, a judicial appeal does not suspend enforcement, notwithstanding the discretionary powers of the Administrative Division of the *Tribunal de Batlles* deriving from current legislation by virtue of the Administration Code itself and concordant provisions.

Article 12. *Precautionary measures*

1. Once the procedure has been initiated, the AFA may, in the exercise of its disciplinary powers, adopt any precautionary measures it deems appropriate with the ultimate aim of protecting depositors and investors, and of ensuring the stability of the financial system and the effectiveness of the decision adopted.

2. (no content)

3. These measures may consist of:

- a) Restricting the scope of action of entities operating within the financial system;
- b) Provisionally banning certain types of transactions;
- 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 parties responsible for very serious infringements;
- d) Appointing provisional administrators and specifying the scope of their competences;
- e) The temporary suspension of voting rights attached to the shares of shareholders in the entities listed in article 2.

4. The duration of the temporary suspension counts towards any suspension penalties imposed.

5. The AFA shall inform the Government of any precautionary measures it takes.

6. An appeal against the decision of the AFA can be brought before the Administrative Division of the *Tribunal de Batlles* [Magistrates Court] within thirteen working days from the day after notification of the decision.

In accordance with the Administration Code, a judicial appeal does not suspend enforcement, notwithstanding the discretionary powers of the Administrative Division of the *Tribunal de Batlles* deriving from current legislation by virtue of the Administration Code itself and concordant provisions.

Chapter IV. Infringements

Article 13. *Definitions and preliminary specifications*

1. Any actions or omissions of the offenders or those responsible that infringe mandatory legal provisions are sanctionable infringements on the terms established in this Law.
 2. These infringements are sanctionable, through administrative channels, according to the administrative procedure established in Chapter III of this Law and, subsidiarily, by application of the Administration Code and the Sanctions Procedure Regulations passed by the Government on 9 January 1991.
 3. The sanctions established by this Law are applicable without prejudice to any liabilities deriving from acts subject to a criminal penalty.
- If the committed infringements might constitute a criminal offence, the AFA shall immediately inform the judicial authority or the Public Prosecutor's Office.
4. If the judicial inquiry involving a final sentence from the criminal court on one of the entities mentioned in article 2 of this Law, results in the discovery of concurrent administrative offences, the appropriate proceedings shall be commenced.

Article 14. *Classification*

Infringements are classified as very serious, serious or minor, as defined by this Law.

Article 15. *Very serious infringements*

Very serious infringements 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 infringements that conceal the real situation of the entity.

Very serious infringements are:

- a) Receiving money from the public, as deposits or other repayable funds, without the legal capacity to do so, according to current legislation.
- b) The pursuit of other specific financial activities reserved exclusively for each of the different types of entities operating within the financial system, according to current legislation, by an entity operating within the financial system or any natural person or legal entity.
- 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 one-off nature.
- d) Acquiring or transferring, directly or indirectly, a qualifying holding in an entity operating within the financial system, or increasing/reducing that holding, so that the proportion of voting rights or capital owned through the acquisition/transfer becomes greater or less than 20%, 30% or 50% of the voting rights or capital, or the entity operating within the financial system becomes its subsidiary, without obtaining prior authorisation for the transaction from the AFA.
- e) When an entity, on realising that an acquisition or transfer of shares in its capital results in acquiring or reducing the percentages of 10%, 20%, 30% or 50% of that capital, or that the entity operating within the financial system becomes its subsidiary, does not inform the AFA of those acquisitions or transfers and infringes subsections 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 within the financial system, investor protection, market abuse and financial collateral arrangements.

- 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 that is not corrected after sending the relevant demand.
- g) Carrying out acts or transactions without the required authorisation, without following the basic conditions of that authorisation, or by 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 established in the Law on solvency, liquidity and the prudential supervision of banking entities and investment entities, in the implementing regulations and 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 fall below the 80% minimum established on the basis of assumed risks, or below the same percentage of the own resources requirements imposed, where appropriate, by the AFA on a specific entity by virtue of 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) Failing to send to the AFA the data or documents to be sent, or which it requires in the exercise of 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 subsection, failure to send means the untimely transmission outside the deadline provided in the relevant rule or the deadline granted by the AFA on carrying out the relevant demand, where 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 subsection 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 the 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 the 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 the 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 the 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 the 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 provided in letter b), section 3 of article 28, letter b), section 2 of article 32 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, where applicable, as established in current legislation.
- n) Not publishing the information required in article 86 and subsection 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 within the financial system or the consolidation group or financial conglomerate to which it belongs, is lacking or presents deficiencies in its organisational structure, internal control mechanisms or administrative and accounting procedures, including those relating to risk management and control, if the deficiencies threaten the solvency or viability of the entity operating within the financial system or the consolidation group or financial conglomerate to which it belongs.
- p) When the entity operating within 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 a 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 within 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 that 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 the

breaches can be considered especially significant due to the number of those affected, repeated behaviour or the effects on customer confidence and the stability of the financial system.

- y) Breaching the duty of confidentiality in the information service about accounts provided in letter h) of section 2 of article 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 communiqués, in particular the additional elements of supervision included in section 1 of article 7 of that Law.
- aa) Committing more than three serious infringements within three years, for which a final sanction has been imposed in administrative proceedings.

Article 16. *Serious infringements*

Serious infringements are infringements that affect the solvency, liquidity and stability of entities, which do not involve a very serious infringement, and infringements that conceal the real situation of the entity.

Serious infringements are:

- a) Carrying out acts or transactions without the required authorisation, without following the basic conditions of the authorisation, or by obtaining the authorisation through false declarations or any other irregular or illegal means, occasionally or on one occasion, when it does not constitute a very serious infringement.
- 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 within 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 reputational 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 infringement.
- 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 infringement, 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 more than 1 month and less than 6 months, 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) Failing to send to the AFA the data or documents to be sent, or which it requires in the exercise of its functions, or the incomplete or inaccurate transmission of them, when it does not constitute a very serious infringement. For the purposes of this subsection, failure to send means the untimely sending outside the deadline provided in the relevant rule or the deadline granted by the AFA on carrying out, where 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 entities operating within the Andorran financial system and other provisions regulating the practice of financial activities in the Principality of Andorra, in the case of:
- indirect asset management companies, financial advisers, in article 32 **Error! No s'ha trobat l'origen de la referència.;**
 - companies managing collective investment schemes, in article 48 **Error! No s'ha trobat l'origen de la referència.;**
 - non-bank specialised credit institutions, in article 54, where applicable.
- i) When the entity operating within the Andorran financial system or the consolidation group or financial conglomerate to which it belongs, presents deficiencies in its organisational structure, internal control mechanisms or administrative and accounting procedures, when this does not constitute a very serious infringement.
- j) The occasional or one-off breach of the obligations for the selection and assessment of members of the board of directors, managing directors and persons in charge of control functions, the organisational requirements and operating conditions, corporate governance obligations, obligations to create the appropriate delegate committees of the board of directors, and remuneration obligations.
- k) Non-compliance with the current rules on guaranteeing deposits and investments by entities that 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 infringement.
- n) Ceasing to comply with the rules relating to investor protection according to current legislation.
- o) Non-compliance with existing regulations on mandatory investment coefficients.
- p) Breaching safeguarding obligations, when it does not constitute a very serious infringement.
- q) The performance of acts or transactions by a payment service provider that 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 infringement.

- r) Breaching the duty of confidentiality in the information service about accounts provided in letter h) of section 2 of article 2 of the Law on payment services and electronic money, when it does not constitute a very serious infringement.
- s) Non-compliance with the specific requirements of the AFA regarding corrective actions or measures, when it does not constitute a very serious infringement.
- 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 communiqués, in particular the additional elements of supervision included in section 1 of article 7 of that Law.
- u) Committing more than three minor infringements within three years, for which a final sanction has been imposed in administrative proceedings.

Article 17. Minor infringements

Minor infringements are failures to fulfil obligations or prohibitions set out in current legislation, including technical communiqués from the AFA, which contain precepts that specifically refer to the entities mentioned in article 2 of this Law and are mandatory for them, which do not constitute a serious or very serious infringement under the two previous articles.

Equally, non-payment within the deadline of any fee payable by the referred entities to the AFA under current legislation also constitutes a minor infringement.

Chapter V. Sanctions

Article 18. Sanctions

The sanctions for each procedure depend on the class of infringement.

1. Very serious infringements are punished with one or more of the following sanctions:

- a) A public reprimand identifying the offender and the nature of the infringement;
- b) A temporary or permanent ban on performing functions in entities operating within the financial system, financial holding companies and mixed financial holding companies, on members of the board of directors and the general management or any other natural person or legal entity considered responsible;
- c) In the case of a legal entity, 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) In the case of a natural person, administrative fines of up to EUR 1,000,000;
- e) Administrative fines of up to double the amount of the proceeds from the infringement, if these can be determined;
- f) Suspension of voting rights of the shareholder or shareholders responsible for the infringements and/or nullity of the votes cast or the possibility of nullifying them;
- g) A temporary restriction on the scope of action of the entity operating within the financial system and/or the appointment of provisional administrators;

- h) Withdrawal of the authorisation or licence of the entity operating within the financial system or a temporary or permanent ban on carrying out specific activities.
- i) A temporary or permanent ban on providing payment services.

2. Serious infringements are punished with one or more of the following sanctions:

- a) A public reprimand identifying the offender and the nature of the infringement;
- b) A temporary or permanent ban on carrying out functions in entities operating within the financial system, financial holding companies and mixed financial holding companies, on members of the board of directors and the general management or any other natural person or legal entity considered responsible;
- c) In the case of a legal entity, 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) In the case of a natural person, administrative fines of up to EUR 500,000;
- e) Administrative fines of the amount of the proceeds from the infringement, if these can be determined;
- f) Suspension of voting rights of the shareholder or shareholders responsible for the infringements and/or nullity of the votes cast or the possibility of nullifying them;
- g) A temporary restriction on the scope of action of the entity and/or the appointment of provisional administrators.
- h) A temporary or permanent ban on providing payment services.

3. Minor infringements are punished with:

- a) In the case of a legal entity, 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) In the case of a natural person, administrative fines of up to EUR 100,000.

4. If the offending entity is a subsidiary of an Andorran parent company, the relevant gross income will be the gross income resulting from the consolidated accounts of the ultimate parent company in the previous financial year.

5. In applying points 1, 2 and 3 above, the sanctions of the various sections of each point can be imposed alternatively or cumulatively.

Article 19. Criteria for grading sanctions

To grade sanctions within the limits established in 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 infringement;

- c) Lack of vigilance;
- d) Failings or shortcomings in forward-planning mechanisms;
- e) The seriousness of the danger and/or damage caused, and the duration thereof;
- 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) Any objective difficulties that occur due to breaking the established rules;
- i) The circumstance of proceeding to correct the infringement on one's own initiative;
- j) The level of cooperation with the AFA, of the natural person or legal entity responsible for the infringement;
- k) The measures adopted by the person responsible for the infringement, after it was committed, to avoid recurrence;
- l) The previous behaviour of the natural person or legal entity with regards to legal rules and regulations, and towards any provisional requirements, also considering any final sanctions imposed on him in the last five years;
- m) Previous infringements by the natural person or legal entity responsible for the infringement;
- n) The financial health of the natural person or legal entity responsible for the infringement, as indicated, for example, by the total turnover of a legal entity or the annual income of a natural person;
- o) The value of the profits obtained or losses avoided by the natural person or legal entity responsible for the infringement, as far as can be determined;
- p) Losses caused to third parties by the infringement, as far as can be determined;
- q) The large number of people harmed by the infraction.

Chapter VI. Supplementary rules

Article 20. *Prescription*

As a general rule, the period of prescription for infringements is three years. If actions have been taken to conceal infringements from supervisory bodies, the period of prescription is ten years.

The period of prescription begins on the date on which the infringement was committed. For infringements of a continuous nature, the period of prescription begins on the date on which the activity ceases or the date of the last act constituting the infringement.

The period of prescription shall be interrupted when the appropriate sanction proceedings commence.

Article 21. *Payment of sanctions*

The amount of the sanctions imposed must be paid at the Andorran National Institute of Finance, to the Institute.

Article 22. *Registration and publication*

1. The imposed sanctions shall be recorded in the relevant administrative records, created and kept by the AFA.
2. Sanctions involving withdrawal of the authorisation, the limitation of the operating capacities of entities or a temporary or definitive ban on providing payment services, and public reprimands shall be published in the Official Gazette of the Principality of Andorra (BOPA).
3. Without prejudice to the data protection regulations, sanctions and reprimands for very serious and serious infringements shall be published on the website of the AFA, within fifteen working days of the final decision on the sanction or reprimand through the administrative channel, with information about the type and nature of the infringement and the identity of the natural person or legal entity receiving the sanction or reprimand.
4. The AFA may decide either to publish the sanctions without identifying the offenders or not to publish them, in any of the following circumstances:
 - a) When the sanction 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 could 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.

Additional provisions

First additional provision (no content)

Second additional provision (no content)

Third additional provision (no content)

Final provisions

First final provision

The Government is authorised to establish specific regulations relating to any part of this Law that requires implementing regulations and to implement them.

Second final provision

This law enters into force on the day of publication in the Official Gazette of the Principality of Andorra.

