

Law regulating the financial system

In its session held on 27 November 1993, the General Council approved the following:

Law regulating the financial system

Explanation of reasons

The financial system includes certain essential functions for the whole of a country's economy.

Based on this premise, the public authorities have to establish the structural framework and the basic regulations to facilitate the good functioning of the system, favouring its stability and ensuring that the general interests of the country are maintained.

Another factor which includes a logical public intervention lies in the fact that the financial systems and more specifically the banking systems have been overall assuming virtually a public dimension, irrespective of the private legal capacity that most of their components could have. This public dimension which mostly comprises the exercising of a power, that of creating money, was historically reserved for those who exercised sovereignty over the nation.

In parallel to these general causes, the legislative conduct of the General Council of Les Valls and the Government in regulating the financial area is expressly designated by the Constitution.

The economy of the Principality is structured within the framework of the market economy. Recent economic history indicates that the techniques arising from this principle are those best promoting the creation and distribution of wealth. Since this recognition has arisen through article 28, the constitutional text takes into consideration that if this doctrine were strictly applied it would seriously affect some of the essential values on which our society is based. For these reasons –and due to the fact that a sensible intervention does not have to damage economic growth, on the contrary it could be positive from a global perspective- the countries economically organised based on a market economy establish measures focused on moderating or complementing the market forces to promote a general well-being and a balanced development. Article 32 of the Constitution is clearly drafted following this line.

The need to regulate the financial system is also, from a functional perspective, imperative according to the constitutional text. In effect, the aforementioned article 28 states the freedom of companies and therefore demands that the current banking *status quo* in the Principality be overcome and also requests an organisation of the entire financial system based on the respect for this freedom and through the laws, making it compatible with the most important interests of the whole of Andorran society.

A specific circumstance has introduced a sense of urgency regarding legislative planning in the financial area. The Law of Provisional Measures approved by the General Council on 28 April 1993 obliged the Council to regulate the financial system as soon as possible. The present Law complements the commitments then acquired.

There are various driving ideas which form the essential structure of this Law.

Regulating has been intended to be carried out considering the unique case of Andorra. Instead of being rejected, historical experiences and formulas in this field prevailing in countries nearby or those countries which can be used as a reference point have been seriously taken into consideration. However, the determining circumstances are those which now make it advisable to legislate using very specific and immediate objectives.

The regulating must not disrupt the favourable development of those companies of the financial sector which, over the years, have succeeded in obtaining a good economic, commercial and professional structure. This regulating does however aim to correct privileged situations, making the financial system bear the corresponding public liabilities, encouraging to face the future from a perspective taking into account not only legitimate private interests, but also the general interests of the country, and supporting the sector to make it solid, coherent and maintain a positive international reputation.

The regulating is aimed to be carried out considering the need to have a present and future system with the capacity to render full and qualified services, both in the national and international financial areas. The necessary measures will be taken to ensure, from the users' standpoint, that these services are rendered in fair and transparent economic conditions.

The regulating is aimed to be efficient and at the same time it aims to prevent, to the largest extent possible, administrative burdens and bureaucracy. In the regulations arising thereof, the supervision will be prudent and must allow the overall follow-up, therefore contributing to ensuring the stability of the system and making it compatible with the clear wish not to intervene at all in the financial entities' individualised relationship with their customers. The professional code of secrecy, protected by the Andorran Criminal Code and originating from banking ethics, shall be strictly maintained. It is foreseen that the financial system will cooperate indispensably in an exceptional issue such as that of the fight against organised crime, making the efficiency of the action compatible with the strict decision not to create any kind of difficulty for the habitual customer.

That last basic idea which has inspired the regulating is that the legal texts, both this Law and the regulations and rules which will develop therefrom, will not give rise to negative situations due to precipitated actions, and that they remain open to modifications based on experience, new circumstances and future forecasts.

The contents of the Law aim to adequately define the various groups comprising the financial system, without prejudice to the fact that any necessary details are introduced to the regulations and rules and that in the future the powers attributed to a certain specific activity can be extended or modified.

It seems advisable that insurance or reinsurance companies should not be introduced into the financial system in this legislative phase. The singular nature of this sector means that in all places it has a separate treatment, even though there is a generalised tendency to consider that the dynamic nature of the insurance companies leads them increasingly to be incorporated into the financial system. In any case, the legislation currently governing the activity of these entities should be reviewed, based on the new regulating approaches regarding financial legislation.

The basic requirements of the entities included in the financial system have been defined. It has been planned that the regulations complementing the Law Regulating the Financial System, together with the specific rules of each entity, will complete the legislation. Regulations regarding the share capital, the setting up of a mandatory reserve deposit, the application of obligatory

compliance quotas and the fight against money laundering arising from drug trafficking should be specifically mentioned.

Regarding the new basic requirements, the implementation of a regime of mandatory reserves and obligatory compliance quotas by the banking system and, where applicable, the other components of the financial system have a special meaning. Until now, Andorra had not had these regulating instruments. A balanced use of the possibilities arising from these technical stipulations must positively influence the solvency and liquidity of the entities.

A component of special importance is that relating to the definition of the two foreseen technical bodies of the financial authorities: the Andorran National Institute of Finance, essentially of a technical nature, and the High Commission of Finance, with functions which are more legal and relate to the structuring of the sector.

In this Law the transitional regulations are of special importance and significance.

In effect, this Law is based on a situation which aims to efficiently and fairly normalise and reorientate; and at the same time avoid the risk of creating functional problems or giving rise to negative situations due to a lack of sufficiently foreseeing the consequences of the changes. For this reason, a period of adaptation to the new legislation has been established and it is determined that the specific regulations and the rules may be developed gradually. In short, the aim is to combine prudence with the wish to adapt the financial system to the new constitutional framework.

During this transitional period, those exceptional situations which could require individual solutions will also be resolved, taking into consideration both the individual rights and the general interest.

First chapter: Scope of the Law

Article 1

This Law affects all those individuals or legal entities who carry out a professional activity in the financial sector and it establishes the legal framework regulating the carrying out of their activities.

Professional activity in the financial sector is understood to be the habitual carrying out of banking operations and rendering of financial services.

Second chapter: Composition of the financial system

(Second Chapter, article 2: repealed by the Law governing the operational powers of the various components of the financial system. 19-12-1996)

Article 2

The Andorran financial system is comprised of:

- ~~1) Banking entities, financial entities with loan activities and other financial entities offering various services~~
- ~~2) Professional associations of the financial sector~~

~~3) Executive technical authorising bodies~~

Third chapter: Definition of the operative components of the financial system

(Third Chapter, articles 3, 4 and 5: repealed by the Law governing the operational powers of the various components of the financial system. 19-12-1996)

~~Article 3~~

~~Banking entities~~

~~“Banking entity” can be understood as a company which receives term or sight deposits and other refundable funds from the general public and grants credits on its own behalf and renders other financial services, especially those relating to payment methods.~~

~~The activities validated as characteristics of banking entities are as follows:~~

- ~~● Receipt of deposits and other refundable funds~~
- ~~● Various kinds of loans~~
- ~~● Financial leasing~~
- ~~● Payment transactions~~
- ~~● Issue and management of payment methods~~
- ~~● Granting of guarantees and similar others~~
- ~~● Transactions in money, exchange and stock markets and in term financial deposits and options~~
- ~~● Issue of securities~~
- ~~● Trade reports~~
- ~~● Rental of safe deposit boxes~~

~~Article 4~~

~~Financial entities with loan activities~~

~~1) Financial entities with loan activities are companies which normally operate on their own behalf in a branch of specialised credit. For this purpose they use their own funds, funds originating from banks and those arising from the international financial system, only when they meet the conditions established by the corresponding regulations. Therefore, they are not authorised to receive deposits directly from the general public.~~

~~2) Financial companies operating in the following kinds of specialised credit are financial entities with loan activities:~~

- ~~● Mortgage credit~~
- ~~● Financing of term sales~~
- ~~● Financial leasing~~
- ~~● Purchase and management of collection of invoices/factoring~~

~~Article 5~~

~~Other financial entities~~

~~1) “Other financial entities” are understood as entities whose activities are not related to credit.~~

~~2) This group comprises all the financial entities which do not form part of the “banking entity” group or “financial entities with loan activities” in accordance with the following classification:~~

- ~~a) Management of wealth~~
- ~~b) Investment companies~~
- ~~c) Portfolio companies~~
- ~~d) Mutual investment funds~~
- ~~e) General holding companies~~
- ~~f) Currency exchange, as principal activity~~

~~The entities included in this group may not receive money directly from the general public by way of deposits.~~

~~Letter a) of this section excludes family companies, whose statutory activity is exclusively that of managing their own net worth.~~

~~3) Insurance companies are governed by a specific legislation and are pending future inclusion in the financial system. The operations of reinsurance entities will have to wait for the development of the legislation.~~

Article 6

Professional associations

Within a period to be established in the respective legislation, each of the three groups of operational entities included in the financial system must set up a professional association which, in addition to backing the general interests of its members, must take initiatives focused on improving the technical standards in the sector, promoting cooperation in the sector which respects the exercising of reciprocal capacities; ensuring transparency in applying conditions to customers and procuring compliance with the ethical rules inherent to the profession.

The professional association will be the normal interlocutor of the technical bodies of the executive authority regarding matters of general interest to the sector.

Fourth chapter: Executive technical bodies of the financial authorities

Article 7

Delegated bodies

The entities comprising the Andorran financial system are subject to the public authority delegated to the following bodies:

- ~~• High Commission of Finance~~
(Item repealed by the Law 14/2003, of 23 October, on the Andorran National Institute of Finance. 23-10-2003)
- Andorran National Institute of Finance (INAF)

~~*Article 8*~~

~~*High Commission of Finance*~~

(Article 8: repealed by the Law 14/2003, of 23 October, on the Andorran National Institute of Finance. 23-10-2003)

~~A High Commission of Finance has been created as an autonomous body, adhering to the Ministry of Finance, the objective of which shall be to exercise a high level of executive authority, as delegated by the Government, in structuring and supervising the financial system.~~

~~Article 9~~

~~Functions of the High Commission of Finance~~

~~(Article 9: repealed by the Law 14/2003, of 23 October, on the Andorran National Institute of Finance. 23-10-2003)~~

~~The High Commission of Finance has the capacity to:~~

- ~~1) Submit to the Government, with the prior report from the INAF, proposals on the regulating and the rules relating to the financial area~~
- ~~2) Review, from a legal and institutional perspective, the proposals of the INAF regarding the rules and regulations referring to the financial area~~
- ~~3) Pass judgement, based on the report including the INAF's explicit opinion, and present the Government with the case documents for requesting the incorporation and establishing of companies in the Andorran financial area~~
- ~~4) Exercise liaison functions coordinating between the financial executive authorities and the legal system~~
- ~~5) Take control of the compliance with rules relating to the regulations against the laundering of money coming from drug trafficking and organised crime~~
- ~~6) Exercise disciplinary power over the whole of the financial system~~

~~Article 10~~

~~Composition of the High Commission of Finance~~

~~(Article 10: repealed by the Law 14/2003, of 23 October, on the Andorran National Institute of Finance. 23-10-2003)~~

~~The High Commission of Finance is comprised as follows:~~

- ~~● President: the Minister in charge of finance or his delegate~~
- ~~● Vice-President: the general manager of the INAF or his delegate~~
- ~~● The following members:~~

~~A *batlle* or magistrate appointed by the High Council of Justice~~

~~A professional from the banking sector, appointed by the Government upon proposal from the sector~~

~~Two people of renowned professional prestige, appointed by the Government~~

~~The term of office for the members appointed by the Government will be three years. The secretariat of this Commission will be assumed by the INAF.~~

~~Article 11~~

~~(Article 11: repealed by the Law 14/2003, of 23 October, on the Andorran National Institute of Finance. 23-10-2003)~~

~~The functions of the INAF as an executive technical body of the financial authority, as delegated by the Government, in accordance with the Law of 3 September 1993 are as follows:~~

- ~~1. To propose measures to be taken regarding the regulating of the financial system~~
- ~~2. To ensure application of the obligatory guarantees and compliance quotas by the banks and financial entities~~
- ~~3. To exercise control over the various components of the system~~

Fifth chapter: Basic requirements for the entities

Article 12

All the entities included in the financial system must meet certain basic requirements concerning:

- The personal and professional requirements of the holders
- The legal nature of the entity
- The nature and amount of the share capital
- The setting up of mandatory reserves
- The cover of obligatory compliance quotas, in the affected sectors
- The technical and administrative structures
- The obligation to audit the financial statements and keep strict professional secrecy

Article 13

Personal and professional characteristics

The members of the board of directors must be persons who do not have any criminal record due to international crime and who have a good personal and professional reputation.

Apart from the aforementioned characteristics, those responsible for the management of each entity must have adequate professional qualifications.

Article 14

Legal capacity

The authorisation or the adaptation of the already existing authorisation to carry out activities in the financial system shall only be granted to legal entities under Andorran Law.

Article 15

Nature of the share capital

The share capital of all the companies included in the Andorran financial system must respect the maximum limit of foreign investment established by the current Companies Act.

Article 16

Minimum share capital

1. The entities included in the Andorran financial system must have share capital in line with the nature of their activities.
2. The General Council, through a specific regulation and prior to a report from the ~~High Commission of Finance~~ INAF, will establish the minimum share capital figures required from each entity, according to the groups or sub-groups (listed in ~~articles 3, 4 and 5~~ the Law regulating the guarantee reserve deposits and other operational obligations which the bodies within the financial system have to maintain and deposit) to which they belong.

Not later than 31 December 1997 the General Council shall fix the minimum figures for company capital referred to in article 16 of the Law ordering the financial system, once it has enacted the regulations complementing the basic legislative schema covering the financial sector on the following matters and with the following timetable:

- a) During the six months following the coming into force of this law, the criteria for the solvency and liquidity of financial bodies, including the rules for weighting in questions of own funds provided for in article 18 of the Law ordering the financial system.
- b) During 1996, regulations for each of the groups of bodies within the financial system.
- c) During the first half of 1997, the disciplinary system for financial bodies which shall be exercised by the Higher Commission for Finance in pursuance of article 9 of the Law ordering the financial system.
- d) During the second half of 1997, conditions other than the minimum figure for company capital required in order to access and carry on an activity proper to a financial body.

(Article 16, point 2: modified by the Law 14/2003, of 23 October, on the Andorran National Institute of Finance. 23-10-2003 and by the fourth transitional provision of the Law regulating the guarantee reserve deposits and other operational obligations which the bodies within the financial system have to maintain and deposit. 11-05-1995)

3. Through the respective regulations, the Government shall establish the supplementary conditions which the shareholders' equity must fulfil in relation to the abovementioned share capital.

~~*Article 17*~~

~~*Deposit of guarantee reserves*~~

(Article 17: modified by the Law 1/2011, of 2nd February, for the creation of a deposit guarantee scheme for banks. 02-02-2011)

- ~~1. In addition to the share capital, the entities comprising the financial system will be obliged to keep minimum reserves of shareholders' equity which must be deposited in the Andorran National Institute of Finance, to guarantee their operational obligations.~~

- ~~2. Upon proposition by the Minister in charge of the Department of Finance and with a prior report from the INAF and the ruling from the High Commission of Finance, the Government will establish the gauges to be applied in setting up these deposits, based on the nature of the activity of the entity and regarding the banking entities, and when corresponding, financial entities with loan activity and based on the volume of investment in all concepts, with a deduction of those made with own funds and of a banking origin.~~
- ~~3. Through a specific regulation, the General Council will establish the maximum limits applicable for this concept and the minimum amounts required from each entity, based on the nature of their activity.~~
- ~~4. The conditions to be applied to the said deposits will be established by the Government.~~

Article 18

Quotas of the financial structure

Banking entities and, when the concepts correspond financial entities, are obliged to maintain an ordered financial structure to ensure their capacity to meet their obligations towards third parties.

For this purpose, the regulation will establish the minimum obligatory ratios which must accredit the entities' effective assumption of the criteria of solvency and liquidity.

Article 19

Mandatory investments

Banking entities and, when the concepts correspond, financial entities with loan activities, are obliged to maintain a quota of investment in public funds.

This matter will be subject to specific regulations.

Article 20

Technical and administrative conditions

Those holding authorisation or those requesting authorisation to operate in the financial system must demonstrate that they have, or will have, an adequate technical and administrative structure, to carry their specific activity out in ideal conditions.

The Government will establish regulations for the conditions which must be met by the entities regarding premises, installations and hiring of Andorran and foreign personnel.

Article 21

Audits

All the companies included in the financial system must have their balance sheets and statements of profit and loss audited.

The characteristics and the frequency of the audits are established, for each group or sector, in the respective regulations expanding on this Law.

Article 22

Professional secrecy

The holders of the companies included in the financial system, their directors and all their personnel, together with the external auditors, are subject to professional secrecy, in accordance with the provisions of the Criminal Code.

Sixth chapter: Legislation

Article 23

Specific regulations

In addition to the regulations established in articles 16, 17 and 19, regarding the minimum share capital, the deposit of guarantee reserves and the quota of mandatory investments, the General Council will complement the basic legislation regarding the financial system with a law regulating the fight against the laundering of money coming from drug trafficking and organised crime and with any required extension to the law on any other matter, arising from this standard law.

Article 24

Regulations

Each of the groups of entities comprising the financial system –“banking entities”, “financial entities with loan activities” and “other financial entities”- will be subject, by the Government, to specific regulations dealing with all those aspects related to this Law which require legislative expansion at a regulatory level.

Transitional Provisions

First provision

Prevailing legislation

Until the regulations have been approved and published, the activities of the various entities of the financial sector will be governed by this Law or other prevailing legal texts which have not been modified by this Law.

Second provision

Adaptation of the authorisations

1. All those individuals or legal entities which carry out their professional activities in the financial sector or who are authorised to operate therein, must apply for the adaptation of their authorisations.
2. The application must be accompanied by the following documents:
 - Registry certificate of authorisation
 - Balance sheet and statement of profit and loss for the two previous years
 - Notes to the annual accounts for the two previous years
 - Composition of the current board of directors and the superior administrative body
 - Composition of the share capital

3. Applications must be presented to the Department of Finance of the Government no later than 30 June 1994.
4. The adaptation of the application file will be declared by the Ministry of Finance on the basis of the technical report from the INAF and the ruling from the High Commission of Finance.
5. Failure to submit the adaptation application will be considered as renouncing the authorisation.
6. The declaration of the adaptation of the authorisation will be granted, when applicable, within a period not exceeding six months from the date of receiving the application or the presentation of the supplementary explanatory information which could be requested by the INAF or the High Commission of Finance.

Third provision

Period for adaptation to the new legislation

1. Once the declaration for adaptation established in the second transitional provision has been obtained, the entities operating in the financial system will have a period of one year to adapt their structure to the conditions established by this Law and those which arise from the respective regulations and rules expanding on the legislation.
2. The Government will establish the date of reference on the basis of which it will calculate the completion date.

Fourth provision

New applications for authorisation

1. Six months after the publication of the law referred to in article 16, applications to incorporate or set up new entities or for integration into the Andorran financial system subject to this Law may be presented to the Government.
2. The Government will appropriately regulate the procedure to be followed and the documents to be presented.
3. The applications stated in section 1) must be sent no later than one year from the date on which they were presented.

Fifth provision

Exceptional situations

The authorisation proceedings relating to foreign entities or bodies with activity in the financial sector, currently installed in the Principality, in accordance with special concessions or due to historical circumstances and in spite of being subject to an exceptional treatment, must follow what is established in the third transitional provision.

Sixth provision

Investments of national and social interest

Provisionally, until this Law has been expanded, banking entities may calculate the credit operations included in the investment programmes that the Government has qualified as of

national and social interest, as a reduction in the amount to be invested in public funds, in compliance with the quota stated in article 19.

In the regulation stated in article 19, the General Council will establish the maximum percentage of investments of national and social interest to be taken into account, and the Government will regulate the procedures and will establish the conditions applicable to each programme.

Final provisions

First provision

Those financial operations or activities which are not included in the list of banking operations stated in article 3 or which are not inherent to the financial activities classified in articles 4 and 5 will not be authorised.

Second provision

No individual or legal entity may professionally carry out the activities listed in articles 3, 4 and 5 if they do not have the corresponding authorisation and they will be liable for the sanctions established in the regulations.

Third provision

This Law will enter into force on the same date it is published in the Official Gazette of the Principality of Andorra.

Casa de la Vall, 27 November 1993

Jordi Farràs Forné
Syndic General

Thus, we, the Coprinces, approve, promulgate and order the publication in the Official Gazette of the Principality of Andorra.

François Mitterand
President of the French Republic
Coprince of Andorra

Joan Martí Alanís
Bishop of Urgell
Coprince of Andorra