

MADRID

Castellana, 216
28046 Madrid
Tel.: (34) 91 582 91 00

BARCELONA

Diagonal, 640 bis
08017 Barcelona
Tel.: (34) 93 415 74 00

BILBAO

Alameda Recalde, 36
48009 Bilbao
Tel.: (34) 94 415 70 15

MÁLAGA

Marqués de Larios, 3
29015 Málaga
Tel.: (34) 952 12 00 51

VALENCIA

Gran Vía Marqués
del Turia, 49
46005 Valencia
Tel.: (34) 96 351 38 35

VIGO

Colón, 36
36201 Vigo
Tel.: (34) 986 44 33 80

BRUSELAS

Avenue Louise, 267
1050 Bruselas
Tel.: (322) 231 12 20

LONDRES

Five Kings House
1 Queen Street Place
EC 4R 1QS Londres
Tel.: +44 (0) 20 7329 5407

LISBOA

Avenida da Liberdade, 131
1250-140 Lisboa
Tel.: (351) 213 408 600

SPANISH LAW REFORM ON SAVING BANKS: ROYAL DECREE-LAW 11/2010

Miguel Lamo de Espinosa

*Resident Partner of the London Office
Banking and Capital Markets Department
Admitted to practice in Spain and New York*

Alejandro Alemany

*Associate of the London Office
Corporate Department
Admitted to practice in Spain and England & Wales*

1. INTRODUCTION

1.1 With the aim of pushing forward the Spanish financial system, the Royal Decree-Law 9/2009 was enacted on 26 June 2009 (hereinafter, the "RD 9/2009"). The RD 9/2009 set up the "Fund for the Orderly Restructuring of the Banking Sector" (hereinafter, the "FROB"). The main purpose of the FROB was to provide support to any merger or similar amalgamation between financial institutions (in particular, to support the merger of Saving Banks), in order to increase their efficiency and to strengthen their position in the market.

1.2 From the enactment of the RD 9/2009, restructuring processes have mainly been carried out through mergers or amalgamations. The aim of each of those mergers has been to create the so-called "Institutional Protection Systems", also known as "cold mergers" (hereinafter "IPSS"). IPSSs are entities (the "IPS holding Company") created through the agreement of a group of other financial institutions (the "Founders"), with the aim of providing each other with enough solvency and liquidity to face their respective obligations vis-à-vis the market and their customers.

1.3 This nevertheless, the Spanish Legislator realized that the financial meltdown required the enactment of new provisions targeting the Saving Banks, the framework of which would be aimed

at: (i) providing the Saving Banks with more flexibility of access to capital markets; and (ii) the possibility for Saving Banks to fund raise through investors and institutions.

1.4 In the light of the above, on 14 July 2010 the Royal Decree-Law 11/2010, on Saving Banks' internal regulations (hereinafter, the "RDL 11/2010") came into force. The RDL 11/2010 regulates the following main topics:

- (a) Enhancement of the possibilities of Saving Banks to raise core capital in the same conditions than those of other financial institutions, through the amendment of the regulations of the Saving Banks' participative quotes ("cuotas participativas").
- (b) Regulation of the Saving Banks governing bodies, to guarantee their full independence and professionalism.
- (c) Strengthening and boosting of the IPSSs as the most effective restructuring alternative for ailing financial institutions, easing their access to financing resources.
- (d) Implementation of the possibility for Saving Banks to divert their financial activities from their social fund, so that the financial branch may have access to capital markets.

1.5 The RDL 11/2010 envisages in its Second Transitory Disposition the obligation of all Autonomous Communities to adapt and amend, where appropriate, their respective regional regulations regarding Saving Banks in accordance with the provisions of the RDL 11/2010.

1.6 This brief note is aimed at providing the reader with an overview of the main aspects and amendments of the RDL 11/2010. It is not the purpose of the authors to thoroughly explain all the Spanish regulations and amendments recently enacted with regards to the Saving Banks.

2. MAIN ASPECTS OF RDL 11/2010

2.1 Amendments regarding the regulations of Participative Quotes. To date, Saving Banks have not been attractive to investors due to their limited liquidity and limitations with regards to voting and political rights conferred to the Quotaholders. In the light of the previous scenario, the RDL 11/2010 attempts to provide investors with a better investment vehicle by introducing the following amendments to the structure and regulations of Saving Banks:

2.1.1 Political rights. Any investors holding quotas of a Saving Bank shall be vested with political rights pro rata with their interest in the capital of the Saving Bank.

2.1.2 Administrative Authorization. From the enactment of RDL 11/2010 onwards, Saving Banks will be allowed to issue Participative Quotas without requiring previous administrative authorization. These new Participative Quotes shall vest the bearer/holder with voting and political rights.

2.1.3 Acquisition of the Saving Banks' own Participative Quotas. The general rule is that Saving Banks would not be entitled to acquire their own Participative Quotas ("Adquisición Origi-

naria"). This nevertheless, Saving Banks may be entitled to carry out a derivative acquisition ("Adquisición Derivativa"), as long as such acquisition does not exceed 5% of the quotes of the relevant Saving Bank. This limitation shall not be applicable to IPSs.

2.1.4 Merger and exchange of quotas. Upon merger of two or more Saving Banks, their respective Participative Quotes will be exchanged by a number Participative Quotes of the resulting Saving Bank in accordance with the economic value of each of the respective merging Saving Banks.

2.1.5 Retribution of the Quotaholders. No administrative authorisation shall be required for the retribution of the Quotaholders. This nevertheless may not affect any of the authorities that may be granted to the Bank of Spain under any relevant regulations enacted or amended from time to time.

2.1.6 Listing regulations. All Participative Quotes should be listed in a secondary/alternative market when the issuing of such quotes is addressed to the general public. No limitations as to maximum percentages of interest in a Saving Bank shall be imposed in investors.

2.2 Amendments regarding the independence and professionalism of the Saving Banks' governing bodies. Title II of the RDL 11/2010, aims on the professionalization and independence of the Saving Banks' governing bodies and the implementation of the voting rights of the Quotaholders. The following regulations have been introduced/amended:

2.2.1 New corporate bodies. The Saving Banks are governed by a General Assembly, a Board of Director and a Controlling Commission

(the "Governing Bodies"). In addition, and holding complementary office and duties, the RDL 11/2010 has established two new corporate bodies: the "Retribution and Appointments Commission" (formerly, the Retribution Commission) and the "Social Fund Commission".

2.2.2 Retribution and Appointments Commission. The duties and authorities of the Retribution and Appointments Commission are the following: (i) to keep the Board of Directors, the Controlling Commission and any directors and managers of the Saving Bank, informed on the policies on salaries and benefits; and (ii) to guarantee that each of the members of the corporate bodies of the Saving Bank complies with the relevant regulations in force from time to time.

2.2.3 Social Fund Commission. The Social Fund Commission shall ensure that the Saving Bank complies with its social duties.

2.2.4 Duties of the General Assembly. Furthermore, new authorities have been vested to the General Assembly: (i) the General Assembly shall be in charge of passing any resolutions regarding the amalgamation or merger with any other Saving Bank(s), (ii) and to approve the relevant resolutions regarding the transformation of the Saving Bank into a "foundation of special characteristics" (see Section 2.4.3 below), and (iii) to resolve the diversion of the financial activities and the social fund. The approval of any resolutions regarding the aforesaid authorities would require higher quorums and majorities.

2.2.5 Appointment of members. The members of all the corporate bodies of the Saving Banks shall be highly-reputable experts in each relevant field, who shall be fully

committed to the interest of the Saving Bank and its social fund. Impeccable business credentials are paramount and individuals with criminal records would be rejected as potential members of the Saving Banks' governing and corporate bodies. The refusal will also be applicable to any of those individuals subject to restrictions with regards to the exercise of political roles or positions in financial institutions; and to politicians and high-members of the government's administration. In the same manner, and in the interest of the Quotaholders, the number of members of the Saving Banks' Boards of Directors would be increased up to 20 members, which could remain in the position for an indefinite period of time.

2.2.6 Diversion of the financial activities and the social fund of the Saving Bank. In any event, if any Saving Bank diverts its financial activities through the assignment of its assets in favour of another financial institution (see Section 2.4 below), it shall be entitled to appoint its representatives in the Board of Directors of such entity in accordance with the representative groups of its own Board. Furthermore, any individuals holding a position in other financial institutions, acting on behalf of the Saving Banks, shall also be entitled to be appointed as General Managers ("Consejeros Generales").

2.2.7 Collective interests and representation in the General Assembly and other corporate bodies. All Saving Banks shall ensure that the following collective interests are duly represented in their General Assembly: (i) local corporations; (ii) deposit holders of the Saving Bank; (iii) the founders of the Saving Bank; (iv) the Saving Bank employees; (v) any other relevant representative union of the Saving Bank, if any.

In any event, the participation and interest of the foregoing groups of interest in the corporate bodies of the Saving Banks shall remain within the following percentages:

- a) Deposit holders: 25% to 50% of the voting rights in each of the corporate bodies.
- b) Employees: the percentage shall be between 5% and 15% of the voting rights in each of the corporate bodies.
- c) Other representative unions: the percentage should not be higher than 10% of the voting rights in each corporate body.

Moreover, the enactment of RDL 11/2010, has introduced a limitation so that political institutions such as regional and local institutions may only hold a limited interest in Saving Banks (no higher than 40% of the total voting rights of the Saving Bank). In addition, no regional representatives ("Representante de la Comunidad Autónoma") shall be members of the Controlling Commission ("Comisión de Control").

2.2.8 Transparency. Further to the requirements of independence and professionalism, the RDL 11/2010 also enhances the requirements of transparency of the governing bodies. To ensure compliance with this, all Saving Banks shall publish their Corporate Governance Reports on a yearly basis.

2.3 Amendments regarding IPSs. The third main objective of the RDL 11/2010 aims to strengthen the position and stability of IPSs. The key facts of the amendments are the following:

2.3.1 Incorporation of the IPS Holding Company. As regarding the IPS Holding Company, they must be incorporated as Public Companies ("Sociedades Anónimas").

2.3.2 Shareholders of the IPS Holding Company. The Founders of an IPS shall have an interest in the IPS Holding Company of at least 50% of its shares. The aim of this regulation is for the Saving Banks to remain in control of the SIPs. If, at any time, such control is lost, the Saving Banks shall be transformed into foundations of special characteristics, and assign their financial activities to a different financial institution.

2.4 Diversion of Activities of the Saving Banks. From the enactment of the RDL 11/2010 the Saving Banks shall be entitled to divert their activities in the following manner:

2.4.1 Indirect exercise of the financial activities of the Saving Banks. Each of the Saving Banks shall be entitled to assign all their financial activities to a financial institution controlled by them (hereinafter, the "Financo"). This alternative allows the nature and structure of Saving Banks (i.e. not only a financial institution but also a social entity) to remain, whilst their financial activities are carried on by a parallel institution.

2.4.2 Controlling interest of Financo. Any Saving Bank whose business are diverted shall be in control of at least, 50% of the shares of its respective Financo. Once the whole of the financial activities have been transferred to the Financo, the Saving Bank would remain in full charge of the social fund and of the management of their affiliates. It is important to note that in any event, the Financo will be an instrument of the Saving Bank, thus being able to advertise and to identify itself as such before the general public and investors.

2.4.3 Transformation into Foundations of special characteristics ("FEC"). The second alternative granted to Saving Banks under the RDL

11/2010 implies the transformation of Saving Banks into FECs. By means of this alternative, Saving Banks are entitled to "assign all their assets regarding their financial activities to another financial institution, in exchange of shares of the later, and shall be transformed into foundations with special characteristics, thus losing their condition of credit entities ". Henceforth, on the one hand, Saving Banks become "foundations" as they must contribute all their profits (arising from investments, affiliates and, in general all their assets) to charity. And on the other hand, Saving Banks become "special" foundations as they would be entitled to carry out the management of their financial portfolio whilst also promoting financial business education, but in any event would lose their condition of lending institution.

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