Royal Decree-Law 9/2009, of June 26, on bank restructuring and credit institution equity reinforcement.

At the beginning of the current financial crisis, Spanish credit institutions enjoyed a healthy financial situation and their exposure to what are known as toxic assets was almost nonexistent. However, the Spanish banking system has not been immune to the crisis; from its very beginning, access to market funding and liquidity became drastically harder and, as the crisis became protracted in time, it led to the impairment of assets, especially those relating to exposure in real estate development sector.

During 2008, the interaction of these two factors, the harder access to funding and the impairment of assets, led to a general restriction on lending conditions, having particular impact on SMEs and households. This reaction from credit institutions to the change in the financial environment and economic perspectives was probably a key factor to explain the depth of the recession in real economy, also made worsen by the aggravation of the international crisis in October 2008. At that moment, the magnitude of the potential systemic problem generated by this dynamic led the government to adopt exceptional measures, in the context of the coordinated response of the EU. The creation of the Fund for the Acquisition of Financial Assets, the program to guarantee funds to credit institutions; and an increase of the maximum amount guaranteed by Deposit Guarantee Funds, managed to contain the costs entailed by the aggravation of the crisis.

Nearly two years after the international crisis started, the resistance of the Spanish banking sector, historically subject to regulation and supervision based on the prudent and stringent application of international standards, has been outstanding; in particular in comparison with that of neighbouring countries. Entities whose size make them decisive for the health of the system maintain a solid position, which, in turn, enables them– (with a reasonable degree of certainty) to continue to deal with the crisis without requiring public support. This is an essential issue, because it places the Spanish banking sector in a very favourable position in comparison with the major advanced economies. The position of some medium or small-size entities remains, in general, solid. Nevertheless, the viability of some of them could be jeopardized in coming months, due to the interaction between their persistent liquidity and financing difficulties and the relative impairment of their assets, the notably increased loss of confidence and the reduction of their

business, consequences both of the duration, intensity and extension of the crisis, and of the sharp drop in economic activity it has caused.

Under normal circumstances, sufficient tools are available to the Bank, Savings Bank and Credit Cooperative Deposit Guarantee Funds, together with the Bank of Spain, for them to face individual crises of a certain number of institutions. These are the tools set out in Royal Decree 2606/1996, of 20 December, on the Credit Institution Deposit Guarantee Fund, which provides that Deposit Guarantee Funds do not only have the purpose of securing money and securities deposits created in credit institutions but also that they may also take action aimed at enhancing the solvency and operation of credit institutions in difficulties.

However, the present situation cannot be described as normal and, although it can be expected that, given the size of those individual institutions likely to encounter difficulties, they are not systemic, if we consider their viability problems overall, a potential systemic risk could be created. This potential risk justifies providing in advance for additional instruments and the use of public resources, in the event that circumstances arise making their use necessary. Failure to provide public rules for this process, should the circumstances arise, could lead to heavy losses. The sector would find hard to sustain such losses with the three Credit Institution Deposit Guarantee Funds, even though they are the best-funded in the European Union. A disorganized solution of this sort could cause the problem to spread, with a loss of confidence and additional restrictions on credit, and it could affect the capacity of the financial system to carry out its economic functions, leading, in short, to what is known as systemic risk.

It is therefore necessary to implement a strategy that would favour a solution to these problems based on the orderly restructuring of the Spanish banking system, aimed at maintaining confidence in the national financial system and enhancing its strength and solvency so that the surviving institutions are sound and able to provide credit normally. In many cases, in order to comply with these objectives, the installed capacity and cost structures of these institutions will have to be adapted to an environment where the demand for financial services will be more moderate. In this context, support should also be included for integration processes between institutions that, although not in difficulties, wish to use such processes to ensure their future viability by improving their medium term efficiency.

The strategy will have to be adapted to Spanish circumstances and to the principles laid down in

the Draft Law passed on 17 March 2009 by the Congress of Deputies. According to these principles, restructuring must take place observing as far as possible the traditional methods of crisis handling, in particular, the Credit Institution Deposit Guarantee Funds, which have had such good results in the past. They should also be carried out first exhausting private solutions, minimising the cost for the taxpayer when it is necessary to use public funds, avoiding general recapitalisations aimed at maintaining non-viable institutions and encouraging the assumption of responsibility by shareholders and managers, transparency in the process and the protection of depositors. These principles are fully consistent with the Common Crisis Management Principles agreed in June 2008 by the Finance Ministers, central banks and supervisory authorities of the European Union. In the same way, the established process is proportionate and provisional and in line with the principles set out in the Communication of the European Commission of 5 December 2008, particularly as regards the need to avoid distortion of competition.

Accordingly, this royal decree-law establishes a series of measures to be able to implement the necessary strategy in banking restructuring matters by establishing a predetermined process aimed at increasing the strength and solvency of the Spanish banking system.

The proposed bank restructuring model is based on the three Credit Institution Deposit Guarantee Funds and on the use of a new institution created for the purpose: the Fund for Orderly Bank Restructuring. The restructuring process has three distinct stages: (I) the search for a private solution by the credit institution itself, (II) the adoption of measures aimed at dealing with any weaknesses that affect the viability of credit institutions, with the participation of the Credit Institution Deposit Guarantee Funds and (III) restructuring processes with the intervention of the Fund for Orderly Bank Restructuring.

Part I of this royal decree-law address, in chapter I, the creation of the Fund for Orderly Bank Restructuring and, in chapter II, the operating procedure for credit institution restructuring processes.

Chapter I establishes the legal system regulating the Fund for Orderly Bank Restructuring which assumes two functions: the management of credit institution restructuring processes and the reinforcement of shareholders' equity in certain consolidation processes.

The Fund for Orderly Bank Restructuring will be subject to the same legal system as that applicable to Deposit Guarantee Funds. The funding system will have an allowance of 9,000

million euros, of which 2,250 will be contributed by the Deposit Guarantee Funds and 6,750 will be charged to the General Budget of the State. The new monetary policy measures announced by the European Central Bank (ECB) on May 7, 2009, consisting of providing liquidity at one year and purchasing mortgage deeds in the market, should contribute to overcome the restriction to access to funding by credit institutions, an extraordinary circumstance that justified the creation, through royal decree-law 6/2008, of October 10, of the Fund for the Acquisition of Financial Assets. The operations carried out to date by this Fund have permitted access to mean-term financing by the credit institutions operating in Spain. However, the new measures announced by the ECB should relieve these restrictions. Thus, in order to minimize the impact of the new Fund for Orderly Bank Restructuring on the General State Budget, it is forecast that the new Fund will be provided with the credit allocated to the Fund for the Acquisition of Financial Assets. In addition, the new Fund for Orderly Bank Restructuring may capture external funding from the security and State-guaranteed credit markets, in an amount not to exceed three times its allocation. Nevertheless, the Ministry for Economy and Finance may authorize that this limit be exceeded after January 1, 2010, the external financing of the Fund for Orderly Bank Restructuring never to exceed more than 10 times its allowance.

As regards its government, the Fund for Orderly Bank Restructuring is governed and managed by a Governing Committee consisting of 8 members, 5 proposed by the Bank of Spain (one of them the Deputy Governor who presides over it) and 3 designated by each of the Deposit Guarantee Funds. All of them are appointed by the Minister for the Economy and Treasury, for a renewable term of 4 years, and they may be removed in the same events as the members of the Deposit Guarantee Funds.

It is also provided that one representative of the General Comptrolling Department of the Government[1] designated by the Ministry of Economy and Finance at the proposal of the General Comptroller may attend the meetings of the Governing Committee with the right to speak but not to vote. His attendance is justified by the public financing of the Fund for Orderly Bank Restructuring.

The Governing Committee will out before the Ministry of Economy and Finance a four-monthly report on the management of the Fund for Orderly Bank Restructuring. With regard to

[1] N.B. In Spanish “Intervención General de la Administración del Estado”.

parliamentary control, the Secretary of State for Economy will appear before the Economy and Finance Committee of the Congress of Deputies on a quarterly basis, to report on the aggregate evolution of lending, the situation of the banking sector and the evolution of the activities of the Fund for Orderly Bank Restructuring. In addition, the Chairman of the Governing Committee of the Fund for Orderly Bank Restructuring will appear before the Economy and Finance Committee of the Congress of Deputies, on the conditions to be established by that Committee, within a term of 30 days after each transaction is performed by the Fund, to report on it.

Chapter II deals with credit institution restructuring processes.

The first stage of the restructuring process involves the search by a credit institution for a private solution to reinforce its solvency, so this stage is not regulated or pre-established by law. In the absence of such a solution, the pre-established orderly restructuring process will be commenced, which includes the two last stages contemplated in Chapter II.

The second stage implies the putting in place of measures to deal with weaknesses that could affect the viability of credit institutions, through the action of the sector Deposit Guarantee Funds. Therefore, this stage too is a private solution but one that is ordered and regulated by law.

This second stage will apply in the case of weaknesses in the economic-financial situation of an institution that could jeopardize its viability and make it advisable for that institution to undertake a restructuring process. In these cases, either the institution on its own initiative or the Bank of Spain *ex officio* must submit an action plan to overcome the situation. The plan must be approved by the Bank of Spain, which may amend it as required. The Plan may contemplate three actions: reinforcement of the equity and solvency of an institution, its merger or takeover or the transfer, in whole or in part, of the business or of certain business units.

The measures that may be put in place are the preventative and reorganization measures entrusted to the sector Deposit Guarantee Fund contemplated in Royal Decree 2606/1996, of December 20, on the Credit Institutions Deposit Guarantee Fund, although the Fund for Orderly Bank Restructuring may grant financing, on market conditions, to Deposit Guarantee Funds, permitting them to comply with their function, namely, to provide financial support to the action plans.

If the situation of weakness persists and a series of statutorily defined events occurs, the third stage would commence, in other words, the stage of public control of the Fund for Orderly Bank Restructuring.

In this case, the directors of the institution will be replaced by the Bank of Spain, which will appoint the Fund for Orderly Bank Restructuring to administrator. The Fund must then prepare a report on the situation and submit a restructuring plan to the Bank of Spain for approval. After the Fund for Orderly Bank Restructuring has been appointed to administrator and, until the restructuring plan has been approved, the Fund may, on a temporary basis, provide the financial support required on the principle of the most efficient use of public resources.

The purpose of the restructuring plan is either the merger of the institution or the transfer of the business, in whole or in part, through the transfer, en bloc or partial, of assets and liabilities through procedures that ensure competition such as, inter alia, auction.

The plan may contemplate measures of financial support (issuing of guarantees, loans, subscription or acquisition of securities representing equity, etc.) and measures of management (organization and internal control and procedure of the institution).

It may also consider two main issues.

First, if the Fund for Orderly Bank Restructuring acquires non-voting shares[2] in the capital of a Savings Bank, it acquires the right to be represented at the General Meeting of the Savings Bank in the same percentage as that represented by its stake in the net equity of the Savings Bank. In other words, the non-voting shares subscribed by the Fund would acquire voting rights. This right of representation is conceived as an exceptional right that may only be maintained as long as the Fund for Orderly Bank Restructuring holds the securities, and it may never be transferred to future transferees of such shares. The ultimate purpose of this measure is to make it possible to use a traditional restructuring tool, the acquisition of shares in banking institutions, in this specific case.

Secondly, the approval by the Bank of Spain of a restructuring plan will mean that no subsequent administrative authorization in the context of lending and banking regulation, other

[2] N.B. By “non-voting share” it must be understood the portion of a savings bank’ equity (see Royal Decree 302/2004 of February 20, on non-voting shares of saving banks.

than those required by anti-trust legislation, will be required for the specific transactions for the merger of credit institutions, either by absorption or by creating a new credit institution, for the spin off or for the transfer en bloc or in part of assets and liabilities contained in it, in addition to the eventual acquisitions of significant stakes that may arise out of such transactions and amendments to the bylaws that may eventually be made because of them. However, before approving the relevant plan, the Bank of Spain must obligatorily request a report issued by the responsible body of the respective Autonomous Community (in the case of savings banks) or by the Minister for the Economy and Treasury (in the case of banks) or of the respective one of these according to their scope of action, in the case of a credit cooperative entity.

It must be remembered that an absolutely exceptional situation has to be faced. For this reason and given the technical specialization of the Bank of Spain, the regulation of lending should not be the responsibility of the Legislative and of the Government alone and should also rest with the Bank of Spain as the guarantor of the adequate operation and stability of the financial system.

Indeed, the Constitutional Court (STC 235/1999, of December 16), in respect of the functions of Deposit Guarantee Funds, has recognized that, in the light of legislation in force, the functions discharged by the Bank of Spain are of basic importance since their purpose is to preserve the solvency of credit institutions. This is because the safeguarding of such solvency extends beyond the specific cases and protects a supra-regional interest, namely, the stability of the financial system as a whole; this system is negatively affected by possible situations of insolvency of its players, and for this reason, mechanisms are established to secure third-party interests and for the reorganization and refloating of institutions in difficulties, in an attempt to restore the trust in the system, involving all credit institutions as a set.

Likewise, the Constitutional Court has established that the suspension and public control of an institution in difficulties affects the financial system as a whole and invades supra-regional interests; therefore, the full legal cycle: legislation, its implementation in regulations and its enforcement, must be reserved to the State, while enforcement must be attributed to the Bank of Spain.

Investments made by the Fund for Orderly Bank Restructuring in the implementation of a restructuring plan will benefit from the exemption from certain legal obligations or limitations

such as the statutory limitations to the right to attend Shareholders' Meetings or to the voting right on the shares acquired or subscribed by that Fund or the limitations to the holding of stakes contemplated in article 7, section 7, of Law 13/1985, of May 25, on Investment Ratios, Shareholders' Equity and Reporting Obligations of Financial Intermediaries.

Part II of this royal decree-law deals with what is known as the reinforcement of equity by the Fund for Orderly Bank Restructuring.

In addition to the function related to the restructuring processes of credit institutions, this royal decree-law also contemplates the possibility that the Fund for Orderly Bank Restructuring may support processes of integration between credit institutions seeking to improve their efficiency at the mean term. The context existing today is characterized by the considerable difficulty of obtaining equity in the wholesale markets, thereby hindering the outcome of transactions that could imply progress in the rationalization of the banking production structure and in its degree of efficiency, and that would in the end contribute to increasing the strength and solvency of the system as a whole. In this context, the interim capitalization of credit institutions undertaking an integration process, even if they are not in a situation requiring a restructuring process such as those described above, becomes a necessity. These processes may include, among others, what are known as "institutional systems of protection" the objectives of which are similar to those generated in a merger process as regards the operating procedure, the definition and implementation of the policies and strategies of the participant institutions and the putting in place and application of their internal and risk management controls.

For such purpose, the Fund for ordered Bank Restructuring may acquire the specific securities, contemplated in this royal decree-law, issued by credit institutions resident in Spain undertaking an integration process. The institutions in question would thus prepare an integration plan contemplating integration processes that involve, among other factors, an improvement of their efficiency, the rationalization of their management and administration, and a resizing of their production capacity, with a view to improving their future prospects. This plan will have to be approved by the Bank of Spain on the principle of the most efficient use of public resources.

The securities that may be acquired by the Fund of Orderly Bank Restructuring are preference shares convertible into ordinary shares, into non-voting shares or into contributions to share capital. The issuance of such securities is considered to be exceptional and should be carried out

on conditions ensuring that the term and risk of the transaction, the need to avoid the risk of competitive distortion, and the certainty that the acquisition facilitates and provides an incentive to the implementation and performance of the integration plan are always taken into account. The terms and conditions of the remuneration of such preference shares will always take into account the principles to be established by the European Commission. In addition, the issuers must undertake to repurchase the securities as soon as they are in a position to do so on the terms undertaken in the integration plan. If the institution has not repurchased the preference shares within five years from the date they were paid in, the Fund for Orderly Bank Restructuring may request their conversion into ordinary shares, into non-voting shares or into contributions to capital of the issuer. Notwithstanding the above, the resolution of issuance must also contemplate the possibility of conversion of the preference shares at the request of the Fund for Orderly Bank Restructuring if, prior to expiry of the five-year term, the Bank of Spain considers their repurchase within such term to be improbable. The conversion would imply that, in the case of saving bank non-voting shares, the Fund for Orderly Bank Restructuring would acquire the exceptional right to be represented at the savings bank's General Meeting.

The divestiture by the Fund for Orderly Bank Restructuring of the subscribed securities will be carried out through their repurchase by the issuer institution or their disposal to third parties. When the divestiture of such securities or of those resulting from their conversion is carried out through their disposal to third parties, the disposal will be made through procedures that ensure competition and within a period not exceeding five years after the date of completion of the integration plan; this time limit will not apply if section 8 of this article is applicable to the institution.

In addition, stringent mechanisms are provided for the monitoring and control of the implementation of the integration plans.

It must be noted that, in respect of the control of the use and allocation of public resources, the Fund for Orderly Bank Restructuring must out before the Minister for the Economy and Treasury an economic report setting out the financial impact either of the restructuring plan or of the eventual acquisition of the securities in an integration process, and on the funds contributed and charged to the General Budgets of the State. The Minister for the Economy and Treasury may object stating the grounds.

The royal decree-law contains three additional provisions which establish, firstly, the legal system of the guarantees issued for the benefit of the Fund for Orderly Bank Restructuring or of the Deposit Guarantee Funds in Credit Institutions and the system of the guarantees securing the economic obligations of the Fund for Orderly Bank Restructuring. It also contains a provision on matters of insolvency law.

Lastly, the royal decree-law contains various final provisions. Of these should be noted the provision amending, first, Law 2/2008, of December 23, 2009 General Budgetary Law, for reasons of clarification and legal certainty and, second, Law 13/1985, of May 25, on investment ratios, equity and reporting obligations of financial intermediaries, the latter referring to two questions. First, the Fund for Orderly Bank restructuring is included in the existing possibility that, in exceptionally serious situations, the Deposit Guarantee Fund or other entities in the savings bank sector, previously authorized by the Bank of Spain, may exceed the 5 per cent limit of non-voting shares issued by a Savings Bank. Therefore, this Fund too could exceed said limit. Furthermore, in such cases, and relating to the fact that the volume of outstanding savings bank non-voting shares may not exceed 50 per cent of the equity of the Savings Bank, this limit will not apply either.

Second, it is currently established that the body responsible for resolving each issuance of savings bank non-voting shares will be the General Meeting, which may delegate such power to the Board of Directors of the savings bank. In addition to this, such power will always be deemed to be delegated to the provisional administrators designated by the Bank of Spain under Part III of Law 26/1988, of July 26, on the Discipline and Public Control of Credit Institutions.

In any case, all these new measures will be put in place on an interim basis linked to the evolution of the financial crisis.

The procedure of the royal decree-law is used to adopt these measures, since they meet the requirements established in article 86 of the Spanish Constitution as regards the extraordinary and urgent need for them. The passing of this royal decree-law is urgent because of the need to face the orderly restructuring of the banking sector in Spain with the maximum promptitude, to ensure that instruments are in place in case it becomes necessary to meet potential difficulties in the best possible conditions.

By virtue of the urgency of the adoption of the measures, to permit their immediate

effectiveness, exercising the authorization contemplated in article 86 of the Constitution, at the proposal of the second Deputy President of Government and Minister for the Economy and Treasury, after discussion by the Cabinet of Ministers at the meeting it held on June 26, 2009,

I ORDER

PART I

Credit Institution Restructuring Processes

CHAPTER I

The Fund for Orderly Bank Restructuring

Article 1. *Purpose and organization.*

1. The purpose of this Royal Decree-Law is to regulate the legal system applicable to the Fund for Orderly Bank Restructuring, credit institution restructuring processes and enhancement of their equity.

2. The Fund for Orderly Bank Restructuring is created to manage the restructuring processes of credit institutions and assist in the enhancement of their equity, on the terms laid down by this Royal Decree-Law.

3. The Fund for Orderly Bank Restructuring will have legal personality and full public and private capacity to implement its objectives.

4. The Fund for Orderly Bank Restructuring will carry out its activities under the legal system contained in this Royal Decree-Law and provisions to be passed implementing it and the system applicable to Credit Institution Deposit Guarantee Funds will be of secondary application. It will not be subject to the provisions of Law 6/1997, of 14 April, on the Organization and Operation of the General State Administration nor will the rules governing the budgetary, economic-financial and accounting system and the system for the contracting and control of public bodies that are attached or related to the General State Administration apply to it, except in relation to external auditing by the Court of Auditors, under Organic Law 2/1982, of 12 May, Court of Auditors Law. The Fund for Orderly Bank Restructuring

will not be subject to the provisions of Law 33/2003, of 3 November, Public Property Law.

5. The personnel of the Fund for Orderly Bank Restructuring will hold an employment relationship with the Fund.

6. The Fund for Orderly Bank Restructuring will receive the same tax treatment as Credit Institution Deposit Guarantee Funds.

7. Transactions undertaken by the Fund for Orderly Bank Restructuring will be governed by this Royal Decree-Law and by its implementing regulations. The rules governing private legal trade will be of secondary application. These transactions will be notified, if applicable, to the European Commission or to the National Competition Commission, for the purposes of the rules on protection of competition and State aid.

8. The Fund for Orderly Bank Restructuring may arrange with the Deposit Guarantee Funds or contract third parties to carry out any material, technical or instrumental activities that are necessary for the proper performance of its functions.

Article 2. *Funding and finance.*

1. The Fund for Orderly Bank Restructuring has mixed funding from the General State Budgets and from the contributions of the Deposit Guarantee Funds of banks, savings banks and credit cooperatives, in the terms laid down below.

2. The funding for the Fund for Orderly Bank Restructuring is 9,000 million euros, one third of which must be paid when it is formally created. This will be when the members of its Governing Committee are appointed, the balance to be paid within the period established by the Fund's Governing Committee.

3. The amount of funding charged to the General State Budgets will be 6,750 million euros. The amount of the contribution to the equity of the Fund for Orderly Bank Restructuring will be charged to budget appropriation 15.16.931M.879 and the appropriate budgetary amendments will be made for such purpose, under General Budget Law 47/2003, of 26 November.

4. The amount of the contribution from the Deposit Guarantee Funds will be 2,250 million

euros. This amount will be distributed among the Bank Deposit Guarantee Fund, the Savings Bank Deposit Guarantee Fund and the Credit Cooperative Deposit Guarantee Fund according to the percentage of the total deposits in credit institutions at the end of the 2008 financial year represented by the deposits in the institutions attached to each of those Funds at that date. This contribution by the Deposit Guarantee Funds may be increased by Law.

5. In addition, in order to meet its objectives, the Fund for Orderly Bank Restructuring may secure funding on the securities markets by issuing fixed income securities, receive loans, apply to open credit facilities and undertake other borrowing transactions.

   Outside resources obtained by the Fund for Orderly Bank Restructuring, whatever their form of instrumentation, may not exceed the sum of 3 times the funding available at any time. However, after January 1, 2010, the Minister for the Economy and Finance may give authority for this limit to be exceeded; nevertheless, outside funding for the Fund for Orderly Bank Restructuring may never exceed 10 times its funding.

6. Unassigned property of the Fund must be materialized into public debt or into other high liquidity, low risk assets. Any return of any kind on the Fund assets will be added to its funding. Expenses incurred for the management thereof will also be charged to its funding. The Bank of Spain will be responsible for the cash service of the Fund for Orderly Bank Restructuring and the Fund will sign the appropriate agreement with it.

Article 3. *Management of the Fund for Orderly Bank Restructuring.*

1. The Fund for Orderly Bank Restructuring will be governed and managed by a Governing Committee composed of 8 members appointed by the Minister for the Economy and Finance, five of whom will be proposed by the Bank of Spain, one representing the Bank Deposit Guarantee Fund, another representing the Savings Bank Deposit Guarantee Fund and a third representing the Credit Cooperative Deposit Guarantee Fund.

   A representative of the General Comptroller Department of the State Administration will also attend the meetings of the Governing Committee and will have the right to speak but not to vote. He will be appointed by the Minister for the Economy and Treasury at the proposal of the General Comptroller.

One of the members appointed at the proposal of the Bank of Spain will be its Deputy Governor, who will chair the Governing Committee. If the Chairman is absent, he will be replaced by another of the members appointed by the Bank of Spain, elected by a majority of the members of the Governing Committee who attend the meeting. The members of the Governing Committee will appoint from among the members appointed at the proposal of the Bank of Spain the member who will discharge the duties of secretary of the Governing Committee.

The representatives of the Deposit Guarantee Funds will be appointed from amongst those members of their respective management committees who have the status of representatives of the adhered credit institutions, by a majority resolution thereof.

The same procedure will be used to appoint two substitute representatives from amongst those proposed by the Bank of Spain and one for each Deposit Guarantee Fund, who will replace holders in the case of vacancy, absence or illness. The representatives of the Deposit Guarantee Fund must also be replaced when the Governing Committee is to discuss issues that directly affect an entity or group of entities with which the representative in question is related as director or manager or under an employment, civil or commercial contract or by virtue of any other relationship that could impair the objectivity of their decisions.

The term of office of the members of the Governing Committee will be four years and may be renewed for a period of time of the same duration.

The representatives of the Deposit Guarantee Funds will be removed from office in the following events:

a) Expiry of their term of office as member of the Governing Committee.

b) Resignation accepted by the Minister for the Economy and Finance.

c) Removal ordered by the Minister for the Economy and Finance because of the representative's serious failure to comply with his obligations, permanent incapacity to discharge his duties or conviction for crime perpetrated in wilful misconduct.

d) Expiry of his term of office as member of the Governing Committee of the Deposit

Guarantee Fund that appointed him.

The resolution for removal will be passed by the Minister for the Economy and Finance at the proposal of the Bank of Spain. When the removal affects a member of the Governing Committee who, as such, is representing a Deposit Guarantee Fund, first his management committee must be given a hearing and this latter Committee will, for these purposes, reach its decision by a majority resolution of the representatives of the adhered credit institutions, without any involvement of the representatives of the Bank of Spain.

2. The Governing Committee will meet whenever it is convened by its Chairman, on his own initiative or at the request of any of the Committee members. It will also be authorised to establish its own system of calls.

3. The Governing Committee will determine the rules governing its own operation and may resolve upon any delegations and powers of attorney that it considers appropriate for the proper exercise of its functions.

4. In addition to any functions envisaged in other rules of this Royal Decree-Law, the Governing Committee will have the following functions:

   a) To approve execution of the funding transactions provided for in Article 2.5.

   b) To approve the accounts that the Fund for Orderly Bank Restructuring must submit each year to the Minister for the Economy and Finance and also the report that must be sent under Article 4 to the Minister for the Economy and Finance to be forwarded to the Committee for the Economy and Finance of the Congress of Deputies.

   c) To take the necessary preventive and corrective measures provided for in Articles 6 and 7.

   d) To take the measures to enhance equity that are provided for in Article 9.

5. The Governing Committee of the Fund for Orderly Bank Restructuring will only be validly constituted for the purposes of meetings, discussions and passing of resolutions if at least half of its members with voting rights are in attendance. Its resolutions will be passed by a majority of its members.

6. The members of the Governing Committee will be obliged to keep confidential any information that they receive because of their participation in the work of the Fund and they may not use this information for purposes other than compliance with the functions entrusted to the Fund for Orderly Bank Restructuring.

Article 4. *Parliamentary control.*

1. Every quarter, the Secretary of State for the Economy will appear before the Committee for the Economy and Treasury of the Congress of Deputies for the purpose of reporting on the aggregated credit evolution[3] of lending in the aggregate, the situation of the banking sector and evolution of the activities of the Fund for Orderly Bank Restructuring.

   In addition, the Chairman of the Governing Committee of the Fund for Orderly Bank Restructuring will appear, on the conditions established by the Committee for the Economy and Treasury of the Congress of Deputies and within the period of 30 days after each transaction has been undertaken by this Fund, in order to report on it.

2. The Governing Committee will place a quarterly report on the management of the Fund for Orderly Bank Restructuring before the Minister for the Economy and Treasury.

Article 5. *Termination of the Fund for Orderly Bank Restructuring.*

Termination and liquidation of the Fund for Orderly Bank Restructuring will require an appropriate provision with legal rank, which will determine the rules that must be applied in the distribution of the remaining equity amongst the sponsors of the Fund.

CHAPTER II

Credit institution restructuring processes

Article 6. *The adoption of measures aimed at dealing with any weaknesses that may affect the viability of credit institutions.*

[3] In Spanish “evolución agregada del crédito”.

1. When a credit institution or a group or consolidatable sub-group of credit institutions has weaknesses in its economic-financial situation that, depending on the development of market conditions, might jeopardize its/their viability and require a restructuring process, the institution or indebted institution of the group or consolidatable sub-group, as applicable, will report this immediately to the Bank of Spain.

   The institution in question will present an action plan within 1 month, specifying the action proposed to overcome this situation, which should seek to ensure the viability of the institution, either by reinforcement of its equity and solvency, by facilitating its merger or absorption by another institution of recognised solvency or by the full or partial transfer of its business or business units to other credit institutions. The expected date of commencement of the implementation of the plan, which must be within 3 months, must also be stated, unless the Bank of Spain expressly authorises otherwise.

   The responsible Deposit Guarantee Fund, as provided for in the legislation regulating it, shall support the plan submitted by the institution in question adopting the preventative and reorganization measures it considers to be adequate.

   The Fund for Orderly Bank Restructuring, guided by the principle of most efficient use of public resources, may grant funding, on market conditions, to the Bank, Saving Bank or Credit Cooperative Deposit Guarantee Funds, to enable them to provide financial support functions in relation to the action plans of the credit institutions, as referred to in this paragraph.

   In any event, the Bank of Spain will ensure that the credit institution or group or consolidatable sub-group of credit institutions does not present any deficiencies in its organisational structure, its internal control mechanisms or its administrative and accounting procedures, including any relating to the management and control of risks, attributable to persons who hold managerial positions and it may apply any appropriate applicable disciplinary measures.

2. When the Bank of Spain, on the basis of deterioration in the assets of a credit institution or group or consolidatable sub-group of credit institutions or in the institution’s computable

equity[4], its capacity to generate continuing results or external confidence in its solvency, draws the conclusion that there are signs of weakness in its economic-financial situation that, depending on the development of market conditions, might endanger its viability, and requires a restructuring process but the institution in question has not presented the plan provided for in the preceding paragraph, it will notify the institution of this, requiring it to present the plan in question within a period of 1 month.

3. The plan referred to in paragraphs 1 and 2 will require the approval of the Bank of Spain, which may include any amendments or additional measures that it considers necessary for the purpose of ensuring that the situation of difficulty faced by the institution is overcome. If no express decision has been issued within one month after the action plan has been submitted, the plan will be considered to have been approved.

Article 7. *Restructuring plans involving the Fund for Orderly Bank Restructuring*.

1. The orderly restructuring of a credit institution, controlled by the Fund for Orderly Bank Restructuring, will take place if the situation described in paragraphs 1 and 2 of the last Article persists, in any of the following events:

   a) the institution in question does not submit the required plan, within the period referred to in paragraphs 1 and 2 of the above Article or has informed the Bank of Spain that it is impossible to find a viable solution to its situation;

   b) in the opinion of the Bank of Spain, the submitted plan is not viable for the purpose of overcoming the situation of difficulty faced by the institution or the latter does not accept any amendments or additional measures included by the Bank of Spain or the plan is conditional upon the intervention of a Deposit Guarantee Fund on terms that such Fund has not accepted;

   c) a credit institution seriously fails to comply with the period of implementation or the specific measures set out in a plan of the kind referred to in paragraphs 1 and 2 of the above Article, previously approved by the Bank of Spain, thus jeopardising the accomplishment of its objectives; or

   d) a credit institution seriously fails to comply with one of the specific measures contained in a plan of the kind referred to in Article 75 of Royal Decree 216/2008, of

[4] In Spanish “recursos propios computables”.

15 February, on the equity of financial institutions, previously approved by the Bank of Spain, thus jeopardising the accomplishment of its objectives.

The orderly restructuring of a credit institution, intervened by the Fund for Orderly Bank Restructuring, will take place in accordance with the rules laid down in the following paragraphs.

2. In the events covered by the preceding paragraph, the Bank of Spain will order the interim replacement of the administration or management bodies of the institution in question and any other precautionary measures that it considers appropriate under Law 26/1988, of 29 July, on Discipline and Public Control of Credit Institutions and other applicable rules. These measures will remain in place until such time as the measures specifically contained in the restructuring plan referred to in paragraph 3 below are implemented. The rules of Part III of Law 26/1988, of 29 July, on Discipline and Public Control of Credit Institutions will apply to the interim precautionary measure of replacing the administration or management bodies, with the following particular features:

   a) The Bank of Spain will appoint the Fund for Orderly Bank Restructuring to interim administrator.

   b) Within a month from the date of its appointment, the Fund for Orderly Bank Restructuring will draw up a detailed report on the equity situation and viability of the institution and will submit to the Bank of Spain a restructuring plan for the institution, which will enable it to overcome its situation of difficulty by merger with another or other credit institutions of recognised solvency or by transferring all or part of its business to another or other institutions by transfer en bloc or in part of its assets and liabilities according to procedures that ensure competition, including, for example, the auction system. Upon reasoned request by the Fund for Orderly Bank Restructuring, the Bank of Spain may extend the aforesaid period for up to a maximum of 6 months. The Fund for Orderly Bank Restructuring will at the same time place a financial report before the Minister for the Economy and Treasury setting out the financial impact of the submitted restructuring plan on the funds charged to the General State Budgets. The Minister for the Economy and Finance may object within a period of 10 days from receipt of this report, giving grounds for

such objection.

From the time of its appointment as interim administrator of a credit institution and whilst the restructuring plan referred to in letter b) above is being drawn up, the Fund for Orderly Bank Restructuring may, on a temporary basis, provide the financial support that is required in accordance with the principle of most efficient use of public resources.

3. The restructuring plan will set out the specific support measures on which the control by the Fund for Orderly Bank Restructuring will be based and these measures may include, *inter alia*, the following:

   a) financial support measures, for example, grant of guarantees, loans on favourable conditions, subordinated funding, acquisition of any type of asset that appears on the institution's balance sheet, subscription or acquisition of securities representing equity and any other financial support aimed at facilitating processes for merger with or absorption by other institutions of recognised solvency or the transfer of all or part of the business to another institution and the corresponding bodies of the institution in question may also pass the resolutions needed for this purpose; and

   b) management measures to improve organisation and the internal procedural and control systems of the institution.

4. The Fund for Orderly Bank Restructuring will also be authorised to transfer in full or in part deposits in current or term accounts held in an institution that it administrates to another or other credit institutions and to pay the amount thereof to the latter, with legal subrogation to the position of their holders vis-a-vis the transferring company, in which case the consent of the holders will not be necessary.

Upon a report by the National Securities Committee, the Fund for Orderly Bank Restructuring may also arrange for immediate transfer of the securities deposited in the institution that it is administering on account of its clients to another institution authorised to carry out this activity, even if such assets are deposited with other bodies on behalf of the institution that is providing the deposit service.

The transferring institution will allow the credit institution to which the deposits or custody of the securities will be transferred access to the accounting and computerized documents and records needed to carry out the transfer.

5. When the measures referred to above involve the acquisition of assets by the Fund for Orderly Bank Restructuring, this Fund may continue to manage them or may entrust their management to a third party. If it decides to entrust their management to a third party, this must be done using procedures that ensure competition.

6. Investments made by the Fund for Orderly Bank Restructuring whilst implementing a restructuring plan will not be subject to the legal restrictions or obligations not applicable in the case of aid provided by the Credit Institution Deposit Guarantee Funds, which include the following in any event:

   a) the statutory restrictions on the right of attendance at General Meetings or the right to vote in respect of any shares that this Fund acquires or subscribes;

   b) the restrictions on holding savings bank non-voting shares laid down in Article 7.7 of Law 13/1985, of 25 May, on Investment Ratios, Equity and Reporting Obligations of Financial Intermediaries;

   c) the restrictions on the acquisition of contributions to the share capital of credit cooperatives by legal persons;

   d) the restrictions that the Law establishes in relation to the computability of equity in respect of any securities that the Fund acquires or subscribes;

   e) the obligation to submit a Takeover Bid under security market legislation.

7. An acquisition of ordinary shares or non-voting shares by the Fund for Orderly Bank Restructuring will require a resolution to remove the preemptive subscription right of shareholders or holders of non-voting shares at the time that the resolution for increase of capital or issue of non-voting shares is passed.

8. When the Fund for Orderly Bank Restructuring acquires non-voting shares in a Savings Bank, it will have the right to be represented at the General Meeting in the same percentage as that represented by its stake in the equity of that Savings Bank. Such exceptional right of representation will only remain in force whilst the Fund for Orderly Bank Restructuring continues to hold the securities and will not be transferable to subsequent acquirers of the securities.

9. When the Fund for Orderly Bank Restructuring subscribes for or acquires contributions to the share capital of a credit cooperative, its voting right at the General Meetings of the cooperative will be proportional to the amount represented by such contributions in the share capital of the cooperative.

Article 8. *Powers relating to corporate transactions in credit institution restructuring processes.*

1. The approval by the Bank of Spain of the plan provided for in Article 7 above will mean that specific transactions to merge credit institutions, whether by absorption or by the creation of a new credit institution or due to spin off or transfer en bloc or in part of its assets and liabilities and also any eventual acquisitions of significant stakes resulting from implementation of the plan and amendments made to the bylaws as a consequence of such transactions will not require any subsequent administrative authorisation in the context of lending, credit and banking legislation, other than those authorisations required by the competition law.

2. Before it approves the relevant plan, the Bank of Spain will request a report from the Minister for the Economy and Finance or from the responsible bodies of the Autonomous Communities where the savings banks and, if applicable, the credit cooperatives in question, have their registered offices. Such reports must be sent within a period of 10 days.

PART II

Reinforcement of the equity of credit institutions

Article 9. *Financial instruments for the reinforcement of equity of credit institutions*

1. The Fund for Orderly Bank Restructuring may acquire the securities referred to in paragraph 3 of this Article that are issued by those credit institutions resident in Spain and unaffected by the circumstances established in Article 6 of this Royal Decree-Law but which need to reinforce their equity for the sole purpose of carrying out integration processes among themselves, when they so request.

   These processes must represent, *inter alia*, an improvement in efficiency, a more rational management and administration and a resizing of their productive capacity, all intended to improve their outlook for the future.

   For this purpose, the institutions in question will draw up an integration plan that must set out the specific measures and commitments aimed at achieving this objective and this plan must be approved by the Bank of Spain, on the principle of the most efficient use of public resources. Such acquisition should always take account of the term and risk of the transaction, the need to avoid the risk of distorting competition and the fact that it should facilitate implementation and performance of the integration plan and will be governed by the principle of most efficient use of public resources.

2. Before it actually acquires such securities, the Fund for Orderly Bank Restructuring will send a financial report to the Minister for the Economy and Finance setting out the financial impact of that acquisition on the funds charged to the General State Budgets. The Minister for the Economy and Finance may object within a period of 10 days after receipt of this report, giving grounds for such objection.

3. The securities referred to in paragraph 1 above will be preference shares convertible into ordinary shares, non-voting shares or contributions to the company's capital and they will be governed by the provisions contained in the second additional provision of Law 13/1985, of 25 May, on Investment Ratios, Equity and Reporting Obligations of Financial

Intermediaries, with the following particular features:

a) such an issue will be exceptional, being the resolution decided only under and for the purposes of this Royal Decree-Law. At the time that the resolution to issue the preference shares envisaged in this Article is adopted, the issuing institutions must pass the necessary resolutions for capital increase, issue of non-voting shares or subscription for contributions to capital in the necessary amount. The terms and conditions of payment of the preference shares will in any event take into account the principles laid down by the European Commission.

b) The acquisition of convertible preference shares by the Fund for Orderly Bank Restructuring will require suspension of the preemptive subscription right of the shareholders or holders of non-voting shares at the time that the issue resolution is adopted.

c) The issuing institutions must undertake to repurchase the securities subscribed by the Fund for Orderly Bank Restructuring as soon as they are in a position to do so on the terms undertaken in the integration plan. If the preference shares have not been repurchased by the institution within five years of the cash outlay, the Fund for Orderly Bank Restructuring may request that they be converted into ordinary shares, non-voting shares or contributions to capital of the issuer. Such power must be exercised, if applicable, within a maximum period of 6 months from the end of the fifth year after the preference shares were purchased. Notwithstanding, the resolution of issuance must contemplate the possibility of conversion of the preference shares at the request of the Fund for Orderly Bank Restructuring if, prior to expiry of the five-year term, the Bank of Spain considers their repurchase within such term to be unlikely, in view of the situation of the institution or its group.

d) the preference shares issued under this provision will be computable as basic shareholders' equity. For these purposes, the restrictions laid down by law for the computability of equity will not apply to them.

e) The resolution for the issuance of such securities must also observe the other conditions undertaken in the integration plan.

4. The subscribed securities will be divested by the Fund for Orderly Bank Restructuring, complying with the functions entrusted to it in this Article, through their repurchase by the issuing company or their transfer to third parties. When it disinvests these securities or those left after their conversion by transfer to third parties, this transfer must be undertaken according to procedures that ensure competition and within a period of no more than five years from the date of performance of the integration plan; however, this period will not apply in the event that paragraph 8 of this Article applies to the institution.

5. In the event of conversion of the preference shares into ordinary shares, non-voting shares or capital contributions, the provisions of paragraphs 6, 8 and 9 of this Royal Decree-Law will apply to them.

6. The body appointed by the institutions involved in the integration process or, if applicable, the institution resulting therefrom, will send a quarterly report to the Bank of Spain concerning the degree of compliance with the measures provided for in the approved integration plan. The Bank of Spain may, in view of the content of that report, require that the necessary action be taken to ensure that the integration plan is brought to a successful conclusion.

7. If, as a consequence of the development of the economic-financial situation of the institution resulting from the integration process or from the evolution of market conditions, it becomes apparent that the integration plan cannot be complied with in the terms in which it was approved, the institution may ask the Fund for Orderly Bank Restructuring for an amendment of these terms, which may include, amongst other matters, an extension of the period to repurchase the securities subscribed to by the Fund, referred to in paragraph 3.c) above, for a further two years. Amendment of the integration plan agreed with the Fund for Orderly Bank Restructuring must be approved by the Bank of Spain.

8. If, as a consequence of the development of the economic-financial situation of the institution resulting from the integration process or from the evolution of market conditions, the integration plan cannot be carried out and the institution is in the situation envisaged in Article 6 of this Royal Decree-Law, the provisions of Article 7 will apply to this institution and the plans should provide that, in accordance with this Article, the appropriate resolutions should be adopted in respect of the securities subscribed to by the Fund for Orderly Bank Restructuring.

First additional provision. *Legal system relating to guarantees in favour of the Fund for Orderly Bank Restructuring or Credit Institution Deposit Guarantee Funds.*

The legal rules laid down in the sixth additional provision of Law 13/1994, of 1 June, on the Autonomy of the Bank of Spain, will also apply to guarantees created in favour of Credit Institution Deposit Guarantee Funds or the Fund for Orderly Bank Restructuring in the exercise of their functions.

Second additional provision. *Legal system relating to the provision of guarantees to secure the economic obligations enforceable against the Fund for Orderly Bank Restructuring*.

Under Article 114 of General Budget Law 47/2003, of 26 November, the General State Administration is authorised, subject to the limits established in letters a) and b) below, to issue guarantees[5] to secure the economic obligations enforceable against the Fund for Orderly Bank Restructuring, derived from issues of financial instruments, agreements for loan and credit transactions and realisation of any other borrowing transactions made by this Fund:

a) Until 31 December 2009, the General State Administration may provide guarantees for a maximum sum of 27,000 million euros, charged against the limit established in Article 54.1 of Law 2/2008, of 23 December, on General State Budgets for the year 2009.

b) For subsequent financial periods, the maximum amounts for the issuance of guarantees will be as determined by the corresponding General State Budget Laws.

[5] The term “guarantee” is used here as the translation of the Spanish term “aval”.

Issuance of guarantees which will not earn any commission, must be agreed by the Minister for the Economy and Finance, in accordance with the provisions of General State Budget Law 47/2003, of 26 November, and may only provided once the Fund has been created and until the date of its termination.

If the guarantee is enforced, provided that enforcement commences within 5 calendar days after the date of maturity of the secured obligation, the State will pay compensation to the lawful holders of the guaranteed securities, regardless of the amounts to be paid under the guarantee. The amount of this compensation will be the result of applying to the payment represented by enforcement of the guarantee the Euro OverNight Average interest rate published by the Bank of Spain or the rate that is determined, if applicable, by the Minister for the Economy and Finance, for the day of maturity of the secured obligation by the number of days between this date and the date of actual payment by the guarantor, on the basis of a 360-day year.

The Minister for the Economy and Finance is authorised to establish the conditions and procedure for paying this compensation.

The Directorate General for the Treasury and Financial Policy is authorised to make the payments in respect of both the enforcement of the guarantee and this compensation by means of Treasury transactions charged against the specific items created for this purpose.

After this has been done, the Directorate General for the Treasury and Financial Policy will apply payments made in the financial period to the expenses budget. Payments made in the month of December of each year will be applied to the expenses budget in the immediately following quarter.

Third additional provision. *Situations of insolvency*

1. The obligation to apply for a declaration of insolvency will not apply to a credit institution which, finding itself in one of the envisaged situations, has filed one of the plans referred to in Articles 6 and 7 of this Royal Decree-Law. In such cases, the competent court will not rule on any applications for insolvency that may have been filed in relation to a credit institution.

2. In the event that the Bank of Spain has ordered interim replacement of the administration or management bodies of a credit institution, legal standing to apply for insolvency will lie with the Fund for Orderly Bank Restructuring alone.

Single repeal provision. *Repealed legislation*

With the entry into force of this royal decree law, all provisions of the same or a lower ranking that are contrary to it are repealed.

First final provision. *Amendment of article 2.1 of Royal Decree Law 6/2008 of October 10, creating the Fund for the Acquisition of Financial Assets.*

Article 2.1 of Royal Decree Law 6/2008 of October 10, creating the Fund for the Acquisition of Financial Assets is amended and is henceforth worded as follows:

"1. The Fund for the Acquisition of Financial Assets will be funded against the General State Budgets in the amount of €30,000 million, which amount may be increased up to the maximum of €43.250 million".

Second final provision. *Amendment of Law 2/2008 of December 23, the General State Budgets for 2009.*

One. The first paragraph of article 54.Two of Law 2/2008 of December 23, the General State Budgets for 2009, is henceforth worded as follows:

"Within the total amount stipulated in the preceding section, the following amounts are reserved:

a) €10,000 to guarantee, in accordance with article 1 of Royal Decree 6/2009 of April 30, adopting certain measures in the energy sector and approving the social benefit, the economic obligations demanded from the Securitization Fund of the Deficit of the Electricity System, arising out of the issues of financial instruments made by that Fund against the collection rights that form its assets.

b) €9,000 million to guarantee, in accordance with the provisions of Royal Decree Law 4/2009 of March 29, the obligations arising out of financing that the Bank of Spain may grant to Caja de Ahorros de Castilla-La Mancha.

c) €27,000, to guarantee economic obligations of the Fund of Orderly Bank Restructuring, arising out of the transactions contemplated in article 2.5 of Royal Decree Law 9/2009 of June 26 on bank restructuring and reinforcement of equity of credit institutions.

d) €64 million, to guarantee the obligations arising out of the financing transactions referred to in article 1 of Royal Decree Law 7/2008 of October 13, on Urgent Measures in Economic-Financial Matters, related with the Concerted Action Plan of the Euro Zone Countries."

Two. Appendix II, "extendable credits", Two. Four- c) of Law 2/20008 pf December 23, the General State Budgets for 2009. is henceforth worded as follows:

"c) Budget appropiation 15.931M.16.879, allocated to the contribution to the Fund for the Acquisition of Financial Assets. The final loan may not exceed the amount of € 43.250,000 thousand, the maximum amount contemplated in article 2 of Royal Decree Law 6/2008 of October 10, creating the Fund for the Acquisition of Financial Assets."

Third final provision. *Amendment of sections 7 and 8, article 7 of Law 13/1985 of May 25, on investment ratios, equity and reporting obligations of financial intermediaries.*

Sections 7 and 8, article 7 of Law 13/1985 of May 25, on investment ratios, equity and reporting obligations of financial intermediaries are amended and are henceforth worded as follows:

"7. Non-voting shares will be listed on organized secondary markets. Nevertheless, no legal or natural person or economic group may hold directly or indirectly non-voting shares exceeding 5 per cent of the total non-voting shares existing. If this percentage is exceeded, all the economic rights of the non-voting shares acquired by that person or economic group will be suspended.

The foregoing is understood to be without prejudice to the possibility that the Deposit Guarantee Fund, the Fund of Orderly Bank Restructuring or other entities in the savings bank sector, previously authorized by the Bank of Spain, may exceed the 5 per cent limit of non-voting shares issued by a Savings Bank in exceptionally serious situations that jeopardize the effectiveness of its assets and the stability, liquidity and solvency of the issuing entity. In such cases, the limit stipulated in section 6 of this article shall not be

applicable either.

8. The body responsible for resolving on each issue of non-voting shares shall be the General Meeting, which may delegate this responsibility to the Board of Directors of the Savings Bank. Said responsibility shall be deemed to be delegated in all cases to the provisional administrators designated by the Bank of Spain under the provisions of Part III of Law 26/1988, of July 29, on the Discipline and Control of Credit Institutions.

The primary acquisition of non-voting shares by the Savings Bank or its economic group will be prohibited. Nevertheless, a secondary acquisition may be made, provided that the par value of the non-voting shares held by the entity or its consolidatable group does not exceed 5 per cent of the total non-voting shares outstanding."

Fourth final provision. *Amendment of article 4 of Law 26/1988 of July 29 on the Discipline and Control of Credit Institutions*.

A new paragraph (p) is added to article 4 of Law 26/1988 of July 29 on the Discipline and Control of Credit Institutions, worded as follows:

"(p) Failure by the administrators of a credit institution to remit to the Bank of Spain the plan for return to compliance with the solvency rules or the plan referred to in article 6.1 of Royal Decree Law 9/2009 of June 26, 2009, on bank restructuring and the reinforcement of the equity of credit institutions, where this is appropriate. Failure to make the report shall be deemed to exist when the term provided for the purpose has expired, reckoned from the moment that the administrators knew or should have known that the entity was in any of the situations that determine the existence of that obligation."

Fifth final provision. *Amendment of the second additional provision of Law 22/2003 of July 9, Insolvency.*

Section 2 of the second additional provision of Law 22/2003 of July 9, Insolvency, is amended, adding a new paragraph (k), worded as follows:

"k) Additional provision three of Royal Decree Law 9/2009 of June on bank restructuring and reinforcement of the equity of credit institutions."

Sixth final provision. *Competence to legislate*

This royal decree law is enacted under article 149.1.6th, 11th and 13th of the Constitution, which attributes to the State the exclusive competence on mercantile legislation, bases for the organization of lending, banking and insurance, and bases for and coordination of the general planning of economic activity, respectively.

Seventh final provision. *Regulatory authorisation.*

The Minister for the Economy and Finance is authorised to pass the necessary rules for application and implementation of the provisions of this Royal Decree-Law.

Eighth final provision. *Entry into force.*

This Royal Decree-Law will come into force on the day after the date of its publication in the Official State Gazette.