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5879 Royal Decree-law 6/2010, of April 9, about measures for the boost of economic recovery and employment (Official State Gazette of April 13) (Measures regarding the financial sector).

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The aim of boosting growth in the Spanish economy and, as a consequence, in employment creation, and the accomplishment of that on a sounder and more sustainable basis, requires the adopting of several measures in order to strengthen our productive framework capacity and to assure the effective support of the public institutions in that growth.

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Finally, chapter VI, includes several measures within the limits of the financial sector which urge their implementation due to the need of facing the financial crisis development with the maximum of efficiency. In the context of the restructuring of the financial sector, article 25 clarifies the rules for the institutional protection schemes made up by credit institutions to assure the legal safety of these operations. Concretely, this article provides the accounting consolidation rules, the deposit guarantee funds membership and how to raise binding enquiries in the taxation field.

Article 26 modifies the Royal Decree-law 9/2009, of June 26, on banking restructuring and credit institutions equity reinforcement, to facilitate the speed and legal safety of the orderly bank restructuring. With this aim, the periods considered are shortened which will speed up the Fund for Orderly Bank Restructuring procedures. Some other changes in its regulation are also made. Regarding the reduction of the legal periods, it is established that the action plan that ensures the viability of the institution will be submitted at the same time as the Bank of Spain is informed of the situation of weakness, instead of within a month as previously stated. The period of a month is also shortened to 10 days in the case of the Bank of Spain itself drawing the conclusion that there are signs of weakness in the economic-financial situation of any institution and is required to submit an action plan. Additionally, the period for the objection of the Minister for the Economy and Finance against the decisions adopted by the Fund for Orderly Bank Restructuring is reduced from 10 to 5 days. Finally, regarding the non-voting shares¹ issued by a Savings Bank that are going to be completely underwritten by the Fund for Orderly Bank Restructuring, it is established that the reports which are referred to in the Royal Decree 302/2004, of 20 February, on Savings Banks non-voting shares, will be substituted by a report made by the Fund for Orderly Bank Restructuring which will mean a significant reduction in the time needed. In the same way, the orderly restructuring of a credit institution will take place in the event of the appearance of new circumstances implying that it is unlikely to find a viable solution. On the other hand, the changes in the urgent regulation of the Fund for Orderly Bank Restructuring, clarify the applicable rules for the non-voting shares bought by the Fund for the purpose of the equity² regulation, laying down that these shares will be computable as TIER I, that is, as capital with maximum quality, and also establish that the listing in a secondary market of the non-voting shares bought by the Fund will not be compulsory.

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¹ In Spanish “cuotas participativas”.

² In Spanish “recursos propios”

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VIII

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On the other hand, the provisions regarding the financial sector are extraordinary and urgently needed to boost the speed of its restructuring. Its immediate approval is necessary to strengthen the solvency of our credit institutions, which have already started this process. At the same time, the urgent need to approve the measures to strengthen the economic recovery, to which the creation of new employment is linked and which is dependant on the right performance of the financial market, justify the urgent approval of the measures in this field to strengthen the reform and restructuring process.

Therefore, these group of measures are adopted, whose extraordinary and urgent need is sufficiently justified.

By virtue, exercising the authorization contemplated in article 86 of the Constitution, at the proposal of the Minister for the Economy and Finance, the Minister of Public Works and the Minister of Industry, Tourism and Commerce after discussion by the Cabinet of Ministers at the meeting it held on April 9, 2010,

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CHAPTER VI

Financial Sector provisions

Article 25. Legal framework of the institutional protection schemes for the purposes of their consideration as consolidatable groups of credit institutions.

A new clause d) is added to section 3, article 8 of the Law 13/1985, of May 25, on investment ratios, equity and reporting obligations of financial intermediaries, with the following wording:

“d) Under a contractual arrangement some credit institutions make up an institutional protection scheme that meets the following requirements:

i) There is a central body which is in charge of laying down the mandatory business policies and strategies, as well as levels and measures for internal control and risk management. This central body will be responsible for complying with the regulatory consolidated reporting requirements of the institutional protection scheme.

ii) The central body must be one of the member credit institutions of the institutional protection scheme or another credit institution held by all others institutions and will be also part of the scheme.

iii) The contractual arrangement that sets up the institutional protection scheme includes a commitment regarding the joint solvency and liquidity of the participating institutions and, for solvency purposes, will involve at least a 40 per cent of the computable equity of each institution. The reciprocal support commitment will include the provisions required to assure that the support among the members is carried out with funds that are available immediately.

iv) The institutional protection scheme members will share a significant part of their profits and losses with a minimum of a 40% of them. This part will be distributed among the members according to their participation in the scheme.

v) The contractual arrangement will state that the institutions have to remain in the scheme for a minimum period of 10 years. After this period they must notify, 2 years in advance, their intention of

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leaving the scheme. Additionally, to reinforce the institutions presence and stability in the institutional protection scheme, the agreement will include penalties in the case of abandonment.

vi) In the opinion of the Bank of Spain the requirements laid down in the regulation on the credit institutions equity are met and the reciprocal exposures held by the members of the institutional protections scheme are 0 per cent risk weighted.

The Bank of Spain will be in charge of verifying the previous requirements for the purposes provided in this article.

When the credit institution that is the central body of the institutional protection scheme has a different nature to the rest of the members in the scheme and is participated in by all of them, it will join the Deposits Guarantee Fund to which all of them belong.

The credit institutions that are going to make up an institutional protection scheme are allowed to require the Bank of Spain to ask for a report from the Directorate General for Taxation in the Ministry of Economy and Finance, in the context of the interpretation of the national taxation regulation, regarding the taxation effects of the integration, with the aim of assuring the tax neutrality in the operation.

This report will be released within a month, will be based on the existence of the requirements previously checked by the Bank of Spain and will have binding effects for the all taxation authorities who are in charge of applying the taxes.”

Article 26. Reduction in the periods and other procedures involving the fund for orderly bank restructuring.

The Royal Decree-law 9/2009, of June 26, on bank restructuring and credit institution equity reinforcement is amended as follows:

One. Second paragraph in section 1 of the article 6 is worded as follows:

“Simultaneously, the institution in question will present an action plan, 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 the implementation of the plan, which must be within 3 months, must also be stated, unless the Bank of Spain expressly authorises otherwise.”

Two. Section 2 of the article 6 is worded as follows:

“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 equity³, 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 10 days”.

Three. Article 7 is worded as follows:

“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:

³ In Spanish “recursos propios computables”.

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- 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 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 also take place when the institution in question is in the situation referred in the section 2 of the previous article and the Bank of Spain concludes, considering the new circumstances appeared, that is unlikely to find a viable solution for the institution without the Fund for Orderly Bank Restructuring support.

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 who, in its turn, will appoint the concrete person or persons who, on its behalf, will exercise the appropriate functions and powers.
- 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 5 competent 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.

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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, underwriting 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.

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- 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.

The representation of the Fund for Orderly Bank Restructuring according to the provisions in this section will not be taken into account for the purposes of the calculation of limits regarding the representation of public Administrations and other public entities, provided in the applicable rules.

The reports which are referred to in the Royal Decree 302/2004, of 20 February, on Savings Banks non-voting shares, regarding the non-voting shares issued by a Savings Bank that are going to be underwritten exclusively by the Fund for Orderly Bank Restructuring will be substituted by a report made by the Fund for Orderly Bank Restructuring and the listing of the non-voting shares in a secondary market will not be compulsory as long as they are in the Fund for Orderly Bank Restructuring possession.

The non-voting shares issued by Savings Banks subscribed by the Fund for Orderly Bank Restructuring according with the provisions in this precept will be considered as TIER I.

- 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.”

Four. Section 2 of the article 9 is worded as follows:

“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 5 days after receipt of this report, giving grounds for such objection.”

Five. Letter d) in section 3 of the article 9 is worded as follows:

“d) the preference shares issued under this provision will be computable as TIER I, without being necessary that they are listed in a secondary market. For these purposes, the restrictions laid down by law for the computability of equity will not apply to them.”

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Third 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.