

### Box: The clean up and sale of real estate assets in the financial sector (Royal Decree/Law 18/2012)<sup>1</sup>

Royal Decree-Law 18/2012, approved on May 11th, 2012, on the write-down and sale of the financial sector's real-estate assets, was published in the Official State Gazette (BOE) on Saturday, May 12th. The main aim of the Royal Decree-Law (RDL) was to increase the provisions against loans for land for construction and construction and property development, as well as to separate real-estate assets from pure bank assets by requiring banks to transfer the former to asset-management companies. Institutions that are unable to meet the new provisioning requirements may be eligible for support from the Fund for Orderly Bank Restructuring (FROB) through its purchase of convertible bonds or equity.

The main points of the Royal Decree–Law are:

- **Write-downs:** New provisions (in addition to the 7% established in RDL 2/2012) need to be set aside, on a one-off basis, on the outstanding balance, as of December 31st, 2012, of loans for land for construction and construction and property development, held by credit institutions or consolidated groups of credit institutions with activities in Spain, as referred to in Article 1.2 of Royal Decree-Law 2/2012. The percentages for additional provisions are as follows: 45% for land, 22% for ongoing development projects, and similarly, 7% for finished homes, and 45% for assets not backed with real-estate as collateral.
- **Implementation plan:** In general, institutions must comply with these new provisioning requirements by December 31st, 2012. Institutions involved in further mergers in 2012 will have twelve months from authorisation of the operation to comply.
- **Institutions must submit an implementation plan by June 11th, 2012.** This is to include a programme for divestment of real-estate assets and a timetable for implementation. If there is a shortfall in own funds or “capital principal” (concept similar to core capital) in the implementation plan, the plan must describe the measures envisioned to avoid such a shortfall, for which the maximum execution period will be five months.
- **The Bank of Spain** will have 15 working days to approve the plan, and may require such changes or additional measures as it considers necessary, including the possibility of requesting financial support from the FROB.
- **Asset management companies (SGAs in their Spanish initials):** All institutions must transfer foreclosed assets and assets received in payment of debts to an SGA before the end of the period allotted for compliance with the new provisioning requirements under Articles 1 and 2 of RDL 2/2012. In the case of institutions in which the FROB

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<sup>1</sup> Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

has a majority shareholding, the latter shall decide whether or not it is appropriate to create an SGA.

- **Assets will be transferred at fair value**, or at book value if that is not possible, determined pursuant to Article 1.1 of RDL 2/2012 and Article 1.1 of the present RDL.
- **Institutions receiving FROB support pursuant to this RDL** will have three years to carry out the measures necessary for the SGA to be separated from the bank, such that its link is no closer than that of an associated company. To do so, it must sell off at least 5% of its assets to third parties each year.
- **Tax treatment of asset contributions to SGAs:** the tax regime has been modified to ensure the fiscal neutrality of asset contributions to SGAs.
- **Amendment of RDL 9/2009 (FROB):** Article 10 of RDL 9/2009 has been modified to enable institutions affected by Article 2 of this RDL to be eligible for financial support from the FROB. To access these funds, they will need to submit a recapitalisation plan for approval by the Bank of Spain. This financial support may take the form of convertible bonds or share capital injections. In either case, the securities will be included in the calculation of own funds and “capital principal”.
- **Amendment of RDL 2/2012:** The deadline for applications for authorisation of mergers, previously May 31st, has been extended until June 30th.
- **The RDL entered into force on May 12th.**