A MAJOR STEP IN SPANISH BANKING LAW - CUATRECASAS GONÇALVES PEREIRA

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Spain's recently enacted Royal Decree-Law 11/2010 has been reported to be the most significant provision in Spanish banking law for many years. It is indeed so. It may help foster the most significant evolution in the map of the Spanish banking sector since the early 80s.

Probably, the most distinctive feature of the Spanish financial system has always been the relevance

of savings banks (*cajas de ahorros*). The existence of financial intermediaries not under the form of public limited companies is by no means uniquely Spanish. Historically, almost everywhere in Europe, companies have shared the market with other institutions. Some of those institutions being not-for-profit is something not that strange either. What is less common is that such non-companies account for roughly 50 % of the market. This is the true difference: about a half of the deposits in Spain are in the hands of some 45 (a number now quickly shrinking) not-for-profit, regionally based, unable to issue shares or any other political rights bearing title, institutions. This "rarity" has undoubtedly had a positive impact in terms of efficiency and competitiveness of the market as a whole.

But the model has proven too rigid now that good times are over.

In the first place, savings banks have relied mostly on profits to build their capital base. Self-financing in a declining market may be not enough to sustain growth, or to face Basel III. The lack of a possibility to issue vote-bearing, share-like instruments (core capital, in other words), appears now to be a very relevant shortcoming.

In addition, the corporate governance of savings banks does not seem optimal. Though foundations in nature, savings banks are governed not through the ordinary foundational mechanisms but through a system that resembles that of a company (with an assembly, a board of directors and a supervisory board – quite like in Germany, for instance) except that, not having shareholders, votes in the assembly may not be assigned on the basis of the stake in capital. Instead, the law provides for those votes to be assigned to representatives of "groups of interest" (public authorities, municipalities, employees, depositors, etc). Each group of interest elects or appoints its representatives through different mechanisms. This model, to most commentators, shows relevant weaknesses.

Royal Decree-Law 11/2010 addresses these issues in various ways. In the first place, it has created a new type of vote-bearing, core capital instrument, named *cuota participativa* (which though not very common, already existed, but without voting rights). Second, and very important, following the Italian Amato Act precedent, and some Spanish experience at a regional level, it has also implemented alternative ways for a savings bank to concentrate all its banking business down to a bank (a public limited company) and remain as a mere holding institution or even an ordinary foundation, dedicated to the promotion of social welfare.

Both reforms lead to significant alterations to the savings banks' nature. If they issue vote-bearing *cuotas* they will end up with a mixed corporate governance model (votes of *cuotas* will be allocated on the basis of the proportion they represent in the overall equity of the institution, hence like in companies). If they decide to transfer the banking business to a bank, they will simply cease to exist in their present form and evolve into something new.

The success of the new legislation is yet to be seen. Some argue the reform has only gone half way to what should be the final aim: a total level playing field among different institutions by elimination of legal barriers. But the step taken is very significant. Savings banks are no longer a *closed* sector. And that is a breakthrough.

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