

SECURITISATION OF THE ELECTRICITY TARIFF DEFICIT - FONDO DE TITULIZACIÓN DEL DÉFICIT DEL SISTEMA - CUATRECASAS GONCALVES PEREIRA

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One of the main objectives of the recent rules approved regarding the Spanish electricity sector is to achieve tariff sufficiency in order to solve some of the financial difficulties of electricity companies. In this respect, last April 30, several measures affecting the energy sector were adopted under Royal Decree 6/2009. Accordingly, current and further tariff deficits have to be financed, and the mechanism chosen to do so has been the securitisation of the collection rights in favour of a Spanish asset securitisation fund.

Under Royal Decree 6/2009, the tariff deficit is defined as the difference between the collected amounts of regulated tariffs, fixed by the government and paid by the end customers for their regulated supplies, plus the access tariffs, fixed by the liberalised market, and the real costs related to such tariffs.

In this regard, also under Royal Decree 6/2009, general measures were approved to finance the tariff deficit by means of the assignment of the collection rights (the right to receive an amount of the monthly invoices of the access toll of the following years) by their holders to an asset securitisation fund that will be incorporated for such purpose (*Fondo de Titulización del Déficit del Sistema Eléctrico* – Electricity Tariff Deficit Asset Securitisation Fund).

Article 1 of Royal Decree 926/1998 regulating asset securitisation funds, defines those as separate estates, lacking legal personality. Given its lack of legal personality, the fiduciary relationship arises with the management company, to which administration and legal representation is entrusted. The reason for such unique relation is the issue of securitisation bonds, as a result of the assignment of the collection rights acquired by the fund represented by the management company. Therefore in the last instance the management company should take care of the interest of the bond holders. The incorporation of management companies is subject to government approval and their activity subject to supervision by the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores* – CNMV).

With regard to the above and by means of a resolution approved by an inter-ministerial commission, Titulización de Activos, S.G.F.T., S.A, has been appointed as the management company that will be responsible of the Electricity Tariff Deficit Asset Securitisation Fund. Therefore with the appointment of the management company the work for the incorporation of the fund will start shortly. Taking into consideration the nature of the collection rights that will be assigned to the fund, it will presumably be an open-end fund on sides, assets and liabilities. On the asset side, in order to make the different assignments of collection rights and on the liabilities side, in order to issue the different series of securitisation bonds.

The fund assets will be:

- i) existing collection rights as of December 31, 2008, not assigned to third parties, up to €10 billion, and ii) collection rights originated between January 1, 2009, and December 31, 2012.

The structure of the fund, the assignment price of the collection rights, the assignment conditions and the procedure to underwrite and place the securitisation bonds, among other issues, require further regulation, which is expected to be approved shortly.

Additionally, the securitisation bonds to be issued by the fund will be guaranteed by the Government of Spain, and therefore it is expected that these will be rated triple A by Moody's and Fitch, and AA+ by S&P.

Considering the amount of the transaction (between €10-€20 billion), that the securitisation bonds will be guaranteed by the Spanish Government, and that the bonds are expected to be placed in the primary market, we consider that this transaction will likely speed up the securitisation market during 2010.

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