

# THE ROLE OF INSTITUTIONAL PROTECTION IN THE RESTRUCTURING OF SPAIN'S CAJAS - DELOITTE ABOGADOS Y ASESORES TRIBUTARIOS

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**The economic situation and the effects of the world crisis on financial institutions have given rise to and fostered numerous initiatives of various natures and types in Spain.**

In the past year these initiatives have ranged from developments in regulations and the activation of state intervention and aid mechanisms (such as the Fund for Orderly Bank Restructuring – FROB) to the start of corporate concentration transactions.

Against this backdrop, the search for alternatives to other traditional formulas, such as mergers, as a means of concentrating interests, has become especially important for the Spanish saving banks sector (known as caixas in Galicia and Catalonia and cajas elsewhere in Spain), which is involved in a complex reorganisation process. Among these alternatives, institutional protection systems (SIPs) are being afforded particular consideration by many saving banks.

A SIP is an agreement which enables a 0% risk weighting to be applied to exposures with respect to counterparties included in the same system as the creditor entity, provided that certain requirements are met. Although SIPs have been subject to regulation at EU and national level, it is important to note the scarcity of the existing regulations, which leaves ample room for interpretation.

In fact, the regulations barely consist of a list of the SIP constitution requirements and, only very recently (14 April 2010), included the necessary requirements to be met for SIPs to be considered consolidatable groups of credit institutions.

These requirements may be summarised as follows:

1. the existence of a stable contractual agreement (the minimum length of inclusion in the system shall be 10 years and institutions may only exit after giving two years' advance notice once this initial period has elapsed), which is binding upon the institutions composing the system, and entails penalties for leaving, in order to reinforce the permanence and stability of the institutions in the system;
2. a reciprocal capital adequacy and liquidity guarantee from the institutions composing the system in the event of insolvency scenarios, which covers at least 40% of the eligible capital of each of the institutions for capital adequacy purposes and which includes the provisions required so that support may be given to the member institutions through immediately available funds;
3. the existence of a central institution (which may be either one of the credit institutions composing the system or another credit institution in which all the members of the system have an ownership interest), which will be responsible for meeting all the regulatory requirements on a consolidated basis for the system and which will determine, with binding effect, its business policies and strategies, as well as the internal control levels and mechanisms, enabling risk monitoring and classification and also control of breaches to be standardised; and
4. the mutualisation of a significant portion of the net profits of the institutions composing the system, representing at least 40% of the net profits, to be distributed among the institutions in proportion to each institution's interest in the system.

At present, just over half of the saving banks in Spain have approved, or are in talks to approve, merger plans or integration processes using SIPs.

The deadline for applying to the FROB for public aid for the restructuring of the sector, set by Brussels at 30 June 2010, is approaching and no extension to the deadline has been established despite the complexity of the processes involved and the time that was required to define an appropriate legal framework (with respect to both the SIPs and the terms and conditions for access to public aid from the FROB).

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