

FONDO DE GARANTÍA DE DEPÓSITOS EN ENTIDADES DE CRÉDITO

ESTABLECIMIENTOS BANCARIOS
CAJAS DE AHORRO
COOPERATIVAS DE CRÉDITO

SPAIN

REGULATIONS REGARDING DEPOSIT GUARANTEE FUNDS

Royal Decree 4/1980 dated the 28th of March by which legal status and other complementary measures are granted.

Royal Decree 18/1982 dated the 24th of September Regulations for Deposit Guarantee Funds.

Law 21/1993 dated the 29th of December regarding The National Budget.

Royal Decree Law 12/1995 dated the 28th of December regarding urgent measures relation to budgets, taxes and finance.

Royal Decree 2606/1996 the 20th of December regarding the Legal Regime for Deposit Guarantee Funds in Credit Companies.

Order dated the 12th of February 1997 for the duction of contributions to the Banking Institutiions.

Law 20/1998 dated the 1th of July regarding modifications to the Legal and Fiscal Regime for collective Investment Institutions.

Law 37/1998 dated the 16th of November modifying Law 24/1998 on the Stock Market (thirteenth additional regulation)

Note: These regulations apply to Deposit Guarantee Funds in Banks Insitutions, Savings Banks and Cooperative Credit Banks .With the exception of Royal Decree 4/1980 and the Order dated the 12th of February 1996, which only apply to Deposit Guarantee Funds in Banking Institutions.

ROYAL DECREE-LAW 4/1980 OF 28TH OF MARCH, GRANTING THE DEPOSIT GUARANTEE FUND IN BANKING INSTITUTIONS LEGAL PERSONALITY, AND OTHER AUXILIARY MEASURES (BOE OF 31TH MARCH, N° 31)

Royal Decree three thousand forty-eight/nineteen hundred and seventy-seven, dated the eleventh of November 1977, created the Bank Deposit Guarantee Fund with the fundamental aim of protecting depositors and, in particular, those small savers who are not always able to readily discern the situation of

the institutions in which they deposit their funds, giving protection analogous to that offered in other countries that, over recent years, have created or reinforced various different deposit insurance systems for their Financial Institutions.

Over the time that has passed since its creation the Deposit Guarantee Fund has been a valuable instrument with which to confront problems arising in our financial system, but precisely this experience of its operation has shown that it would be appropriate to extend its possibilities of action, such that the object of the Fund is not simply to guarantee the deposits in the event of an Institution's going into temporary receivership or bankruptcy, but to enable it to also make an important contribution to the solvency and operation of Banks, for which purpose it is necessary to endow it with legal personality and full legal capacity.

Also, it is necessary to modify the provisions of the Law of Joint-Stock Companies in relation to quorum and notice periods for General Shareholders' Meetings so that such meetings can be legally called and constituted in the specific case where the Banco de España believes it to be absolutely essential to re-establish the capital and financial balance of Banking institutions.

By virtue of which, and pursuant to article eighty-six of the Constitution, it is hereby

DECREED

Article One

One. The Deposit Insurance Fund for Banking Institutions, created by Royal Decree three thousand and forty-eight/nineteen hundred and seventy-seven, of the eleventh of November 1977, shall have public legal personality, with full capacity for the carrying out of its functions under private law and without subjection to the rules governing autonomous government organizations and State-owned Companies.

Two. Its purpose shall be to guarantee the deposits held in Banking Institutions in the way and to the extent that the Government establishes, and also to carry out any such actions as it considers necessary to reinforce the solvency and proper functioning of the Banks, in the defence of their interests of their depositors and of the Fund itself.

Three (c) The assets of the Fund shall be provided by annual contributions from the Banks which form part of it, equivalent at most to the one per mille of their deposits, together with an annual contribution from the Banco de España equal to the sum of the contributions from the other Banks.

Article Two.- The fiscal regime governing the Fund shall be as follows:

a) For the purposes of Corporation Tax, the rules envisaged for the Banco de España laid down in the fifth article, point one, of Law sixty-one/nineteen hundred and seventy-eight, of the twenty-seventh of December 1978 shall be applicable to the Fund.

b) The Fund shall be exempt from any indirect taxes that could accrue to it as a consequence of its formation, its operation and the actions or transactions that it carries out in the fulfilment of its purpose. This exemption shall also extend to transactions subject to indirect taxes applicable to the Fund by virtue of the provisions that regulate them.

Article Three.

Resolutions for the modification of the share capital of a Banking Institutions, when made necessary in order to re-establish the financial and asset balance of the Bank, and when given specific instructions to do so by the Banco de España, may be adopted by the first session of a General Shareholders' Meeting by a majority among shareholders (whether present in person or in representation) accounting for at least fifty per cent of the paid-in capital. At the second session only twenty-five per cent of the share capital need be represented, and in both cases this is regardless of the number of shareholders present. A period of seven days between notification of the General Shareholders' Meeting and its being held shall be considered sufficient notice.

Article Four

The Government, upon proposal, whether collective or individual, by the Ministries of Justice, the Treasury and the Economy, in the area of their respective competencies, shall dictate the precise measures for the implementation and application of the present Royal Decree-Law, which shall come into effect the day following their publication in the "Official State Gazette".

ROYAL DECREE-LAW 18/1982, OF 24 OF SEPTEMBER 1982), BANKING INSTITUTIONS, SAVINGS BANKS AND CREDIT COOPERATIVES. DEPOSIT GUARANTEE FUND REGIME. (BOE OF 1ST OCTOBER 1982)

Article 1.

1. The Savings Bank Deposit Guarantee Fund, created by Royal Decree 2870/1980, of 4th December 1980 (R. 1981, 42), shall have public legal personality, with full capacity for the carrying out of its functions under private law and shall not be subject to the rules governing autonomous government bodies, autonomous state-owned companies and state-owned companies.
2. Its purpose shall be to guarantee the deposits held by Savings Banks in the manner and to the extent set by the government, and to carry out any actions it considers necessary to bolster solvency and improve the operation of Savings Banks in defence of the interests of the Fund.
3. The Fund shall be governed and administered by a Management Committee, which shall consists of four representatives of the Banco de España, one of whom shall be the chairman, and four representatives of the Savings Banks, appointed by the Ministry of Economy and Commerce at the proposal of the Banco de España.

Article 2.

1. The Deposit Guarantee Fund for Credit Cooperative Banks is formed with full legal personality and capacity to carry out its functions. Its business shall be governed by private law and it shall not be subject to the rules governing autonomous state institutions and state-owned companies.
2. It shall aim to guarantee the deposits in Rural Savings Banks and other Credit Cooperative Banks recorded in the Special Register, created in article 3.1. of Royal Decree 2870/1978, 3rd November 1978 (R. 2670 and 2847) in the manner and to the extent set by the Government, and to carry out any such actions as necessary to bolster solvency and improve the functioning of the Cooperatives in defence of the interests of the Fund.
3. The Fund shall be governed and administered by a Management Committee, which shall comprise four representatives of the Banco de España, one of whom shall be chairman, and four representatives of

the Credit Cooperative Banks appointed by the Ministry of Economy and Commerce, at the proposal of the Banco de España.

Article 3

The assets of the Guarantee Funds for Deposits held in Banking Institutions, in Savings Banks and in Credit Cooperative Banks, shall be provided by annual contributions from the institutions belonging to each of them, which shall be equal to one per mille of their deposits, together with annual contributions from the Banco de España equal to the sum of these contributions. When the total contributed to a Fund by the Banco de España is greater than four times the amount contributed by the Institutions and the Banco de España in the previous financial year, this amount may be raised by the Government, when so proposed by the Banco de España, to a rate of two per mille for the fund in question.

If, on the other hand, any Fund obtains sufficient assets for its purposes, the Banco de España may agree to a decrease in the abovementioned annual contributions prior to the contribution being paid.

Article 4.

The fiscal regime governing the Guarantee Funds for Deposit in Savings Banks and in Credit Cooperative Banks shall be as follows:

- a) Corporation Tax shall be applied in accordance with the rules of article 51, 1 of Law 61/1978, of 27th December 1978 (R.2837), envisaged for the Banco de España.
- b) The Funds shall be exempt from any indirect taxes that may accrue to them as a consequence of their being formed, their operation and the actions or transactions that they carry out in the fulfilment of their purpose. This exemption shall also extend to transactions subject to indirect taxes applicable to the Funds by virtue of the provisions that regulate them.

Article 5

The powers granted to the Banco de España pursuant to the first and second articles of Royal Decree-Law 5/1978, of 6th March 1978 (R 501), in relation to Banking Institutions apply here with equal scope and under equal conditions as in the case of Savings Banks and Credit Cooperative Banks.

Article 6.

1. When a Bank, Savings Bank or Credit Cooperative Banks goes into temporary receivership, pursuant to the Law of the twenty-sixth of July nineteen hundred and twenty-two, the two Financial Controllers (who shall be Qualified Mercantile Experts chosen from those appearing on the Court lists, pursuant to the fourth article of the abovementioned Law Of Temporary Receivership), shall be named on the lists that are sent to the Deposit Guarantee Fund to which the Institution belongs or belonged.

When the circumstances of the first paragraph of the sixth article of the abovementioned Law obtain and suspension and substitution of the administrative bodies of the suspended institution takes place, the Administrator shall be the Deposit Guarantee Fund itself.

2. When a Bank, Savings Bank or Credit Cooperative Banks is formally declared to be bankrupt in accordance with the standards of the Commercial Code and the Law Of Civil Judgement, the functions of its bodies, i.e. the Commissioner, Depositary and Syndics, shall be assumed by the Deposit Insurance Fund to which the institution belongs or has belonged, and it shall substitute them for all purposes.

3. The Banking Institution Deposit Guarantee Fund, the Savings Banks Deposit Guarantee Fund and the Credit Cooperative Banks Deposit Insurance Fund, shall have the benefit of poverty vis-à-vis all courts and jurisdictions in any such proceedings as it may be involved, whether as plaintiff or defendant.

Banks, Savings Banks and Credit Cooperative Banks that are declared bankrupt or whose temporary receivership proceedings enter the winding up phase shall likewise the benefit of poverty, unless once their assets have been liquidated and all the creditors paid they have sufficient assets to meet their legal expenses.

Article 7.

The Government shall stipulate the precise measures for the development and application of this Royal Decree-Law, which shall come into effect on the day following its publication in the "Official State Gazette", and it shall give an immediate report of the same to parliament.

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LAW 21/1993, ON STATE GENERAL BUDGETS FOR 1994 STIPULATES THE FOLLOWING: (BOE OF 30TH DECEMBER, N^O 312)

The Twentieth-Seventh Provision

Article 45.I.C) of Legislative Royal Decree 1/1 993, of 24th of September, includes a twenty-third additional clause whereby the consolidated text of the Law of Tax on Capital Transfers and Documented Legal Acts was approved, which reads as follows:

"23rd. The Deposit Guarantee Funds for Banking Institutions, Savings Banks and Credit Cooperative Banks shall continue to enjoy the exemption from Tax on Capital Transfers and Documented Legal Acts established in the Royal Decree-Law 4/1980, of 28th March 1980 and Royal Decree-Law 18/1982, of 24th September 1982, on their formation, operation and the actions and transactions that they undertake in the performance of their functions."

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ROYAL DECREE-LAW 12/1995, OF 28TH DECEMBER 1995, ON URGENT BUDGETARY, TAXATION AND FINANCIAL MEASURES (BOE OF 30TH DECEMBER 1995 - N^O 312)

Seventh additional provision. Deposit Guarantee Funds for Credit Institutions. Incorporation of Directive 94/19/CE into national legislation.

One. Royal Decree-Law 1 8/1982, 24th of September 1982, has been modified as follows:

a) A continuation to article two has been added, which reads as follows:

"1. All Spanish credit institutions shall be obliged, according to their legal nature, to be a member of the Deposit Guarantee Funds, regulated by statute or by Royal Decree-Law 4/1980, 28th March 1980. However, it may be foreseen that, or required that, a credit institution join a Fund other than that to which it would correspond by virtue of its legal nature, whether as a result of its specific characteristics or its economic dependence, under the conditions established in the regulations.

The duty established in the foregoing paragraph shall not be applicable to the Official Credit Institute. In the same way, during the transitional period stipulated in the first additional provision of Law 3/1994, 14th April 1994, this duty shall not be applicable to mortgage credit companies, financing institutions and financial leasing companies.

2. The branch offices of foreign credit institutions operating in Spain shall be included in the Spanish Deposit Guarantee Fund under the circumstances and in the manner laid down by statute.

3. Each of the Guarantee Funds shall be governed and administered by a Management Committee comprising eight members appointed by the Minister of the Treasury, four representing the Banco de España, one of which shall act as chairman, and four representing the member financial institutions, who shall be appointed under the terms laid down by statute, upon the proposal of the member institutions.

b) The third article reads as follows:

"1. The Deposit Guarantee Funds for Banking Institutions, Savings Banks and Credit Cooperative Banks shall be provided with funds, in the manner stipulated by their regulations, by means of annual contributions from the member credit institutions of each, whose contribution shall be 2 per mille of the deposits guaranteed by the relevant fund.

2. However, when the assets held by a Fund reach sufficient levels for it to carry out its functions, the Minister of the Treasury, at the proposal of the Banco de España, may agree on a decrease to the abovementioned contribution. In any case, contributions shall be suspended when the asset fund not committed to any transactions in relation to the object of the Fund equals or exceeds 1 per cent of the deposits of its member institutions.

3. Exceptionally, in order to safeguard the stability of its group of member institutions, a Fund may also draw upon contributions from the Banco de España, whose amount shall be set by Law".

c) Article five, which was repealed by Law 26/1988, on Credit Institutions Discipline and Intervention, read as follows:

"1. The Funds shall indemnify depositors with the full value of the deposits guaranteed when one of the following circumstances obtains:

a) The institution has been declared bankrupt.
b) There has been a court order requiring the institution be placed under temporary receivership; or

c) The Banco de España decides, that as a result of non-repayment of deposits the institution is unable to repay in the immediate future as a direct result of its current financial situation. In the abovementioned case of non-payment, the Banco de España must resolve the situation with the greatest possible speed, and at the latest within twenty-one days after it has been shown that the institution has not managed to return the deposits which have matured and may be demanded of it.

As a result of payment the Funds shall be subrogated by law, in respect of all the rights of the creditor corresponding to the paid amount, the document in which the payment is recorded being sufficient title.

2. Finance companies which do not make their contributions in the appropriate manner to the Deposit Insurance Fund of which they are a member, or that, in general, are in breach of the duties that correspond

them with respect to it, may be expelled from the Fund once the measures adopted to ensure their compliance have failed. The Minister of the Treasury, on the proposal of the Banco de España following a report from the Management Committee of the Fund in question, shall have competence to decide such exclusion."

Two. In 1996 the Banco de España shall make exceptional contributions to the Bank Deposit Guarantee Fund for an amount equal to the total of the contributions made by member financial institutions to the Fund during the same year.

Three. Until the provisions of section 2 of the continuation of the second article of Royal Decree-Law 18/1982, 24th September 1982, have been implemented, in accordance with the text cited in section 1 of this article, the branch offices in Spain of credit institutions resident in other Union European Member States, shall be able to request, at their own discretion, that they be excluded from the Bank Deposit Fund or that their contributions to this Fund be reduced, provided that their depositors in Spain remain covered by the Deposit Guarantee System in their state of origin.

Four. Financial credit establishments regulated by the first additional provision of Law 3/994 shall be considered credit institutions, although legislation concerning deposit guarantees shall not be applicable to them.

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ROYAL DECREE 2606/1996, OF 20TH DECEMBER 1996, ON CREDIT INSTITUTION DEPOSIT GUARANTEE FUNDS. (BOE OF 21TH DECEMBER Nº 307)

The object of this Royal Decree is to establish the legal regime covering deposit guarantee funds in Banking Institutions, savings banks and Credit Cooperative Banks.

The new regulation implements European Parliament and Council of Europe Directive 94/19/CE, 30th May, concerning deposit guarantee systems, already partially implemented via Royal Decree-Law 12/1995, 28th December 1995, on urgent budgetary, taxation and financial measures, which introduced the first important novelties such as obligatory membership of a deposit guarantee fund for Spanish credit institutions, the conditions for exemption from this duty, together with the reasons for expulsion.

A further new feature introduced by the abovementioned Royal Decree-Law was the definition of the system of contributions to the funds and the mechanisms for the reduction and suspension of contributions, such that each of the funds is fed via the annual contributions of its member credit institutions and, exceptionally, by contributions from the Banco de España, the amount of which must be set by Law.

At the same time the range of circumstances giving rise to compensation payments was broadened to include administrative declaration of non-payment of deposits along with temporary receivership and bankruptcy. Finally, the regulations governing the membership of branch offices of foreign credit institutions were outlined.

This Royal Decree, which completes the transposition of Directive 94/19/CE into Spanish law, develops the previous one further, one of its most outstanding features being that it brings together in a single unified text the regulations governing the various different funds, formerly dispersed in a variety of legal instruments.

In Spain, deposit guarantee funds have traditionally been characterized by the double purpose of insuring deposits and reorganizing and refloating financial institutions which are in difficulties. The current regulations have maintained both principles.

The most novel features of the current regulations centre on the following points:

Firstly, voting is required as the means of electing members of the bodies governing the funds, i.e. this is to be the means whereby associations representing credit institutions elect their representatives on the respective deposit guarantee fund management committee. The concept of the representativeness of the associations is established according to two criteria: They must represent more than 80 per cent of the member institutions of the corresponding fund and more than 90 per cent of the deposits held by these institutions. If these percentages are not reached the appointment of representatives shall be carried out by means of a direct vote held by all the member institutions of the fund.

Secondly, several points should be highlighted. The definition of the guaranteed deposits involves a delimitation which is as much positive as negative, in accordance with the guidelines foreseen in the Directive that it implements. Deposits not guaranteed on account of their nature and which, therefore, are not included in the calculation of the contributions, are distinguished from those which, although covered in principle, and so included in the calculation, may be excluded from the obligation to pay under certain circumstances.

On the other hand, the maximum guaranteed amount in relation to deposits is limited to the equivalent in pesetas of 20,000 ECUs, although up until 31st December 1999 this limit remains set at 15,000 ECUs.

This has given rise to the adoption of the so-called "principle of guarantee by the country of origin" which implies obligatory coverage by deposit guarantee funds in the country of origin in the case of Spanish branch offices of credit institutions based in other countries of the European Union. Nevertheless, a limitation known as the "prohibition clause on the export of more favourable regimes", is included, which prevents the level and the scope of the coverage exceeding the maximum offered by the guarantee system of the Member State of in which the foreign institution operates.

The system of membership of the Banking Institution Deposit Guarantee Fund for foreign branch offices of credit institutions is also defined, and an essential distinction is drawn. Institutions based in other Member States of the European Community are permitted voluntary membership so that they may offer their depositors a complementary guarantee in addition to their own.

On the other hand, the obligatory nature of the regime covering branch offices of credit institutions based in countries outside the European Community varies depending on the existence or not of coverage in the country of origin, and whether there is any difference in its level or scope.

Thirdly, the regulation of procedural aspects relating to the causes or circumstances that give rise to the liability for payment and those governing payment itself stand out.

The second traditional purpose of Spanish Guarantee funds has been to ensure the stability of the financial system, avoiding a crisis afflicting one credit institution affecting the rest of the institutions operating in the market. Another noteworthy feature of the new regulations is the so-called "Action Plan", which may include both preventive measures and measures for the reorganisation of the institution. These measures may entail a range of actions intended to restructure the institution's assets, in particular subscription of capital increases by the fund, and various types of financial assistance and management measures.

The Royal Decree delimits the functions of the Banco de España and of the Management Committees of the funds in relation to the approval of the action plan, and in relation to the adoption of executive measures and specific steps for reorganisation. This regulation seeks to avoid overlapping competencies and to systematise the public or private actions intended to overcome financial crises affecting credit institutions.

In virtue of which, on the proposal of the Second Vice-President of the Government and Minister of Economy and the Exchequer, according to the Council of State and prior deliberation of the Board of Ministers at their meeting of the 20th of December of 1996,

IT IS HEREBY DECREED

Article 1. Object and legal personality.

1. This Royal Decree implements the legal regime governing deposit guarantee funds for Banking Institutions, savings banks and Credit Cooperative Banks.
2. The deposit guarantee funds for Banking Institutions, savings banks and Credit Cooperative Banks shall have full legal personality and capacity for the carrying out of their functions under private law and shall not be subject to the rules regulating autonomous state institutions and state-owned companies.

Article 2. Fund Government Bodies 1. The deposit guarantee funds for Banking Institutions, savings banks and Credit Cooperative Banks shall be governed and administered by a Management Committee comprising eight members appointed by the Minister of the Treasury, four of which shall represent the Banco de España and four of which shall represent the credit institutions which are members of each fund.

The representatives of the Banco de España shall be put forward by its executive committee. Deputy Governor of the Banco de España shall be a member of the management committee and shall be chairman of each of the funds. If the post is vacant, or the Deputy Governor is absent or ill, the chair shall be occupied by a representative of the Banco de España appointed by the management committee.

The representatives of the institutions shall be put forward by the associations representing the banks, savings banks and the Credit Cooperative Banks, provided they reach the thresholds established in the following paragraph. The persons appointed shall be of acknowledged commercial and professional honour and must possess adequate knowledge and experience for the exercise of their functions. In order to determine whether these conditions have been fulfilled the criteria included in article 2 of Royal Decree 1245/1995, 14th July 1995, on the creation of banks, cross-border business and other questions related to the legal regime governing financial institutions, shall be applied. Such persons must be accredited at the time of their appointment. It shall not be necessary to renew such accrediting.

If at the time of electing representatives for the management committees of the respective deposit guarantee funds the credit institutions which are members of one of the mentioned associations represent more of the 80 per cent of members of the corresponding fund, and the deposits of member institutions account for more than 90 per cent of those constituted, the representative associations shall be responsible for proposing appointments of representatives to the Minister of the Treasury. The Banco de España shall verify compliance with the percentages of representation mentioned above and, in the event of compliance, the association in question shall be notified. If the required percentages are not reached, representatives shall be put forward by the member institutions of the fund and shall be appointed by direct election by all members. Every institution shall have as many votes as the value of its deposits expressed in millions of pesetas, and only persons holding 20 per cent or more of the votes may be appointed. The Banco de España shall organize and set the voting criteria. For the purposes of this article, all debits that may benefit from the guarantee provided by the funds, pursuant to current regulations, regardless of the amount owned by each holder, shall be considered deposits.

The same procedure may be used to elect two substitute representatives for the Banco de España and two for the institutions, in order to replace office holders in the event of vacancy, absence or sickness. In the case of the representatives of the institutions, they must also be replaced upon the demand of the chairman of the management committee when it is going to deal with matters directly relating to an institution or group of institutions with which said representative is associated as administrator or manager, or by any contract of employment or otherwise, by any other relationship that could reduce the objectivity of his decisions or require his abstention.

The duration of the term of office of the members of the management committees shall be of four years, which shall be renewable, except in the case of the mandate of the Deputy Governor of the Banco de España, which shall last as long as he remains in the post.

The office of the representatives of credit institutions which are members of the fund shall be terminated under any of the following circumstances:

- a) Expiry of the term of the mandate.
- b) Resignation accepted by the Minister of the Treasury.
- c) Dismissal agreed by the Minister of the Treasury for grave non-fulfilment of duties, permanent inability to carry out the functions associated with the office or following a sentence for an offence involving deceit.

As well as being terminated for the reasons envisaged in the foregoing paragraph, the office of the representatives of the Banco de España may also be terminated at the proposal of the Executive Committee of the Banco de España.

2. The management committees shall meet when called by their Chairman, whether on his own initiative or as a result of an application by any of the members of the committee. The management committees shall also be empowered to establish their own system for the calling of meetings.
3. The management committees shall determine the rules for their own operation and shall be able to agree on the delegations that they deem appropriate for the due exercise of their functions.
4. Each management committee shall have, besides the functions that are considered elsewhere in this Royal Decree, the following duties and functions:
 - a) To inform and advise the Banco de España on matters which are under the competency of the funds.
 - b) Approval of the accounts that the funds must provide to their members and to the Banco de España each year.
5. The management committees shall demand from the Banco de España as much information they need regarding their member institutions for the performance of their functions. In particular, they shall be informed by the Banco de España regarding those institutions in economic difficulties that may require action on the part of their respective fund.
6. At least half of the members must be present in order for management committee meetings to be valid. Management Committee agreements shall be adopted by majority vote by the members present. In the event of a hung vote the chairman shall have the casting vote.

Exceptionally, when it is a matter of adopting measures included in an action plan, pursuant to the provisions of article 10, the agreement may be adopted by a two-thirds majority, provided the financing of the action plan does not require a contribution from the Banco de España.

7. The members of the management committee shall be obliged to keep secret all information they may come to know as a result of their participation in the tasks of the fund, and they may not make use of such information for purposes other than those relating to the exercise of their office on the committee. For these purposes, the provisions of article 6 of Royal Legislative Decree 1298/1986, 28th June 1986, on the adaptation of current law governing credit institutions to European Community directives, shall be applicable in the form given to it by article 5 of Law 3/1994, 14th April 1994, whereby the second Banking Coordination Directive and other modifications to the financial system were incorporated into Spanish legislation.

Article 3. Assets of the Funds

1. The annual contributions to funds made by member institutions shall comprise 2 per mille of the deposits guaranteed at the end of each financial year.

2. The annual contributions of member institutions shall be destined to covering needs arising from the functions of the funds and shall be paid into the account held by the corresponding fund at the Banco de España in one or more payments after the end of the financial year, in view of the requirements of the Fund, and the deadlines set by the corresponding management committee.

3. When the assets of a fund reach a sufficient amount for it to be able to fulfil its functions, the Minister of the Treasury, upon the proposal of the Banco de España, may agree to a decrease in the contributions mentioned in point 1 of this article. In any case, such contributions shall be suspended when the assets not committed to any of the operations proper to the purposes of the Fund are equal to or greater than 1 per cent of the deposits of the member institutions, this fact being communicated by the management committee in the form determined by it.

4. Exceptionally, for the purpose of safeguarding the stability of member institutions as a whole, a fund may draw upon contributions from the Banco de España, the value of which shall be set by Law.

5. The uncommitted assets of the funds must take the form of national debt or other highly-liquid, low-risk assets.

Article 4. Definition of the Guaranteed Deposits

1. For the purposes of this Royal Decree, credit balances on account, including those funds arising transitorily as a result of movements of funds and nominative deposits that the institution is obliged to restore under the applicable legal and contractual conditions shall be considered guaranteed deposits, whatever the currency in which they are denominated, provided that they are constituted in Spain or in another Member State of the European Union.

2. The following shall not be considered to be guaranteed deposits for the purposes of this Royal Decree, and shall not therefore be included in the calculation of contributions:

a) Deposits made by other financial institutions on their own behalf and in their own name and those made by any of the following:

- 1st Stock market companies and agencies
- 2nd Insurance companies
- 3rd Security investment companies

4th Collective investment companies, pension fund management companies, and companies dealing in securitization funds, venture capital and deposits for the institutions they manage.

5th Portfolio management companies.

6th Venture capital companies.

7th Institutions whose main activity is the ownership of share or holdings.

8th All institutions, regardless of their denomination or purpose, which, according to the applicable regulations, carry out business typical of the companies listed above.

9th Any financial institution submitted to prudential supervision.

b) Securities representing debt issued by the credit institution, including promissory notes and negotiable securities.

c) The bearer deposit certificates, temporary assignment of assets and financing with a subordination clause.

d) Deposits constituted by companies belonging to the same financial group as the credit institution in which the deposits are placed.

e) Deposits constituted by Public Administrations.

f) The deposits constituted by those who hold administrative or management offices in the institution giving rise to the need for action by the fund, pursuant to article 1.4 of Law 26/1988, 29th July 1988, on Credit Institution Discipline and Intervention, or by persons holding a significant share of the assets of the institution, pursuant to article 56 of Law 26/1988, or who have a shareholding in companies of the financial group, according to the criteria given in article 4 of Law 24/1988, 28th July 1988, on the Stock Market, and also the spouses and immediate relatives of all the foregoing.

3. Also, notwithstanding the fact that they are taken into account for the calculation of contributions, the duty to pay guaranteed amounts shall not be applicable if the sums were deposited under any of the following circumstances:

a) In breach of current legislation, in particular those funds arising out of operations in relation to which there has been a criminal sentence for offences involving money-laundering transactions.

b) For customers who have brought about, through their own actions, financial conditions that have contributed towards worsening the situation of the institution, provided such circumstance have been confirmed by a court conviction.

4. Notwithstanding the periods and deadlines laid down in article 9.1. of this Royal Decree, when in the opinion of the Management Committee there exist circumstances allowing it to suspect a depositor's relationship to, or participation in, the circumstances bringing about the situation giving rise to the duty to

paying indemnity, it shall be permitted to suspended payment of the corresponding compensation until the Court declares such a relationship or participation not to exist. The Funds shall have a similar power when a depositor or any other person with a right or interest in a deposit has been prosecuted or summary court proceedings have been begun against him for offences relating to money-laundering transactions, pursuant to Title III of Book IV of the Law of Criminal Judgement and until such time as proceedings are concluded.

Article 5. Membership of the Funds

1. Credit institutions entered in the Special Registers of the Banco de España corresponding to Banks, Savings Banks, and Credit Cooperative Banks, must join their respective guarantee funds.

2. The foreign branch offices of credit institutions based abroad shall be governed by the following regime.

a) The branch offices of credit institutions authorised in other Member States of the European Union may join the deposit guarantee fund for Banking Institutions.

b) The branch offices of credit institutions authorised in a country which is not a member of the European Union shall be governed by the following regime:

1st Membership the deposit guarantee fund for Banking Institutions shall be obligatory when their deposits in Spain are not covered by a deposit guarantee system in the country of origin.

2nd Such branches must subscribe to the Banking Institution deposit guarantee fund in order to cover the difference in level or scope, when the guarantee given under the system in the country of origin is less than that given in Spain.

3rd Membership of the Banking Institution Deposit Guarantee Fund shall not be obligatory when deposits are covered in the country of origin.

For the purposes of determining the circumstances corresponding to each branch office, these shall accredit, if appropriate, the coverage given by the guarantee system of their country of origin.

The Fund shall be permitted to enter into agreements with the deposit guarantee systems operating in other countries in order to organize the payment of compensation, if applicable.

3. The management committee of each fund shall publish annually a list of its member institutions in the "Official State Gazette".

4. Institutions which are members of the funds shall not be allowed to use the fact of their membership in advertising, although they shall be allowed to mention it without adding other data or information regarding the funds. They shall make information on the characteristics of the fund available to the public at their offices, with a statement, in the case of the branch offices of foreign credit institutions, to the effect that the guaranteed amounts are limited to those laid down in Spanish legislation.

5. Any institutions that for any reason cease to be members of their respective funds shall not be entitled o a refund of the sums they have contributed.

Article 6. Expulsion from the Funds

1. Credit institutions not making their contributions to the deposit guarantee fund to which they belong in the due manner, or which do not comply with their obligations pursuant to section 4 of the foregoing article, may be excluded from the fund if, having been required to make good the breach, they have not

rectified their situation within a stipulated period, which may not be less than one month. Competence to decide the expulsion of an institution shall reside with the Minister of the Treasury, who shall act upon the proposal of the Banco de España, following a report from the management committee of the fund affected and after holding audience with the interested party, pursuant to article 84 the Law 30/1992, 26th November 1992, on the Legal Regime of the Public Administrations and of Common Administrative Proceedings.

2. When the branch office of a financial institution based in a country of the Union European does not fulfil its duties as a member of the fund, the fund may, through the Banco de España, communicate this fact to the supervisor authority in the State of origin of the institution, such that it may take the appropriate measures. If, despite this, the institution persists in its failure to fulfil its obligations, the fund shall be able to propose to this authority the expulsion of the branch office. Once the express permission of the mentioned authority has been obtained, the fund shall notify the branch office of its expulsion, which shall be effective twelve months after receipt of notice.

3. The deposits made, both with Spanish financial institutions and branch offices of foreign credit institutions, prior to the expulsion becoming effective, shall continue be protected by the fund until expiry. In the case of current accounts, the protected balance shall not exceed that existing on the date of exclusion, minus the debits taking place between this date and that of the circumstances giving rise to the payment of compensation. The withdrawal of the coverage shall be communicated to depositors through the "Official State Gazette" and two national circulation newspapers.

Article 7. Extent of the Guaranteed Amount

1. The guaranteed amount of the deposits shall be subject to an upper limit set at the peseta equivalent of 20,000 ECUs, at the rate of exchange on the day that any of the events described in article 8 of this Royal Decree occurs, or on the previous business day in the case of a public holiday.

In the case of deposits held in branch offices of Spanish credit institutions in other countries of the European Union, coverage shall not exceed, either in level or scope, that given by the guarantee system of the country where these branch offices have been set up.

That guarantee shall be applied depositor by depositor, whether natural or legal person, regardless the number and type of deposits of which said person appears as holder at the same institution. The abovementioned limits shall also be applied depositors holding deposits exceeding the guaranteed maximum.

2. When an account has more than one holder, the balance shall be divided among the holders, according to the provisions of the deposit contract and, failing that, in equal shares.

3. When the holders of a deposit act as representatives or agents of third parties, provided this situation existed at the moment of formalizing the deposit and it has been declared formally to the institution involved

in the circumstances described in article 8, the fund liability shall be applied to the third party payees of the deposit to the extent that it corresponds to them.

4. Deposits existing at the moment of revoking the authorization granted to an institution which is member of a fund shall continue to be covered up until the time the institution ceases to exist and the institution shall be obliged to meet any contributions required of it by law. In the case of current accounts, the protected balance shall be that existing on the date of the revocation.

Article 8. Grounds for performance of the Guarantee

The funds shall indemnify holders with the guaranteed deposit under the following circumstances:

- a) The institution declared bankrupt.
- b) A court order is issued requiring the institution be placed in temporary receivership.
- c) Upon failure to repay deposits which have matured and may be demanded at law, the Banco de España determines that, in its opinion, and for reasons arising directly out of the institution in question's financial situation, that it is unable to return these deposits and it does not seem likely to be able to do so in the immediate future. Having heard the fund's management committee, the Banco de España must decide upon the matter as swiftly as possible, and at the latest, within twenty-one days of it having first been evident that the institution has not been able to return matured deposits and audience has been granted to the institution concerned, pursuant to article 84 of Law 30/1992, 26th November 1992, on the Legal Regime of the Public Administrations and Common Administrative Procedure, without this implying any change to the stated deadline.

Article 9. Payment and its Effects.

1. The funds must be in a position to satisfy duly verified claims within three months of the date upon which the Banco de España decided as described in paragraph c) of the foregoing article, or the judicial authority dictates one of the decisions mentioned in paragraphs a) and b) of this article, notwithstanding the provisions of section 4 of article 4 of this Royal Decree.

When the funds foresee that they are unable to make the payments within the stipulated period, they may make successive applications to the Banco de España for the granting of up to three extensions of deadlines of not more than three months each, stating the reasons for the application. The Banco de España may authorize these extensions when it believes that exceptional reasons exist to justify the delay, such as a large number of depositors, the existence of accounts in other countries or the confirmed existence of extraordinary technical or legal difficulties in verifying the actual balance of the guaranteed deposits or the origin of the compensation.

2. The payment of guaranteed deposits shall not be extended to deposits made subsequent to the date on which the causes stated in the previous article occurred nor to deposits or amounts that have been withdrawn subsequent to this date, notwithstanding the provisions of article 7.1 of this Royal Decree.

3. Funds may not have resort to the periods referred to in previous sections to refuse the benefit of a guarantee to a depositor who has not been able to exercise his right in time. The balance unpaid within the

stipulated term or its extension shall remain in the Funds and available to its holders, notwithstanding the limits placed on it by the law.

4. By the mere fact of making payment of the guaranteed amounts the legal rights of depositors shall be subrogated to the Fund to the extent of the payments made, the document in which the payment is recorded being sufficient to accredit this right.

Article 10. Other Actions of Deposit Insurance Funds.

1. Exceptionally, when according to the information supplied by the Banco de España, the situation of a credit institution is such that it may be foreseen that the fund shall be obliged to make payment,

pursuant to article 8 of this Royal Decree, the fund shall be able to carry out preventive measures and reorganisation of the institution concerned with a view to improving its viability and enabling it to overcome its crisis, within the framework of an action plan agreed by the institution and approved by the Banco de España.

2. All plans of action including measures that require the approval of the Board or General Shareholders' Meeting of the institution concerned, shall be deemed to be conditional and shall not be carried out without the decisions that make them possible. Meanwhile, if the institution's situation so requires, the deposit insurance funds may provide temporary assistance, provided that in the opinion of the management committee this is appropriately guaranteed.

3. When adopting these measures the fund shall take into account their economic cost, which it shall compare with the payments it would have had to have made if, at the time of adopting the plan, it had instead decided to pay the amounts corresponding to the deposits under their guarantee.

Article 11. Preventive Measures and Measures for Reorganization included in Action Plans.

1. The action plan of the institution in crisis, provided it has the support of a deposit guarantee fund, may include the following actions:

a) Financial aid, which may consist of subsidies, granting of guarantees, loans under favourable conditions, subordinate financing, acquisition for the fund of damaged or unprofitable assets that appear on the institution's balance sheet, together with any other types of financial support.

b) Restructuring of the institution's assets, which may entail, among other measures, the appropriate application of the institution's own resources in order to absorb its losses, in the light of the particular circumstances of each case; facilitating a process of merger with, or take-over by, another institution of recognised solvency or the transfer of its business to another credit institution; subscription of capital increases by the Banking Institution Fund, in accordance with the provisions of the following sections; and adoption by the relevant bodies of the institution concerned of all such resolutions as guarantee the appropriate application of the support given by the relevant deposit guarantee fund.

c) Management measures that improve the organisation, procedural systems and internal control of the institution.

2. Measures intended to reorganize and refloat the institution must be channelled so as to ensure the viability of the institution within a reasonable period, in the opinion of the Deposit Guarantee Fund, either by

reinforcing its assets and solvency, or by facilitating its merger with or absorption by another institution of recognised solvency, or by the transfer of its business to another credit institution.

3. The Banking Institutions Deposit Guarantee Fund may subscribe capital increases that the banks approve as part of an action plan pursuant to the foregoing article, in order to re-establish their asset situation if such capital increases are not covered by the institution's shareholders.

The capital increases referred to in the foregoing paragraph shall be deemed not to be covered by the institution's shareholders when the General Meeting of Shareholders has resolved upon the total or partial exclusion of the right of preferential subscription, pursuant to the applicable legislation.

The Fund shall offer for sale the shares so subscribed during such capital increases as described in the previous subsection within a maximum period of one year. This offer for sale shall be undertaken in such a way as to ensure that at least those credit institutions which are members of the fund and whose financial capacity, business and other prerequisites, are able to ensure the definite reestablishment of solvency and normal operation of the bank undergoing reorganisation given its relative size and importance. The offer shall state the minimum commitments that must be undertaken by the successful bidder.

The fund shall award the shares to the institution that offers the most advantageous purchase conditions. For this purpose the capacity and financial and organizational means of each bidding institution may be taken into account as well as the economic conditions of the offer.

The offer for sale of the shares and the conditions of sale, as well as the decision as to who to award them, shall be published in the "Official State Gazette".

4. The savings bank deposit guarantee fund may subscribe issues of participative shares approved by the institutions as part of an action plan in accordance with the terms of the foregoing article, in order to re-establish the situation of its assets should they not be covered during the subscription period.

5. In order to make it possible to award the shares, or participative shares envisaged in sections 3 and 4 above, as well as to make it possible to improve the circumstances of temporary receivership admitted by the judicial authority, the fund shall be able to assume losses, to give guarantees and to purchase assets that appear on the balance sheet of the affected institutions, as well as to be take responsibility for the economic balance resulting from proceedings of various types that are in progress or may be initiated subsequently. The fund may also purchase assets of those institutions when, in the opinion of the management committee, this contributes substantially to avoiding the need for other measures to reestablishment the asset situation of an institution which is a member of the fund. This action shall not exclude the requirement upon the administrators of the institution to adopt other measures contributing to the strengthening and to the solvency of the institution, and to the necessary balancing of the profit and loss accounts of the credit institution in question.

6. Under no circumstances shall the statutory limitations on voting rights with respect to shares purchased by the Bank Deposit Guarantee Fund within the framework of action plans envisaged in this Royal Decree be applicable to the Fund.

First Transitional Provision. Regime applicable to the branches in Spain of credit institutions based in other States of the European Union that leave the fund.

With the coming into force of this Royal Decree, branches in Spain of credit institutions based in other Member States of the European Union shall be able to terminate their membership of the Bank Deposit

Guarantee Fund, but shall not be entitled to a refund of the contributions already made, nor a duty to continue making contributions for whatever reason.

Second Transitional Provision. Amount guaranteed up until the 31st of December 1999.

Up until the 31st of December 1999, the amount guaranteed in virtue of article 7, section 1, shall be the equivalent in pesetas of 15,000 ECUs.

Third Transitional Provision. Appointment and renewal of representatives of credit institutions on the management committees of deposit guarantee funds.

The deposit guarantee funds shall appoint or renew the appointment of representatives of credit institutions on their management committees within three following months of the coming into force of this Royal Decree. To this

end, and in relation to the provisions of article 2, subsection 1, third paragraph, the following shall be deemed to be representative associations: the Banks shall be represented by the Spanish Private Banking Association (AEB); the Savings Banks, by the Spanish Confederation of Savings Banks (CECA) and the Credit Cooperative Banks, by the National Union of Credit Cooperative Banks (UNACC).

Single Repealing Provision. Scope of the repeal of regulations.

With the coming into force of this Royal Decree all the provisions of equal and inferior order which contradict the contents hereof shall be repealed, namely:

- a) Royal Decree 567/1980, 28th March 1980, which completes and broadens the Bank Deposits Guarantee Fund.
- b) Royal Decree 1620/1981, 13 July 1981, whereby Royal Decrees 567/1980 and 2860/1980 on deposit guarantee funds for banks and savings banks, respectively, were partially modified.
- c) Royal Decree 2575/1982, 1st October 1982, on the deposit guarantee fund for savings banks, implementing Royal Decree-Law 18/1982, 24th September 1982.
- d) Royal Decree 2576/1982, 1st October 1982, on deposit guarantee funds for Credit Cooperative Banks, implementing Royal Decree-Law 18/1982, 24th September 1982.
- e) Royal Decree 740/1985, 24th April 1985, on bank deposit guarantee funds.
- f) Article 2 of Royal Decree 437/1994, 11th March 1994, which modified Royal Decrees 1197/1991, 26th July 1991, on the regime for public bids for the purchase of stock, and 567/1980, 28th March 1980, on bank deposit guarantee funds.
- g) The single additional provision of Royal Decree 2024/1995, 22nd December 1995, which partially modified Royal Decree 1343/1992, 6th November 1992, which implemented Law 13/1992, 1st June 1992, on Own Resources and Consolidated Supervision of Financial Institutions, and which includes a new Title V on the special surveillance rules applicable to the mixed non-consolidatable groups of financial institutions.

First Final Provision: Empowerment for Implementation

The Minister of the Treasury is empowered to dictate the rules that are required for the implementation of this Royal Decree.

The Banco de España is authorized to implement the procedure whereby its representatives on the fund management committees are elected and to decide upon accountancy and technical questions regarding the items guaranteed and uncommitted net assets.

Second Final Provision: Basic Character

The provisions contained in this Royal Decree are declared to be basic in accordance with the provisions the 149,1.11th and 13th articles of the Constitution.

Third Final Provision: Entry into Force.

These provisions shall come into effect on the day following its publication in the "Official State Gazette".

Madrid, on the 20th day of December of 1996.

ORDER DATED 12TH FEBRUARY 1997 FOR THE REDUCTION OF CONTRIBUTIONS TO THE BANKING INSTITUTION DEPOSIT GUARANTEE FUND. (BOE OF 15TH FEBRUARY N° 40)

Article 3° of Royal Decree-Law 18/1982, 24th September 1982, on Deposits Guarantee Funds for Savings Banks and Credit Cooperative Banks, according to the text of the additional seventh provision of Royal Decree-Law 12/1995, 28th December 1995, on urgent budgetary, taxation and financing measures, sets the contributions of credit institutions to their respective Deposit Guarantee Funds at 2 per mille of the guaranteed deposits. Furthermore, the Minister of the Treasury is empowered to reduce the amount of these contributions when the assets of a Fund reach a sufficient amount for the fulfilment of its purposes. This empowerment is reiterated in article 3° of Royal Decree 2606/1996, 20th December 1996, on Deposit Guarantee Funds for Credit Institutions, article 4° of which defines the guaranteed deposits that must be taken into account for the purpose of calculating the required contributions.

The Management Company of the Banking Institution Deposit Guarantee Fund has requested that, given the asset situation reached by said Fund, and in order to bring the situation in which banks are competing into line with other credit institutions, this contribution be reduced and therefore recourse is hereby had to this power in order to reduce the annual contributions to 1 per mille.

As a result, at the proposal of the Banco de España, it is hereby decreed that:

First.- The value of the contributions by the banks to the Banking Institution Deposit Guarantee Fund is set at 1 per mille of the guaranteed deposits.

Second.- This Order shall enter in force on the day following its publication in the State Official Gazette, and shall also be applicable to contributions paid in 1997.

LAW 37/1998, OF 16 NOVEMBER 1998, REFORMING LAW 24/1988, 28 JULY 1988, ON THE STOCK MARKET (BOE OF 17TH OF NOVEMBER, N°

Thirteenth Additional Provision

The following modifications are made to Royal Decree-Law 18/1982, 24 May 1982.

One. A new Article 2 part 3 is created which reads as follows:

Article 2 ter.

Guarantee Funds for Deposits held by Banks, Savings Banks, and Credit Cooperative Banks, shall indemnify investors who have entrusted financial resources, securities or other financial instruments to any member institution for their deposit and administration or for the performance of any investment service from among those considered in Law 24/1988, 28 July 1988, on the Stock Market, in the cases described in Article 5, number 1 and 1bis, of this Royal Decree-Law. This cover shall have the form, term and scope defined by the relevant regulations.

Two. The following paragraph is added to section 1 of article 3.

When a Fund's net worth becomes negative, the Management Committee may resolve, by a two thirds majority of all its members, to demand additional contributions from member institutions. These contributions shall be apportioned according to the basis on which they were calculated, and their total value may not exceed the sum necessary to eliminate the deficit existing.

Three. The following point is added to article 5:

1 bis: Independently of the sum established as guarantee for deposits under article 1, number 2, of Royal Decree-Law 4/1980, 28 March 1980, and article 1, section 2 and article 2, section 2, of this Royal Decree-Law, Deposit Guarantee Funds shall indemnify holders of securities or other financial instruments entrusted to credit institutions with the guaranteed amounts when any of the following events occurs:

The credit institution is declared bankrupt, or its declaration of temporary receivership has been applied for through the courts and these situations do not imply the suspension or restoration of the securities or financial instruments; nevertheless, no sums shall be payable if, within the period envisaged by the regulations for commencing payment the above-mentioned temporary receivership is lifted.

That, following the restoration of the securities or financial instruments, the Banco de España decides that the credit institution is unable to restore them in the immediate future for reasons directly related to its financial situation. The Banco de España shall have available to it a period of twenty-one days within which to verify that this condition obtains and resolve upon the applicability of the indemnity.

Four. The last paragraph of section 1 of article 5 has been deleted, and the following text has been added.

_ter. All payments made by the Deposit Guarantee Fund by virtue of the two preceding points shall be made in cash. For the purposes of this payment the securities or other financial instruments shall be valued in the form determined by the regulations.

By the mere fact of making payment the Deposit Guarantee Fund shall legally surrogate the rights of the creditor or investor corresponding to the amount paid. The documentary proof of the payment's having been made shall be sufficient title.

In the even of the securities or other instruments entrusted to the institution being restored subsequent to the payment of the guaranteed sum pursuant to number 1 bis, the Deposit Guarantee Fund may seek to compensate itself for this sum settled, in whole or in part, if the value restored was greater than the difference between that entrusted to the institution and the sum paid to the investor. It shall be empower for these purposes to recover from the investor the resulting sum in accordance with the procedures and criteria for assignation and valuation established by the relevant regulations.

LAW 20/1998, 1 JULY 1998, , ON REFORM OF THE LEGAL AND FISCAL REGIME GOVERNING COLLECTIVE REAL ESTATE INVESTMENT INSTITUTIONS AND ON THE GRANTING OF CERTAIN RIGHTS TO THE NATIONAL ADMINISTRATION (BOE OF 2TH JULY,Nº. 157)

Third additional provision:

The eight additional provision of Law 6/1997, 14 April 1997, on the Organization and Functioning of the National Administration, has been amended to read as follows:

“Eight additional provision. Legal regime governing the Banco de España and Deposit Guarantee Funds for Credit Institutions.

The Banco de España, and the Deposit Guarantee Fund for Banks, Savings Banks, Credit Cooperative Banks, shall be governed by their specific legislation.”