

**MALUQUER**  
ADVOCATS

**AEDBF**  
**Athens Meeting**

**October 2012**



# Spanish Bank Restructuring

**Several months of improvisation**

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# Legal Restructuring Report



## **CONTENTS** Five Attempts on Bank Restructuring

**1st** Royal Decree-law (RDL) 9/2009, June 2009

**2nd** Royal Decree-law (RDL) 11/2010, July 2010

**3rd** Royal Decree-law (RDL) 2/2011, February 2011

**4th** Royal Decree-law (RDL) 2/2012, February 2012

**5th** Royal Decree-law (RDL) 24/2012, August 2012



# 1<sup>st</sup> attempt on bank restructuring...

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**Royal Decree-law 9/2009, June 2009**

- Reinforcement of the equity of credit entities
- Creates the Fund of Orderly Bank Restructuring (FROB Spanish Acronym)





**1st** attempt on bank restructuring...

# FROB

## Fund of Orderly Restructuring

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**It is a public entity with legal personality and full public and private capacity to adopt financial support measures like:**

- **The acquisition of ordinary shares or share capital contributions from viable entities (Subject to EU approval)**
- **The participation in the governing bodies of the restructured entity**



**1st** attempt on bank restructuring...

# FROB

## Objectives and purposes

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- **Helping viable entities to increase their solvency  
THROUGH CAPITAL INJECTIONS**
- **Supporting THE INTEGRATION PROCESS of the  
viable entities in a merger process**
- **Conducting THE RESOLUTION process of the non  
viable entities**



# FROB - Objectives and purposes

1st attempt on bank restructuring...

Eligible entities	Non viable entities	Viable entities that <u>decide to enter in a merger process</u>	Viable entities that need to increase their solvency
Objectives	To avoid a disorderly resolution process entailing losses for creditors and depositors that could raise concerns on the overall stability of the banking sector	To foster financial stability and adapt the capacity of the sector to the level of demand and the current economic environment	To allow entities to comply with the new capital requirements with the aim of regaining market confidence.
FROB's role / Form of support	Loans; guarantees; assets protection schemes; purchase of assets and/or capital provision	Subscription of convertible instruments. Entities must repurchase these financial instruments within a period of 5 years (can be extended for 2 further years)	Subscribing ordinary shares issued by banks or credit cooperatives . The support will be on a temporary basis (the FROB must divest within 3 years)
Way to proceed	<p>The FROB will be appointed to interim administrator of the entity and will draw up a restructuring plan to be approved by BdE which may include financial support and meanwhile could provide rescue aid for keeping the institution afloat</p> <p>The plan will result in a merger or in the transfer of the assets and liabilities of the ailing bank to a financial institution to be chosen through a competitive process</p>	<p>The entities involved are required to tackle an integration process aimed at diminishing the global capacity of the sector .</p> <p>The integration plan has to be approved by BdE and must include goals in terms of reorganization, efficiency gains and productivity improvement.</p>	<p>A recapitalization plan must be submitted to the BdE.</p> <p>The subscription of these instruments will cause the immediate inclusion of the FROB in the entity's board of directors.</p> <p>In the event that the requesting entity is a savings bank or an Institutional Protection Scheme (IPS), the entity or entities must transfer the financial activity to a commercial bank.</p>



# **2nd** attempt on bank restructuring...

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**Royal Decree-law (RDL) 11/2010, July 2010**

- **About the governing bodies and other important aspects regarding the regulation of the Savings Banks**





# Spanish Savings Banks

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- They are financial institutions that do not distribute profits and pursue social functions
- They provide services with a charitable or socio-cultural character to the community
- They contribute to regional development; generating social externalities that the private sector does not provide



## Spanish Savings Banks - Ownership

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- Ownership Structure are regional and local governments, depositors, employees, founders, others
- They do not have any share capital and their ability to raise external equity has been limited



## Spanish Savings Banks - Responsibilities

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- BDE (Bank of Spain) retains the powers over financial stability, solvency, liquidity, risk limits, provisions & accounting
- Regional and local governments retains competence in corporate governance, consumer protection and the integration process



2nd attempt on bank restructuring...

# Spanish Savings Banks

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**The presence of the public sector in the ownership structure creates conflicts and promotes political influence**



2nd attempt on bank restructuring...

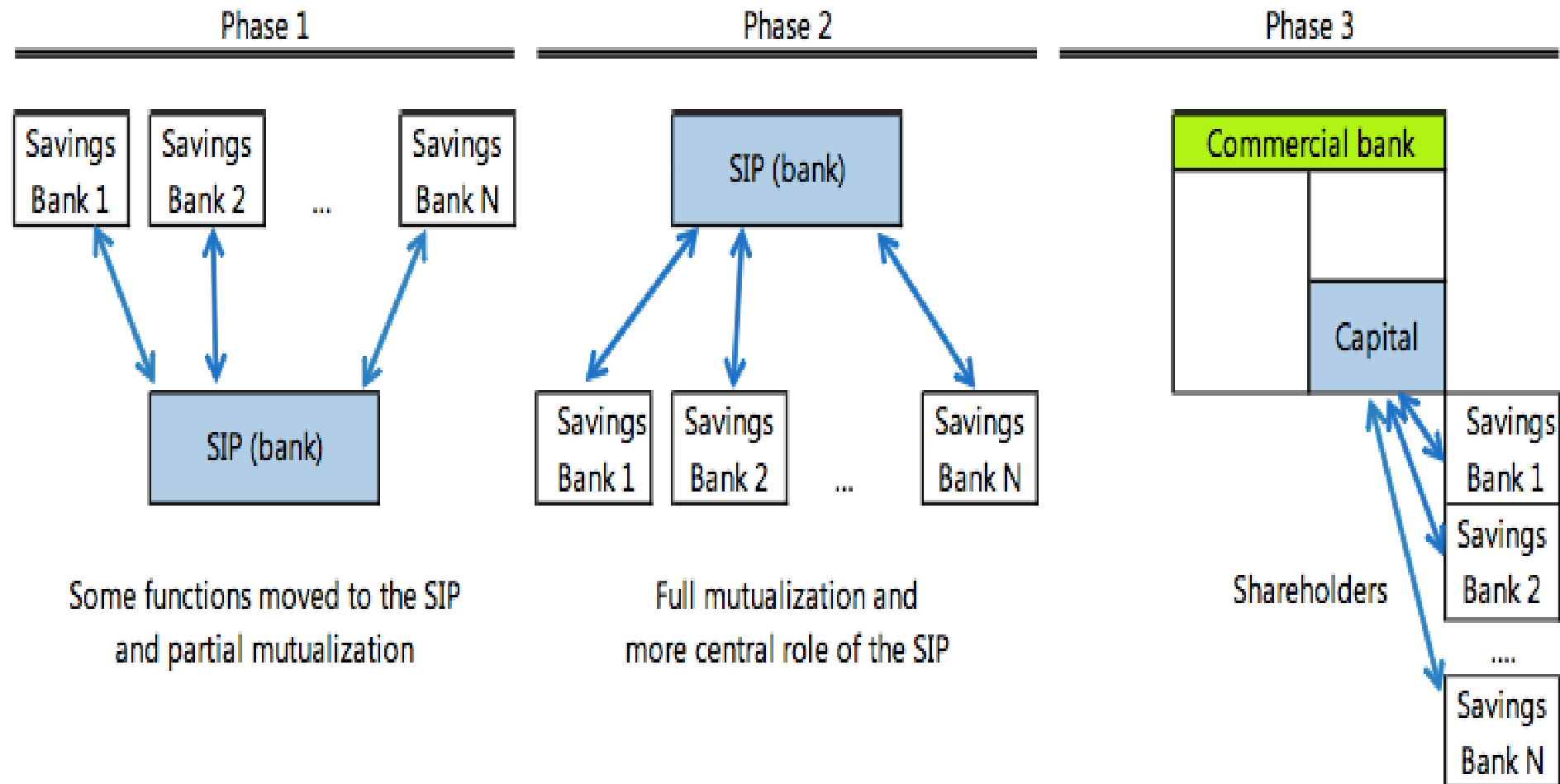
# Spanish Savings Banks - SIP

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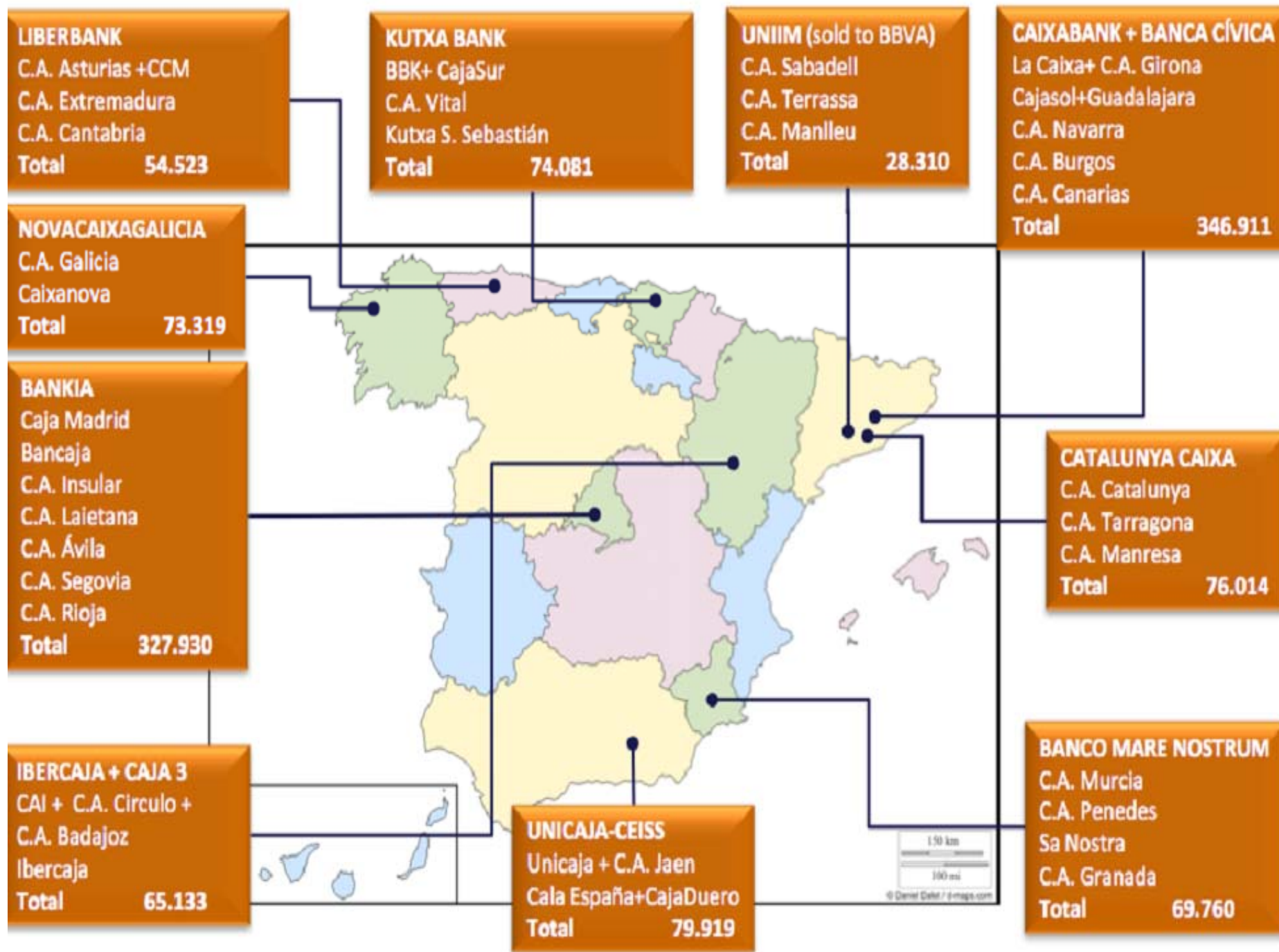
- SIP (Institutional Protection System) is the formula adopted for consolidating SSB
- The process is popularly known as "cold fusion"
- The conversion of SIPs in banks, is mandatory to participate in the integration process of the FROB and to get public aids
- Additionally SSB may perform indirectly their financial activity through a bank



## Spanish Savings Banks: From SIPs to Commercial Banks







Assets in € Mn as of Dec. 2010



**2nd** attempt on bank restructuring...

# Spanish Savings Banks

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- Large-scale transformation of the banking system
- Savings Banks have been restructured through several integration process
- As result 43 out of the 45 Savings Banks in Spain are under the largest integration process of the system that the country has ever seen



# 3rd attempt on bank restructuring...

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**Royal Decree-law (RDL) 2/2011, February 2011**

- **New capital requirements**
- **Stress tests for the entire system**





## Royal Decree-law (RDL) 2/2011

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- **The presence of the FROB in the capital of the entities is temporary, with a maximum holding period of 5 years**
- **Frob's participation in governing bodies proportionally to the stake acquired**





**20th December 2011**



# **4th** attempt on bank restructuring...

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**Royal Decree-law (RDL) 2/2012, February 2012**

- **Increase the minimum core capital**
- **Amendments RDL 9/2009 and 11/2010**
- **FROB can acquire ordinary shares in integration process**
- **Limit the remunerations of directors and executives of supported entities**





**4th** attempt on bank restructuring...

**COUNCIL DECISION of 23 July 2012 addressed to Spain on specific measures to reinforce financial stability (2012/443/EU)**

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- **Eurogroup statement on Spain on 9 June 2012**
- **Spanish Government formally requested financial aid for Spanish banks on 25 June 2012**
- **The financial assistance will be provided by the EFSF/ESM for recapitalisation of financial institutions**



**4th** attempt on bank restructuring...

**COUNCIL DECISION of 23 July 2012 addressed to Spain on specific measures to reinforce financial stability (2012/443/EU)**

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- **The loan amount is estimated up to EUR 100 billion in total**
- **The FROB could receive the funds and channel them to the financial institutions concerned**
- **The Spanish Government signed the MoU**



# **5th** attempt on bank restructuring... **Final??**

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## **Royal Decree-law (RDL) 24/2012, August 2012**

- **As consequence to the program of financial assistance to Spain banking sector (EFSF)**
- **Legal framework for early measures, restructuring and resolution**
- **New Asset Management Company (Bad Bank)**
- **A complete new regulation for FROB (repeals the old regulation RDL 9/2009)**





# Conclusions



**Thank You**



# Information Resources Consulted

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- Banco de España (Bank of Spain) <[www.bde.es](http://www.bde.es)>
- European Financial Stability Facility <[www.efsf.europa.eu](http://www.efsf.europa.eu)>
- European Commission <<http://ec.europa.eu>>
- FROB (Fund for Orderly Bank Restructuring) <[www.frob.es](http://www.frob.es)>
- Fondo de Garantía de Depósitos de Entidades de Crédito (The Deposit Guarantee Fund of Credit Institutions) <[www.fgd.es](http://www.fgd.es)>
- Ministerio de Economía y Competitividad (Ministry of Economy and Competitiveness) <[www.mineco.es](http://www.mineco.es)>
- IFM (International Monetary Fund) <[www.imf.org](http://www.imf.org)>
- EBA (European Bank Authority) <[www.eba.europa.eu](http://www.eba.europa.eu)>
- The Spanish Economy <[www.thespanisheconomy.com](http://www.thespanisheconomy.com)>
- European Parliament <<http://www.europarl.europa.eu>>
- EUR-Lex <<http://eur-lex.europa.eu>>
- Fondo Monetario Internacional (FMI) (2012a): Spain: Financial Stability Assessment, In: <<http://www.imf.org/external/pubs/ft/scr/2012/cr12137.pdf>>
- Real Decreto-ley 9/2009, de 26 de junio, sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito. In: <http://www.boe.es/boe/dias/2009/06/27/pdfs/BOE-A-2009-10575.pdf>
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- Real Decreto-ley 2/2011, de 18 de febrero, para el reforzamiento del sistema financiero. In: <http://www.boe.es/boe/dias/2011/02/19/pdfs/BOE-A-2011-3254.pdf>>
- Real Decreto-ley 2/2012, de 3 de febrero, de saneamiento del sector financiero. In: <<http://www.boe.es/boe/dias/2012/02/04/pdfs/BOE-A-2012-1674.pdf>>
- Real Decreto-ley 18/2012, de 11 de mayo, sobre y venta de los activos inmobiliarios del sector financiero. In: <http://www.boe.es/boe/dias/2012/05/12/pdfs/BOE-A-2012-6280.pdf>
- Real Decreto-ley 24/2012, de 31 de agosto, de reestructuración y resolución de entidades de crédito. In: <http://www.boe.es/boe/dias/2012/08/31/pdfs/BOE-A-2012-11247.pdf>>

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