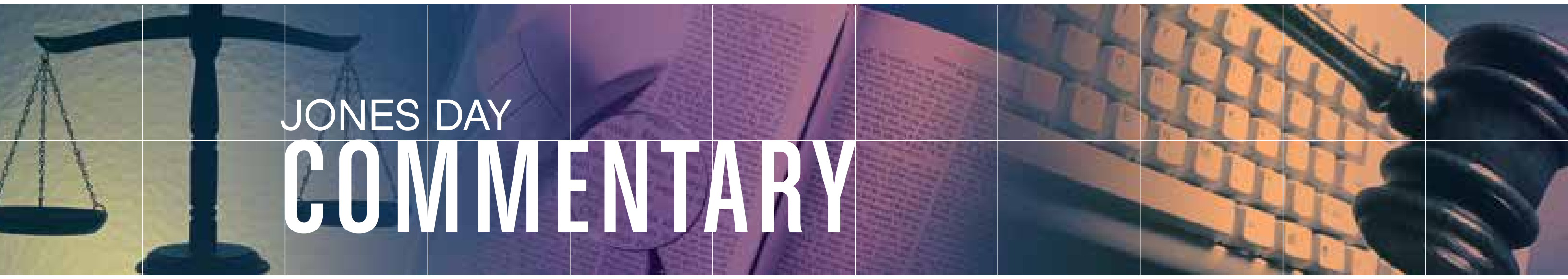
JONES DAY

SEPTEMBER 2013



SPAIN'S FABs: A NEW VEHICLE FOR INVESTMENT IN ASSETS DISPOSED BY THE BAD BANK

During August 2013, the Spanish bad bank (*Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A.*, or "SAREB") completed the bidding process for its first sale of a REO portfolio (project "Bull"), awarding to HIG Capital through its affiliate Bayside Capital. The portfolio consists of a total of 939 residential units and 750 parking and storage units valued at €100 million.

The transaction was structured through a FAB (*Fondo de Activos Bancarios* or Bank Asset Fund), the first to be created in Spain. The FAB will operate as a joint venture (SAREB will have a 49 percent shareholding in the FAB, while HIG Capital will hold the remaining 51 percent).

FABs are a new type of investment vehicle specifically created to attract investors based, *inter alia*, on its tax benefits and flexibility, in order to facilitate dispositions of assets by the bad bank.

SAREB plans to release new portfolios using these investment vehicles in open and competitive processes. As an example, project "Teide," involving the sale of a portfolio composed of 36 finished residential buildings, six developments in progress, and four plots of land, will also be structured through a FAB.

ADVANTAGES OF FABs

FABs are new investment vehicles specifically designed and regulated to market SAREB assets. The use of FABs may consist of a joint venture between the buyer and SAREB (as co-investors). This structure has benefits for both SAREB and investors:

For investors:

- Liquid and transparent vehicle, managed by a professional entity.
- Highly advantageous special tax regime: the vehicle is taxed at 1 percent corporate tax while investors' returns will not be subject to withholding tax under certain conditions (similar to the

tax regime for public debt) if the investor is a nonresident with no permanent establishment in Spain.

- Flexibility: the nature of FABs facilitates structuring relationships between financial partners and, in particular, with SAREB, which may participate itself in the financing, thereby reducing the capital required.
- Transfers to FABs of debts of companies in which SAREB holds an interest shall not rank as subordinated in the event of the company commencing an insolvency proceeding. Such exception will not apply if those debts were qualified as subordinated in an already opened insolvency proceeding upon their transfer to SAREB.

For SAREB:

- Benefit from potential increase in value of real estate or financial assets transferred to the Fund.
- Difficulty in setting prices for certain types of assets, given their complexity and risk, can make it more attractive for SAREB to share risks and profits in co-investment than to simply transfer or write off at a loss.
- At the same time, SAREB can generate revenues from the first moment.

FABs: INVESTMENT FUNDS OR SECURITIZATION FUNDS?

FABs are initially integrated by a combination of assets and liabilities from SAREB and may be created only by SAREB, but FABs have no legal personality. In principle, they are a hybrid between asset securitization funds and collective investment vehicles (in fact, FABs must be managed and represented exclusively by regulated and registered asset securitization fund managers, not by managers of collective investment institutions, such as Investment Funds).

FABs are governed by the provisions of Law 9/2012 governing the restructuring and resolution of financial institutions ("Law 9/2012"), and Royal Decree 1559/2012 governing asset management companies ("RD 1559/2012"). The regulation governing asset securitization funds and collective investment institutions will also be applicable.

FABs may issue securities subject to the provisions of the Stock Exchanges legislation. The placement of such securities will be possible only among professional investors, and the minimum unit value of the securities issued will be €100,000.

However, SAREB is not expected by market players to make public offers to potential investors of securities issued by FABs; rather, investors will want to structure through FABs the acquisition of large portfolios of loans and/or real estate in a flexible and fiscally advantageous manner. In any case, under the current legislation, it would be possible to consider securities issued by FABs as a structured product for placement with professional investors, if structurers believe there is potential in the market.

TAX REGIME

The tax regime will be applicable as long as SAREB itself remains exposed to the FAB, which will, as a maximum, be the expected life of SAREB (until November 2027, i.e., 15 years from the incorporation of SAREB). Once the period of exposure of SAREB to the FAB is over, FABs will transfer to the general Corporate Tax regime.

FABs shall pay Spanish corporate tax at the rate of 1 percent. If the FAB participants are subject to the payment of Spanish nonresident income tax and do not have a permanent establishment in Spain, they will benefit from the same exemption that applies to returns from Spanish public debt (i.e., no withholding).

If FAB participants are subject to Spanish corporate tax, personal income tax, or nonresident income tax with a permanent establishment in Spain, they will pay tax like partners and participants in collective investment institutions.

CREATION, ASSETS, AND LIABILITIES OF FABs

FABs must be created under a notarial deed with a minimum content (including assets on incorporation, manager, duration, etc.) to be filed with the National Stock Exchanges Commission (*Comisión Nacional del Mercado de Valores*, or "CNMV").

FABs will initially comprise assets and liabilities transferred from SAREB. Assets eligible for transfer to FABs are not only those previously acquired by SAREB from financial entities. The following asset classes may be transferred to FABs:

- Assets transferred, directly or indirectly, by SAREB, as well as other assets acquired by subrogation or transformation of the above, generated from the same or connected therewith.
- Cash, demand, and term deposits with financial institutions.
- Fixed income securities admitted for trading on official secondary markets.

Liabilities of FABs may comprise:

- Liabilities transferred by SAREB.
- Securities of any type issued by the FAB.
- Loans or credit facilities.
- Contributions from institutional investors, who shall be entitled to the proceeds from the eventual liquidation of the FAB after payment has been made to the remaining creditors.
- Regular liabilities generated in the conduct of the typical activity of the FAB.

Transfers of assets by SAREB to FABs will be completed without approval from third parties and without the requirements imposed on structural modifications of commercial companies. Furthermore, such transfers will *not* be exposed to "claw back" actions under the Spanish insolvency legislation. Transfers must be full and unconditional. SAREB may not grant any warranties to the FAB or secure collection of receivables or the value or quality of the assets transferred.

FAB DIVISIONS, MERGER, AND SPIN-OFF

The assets of a FAB may be organized in separate divisions (*compartimentos*). Securities may be issued or obligations of different kinds may be assumed against a specific division. The portion of a FAB's assets allocated to each division will respond exclusively for the liabilities expressly allocated to such division, together with the proportional part of those assets that have not been expressly attributed to other divisions. Creditors of a division may enforce their credits only vis-à-vis the assets of said division.

FABs and their divisions may merge (i.e., transfer of all the assets and liabilities from one or more FAB or division to another new or preexisting FAB); and spin-off (i.e., transfer certain assets or liabilities from a FAB or division to one or more new or preexisting FABs).

In FAB merger or spin-off deals, creditors shall have a right to object during a one-month period from publication of the relevant proposal. However, the deed of incorporation of the FAB may provide for a regime of exclusion or limitation of this objection right, provided that creditor representation bodies are established with collective decision-making mechanisms.

MANAGEMENT AND REPORTING

FABs can be managed only by registered asset securitization fund managers, regulated by CNMV. These managers will not act as property managers but only as trustees and vehicle servicers. FABs may contract expert asset managers, which will be controlled by the manager.

The share capital of the manager will be a function of the value of the FAB's assets. The manager's compensation will be calculated following procedures in line with the investment and risk management policy of each FAB, avoiding the creation of incentives that are contrary to the targets of such policies. Compensation for top executives and key employees will be based on the same principles.

The manager of each FAB must publish on its website the deed of incorporation and other public deeds granted in connection with each FAB, as well as the documentation whereby contributions of assets or liabilities are made at a later date, the six-monthly report, and the annual report for each FAB that it manages. CNMV may request additional information.

The annual report that the manager shall produce will contain, *inter alia*, the duly audited financial statements, a breakdown of the assets transferred to the FAB, a breakdown of the liabilities of the FAB and a breakdown of the financing agreements. Such annual report will be sent to CNMV for recording at the public registry within four months from the end of the previous financial period.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Victor Casarrubios
Madrid
+34.91.520.3939
vcasarrubios@jonesday.com

Juan Ferré
Madrid
+34.91.520.3939
jferre@jonesday.com