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### Ministerial Order EHA/3364/2008 of 21 November 2008

Ministry of Economic Affairs and Digital Transformation

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This translation of the Order EHA/3364/2008 is published for information purposes and while it is intended to be faithful and accurate, the official binding text remains the Spanish version as published in the Official Gazette (Boletín Oficial del Estado) of November 24<sup>th</sup> 2008

# I. General Regulations

## MINISTRY OF ECONOMY AND FINANCE

**18945** ORDER EHA/3364/2008, dated 21 November, whereby Article 1 of Royal Decree Law 7/2008, dated 13 October, on Urgent Economic-Financial Measures in relation to the Concerted Action Plan for Euro Zone Countries is enforced.

Amongst the measures intended to promote the financing of companies and individuals by credit entities, Article 1 of Royal Decree Law 7/2008, dated 13 October, on urgent economic and financial measures regarding the concerted action plan for Euro Zone countries authorised the granting of State guarantees for certain new financing transactions carried out by credit entities incorporated in Spain. As provided for in paragraph 6 thereof, guarantees for up to a maximum amount of 100 billion euros may be granted in 2008.

Therefore, the purpose of this Order is to implement the provisions of said Royal Decree Law in order to specify certain essential aspects of the system for granting guarantees to credit entities. In particular, it is necessary to specify the characteristics of the guarantees to be granted, the requirements that the beneficiary entities and the transactions to be guaranteed must fulfil, and the different processes to be followed in order to grant the guarantees.

This Order consists of seven articles, one additional provision, one repeal provision, three final provisions and an annex. Articles 1-4 contain details on the essential characteristics of the guarantees to be granted, the beneficiary entities and the transactions to be guaranteed, whereas Articles 5-7 define the procedures to be followed in order to grant the guarantees.

As for the characteristics of the guarantees, the waiver of the benefit of excussio, the irrevocability and the unconditional nature of the guarantee once

the securities are issued and admitted to trading should be highlighted. On the other hand, State guarantees may be requested by credit entities, credit entities' consolidating groups or credit entity groupings, provided that they carry out significant business activity, which is reflected in the requirement that any such entity should have a significant share in the granting of credits to businesses and individuals in Spain.

The requirements for the financing transactions eligible for guarantee are also detailed. Among these, the interest rate may be fixed or floating and the amount of each issue should be no less than 10 million euros.

The payment of a fee which will accrue in favour of the State is also required. The characteristics of these fees are detailed in the Annex to this Order.

As for the description of the procedures that must be followed for the granting of guarantees, the stages established for such purposes are the following: the entity first needs to file the corresponding application filled out as indicated in the sample application to be determined by the Directorate General for the Treasury and Financial Policy. The application must contain the exact amount of the guarantee applied for. The guarantee shall be granted to each entity in proportion to its share in the total «Credit. Other Resident Sectors» of the Bank of Spain's Statistical Bulletin, thus complying with the ultimate purpose of the rule which is to allow credit flows to reach families and businesses. Once the guarantee is granted, the entities must make the specific issuances within the established terms.

Moreover, due to the important economic commitment made with the implementation of this measure, bearing in mind the need to safeguard the general interest, while the State, in its capacity of guarantor, holds any and all rights recognised by the applicable rules for the case of exercise of guarantees, the single additional provision also obliges the Directorate General for the Treasury and Financial Policy to notify the Bank of Spain thereof in case any of the measures contained, among other provisions, in Law 26/1988, dated 29 July, on Discipline and Intervention of Credit Entities, should be adopted.

It should be mentioned that, the contents of the Communication from the European Commission of 13 October 2008 *on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis* were taken into account in the preparation of this Order. In this regard, according to said Communication, the granting of guarantees against this scheme is established with a limited duration. Thus, Royal Decree Law 7/2008, dated 13 October, on urgent economic and financial measures regarding the concerted action plan for Euro Zone countries states that, in any case, the term for granting guarantees shall end on 31 December 2009. In addition, the mechanism may be reviewed if so required by the market conditions or if so determined in a coordinated way within the framework of the financial coordination mechanisms established in the European Union. In any case, within a six-month term after the granting of guarantees, it shall be reviewed and considered whether reasons for the adoption of this State guarantee scheme still exist and if, therefore, it needs to be maintained or modified.

This Order is issued by virtue of the authorisations set out in Article 1.4 and the first final provision of Royal Decree Law 7/2008, dated 13 October, on urgent economic and financial measures with respect to the concerted action plan for Euro Zone countries.

By virtue thereof and in accordance with the State Council,

#### I ORDER:

##### Article 1. *Characteristics of the Guarantee*

The State guarantee shall be granted under the following terms:

a) Once the provisions of Article 7.2 hereof are fulfilled, the guarantee granted shall be understood to be of an irrevocable and unconditional nature.

b) The guarantee shall be granted with a waiver of the benefit of *excussio* established in Section 1830 of the Civil Code.

c) The guarantee shall only guarantee the principal of the credit as well as ordinary interest. In the case of issues made in foreign currencies, the guarantee shall not cover any exchange rate risks, which in any case shall be borne by the issuer.

d) Each guarantee shall bear the corresponding fee as indicated in the Annex hereto.

e) The obligations assumed under the guarantee shall be enforceable on the date where the guaranteed obligation becomes due, including as such both the principal of the issue and its ordinary interest, no obligation to pay in advance being applicable to the guarantor.

f) The guarantee shall not be effective if the characteristics of the original guaranteed financial

transaction are changed, unless the guarantor has accorded his prior consent, by written, to the aforementioned changes.

##### Article 2. *Entities Eligible for Guarantees*

1. In accordance with Article 1.1 of Royal Decree Law 7/2008, dated 13 October, on urgent economic and financial measures in relation to the concerted action plan for Euro Zone countries, the following entities may apply for guarantees:

- a) Credit entities.
- b) Consolidated groups of credit institutions.
- c) Credit entity groupings.

2. Credit entities shall meet the following requisites:

a) To be a credit entity with registered address in Spain;

b) To have a market share of at least one thousandth of the total set in subsection «2.4. Loans and Credits. Other Sectors» corresponding to Residents in Spain of the UEM 1 status of the Bank of Spain's Statistical Bulletin;

c) To have issued securities similar to the ones that are to be guaranteed in Spain, in the five years immediately prior to the date of entry into force of Royal Decree Law 7/2008, dated 13 October, on urgent economic and financial measures in relation to the concerted action plan for Euro Zone countries.

3. Each group of credit entities suitable for consolidation shall produce a single application. It shall be sufficient for a single group entity to fulfil the requirement established in item a) under the preceding paragraph. Similarly, the requirement of item c) in the preceding paragraph shall be understood to be fulfilled when complied with by one of the group entities. The applicant entity shall be the deposit entity that, as the case may be, has the highest rating of the group. In any event, the applicant entity shall fulfil the requirement established in item a) in the paragraph above. In each group suitable for consolidation, the State guarantee shall be granted, as the case may be, to transactions issued by this applicant entity. The requirement stated in item b) in the paragraph above is understood as applicable at a group level and, for the purpose of calculating that joint market share, only the amount corresponding to the group credit entities with registered address in Spain shall be included.

By way of exception, a credit entity belonging to a group suitable for consolidation that complies with the requirements in items a) and c) hereinabove may submit a separate application to the one of the group to which it belongs, provided that, in respect of the requirement stated in item b) of the preceding paragraph, the market share of such entity is at least 5 thousandths.

4. Credit entities with registered address in Spain that have systematically assigned the

management of their liquidity on the interbank market to another entity with which they have a contractual compensation agreement may group all their market shares with the entity responsible for the management. The grouping formed in this way shall fulfil the requirements indicated in items b) and c) of paragraph 2 hereof. For such purposes, the requirement established in item b) of paragraph 2 shall be understood as applicable at group level. As for the requirement of item c) thereunder, it shall be sufficient for one of the entities that form part of the group to fulfil it. The entity responsible for the management shall be entitled to apply for guarantees. The guarantee thus applied for shall be granted exclusively in favour of such applicant entity, which shall be the only one entitled to carry out the guaranteed issues.

5. Credit entities, groups suitable for consolidation and groupings that, under the provisions of the previous paragraphs, can apply for the State guarantee may add their market share to that of another credit entity that does not fulfil the requirements of items b) or c) in paragraph 2, insofar as there is a prior agreement between these entities.

#### Article 3. *Transactions Eligible for Guarantee*

Transactions consisting of issues of commercial paper, bonds and obligations carried out in Spain that also fulfil the following requirements are eligible:

a) Type of transaction: Stand-alone transactions or issue programs.

b) Type of securities: Non-subordinated debt securities, which are not guaranteed by any other kind of guarantee. Inter-bank deposits shall not be guaranteed.

c) Maturity: The term of maturity shall be between three months and three years after their issuance. On an exceptional basis, the Ministry of Economy and Finance may guarantee operations with a term of maturity of up to five years, after consultation with the Bank of Spain.

d) Return: Interest rate may be fixed or floating. The effective interest rate shall be set within the range of market rates for issues and issuers with similar characteristics and shall be coherent with the same issuer's previous operations. Moreover, in the case of a floating interest rate, the reference rate shall be one that is widely known and used on the financial markets.

e) Structure of guaranteed transactions: Redemption shall be made in a single payment (bullet). Likewise, guaranteed issues shall not include options or other derivative financial instruments, or any other element that makes it difficult to assess the risk undertaken by the guarantor.

f) Minimum amount: The amount of each issue shall not be less than 10 million euros, calculated as nominal value of the issue.

g) Admission to trading: Securities shall be listed for trading on Spanish official secondary markets.

#### Article 4. *Fees*

1. In accordance with Article 1.7 of Royal Decree Law 7/2008, dated 13 October, on urgent economic and financial measures in relation to the concerted action plan for Euro Zone countries and Article 117 of the General Budget Law 47/2003 dated 26 November, State guarantees shall bear, in favour of the State, the fees detailed in the Annex to this Order.

2. Fees shall accrue, for each transaction, at the moment of issuance.

3. The Directorate General for the Treasury and Financial Policy shall request the payment of the corresponding fees and provide the terms under which they shall be paid. To such end, the guaranteed entity shall account for the payment of such fee before the relevant issue is made.

4. By a decision of the Directorate General for the Treasury and Financial Policy, the Annex to this Order may be modified in order to adapt it to the economic and financial measures adopted in the European Union in relation to the concerted action plan for Euro Zone countries.

#### Article 5. *Applying for Guarantees*

1. Entities intending to obtain the State guarantee shall submit their applications to the Directorate General for the Treasury and Financial Policy, the body in charge of processing them, completed as indicated in the sample application supplied by the Directorate General.

Applications for guarantees against the General State Budget for 2008 shall be submitted prior to 3 December 2008. The deadline for submitting applications for guarantees against the General State Budget for 2009 shall be established by a decision of the Directorate General for the Treasury and Financial Policy.

2. Save in the exceptional case provided for in the second paragraph of Article 2.3, only one application may be submitted for each credit entity, group suitable for consolidation or grouping.

3. Applications shall contain the following information:

a) The identification of the entity submitting the application. It shall be expressly indicated, where appropriate, if the application is submitted on behalf of a group suitable for consolidation or grouping;

b) The amount of the guarantee applied for. Such an amount shall be stated in millions of euros and no application for guarantee whose total

amount by entity, consolidating group or credit entity grouping is less than 100 million euros shall be considered.

c) The market share of the credit entity, group suitable for consolidation or grouping. This market share is the amount the entity declares in section «2.4. Loans and Credits. Other Sectors» corresponding to Residents in Spain of the UEM 1 status of the Bank of Spain's Statistical Bulletin, as of September 2008. In the case of consolidated groups or groupings, the total market share for the group shall be indicated, as well as the individual market share for each one of the entities comprising the group.

d) Details of all issues in Spain during the five years immediately prior to the date of entry into force of Royal Decree Law 7/2008 for each type of securities that may be guaranteed. For each type of securities, details of the issues carried out shall be informed providing a list of all the issues, specifying in each case: their ISIN code, the amount issued, the tenor and the interest rate resulting at issuance.

4. The Directorate General for the Treasury and Financial Policy may request any clarification deemed appropriate regarding the information provided by each entity, group or grouping, as well as any additional information it sees fit.

#### Article 6. *Criteria for Granting Guarantees*

The Ministry of Economy and Finance shall assign the maximum amount that may be guaranteed to each of the individual credit entities and to the representatives of consolidating groups or groupings in direct proportion to the market share corresponding to each credit entity, group or grouping within the section «2.4. Loans and Credits. Other Sectors» corresponding to Residents in Spain of the UEM 1 status of the Bank of Spain's Statistical Bulletin, and such maximum amount shall be the amount resulting from applying such market share to the maximum amount of the guarantees to be granted, in each financial year.

This notwithstanding, pursuant to Article 118 of the General Budget Law 47/2003 dated 26 November, the amount to be guaranteed, resulting from the application of the abovementioned criteria, may be limited in order to reduce the risk of the guarantees being exercised.

The Ministry of Economy and Finance may request the reports deemed appropriate from the Bank of Spain in order to evaluate the fulfilment of the criteria set forth herein.

#### Article 7. *Granting of Guarantees*

1. The Order of the Ministry of Economy and Finance to grant a guarantee to each entity, consolidating group or grouping shall be duly notified to each of the interested parties.

Guarantees against the General State Budget for 2008 shall be granted prior to 31 December 2008.

2. The guarantee thus granted may apply to one or more issues. Therefore, the enforceability of the guarantee granted shall be subject to the fulfilment of the following procedures:

a) The issuer shall inform the Directorate General for the Treasury and Financial Policy of the details of any specific issuance it intends to make (under the guarantee)

b) The Directorate General for the Treasury and Financial Policy shall examine the details of the issue and, if they fulfil the requisites necessary for the issue to comply with the State guarantee under the terms stated in the order granting the guarantee, it shall notify this to the issuer together with the request of payment of the corresponding fee, established in Article 4 herein, so that, after payment of such fee is credited, the issue is carried out.

c) Once the issue is carried out, the issuer shall officially notify the Directorate General for the Treasury and Financial Policy, the Bank of Spain and the Spanish Securities Market Commission of the details of the issue and shall apply for the issue to be listed on an official secondary market in Spain.

d) The Directorate General for the Treasury and Financial Policy shall ensure that the characteristics of the issue effectively carried out are as notified.

e) The Spanish Securities Market Commission shall notify the Directorate General for the Treasury and Financial Policy when the securities issued have been effectively listed.

3. The issues guaranteed against the General State Budget for 2008 shall be made prior to 1 July 2009. The deadline for carrying out the issues guaranteed against the General State Budget for 2009 shall be established by a decision of the Directorate General for the Treasury and Financial Policy.

4. The guarantee granted by means of the order shall be binding upon the State and shall be fully enforceable for each specific guaranteed transaction.

#### Single Additional Provision. *Notification to the Bank of Spain in Case of Exercise of the Guarantee*

In the case of exercise of the guarantee, the Directorate General for the Treasury and Financial Policy shall notify the Bank of Spain of such event in case any of the measures contained, among other provisions, in Law 26/1988, dated 29 July, on Discipline and Intervention of Credit Entities, should be adopted.

#### Single Repeal Provision. *Repeal of Regulations*

Any and all regulations of equal or inferior hierarchy which oppose to this Ministerial Order are hereby repealed.

First Final Provision. *Complementary Rules.*

As for its aspects not addressed in Royal Decree Law 7/2008, dated 13 October, on urgent economic-financial measures in relation to the concerted action plan for Euro Zone countries and in this Order, the procedure for granting guarantees shall be governed by Law 30/1992, dated 26 November, on the Legal System of Public Administrations and the Common Administrative Procedure and by the General Budget Law 47/2003 dated 26 November.

Second Final Provision. *Empowerment*

The Director General for the Treasury and Financial Policy is hereby empowered to issue as many resolutions as necessary for the application and enforcement of the provisions of this Order.

Third Final Provision. *Entry into Force*

This Order shall become effective on the date of its publication in the «State Official Journal». Madrid, 21 November 2008.-The Second Vice-President of the Government and Minister of Economy and Finance, Pedro Solbes Mira.

**ANNEX**  
**Fees on the Guarantee**

1. Issues maturing after one year or less shall accrue an annual fee of 0.50%, which shall be calculated based on the nominal value issued.

2. Issues maturing after more than one year shall accrue a fee that shall be calculated, according

to the rules indicated below, based on the nominal value issued.

a) For issuers for which representative data on credit default swaps (CDS) exist, the total fee charged shall be the sum of:

- i) a flat rate of 0.50% per year; and
- ii) a rate based on the prices of the CDS, which shall be the lower of either:
  - the mean value of their 5-year CDS spreads, calculated for the period 1 January 2007 to 31 August 2008; and
  - the mean value of their 5-year CDS spreads, during the same period, for banks with the same rating category (AA or A). The mean value for AA-rated banks is 0.365% per year. And the mean value for A-rated banks is 0.448% per year.

b) For issuers for which no CDS data exists or if such data is not representative, but they have a rating, the total fee charged shall be the sum of:

- i) a flat rate of 0.50% per year; and
- ii) a rate that shall be the mean value of the 5-year CDS spreads, for the period 1 January 2007 to 31 August 2008, for banks with the same rating category (AA or A). The mean value for AA-rated banks is 0.365% per year. And the mean value for A-rated banks is 0.448% per year.

c) For all other issuers, the total fee charged shall be the sum of:

- i) a flat rate of 0.50% per year; and
- ii) a rate that shall be the mean value of the 5-year CDS spreads, for the period 1 January 2007 to 31 August 2008, for A-rated banks, which is 0.448% per year;
- iii) a supplement of 0.10% per year.