The so called "internationalisation covered bonds (cédulas de internacionalización)"

On 14 July, Royal Decree-Law 20/2012 dated 13 July, on measures to guarantee budget stability and promotion of competition ("**RDL 20/2012**") was published in the State Official Gazette. Considering the need to strengthen support for financing transactions aimed at the internationalisation of companies, RDL 20/2012 amends the Spanish Securities Market Law 24/1988, dated 28 July (*Ley del Mercado de Valores*) ("**LMV**") and Law 44/2002, on Measures which Reform the Financial System (*Medidas de Reforma del Sistema Financiero*) in order to include in the legal system a new financial instrument called "internationalisation covered bonds (*cédulas de internacionalización*)".

We describe below the main characteristics of this figure as well as their basic legal framework.

Concept and collateral pool

Internationalisation covered bonds are debt securities issued by credit institutions whose interest and capital are specially secured by:

(a) The loans and credits associated with the financing of export agreements of Spanish goods and services or to the internationalisation of companies residing in Spain, granted or guaranteed by central administrations, central banks, regional administrations, local authorities, public sector entities or multilateral development banks and international organisations, and which are of high credit quality.

(b) Loans and credits associated with the financing of export agreements of Spanish goods and services or to the internationalisation of companies residing in Spain, granted to debtors that are non-financial companies or financial institutions and are of high credit quality.

(c) Loans and credits associated with the financing of export agreements of Spanish goods and services or the internationalisation of companies residing in Spain that benefit from the protection from credit risk by means of an insurance or a guarantee by the State, issued by CESCE. Credits and loans of this type will also be admitted if such protection or guarantees are issued jointly with other state or states and they are of high credit quality, through their corresponding export credit agency or similar official body and they involve financing allocated for agreements with the participation of multiple providers residing in different jurisdictions.

(d) Certain replacement assets and economic flows generated by derivative financial instruments linked to each issue and in particular those which hedge foreign currency exchange risks, under the conditions to be specified in secondary legislation.

(e) Credits and loans associated with the financing of export agreements of goods and services of any nationality that hedge credit risk through insurance or guarantees by states with high quality credit, issued by their respective export credit agencies or similar official bodies.

Holders of internationalisation covered bonds will have privileged creditor status in relation to the collateral pool, on the terms of Article 1,922 of the Spanish Civil Code.

In the event of insolvency (*concurso*), holders of internationalisation covered bonds shall be recognised as having the benefit of preferential creditors (*créditos con privilegio especial*) established in paragraph 1 of section 1 of Article 90 of Law 22/2003, of 9 July, on Insolvency.

Issue limits

The total amount of internationalisation covered bonds issued by a credit institution cannot exceed 70 per cent. of the amount of the loans and credits which are eligible to serve as collateral pool.

However, should such threshold be exceeded, it will have to be restored by the issuer within three months by acquiring the credit institution's own internationalisation covered bonds on the market or by redeeming internationalisation covered bonds in the amount necessary to re-establish the balance and in the meantime the credit institution must cover the difference by means of a deposit of cash or public funds in the Bank of Spain, or by affecting new replacement assets to the issue of internationalisation covered bonds, subject to the established limits.

Replacement assets

Internationalisation covered bonds can be secured up to a limit of 5 per cent. by the following securities, provided that they comply with the requirements established for said purpose: (i) fixed-income securities represented by book entries issued by the State, other Member States of the European Union or the *Instituto de Crédito Oficial*; (ii) mortgage covered bonds (*cédulas hipotecarias*); (iii) specific mortgage covered bonds (*bonos hipotecarios*); (iv) securities issued by mortgage securitisation funds or by asset securitisation funds; (v) public covered bonds (*cédulas territoriales*); (vi) internationalisation covered bonds (*cédulas de internacionalización*); (vii) other debt securities and (viii) other low-risk and high liquidity assets to be specified in secondary legislation.

Issue regime

Internationalisation covered bonds must not be recorded at the Mercantile Registry nor will they be subject to the rules contained in Title XI of the Spanish Corporations Act (*Ley de Sociedades de Capital*) or those established in Law 211/1964, of 24 December.

The issued internationalisation covered bonds may be admitted for trading on the securities markets, in accordance with the provisions of the LMV, and acquired by entities, in which case they will be represented by means of book entries.

The issuer of the internationalisation covered bonds will maintain a special accounting registry of the loans and credits that secure the issues of the internationalisation covered bonds and, if applicable, of the replacement assets as well as of the derivative financial instruments linked to each issue. The annual accounts of the issuer will contain the relevant data from such registry, in the manner to be specified in secondary legislation.

Secondary legislation

The characteristics that the assets must meet in order to be considered of high quality credit for the purposes of the new internationalisation covered bonds regime; the low-risk and high liquidity assets that may serve as replacement assets and the information to be included in the annual accounts regarding the special accounting registry of the loans and credits which serve as collateral pool for the issue of internationalisation covered bonds will be subject to the implementing regulations of the Spanish Ministry of Economy and Competitiveness.

CONTACT

Clifford Chance
Paseo de la Castellana 110-Planta 12 (28046 Madrid)
Tel.: +34 91 590 75 00

Yolanda Azanza
Partner of the Capital Markets Department
yolanda.azanza@cliffordchance.com

Alvyda Usinskaite
Lawyer of the Capital Markets Department
alvyda.usinskaite@cliffordchance.com