

New Spanish Law Opens Door for Managed Funds and Structured Covered Bonds

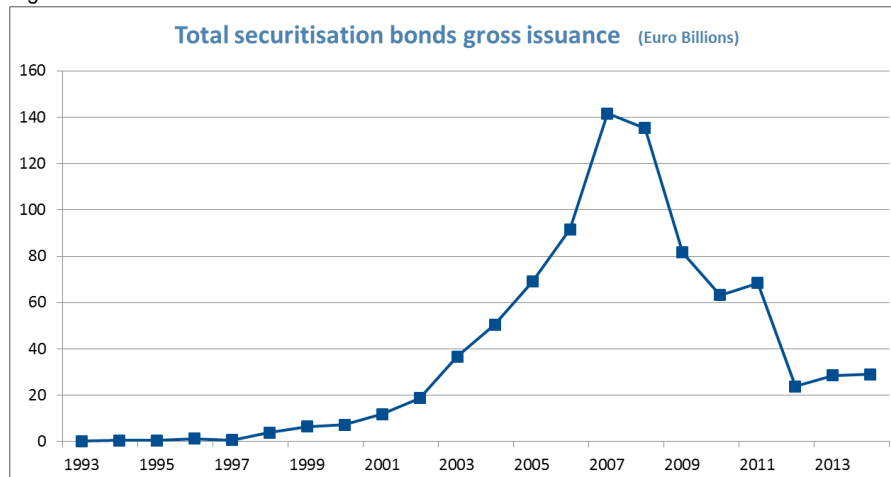
Special Report



Changes introduced by the new Spanish Law 5/2015 will significantly enhance the robustness and flexibility of the securitisation framework in Spain. These changes will foster the financing of SMEs and allow for more robust securitisation structures. The new law will also encourage the issuance of managed funds, SME CLOs and other forms of asset securitisation with recourse to the originating bank, such as structured covered bonds. Scope highlights the key elements introduced by the new law.

Figure 1 below illustrates why the Spanish Ministry of Finance judged it necessary to revitalise securitisations through regulatory reform.

Figure 1



Source: CNMV

Key changes introduced by the new law aim to enhance transparency, quality and simplicity in Spanish securitisations:

Simpler framework for securitising assets

Consolidation of securitisation framework: Investors should pay close attention to the assets being securitised because the legal form (FTH or FTA) of the securitisation fund will no longer offer indications regarding asset quality. The law consolidates the existing fragmented regulation by unifying the regimes for securitisation and creating one single type of fund: Fondo de Titulización ('Securitisation Fund'). The laws governing Spanish 'Mortgage Securitisation Funds' and 'Asset Securitisation Funds' have been partly repealed but the laws will continue to govern these types of funds until their extinction.

Creation of compartments: This feature is one of the main steps to bring the Spanish securitisation framework in line with international standards, which may stir Spanish securitisation further. For a Securitisation Fund, the law allows the creation of separate compartments that are ring fenced and liable only for the costs, fees and obligations assigned to it, as well as being subject to limited recourse provisions that limit a creditor's rights to the assets in a given compartment. A compartment can also be liquidated separately from other compartments in the same Securitisation Fund.

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Assets of different nature may be grouped

Eligible assets: The law allows for non-ECB eligible securitisations as it removes the requirement of assets being of 'homogeneous nature'. To balance this the 'Fund Manager' (sociedad gestora) has to inform the CNMV (Spanish Securities Market Commission) of the characteristics of the assets to be transferred to the Securitisation Fund, as well as declaring they comply with requirements established in the deed of incorporation. Lastly the law maintains the possibility of synthetic securitisations.

Asset transfer more flexible and legally robust

Asset transfer: The transfer of assets becomes more flexible and legal risks are reduced substantially. The old requirement that a transfer has to be unconditional and until final maturity has been removed. The Securitisation Fund's recourse to the originator does not give rise to the possible challenge of a transfer in an insolvency scenario. Subject to certain exceptions the originator now has to provide audited financial accounts from the last two years.

Structured covered bonds introduced

Liabilities: Scope expects the issuance of structured covered bonds will take off in Spain because the conditional pass-through and dual-recourse nature of these instruments may appeal to investors looking for more rating stability. For this purpose the law now allows Securitisation Funds to issue guarantees that cover obligations of third parties. Beyond that the funding base for securitisations has been broadened as a Securitisation Fund may fund itself through bonds and loans from any third party instead of just credit institutions. The restriction that the vehicle's funds must not consist of more than 50% of loans has been removed as well.

Objective termination events

Termination events: Legal uncertainty regarding a possible termination of securitisation transactions in Spain is reduced substantially. The law removes statutory termination events that were subject to the Fund Manager's determination and introduces a defined catalogue of more objective events. These events are: the liquidation of all assets, decision at a creditors meeting with a 75% majority, full amortisation, and forced replacement of the Fund Manager. Additional contractual termination events have to be included in the deed of incorporation of the Fund.

Framework designed to increase structures' quality and introduce managed transactions

Asset management improved

Asset management: Investors will see more managed transactions in Spain that require detailed scrutiny of management quality. The law establishes that Open Securitisation Funds can carry out active asset management (gestión activa) to maximise profits, guarantee the quality of asset selection, manage risks, or maintain conditions established in the deed of incorporation. Closed Securitisation Funds will be allowed to ramp up their asset pool and increase their funding up to a maximum amount during an initial four-month phase from incorporation date. Under tight conditions, Closed Securitisation Funds may also substitute and acquire assets to manage cash-flow mismatches between liabilities and the asset pool.

Creditor control strengthened

Creditor control: Investors will appreciate that their influence on the Securitisation Fund has increased. The law strengthens creditor control by providing for a creditors meeting that is empowered to do what is needed to defend its interests. Any omissions in the Securitisation Fund's constitutional documents are supplemented by respective stipulations in the Spanish commercial law for limited-liability companies. The creditors meeting is empowered, among other things, to change the deed of incorporation, which is otherwise only sanctioned through the consent of all 'financial' creditors, unless the change is of minor relevance in the opinion of the CNMV.

Regulatory regime for Fund Managers tightend

Fund Manager: The quality of a Fund Manager becomes more relevant as their role is amplified, but comfort is provided by the strengthened regulatory requirements that apply to them. The law provides for a new detailed regime for Fund Managers including a minimum equity capitalisation in line with the value of assets under management. The CNMV is in charge of authorising the incorporation of a Fund Manager, who must submit detailed reports to the CNMV and the public. Fund managers must also have internal-control and IT-security procedures and are subject to a rigorous sanction scheme.

Transparency enhanced

Transparency

Several disclosure requirements enhance the transparency of securitisation transactions. These disclosure requirements include specific definitions of information the Securitisation Fund has to provide and the Fund Manager's obligation to disclose the fund's annual and quarterly accounts.

Conclusion

The new regulation brings the Spanish securitisation framework in line with international legislation. Whereas most new elements do not impact the credit risk of Spanish securitisations, as a whole they allow for more robust structures. The law grants more flexibility in creating securitisation transactions and should foster the issuance of transactions beyond RMBS, which has been the predominant transaction in the Spanish market. In particular the possibility to issue structured covered bonds may become a widely used tool that results in significant competition for the traditional Cédulas.

Sources

Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial, Bolletín Oficial del Estado Núm. 101, 28/04/2015, Sec. I., Pág. 36599.

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