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NEW REGULATIONS ON SPANISH GOVERNMENT GUARANTEES OF CERTAIN SENIOR DEBT ISSUANCES

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Introduction

On November 21, 2008, the Spanish Ministry of Economy and Taxation (the “**MET**”) issued Ministerial Order EHA/3364/2008 (the “**Ministerial Order**”) under Royal Decree-Law 7/2008, of October 13, in respect of Urgent Economic-Financial Measures under the Euro Zone’s Coordinated Action Plan (the “**Royal Decree-Law**”), a law that authorized the issuance by the Spanish government of guarantees of certain financing transactions carried out by Spanish credit entities in an amount up to € 100 billion in 2008 and authorized the MET to issue regulations implementing the law. These regulations, embodied in the Ministerial Order, set forth the terms on which, and the procedures pursuant to which, certain senior debt instruments issued by Spanish credit entities may be guaranteed by the Spanish government during calendar years 2008 and 2009.

The Ministerial Order entered into force on November 24, 2008, the date of its publication in the Official National Gazette. Sections 1 through 3 of this

memorandum summarize those aspects of the Ministerial Order that regulate the principal features of the guarantees, the debt instruments that are eligible for the guarantees and the entities that are eligible to apply for the guarantees. Section 4 concludes with certain tax considerations regarding the guaranteed debt instruments.

1. Principal features of the guarantees.

The principal features of the guarantees are as follows:

- Once issued in accordance with the terms of the Ministerial Order, the guarantees are irrevocable, unconditional and enforceable upon the maturity of the guaranteed obligation (which, as noted below, must contemplate a balloon payment). Beneficiaries of the guarantee are not required to proceed against the issuer's assets before enforcing the guarantee (that is, the Spanish government waives the so-called *beneficio de excusión* provided for under Article 1,830 of the Spanish Civil Code).
- Only principal of and ordinary interest accruing under eligible debt instruments are guaranteed. Exchange rate risk, penalties, costs and expenses may not be guaranteed.
- The cost of the guarantees varies based on certain formulations set forth in an annex to the Ministerial Order, ranging between 0.5% and 1.048% per annum of the face value of the debt instrument.

2. Debt instruments that are eligible to be guaranteed.

In order to be eligible for guarantees by the Spanish government, the debt instruments must have the following features:

- Only senior, unsecured commercial paper, bonds and notes issued in Spain may be guaranteed. Despite being potentially eligible for guarantees under the Royal Decree-Law, inter-bank debt is expressly excluded from the scope of the Ministerial Order.
- The debt instrument must contemplate a balloon payment.
- The term of the debt instrument must generally be between three months and three years (although exceptionally debt with up to a five-year maturity may be guaranteed).
- Interest on the debt may be fixed or variable, but must in any event be within the "range of market terms."

- The debt instrument must be listed on an official Spanish secondary securities market.
- The principal amount of each issuance must be at least € 10 million.
- Both individual issuances and debt issuance programs are permitted. The issuances may not incorporate options, derivatives or any other feature that complicates the valuation of the risk being assumed by the Spanish government as guarantor.

3. Entities eligible to apply for a guarantee; Key dates and parameters.

The entities eligible to participate in the guarantee scheme are generally Spanish credit entities and consolidated groups of Spanish credit entities that (i) have, according to the Bank of Spain's official records, a share of at least 0.1% of the aggregate outstanding amount of loans and credits to Spanish residents and (ii) have issued in Spain during the five years preceding the entry into force of the Royal Decree-Law (*i.e.*, October 14, 2008) securities similar to those that fall within the scope of the Ministerial Order.

Entities desiring to apply for guarantees chargeable to the 2008 National Budget must submit their applications before December 3, 2008, with the corresponding guarantees to be issued no later than December 31, 2008 and the corresponding issuances to be carried out no later than July 1, 2009. Applications must adhere to the form approved by resolution of the General Directorate of the Treasury and Financial Policy on November 24, 2008.

Applications on behalf of credit entities and consolidated groups of credit entities will only be accepted if the amount of the guarantee applied for is at least € 100 million and such guarantee may then be applied toward one or more issuances of at least € 10 million each. The maximum amount that may be guaranteed by the Spanish government in respect of each credit entity or each consolidated group of credit entities will be based on its proportion of the aggregate outstanding amount of loans and credits to Spanish residents.

The deadline for applications for guarantees chargeable to the 2009 National Budget and the deadline for carrying out the corresponding issuances will be established by resolution of the General Directorate of the Treasury and Financial Policy.

4. Tax considerations regarding the guaranteed debt instruments.

The Spanish tax regime applicable to the debt instruments that are eligible to be guaranteed by the Spanish government will not be affected by the existence of such guarantees.

Indeed, as these debt issuances, whether individual or in the form of issuance programs, will have to be carried out directly by Spanish credit entities, all of these transactions will fall within the scope of Law 13/1985 (as amended by Law 19/2003). Law 13/1985, as is widely known, provides for an extremely favorable tax regime under which income derived from the relevant securities by investors who are not resident in Spain for tax purposes (including those resident in tax haven territories) and who do not act with respect to such securities through a permanent establishment in Spain, is fully exempt from Spanish withholding tax.

It is worth recalling that under the general tax regime provided for by Spanish law, interest and other financial income obtained by foreign investors from Spanish debt securities must be paid net of the applicable Spanish withholding tax (currently, at the rate of 18%), unless a domestic exemption (*e.g.*, EU residents) or a reduced rate provided for by a tax treaty (generally, a 10% rate) applies. Moreover, the application of any of these benefits requires the investor to identify itself fully by submitting each year a paper certificate of tax residence officially issued by the tax authorities of its country of residence.

As an alternative to this individualized and time-consuming procedure to evidence each investor's identity and tax residence, Law 13/1985 allows issuers to make the relevant payments free of Spanish withholding tax provided that certain reporting obligations are complied with. Under these reporting obligations, Spanish issuers must collect on each payment date information regarding the identity and tax residence of the beneficial owners of the issued securities and file it with the tax authorities on an annual basis. In essence, such beneficial owner information must be provided in the form of a list of investors attached to an official form of tax certificate by certain qualified financial institutions (essentially, those acting as participants, whether in their own name or on behalf of third party beneficial customers, in the applicable clearing system where the securities are settled), which drastically simplifies the process of obtaining the pertinent information from final investors as compared with the extraordinarily burdensome procedures entailed by non-Law 13/1985-compliant transactions.

The Ministerial Order does not expressly set forth any requirement concerning the clearing system where the eligible debt issuances must be settled. To the extent that the securities are channeled through Iberclear, the Spanish domestic clearing system, it would be in the interest of issuers and international investors that Iberclear design, develop and implement investor-friendly procedures aimed at collecting, processing and submitting the beneficial owner information required by Spanish law.

These investor-friendly procedures might well mirror those already successfully in place since 2005 for Spanish debt issued in international markets, such as the US market (where issuances are settled through the US clearing system, DTC), the Euro market (where issuances are settled through Euroclear and Clearstream) or potentially the Canadian and Australian markets (where similar procedures are in the

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The logo banner features the company name 'URÍA MENÉNDEZ' in a white, serif font against a dark blue background with a wavy, fabric-like texture. Below the blue section is a horizontal strip of a light brown, textured material, possibly representing a stone or concrete surface.

process of being developed with the assistance of the respective local clearing houses, CDS and Austraclear).

Uría Menéndez looks forward to working with its clients to structure and implement transactions that take advantage of the guarantees contemplated by the Royal Decree-Law and developed by the Ministerial Order.